



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 63 OF 2008**

**JACOB PATIS REMOR..... PLAINTIFF**

**VERSUS**

**CHEPOTUTURWA YARAITA..... 1<sup>ST</sup> DEFENDANT**

**PAUL KARIY YARAITA..... 2<sup>ND</sup> DEFENDANT**

**J U D G E M E N T**

**INTRODUCTION**

1. The plaintiff filed this suit against the defendants seeking a declaration that the defendants were trespassers on **LR. No. West Pokot/Chepareria/2312** and for orders of eviction. The defendants filed a defence to the plaintiff's claim and raised a counter-claim in which they contend that title to **West Pokot/Chepareria/2312** (suitland) was fraudulently obtained by the plaintiff and that the same should be cancelled. They also sought a declaration that they are entitled to remain in the suitland without any interference from the plaintiff.

2. The plaintiff is son of **Remor Kachutrut Remor** who was the beneficial owner of a parcel of land which became **West Pokot/Chepareria/163** upon registration. The plaintiff's father died in **1985** before registration. The first defendant is wife of **Yaraita Peena** who was the beneficial owner of an adjoining parcel of land which was later registered as **West Pokot/Chepareria/164**. The first defendant's husband died in 1994 before registration of the land.

**PLAINTIFF'S CASE**

3. The plaintiff testified that his father's land spread across the Kapenguria/Lodwar road in West Pokot County. During land adjudication in the area, their portion of land which was on the right side of Kapenguria/Lodwar road was wrongfully given to Yaraita Peena. When the plaintiff realized what had happened, he went and lodged an objection before the area adjudication officer.

4. The objection was heard and it was found that a portion of **LR. No. West Pokot/Chepareria/164** rightfully belonged to the family of Remor Kachturut and that that portion should be incorporated into **West Pokot/Chepareria/163**. The plaintiff then went ahead to process title which came out in his name and that of his late brother **Losiwanyang Remor**.

5. The first defendant was not satisfied with the verdict of the objection which had been raised by the plaintiff. She moved on appeal to the minister as required. The appeal was heard by the District Commissioner West Pokot District. The District Commissioner overturned the decision arising from the

objection which had been raised by the plaintiff. The plaintiff was aggrieved by the decision of the District Commissioner. He moved to Kitale High Court where he filed an application for judicial review. The High Court delivered its ruling on **8/6/2005** quashing the decision of the District Commissioner on the ground that the District Commissioner had no jurisdiction to entertain an appeal by the first defendant who had not taken out letters of administration in respect of her husband's estate.

6. The plaintiff later had **LR. No. West Pokot/Chepareria/163** subdivided into four parcels namely **West Pokot/Chepareria/2309, 2310, 2311** and **2312**. **LR. No. West Pokot/Chepareria/2312** is in the name of the plaintiff. This is the parcel which is now the subject of this suit. The plaintiff testified that he has been asking the defendants to move out of the suitland but that they have refused to move out prompting him to file this suit.

### **DEFENDANTS' CASE**

7. The first defendant stated that the second defendant is her last born son. That she was married to Yaraita at a time she could not remember and that she has been living on the suitland since she was married. All her children were born on the suitland. Her husband was buried on the suitland and that the plaintiff has never utilized the suitland. She contended that the plaintiff obtained the title to the suitland illegally and that the same should be cancelled and a new title issued in her name.

### **ANALYSIS OF EVIDENCE AND ISSUES FOR DETERMINATION**

8. I have carefully gone through the evidence adduced by the plaintiff and the first defendant. The issues which emerge for determination are firstly whether the defendants are trespassers on the suitland. Secondly, whether the plaintiff obtained title to the suitland fraudulently and if so whether the same should be cancelled. Lastly, should the defendants be evicted from the suitland?

#### **Whether the defendants are trespassers on the suitland**

9. Evidence adduced in this case shows that there was a dispute as regards boundaries of parcel No. **LR. No. West Pokot/Chepareria/163** and **164**. When the plaintiff's father died, the plaintiff filed an objection before the land adjudication officer of Chepareria adjudication section. This objection was lodged pursuant to the provisions of the ***Land Adjudication Act Cap 284 Laws of Kenya***. The adjudication committee heard the objection and found that the portion which the plaintiff was claiming indeed belonged to his father. The proceedings were held in 1992.

10. The plaintiff produced the proceedings of the committee and the ruling thereof as Exhibit 1. Though the proceedings bear a date of 5/7/2012, it is clear that this is the date when these proceedings were re-typed. The original version of the proceedings are contained in Exhibit 8 which is the original record in ***Kitale High Court Miscellaneous Application No. 25 of 2005***. A reading of the proceedings show that the committee members visited the disputed portion and found that the husband of the first defendant had not constructed houses for his two wives on the disputed portion. The committee also found that there were discrepancies in the demarcation book and the PID (Air Photograph). The committee found that the disputed portion belonged to the father of the plaintiff. They accordingly ordered that it be added to **LR. No. West Pokot/Chepareria/163**.

11. The plaintiff had testified that there was someone who had attempted to occupy the disputed portion. He had him removed. When the husband of the first defendant died in 1994, he was buried on the disputed portion despite the plaintiff's protest and despite the verdict of the adjudication committee which had given the disputed portion to his father.

12. The first defendant preferred an appeal against the adjudication committee to the minister who by virtue of the provisions of the Land Adjudication Act had powers to delegate to the local District Commissioner. The appeal was heard by the District Commissioner West Pokot District. The District Commissioner upon hearing the appeal overturned the decision of the adjudication committee. The plaintiff moved to the High Court at Kitale which overturned the decision of the District Commissioner.

The District Commissioner's proceedings and ruling were produced as Exhibit 2. The ruling of the High Court in Miscellaneous Civil Application No. 25 of 2005 was produced as Exhibit 3.

13. The decision of the District Commissioner having been quashed by the High Court, it follows that the verdict which remains is that of the adjudication committee which gave the disputed portion to the plaintiff's father. The disputed portion which comprises the suitland was registered in the plaintiff's name and that of his late brother Losiwanyang Remor. However the green card which was produced as Exhibit 5 shows that the land has since reverted to the plaintiff by way of transfer on 8/4/2013. It is not clear whether the transfer was before Losiwanyang Remor died or it was after his death. There is no evidence as to when Losiwanyang died.

14. It is clear that, the suitland is now in the plaintiff's name. The two defendants have no business remaining on it. They have their own land comprised in **LR. No. West Pokot/Chepareria/164** which is registered in the name of **Julius Yaraita**. This is as per the green card produced as Exhibit 6. It is therefore clear that the defendants are trespassers in the suitland.

**Whether the plaintiff obtained the suitland fraudulently and if so whether the title should be cancelled.**

15. The evidence adduced in these proceedings show that the plaintiff was registered as owner of the suitland after the adjudication committee found that the disputed portion which now comprises the suitland belonged to his father. The plaintiff first obtained title in the **LR. No. West Pokot/Chepareria/163**. This portion was later subdivided and yielded four parcels one of which happens to be the suitland. The first defendant enumerated particulars of fraud on the part of the plaintiff in her counter-claim. None of those particulars were proved in evidence.

16. Contrary to the first defendants' allegation that the title to the suitland was obtained fraudulently, evidence herein clearly shows that the plaintiff followed the right procedures in getting the suitland. I therefore find that the process leading to acquisition of title to the suitland was lawful. This therefore means that the same cannot be cancelled by this court.

**Whether the defendants should be evicted from the suitland.**

17. I have already found that the defendants are trespassers on the suitland. A trespasser has no right to remain on the property to which he/she has trespassed. During the hearing it emerged that the husband of the deceased was buried on the suitland. The burial was after the adjudication committee had found that the suitland belonged to the father of the plaintiff. The mere fact that the remains of the husband were interred on the suitland is not a bar to the court granting eviction orders.

**DECISION**

18. I find that the plaintiff has proved his case against the defendant on a balance of probabilities. On the other hand, I find that the defendants have not proved their counter-claim. I make the following orders:-

- (a) A declaration that the defendants are trespassers to land parcel No. West Pokot/Chepareria/2312.**
- (b) An order of eviction against the defendants from LR. No. West Pokot/Chepareria/2312.**
- (c) An order dismissing the defendants counter-claim.**
- (d) Costs of the suit and counter-claim to be paid by the defendants.**

Dated, signed and delivered at Kitale on this **13<sup>th</sup>** day of **October, 2016**.

**E. OBAGA**

**JUDGE**

In the presence of M/s. Wanyama for plaintiff.

Court Assistant - Isabellah.

**E. OBAGA**

**JUDGE**

**13/10/2016**