



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KERICHO

CIVIL SUIT NO. 6 OF 2015

KIPRONO ARAP KOSKE.....PLAINTIFF

VERSUS

JOHN CHERUIYOT KOSKE.....DEFENDANT

JUDGMENT

(Suit seeking subdivision of land held in joint names of plaintiff and defendant; no reason to deny the plaintiff the said orders; suit by plaintiff succeeds)

The suit herein concerns the ownership of the **land parcel Kericho/Silibwet/944** (hereinafter the suit land) which land is registered in the joint names of the plaintiff and defendant. The two litigants are step brothers and became registered as proprietors on **17th February 2014**. The land in issue measures 1.0 Hectares. In this suit, commenced by way of plaint on **5th February 2015**, the plaintiff wants the suit land subdivided into two equal portions so that he can get his title deed to his half share.

The defendant filed a brief defence vide which he pleaded that a division of the land ought not to be ordered for the reason that there is a pending matter being **Nakuru HCCC No. 47 of 2008** where the two litigants are joint defendants. He asked that the suit be dismissed.

The plaintiff filed a Reply to Defence through which he averred that the suit **Nakuru HCCC No. 47 of 2008** is concluded and annexed a copy of the decree. It seems from it that the suit against the two litigants was dismissed.

At the hearing of this case, only the plaintiff attended. He testified as the sole witness and basically led evidence to the effect that the land is registered in the names of himself and the defendant. He produced a copy of the title deed and official search to demonstrate this. He stated that the defendant has possession of the original title deed. He testified that the land was acquired through succession. He asked for his half share of 0.5 Ha.

Ms. Chepkirui for the plaintiff made brief submissions and was of the view that the plaintiff is entitled to the orders sought.

I have considered the matter. The only evidence that I have is that of the plaintiff as the defendant opted not to tender any evidence. I have seen that the land is registered in the two names of the plaintiff and defendant. It is not clear whether the ownership is joint or in common for there is no indication of this in the title deed or the search. In the case of ***Moses Bii vs Kericho District Land Registrar & Another, Kericho ELC No. 8 of 2014 (2015) eKLR***, I did hold that where there are more than one proprietors, and there is no notice as to whether title is held jointly or in common, barring any special circumstances, the

default position ought to be that the title is held in common. I take that position in this case as well, in which event, the presumption is that the two proprietors have equal undivided shares in the property. That being the position, I do not see why the defendant would insist to have the title continue being held in the two names. The plaintiff wants a separate title in his own name and I have no reason to deny him this prayer. The excuse by the defendant, that there is a pending suit, holds no water since it is apparent that the said suit was concluded, indeed in their favour.

From the foregoing, I am of the opinion that the plaintiff is deserving of the orders sought. I therefore, allow this suit and make the following orders :-

*a) That an order is hereby issued that the **land parcel Kericho/Silibwet/944** be subdivided into two equal portions, one portion to be registered in the name of Kiprono arap Koske and the other portion to be registered in the name of John Cheruiyot Koske, the plaintiff and defendant respectively.*

b) That the defendant is hereby ordered to make available the original title deed and execute all requisite documents required in order to effect the subdivision of the property. In default, the Deputy Registrar to execute the necessary documents.

c) That the costs of the subdivision will be shared equally between the plaintiff and defendant.

d) Given the relationship of the parties, there shall be no orders as to costs.

Judgment accordingly.

Dated, Signed and delivered on this 30th day of September, 2016

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

PRESENT

No appearance on the part of M/s Koech chepkirui & Co. Advocates for Plaintiff.

Defendant acting in person – Absent

Court Assistant; Wambany