



**REPUBLIC OF KENYA**

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

**LAND CASE NO. 92 OF 2010**

**KIMAIYO RONO :::::::::::::::::::::::::::::: PLAINTIFF**

**VERSUS**

**SUSAN CHELAGAT :::::::::::::::::::::::::::::: DEFENDANT**

**JUDGEMENT**

**INTRODUCTION**

1. The Plaintiff is father in-law of the defendant. The defendant was married to the plaintiff's son in a civil marriage which was solemnized at the District Commissioner's office Trans-Nzoia on 11/9/1987. The defendant's husband died on 14/5/1995. On 28/10/2010, the plaintiff filed present suit against the defendant in which he sought an order of eviction of the defendant from LR NO Chepsiro/Kibuswa Block 2/Kiptenden/452.

**PLAINTIFF'S CASE**

2. The Plaintiff testified that he is the registered owner of LR NO Chepsiro/Kibuswa Block 2/Kiptenden/452 (suit land) which is 14.64 hectares. He testified that the defendant is her daughter in-law who was married to his son who is now deceased. He testified that he is not in good terms with the defendant because the defendant at one time took him before the Land Disputes Tribunal claiming part of his land. The Tribunal awarded her 4.8 acres but he moved to the High Court and had the Tribunal decision quashed. He prayed for orders of eviction of the defendant from the suit land and an order of injunction restraining the defendant from ploughing the suit land.

**DEFENDANT'S CASE**

3. The defendant testified that she is daughter in-law to the plaintiff having been married to his son known as Daniel Kirwa Rono in 1987. She testified that her husband died on 14/5/1995. At the time she was testifying, she was in the process of obtaining letters of administration in respect of the estate of her deceased husband. She testified that she has lived on the suit land since her marriage and continues to stay there.
4. Sometime in the year 2003 the plaintiff subdivided his land between his two wives. The defendant's husband came from the first house which had two sons. Each of the sons of the first house were given 4.8 acres. This was after the plaintiff had taken 5 acres for himself. After the defendant utilised her 4.8 acres for about two years, the plaintiff approached her and told her that he wanted to take away her 2.8 acres so that she could remain with 2 acres. She suggested to the plaintiff that if any part of her portion was to be taken, then this should happen to the rest of the

family members. It is after this that the plaintiff moved to court and filed the present suit.

### **ANALYSIS OF EVIDENCE**

5. There is no contention that the plaintiff is the registered owner of the suit land. There is also no contention that the defendant is the daughter in-law of the plaintiff. The only issue which arises for determination is whether in the circumstances an order of eviction can issue against the defendant. The defendant is staying on the land by virtue of her marriage to the plaintiff's son. She has lived on the land since her marriage in 1987. She has three children who are grandchildren of the plaintiff. The plaintiff testified that he is ready to listen to the defendant if she is willing to talk to him. The plaintiff is merely contending that he is not in good terms with the defendant. The plaintiff did not deny the defendant's claim that the problem started after the plaintiff wanted to take 2.8 acres from her and leave her with only 2 acres. It is not fair that the plaintiff picks on the defendant for reduction of her share. What the plaintiff was trying to do is to discriminate against the defendant. Discrimination of any kind is contrary to the provisions of the constitution and international conventions which outlaw discrimination.
  
6. Though the plaintiff is the registered owner of the suit land his rights as a registered owner is subject to overriding interests which need not be noted in the register. These overriding interests include customary trusts. In African communities, children are allowed to inherit land from their fathers. The defendant having been married to the plaintiff's son who is now deceased, she is expected to inherit her husband's share. It will therefore be absurd to evict the defendant from the only land which has been a source of her livelihood and that of her children. I find that the plaintiff's suit against the defendant is misconceived. The plaintiff should not subject his grand children to untold suffering. He should instead embrace them and give them comfort at this time when their father is not alive. The plaintiff's suit is hereby dismissed with costs to the defendant.

**Dated, signed and delivered at Kitale on this 12th March, 2015.**

**E. OBAGA**

**JUDGE**

**12/03/2015**

**In the Presence of M/S Arunga for Plaintiff and Defendant. Court Clerk – Isabellah.**

**E. OBAGA**

**JUDGE**

**12/03/2015**