



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT ELDORET**

**E & L CASE NO. 114 OF 2015**

**PETER KIMELY KIPSANG.....PLAINTIFF**

**VERSUS**

**KIBIYEGO ARAP KIPSANG.....1ST DEFENDANT**

**PHILIP KIPKEMBOI ARAP SANG.....2ND DEFENDANT**

**MICHAEL KIBET ARAP SANG.....3RD DEFENDANT**

**JUDGMENT**

*Peter Kimely Kipsang*, hereinafter referred to as the plaintiff has sued *Kibiyego Arap Kipsang*, *Philip Kipkemboi Arap Sang* and *Michael Kibet Arap Sang* claiming that he and the defendants are all registered/proprietors in common of parcel of Nandi/Ndubeneti/224 measuring approximately 12.2 hectares which is a family land, and which they inherited after their father passed away. The interest of each one of them is a  $\frac{1}{4}$  of undivided share of the parcel Nandi/Ndubeneti/224. The Kilibwoni Land Control Board granted consent to have the land partitioned into four equal portions but the defendants became uncooperative to complete the partition of the land. The Kilibwoni Land Control Board granted another consent to have the same parcel of land partitioned into two portions of 3.05 hectares and the remainder of 9.15 hectares so that the plaintiff could have the title for his portion of 3.05 hectares and that the plaintiff commissioned a surveyor to carry out the survey work but the defendants again became uncooperative and the plaintiff has not been able to have title for his portion. Despite several request and demand that they facilitate partitioning process, the defendants have adamantly and for no justifiable reasons refused to do so.

Reasons wherefore, the plaintiff prays for judgment against the defendants for an order of compelling the defendants to facilitate partitioning process of parcel No. Nandi/Kilibwoni/224 into the portion of 3.05 and 9.15 acres and an order of partition to be granted to the plaintiff to have his portion registered in his names. In the alternative, that the Deputy Registrar of High Court be granted order to execute all the relevant documents to facilitate the partitioning, transfer and registration of the property measuring 3.05 hectares in to the name of the plaintiff. Ultimately he prays for Costs and Interest.

The defendants filed joint statement of defence whose gist is that they are registered in trust for other beneficiaries in essence, the defendants pray for subdivision of the land in five equal portions.

When the matter came for hearing on the 23.11.2016, the plaintiff established that the date had been taken by consent of the parties on the 3.6.2016.

The plaintiff testified that there is a piece of land known as Nandi/Ndubeneti/224 which used to belong to their late father. The same measures 12.2 hectares and is a family land. When their late father passed away, they inherited the land as brothers and the interest of each one of them is a  $\frac{1}{4}$  of the land in question. That on 24.10.1974, the said land was registered into their names and a title deed issued. On 22.9.1994, consent was granted by Kilibwoni Land Control Board to partition the land into four equal portions. Later, his brothers became uncooperative to complete the partition of the land. He commissioned a Surveyor to carry out the survey work. Again, his brothers became uncooperative and hence he cannot get his portion of land.

He has filed a suit against his brothers so that the court can grant him an order of partition and have his portion registered in his names and his 3 brothers can retain their portion in their own names. He is also asking for costs of the suit.

I have considered the pleadings and evidence on record especially the testimony of the plaintiff and do find that the plaintiff and the defendants are registered as absolute proprietors of the land comprised in title Number Nandi/Ndubeneti/224. They were registered on 24.10.1974 and title issued on 27.9.2007. They twice obtained a letter of consent to partition into 4 equal portions to parcel of land No. Nandi/Ndubeneti/224 but due to family disagreement, they could not allow the surveyor to do the subdivision. The plaintiff therefore, prays for judgment.

The plaintiff has proved his case on a balance of probabilities that he is entitled to the orders sought as the said land was registered into their names on 24.10.1974 and a title deed issued 22.9.1994 and that consent to partition was granted by Kilibwoni Land Control Board to partition the land into four equal portions. Later, his brothers became uncooperative to complete the partition of the land. He commissioned a Surveyor to carry out the survey work. Again, his brothers became uncooperative and hence he cannot get his portion of land. The plaintiff is entitled to the orders sought. I therefore do grant orders that the parcel of land be partitioned to enable the plaintiff to have his portion registered in his names. The Deputy Registrar of High Court to execute all the relevant documents to facilitate the partitioning, transfer and registration of the property measuring 3.05 hectares in to the name of the plaintiff. There will be no order as to costs this being a family dispute.

**DATED AND DELIVERED AT ELDORET ON 30TH DAY OF NOVEMBER, 2016.**

**ANTONY OMBWAYO**

**JUDGE**