



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CIVIL SUIT NO. 343 OF 2014

ELIJAH KIMUTAI MUREI.....PLAINTIFF

VERSUS

ERASTUS SERONEY KESSIO.....DEFENDANT

JUDGMENT

*Elijah Kimutai Murei*, hereinafter referred to as the applicant (sic plaintiff) has sued *Erastus Seroney Kessio*, hereinafter referred to as the defendant claiming that he and other members of his family namely William Kiprop Mureiu, Thomas Kipchumba Murei (deceased) and Anne Chelagat (mother, deceased) sold a parcel of land measuring 3.5 acres to the defendant herein in the year 2008. The entire piece of land before sale was 1.82 Ha approximate 4.6 acres namely Nandi/Kokwet/338. The defendant brought a private surveyor from Kapsabet to demarcate his portion, but instead colluded with him to add himself more land more than the 3.5 acres he had bought. The defendant took advantage of the applicant mother who was at home during the demarcation and did not know much about land measurement. The defendant hurriedly fenced off the demarcated portion and conned the applicant and the other family members into signing mutation form, consent and transfer forms unknowingly. The defendant secretly went to the Lands Office at Kapsabet and corruptly processed a title deed No. Nandi/Kokwet/913 colluding with some staff in the registry office, before the succession was done by the applicant and members of his family above. That efforts by the plaintiff and his family members to address the issue failed since the defendant had already fenced the said land and had obtained a title deed unlawfully to defeat justice. The plaintiff and his family members claim to have suffered untold sufferings in view of the respondent unlawful acts. The particulars of the unlawful acts against the applicant are listed as follows:

1. *Secretly registering himself the absolute owner of land No. Nandi/Kokwet/913 while having knowledge of the dispute and shoved controversy.*
2. *Colluding with the surveyor to award himself extra 0.06 acre land he never paid for.*
3. *Conning the applicant and other members of his family into consent and transfer forms for him to corruptly acquire a title deed No. Nandi/Kokwet/913 before the applicant and his family could apply for succession.*
4. *Fencing the entire suit land to prevent confirmation of the actual acres he bought from the applicant family, thus defeating justice.*
5. *The applicant confirms that there is no other pending case on this subject matter in any court of law in Kenya.*
6. *That this matter aroused within the jurisdiction of this Honourable court at Kosirai, Nadaptabwa village, Nandi County.*

Reasons wherefore, the applicant prays for judgment against the respondent for cancellation of title deed No. Nandi/Kokwet/913, confirmation of same on ground by the Lands Registrar, Nandi central and returning any extra piece of land in excess of 3.5 acres the respondent bought from the applicant's family to the applicant who owns Nandi/Kokwet/914. Cost of this application.

The defendant never entered appearance and never filed defence. He was served with a hearing notice but never came for hearing. **PW1, Elijah Kimutai** testified that he served the defendant but he never came to court. He tried to talk to him but all in vain. He seeks to confirm the boundary of Nandi/Kokwet/338 which was subdivided to create Nandi/Kokwet 912, Nandi/Kokwet 913, Nandi/Kokwet 914. Nandi/Kokwet 913 registered in the name of Erastus Seroney Kessio. They claim to have sold him 3½ acres. They do not have a problem in the defendant having 3.5 acres because they sold him 3.5 acres.

**PW2 was William Kiprop Murei**, a farmer based in Nandi. He claims that he family sold the defendant 3.5 acres. The entire land was 1.82 Ha. The plaintiff brought a private surveyor and demarcated land taking advantage of their mother who did not know things of land measurement in their absence and fenced and went ahead to obtain a title deed for Nandi/Kokwet/915 after conning them to sign a blank mutation form. This was done before succession.

I have considered the pleadings and evidence on record and do find that the evidence on record demonstrates that the defendant was entitled to 1.32 Ha as per the mutation form dated 9.6.2009 and therefor the title document should reflect the entries on the mutation form. I do find for the plaintiff and do enter judgment for cancellation of Kokwet/913 and that there be a resurvey to enable the defendant to own 3.5 acres of the land and the rest to be registered in the name of the family members of the late Malakwen Arap Singoei. The defendant to get costs of the suit.

**DATED AND DELIVERED AT ELDORET ON 22ND DAY OF NOVEMBER, 2016.**

**ANTONY OMBWAYO**

**JUDGE**