



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**LAND CASE NO. 27 OF 1999**

**GILIDI CHERUIYOT KIPKOECH .....PLAINTIFF**

**VERSUS**

**NATHAN KIPCHUMBA LAGAT.....1ST DEFENDANT**

**MARY NAIBEI CHANGWONY..... 2ND DEFENDANT**

**DAVID OSORO..... 3RD DEFENDANT**

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

**INTRODUCTION**

1. The plaintiff is the registered owner of **L.R. No. Kaplamai/Sirende/Koitogos/28** (suit land) which is **5.809 hectares**. The plaintiff filed this suit against the three defendants seeking the following reliefs:-
  - (a) **A declaration that he is the registered owner of the suit land.**
  - (b) **An eviction order against the defendants.**
  - (c) **General damages.**
  - (d) **Costs of the suit.**
  - (e) **Any other relief this Honourable court may deem fit and proper to grant.**
2. The first defendant died and was never substituted. The claim against the third defendant was compromised through a consent recorded on 8/12/2014 in which the plaintiff agreed to transfer 2½ acres to the third defendant. The plaintiff therefore proceeded to hearing against the second defendant only.

**PLAINTIFF'S CASE**

3. The plaintiff testified that he is the registered owner of the suit land. He produced a title deed which he obtained on 6/7/1998 as Exhibit 1. He stated that the defendants invaded the suit land in 1989 following sale agreements between them and his late brother **Benjamin Malakwen**. He stated that the defendants constructed houses while police officers stood by. He further testified that he has since agreed to give land to the third defendant but that he is not willing to give land to the second defendant.
4. The defendant testified that he does not know the acres occupied by the second defendant and that it is not his mother who sold the portion occupied by the second defendant to her husband. He contends that his mother was old and is not the one who sold the land being claimed by the defendants.

### **SECOND DEFENDANT'S CASE**

5. The second defendant testified that she is the wife of **Wilfred Changwony Mnaibei** who bought 5 acres from the plaintiff's mother **Maria Tablelei Tangus** in 1986. She has been residing on the 5 acres on the strength of her marriage to Wilfred Changwony Mnaibei. Maria Tablelei was wife of Kipkoech Tangus who died in 1985. The suit land used to be known as **Plot 3709**. She produced a letter dated 21/11/ 2001 from the Ministry of Lands and Settlement [Defence Exhibit 1] confirming that the suit land was originally known as L.R. No. 3709.
6. The second defendant produced a letter of consent [Defence Exhibit 3] which shows that Maria Tablelei Tangus was given consent to subdivide her 15 acres land into four portions. One of the portions was five acres. She produced a letter of consent (Defence Exhibit 4) given to Maria Tablelei Tangus to transfer 5 acres to her husband Wilfred Changwony Mnaibei.
7. The second defendant further testified that Maria Tablelei Tangus transferred the entire land into the plaintiff in 1998. This was after she had procured a consent in favour of her husband. The second defendant contends that this was a conspiracy between Maria Tablelei Tangus and her son (plaintiff) to defeat the interests of her husband who had bought 5 acres. She produced an extract of the register [Defence Exhibit 2] which shows the history of the suit land.
8. The second defendant called DW2 Wilfred Changwony Mnaibei. This witness testified that he is the husband of the second defendant. He further testified that he is the one who bought 5 acres out of the suit land from Maria Tablelei Tangus in 1986. Maria ensured that consent to transfer 5 acres which he had bought was obtained but she later transferred her entire land into the name of the plaintiff who is her son. This witness stated that the suit land was initially known as L.R. No. 3709 but it changed to its current number.

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

9. The advocates for the parties herein filed a statement of agreed issues on 24/2/2000. One of the issues for determination is whether L.R. No. 3709/165 is the same as L.R. No. Kaplamai/Sirende Block 4/Koitogos/28. The second defendant adduced evidence to show that L.R. No. 3709/165 is the same as L.R. No. Kaplamai/Sirende Block 4/Koitogos/28. This was confirmed vide letter dated 21/11/2001 from the Ministry of Lands and Settlement. The land registrar Trans-Nzoia confirmed that L.R. No. 3709 is currently registered as Kaplamai/Sirende Block 4/ Koitogos/28. The acreage is the same which is 15 acres. The plaintiff's argument that the second defendant's husband may have bought land other than the suit land is therefore without basis. The plaintiff during cross-examination confirmed that the original number of the suit land was 3709 when the registration was under the Registration of Titles Act.
10. The other agreed issue for determination is whether it is the plaintiff's mother who sold part of the suit land to the defendants. Related to this is the issue whether the plaintiff is son of Kipkoech Tangus. The second defendant was categorical in her evidence that she is not the one who bought 5 acres from the plaintiff's mother. She testified that she is on the suit land on the strength of her

husband having purchased land from the plaintiff's mother. Whereas the second defendant claims that her husband bought 5 acres from the plaintiff's mother, there is no evidence produced such as sale agreement. The second defendant's husband testified but he too did not produce any agreement between him and the plaintiff's mother. In her defence, the second defendant pleaded that her husband bought 6 acres from the plaintiff's mother. However in her evidence, she stated that her husband bought 5 acres. The only document which the second defendant produced is a letter of consent dated 23/4/1991 [Defence Exhibit 4] in which it is shown that the plaintiff's mother was to transfer 5 acres to her husband. This consent is doubtful because as at this time the plaintiff's mother had not been registered as owner of the suit land. The suit land was transferred from the Government of Kenya to the plaintiff's mother on 16/5/1997. It is therefore not possible that consent to subdivide an unregistered land would have been given to the plaintiff's mother. I therefore find that there is no basis upon which the second defendant can claim that her husband bought land from the mother of the plaintiff. On the issue as to whether the plaintiff is son of Kipkoech Tangus, there is really no contention on this. The plaintiff himself has not denied that he is son of the late Kipkoech Tangus. It was not even denied in the pleadings that he is son of Kipkoech Tangus.

11. The other agreed issue for determination is whether the second defendant is a trespasser and if so if she should be evicted. The second defendant is claiming to be on the suit land by virtue of her marriage to Wilfred Changwony Mnaibei who alleges to have bought 5 acres from the plaintiff's mother. I have demonstrated hereinabove that there is no evidence that the second defendant's husband bought land from the plaintiff's mother. With no evidence of purchase, there is no basis upon which the court can hold that she is lawfully on the land based on the purchase by her husband. This being the case, I find that she is a trespasser who should be evicted from the suit land.

12. The first defendant (now deceased) and the third defendant provided copies of sale agreements between them and the plaintiff's mother. Copies of these agreements are in the court file. This explains why the plaintiff settled his case against the third defendant. The second defendant did not file any copy of sale agreement between her husband and Maria Tablelei Tangus. She did not even produce any agreement during her testimony. Even if she has been on the land for long, she has been on the same as a trespasser.

### **DETERMINATION**

13. The plaintiff does not know the acreage occupied by the second defendant. The second defendant herself does not know what her husband bought because her pleadings and evidence in court is at variance. I therefore do not find that an award of general damages for trespass is appropriate in the circumstances. The plaintiff is the registered owner of the suit land. As the court has found that the second defendant is a trespasser an order of eviction is hereby issued against her. The second defendant shall pay costs of this suit to the plaintiff.

**Dated signed and delivered at Kitale on this 16th day of September, 2015.**

**E. OBAGA**

**JUDGE**

**16/9/2015**

In the presence of M/s. Arunga for Plaintiff and Mr. Wanyama for Mr. Onyancha for 2nd Defendant.

Court Assistant – Winnie.

**E. OBAGA**

**JUDGE**

**16/9/2015**