



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT KITALE**  
**LAND CASE NO. 9 OF 2014**

**ESTATE OF KIPRONO ARAP LETING**

Represented by **ANDREW K. RONO.....PLAINTIFF**

**VERSUS**

**PAULINA YABEI**

**SAMUEL KUTTO.....DEFENDANTS**

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

**INTRODUCTION**

1. The Plaintiff Andrew Kiprotich Rono is the legal representative of the estate of his late father Kiprono Arap Leting who was the registered owner of LR NO. Chepsiro/Kibuswa Block 1 (Kapcheplanget/40 (suit land). The first defendant Pauline Yabei is mother to the second defendant Samuel Kutto. The plaintiff filed a suit against the defendants in which he sought the following reliefs;-

**(a) A declaration that the land comprised in Title No. Chepsiro/Kibuswa Block 1 (Kapcheplangat)/40 solely belong to Kiprono Philip Leting and that the defendants have no proprietary interest in the said land.**

**(b) A permanent injunction to restrain the defendants from cultivating the land comprised in title No. Chepsiro/Kibuswa Block 1 (Kapcheplanget/40.**

**(c) Costs**

**(d) Interest**

The defendants who were duly served neither entered appearance nor filed defence. The hearing therefore proceeded by way of formal proof.

**PLAINTIFF'S CASE**

2. PW1 Andrew Kiprotich Rono testified that he is the administrator of the estate of his later father Kiprono Arap Leting who died on 7/7/1999. (Deceased). The deceased together with others bought LR Nos 2219/1 and 4475. These two parcels were subsequently subdivided and shared amongst the members. It was mutually agreed during the subdivision that those who were to be given land which was

arable were to get less acres than those who got land in rocky and hilly places who were to get larger portions of land. It was also mutually agreed that those who happened to be cultivating on land which was allocated to others, they were to move and go to their allocated portions.

3. The deceased was allocated a hilly portion of land which measured 28.45 hectares. The husband of the first defendant happened to be cultivating land which was allocated to the deceased. The husband of the first defendant who is now deceased was then expected to move out of the portion of the deceased and go to his own land. The husband of the first defendant never moved out of the deceased's land. He moved to court and filed a case against three defendants one of whom was the deceased. He was claiming 24 acres from the three. This case was later dismissed for want of prosecution. The defendants have since been cultivating the deceased's portion and they have refused to move out.

### **ANALYSIS OF EVIDENCE**

4. The plaintiff has demonstrated that he is the administrator of the estate of the deceased. A grant of letters of administrator was produced as exhibit 1. The plaintiff has also produced a title deed in respect of the suit land exhibit 2. The title was issued to the deceased on 15/2/1998. The property is 28.45 hectares.

5. The husband of the first defendant filed Kitale High Court Civil case No. 19 of 1990. The defendants included the deceased who was the third defendant. The first defendant wanted 24 acres excised from the suit land and added to his portion to make it 67 acres. This case was never prosecuted and it was dismissed for want of prosecution on 10/11/2008. The plaint in that case was produced as exhibit 3 and the order of dismissal produced as exhibit 5.

6. The husband of the first defendant never proceeded to prove his allegations in the case filed against the deceased as the suit was dismissed. The defendants are said not to be residing on the suit property but are cultivating on the same. The plaintiff has demonstrated that the suit land is in the name of the deceased. The evidence of the plaintiff has not been controverted. I find that the plaintiff has proved his case against the defendants on a balance of probabilities.

### **DECISION**

7. As the plaintiff has proved his case on a balance of probabilities, a declaration is hereby issued that land comprised in LR No. Chepsiro/Kibuswa Block 1 (Kapchelanget/40 solely belong to Kiprono Philip Leting and that the defendants have no proprietary interest in the same. A permanent injunction is hereby issued restraining the defendants from cultivating the land comprised in Title No. Chepsiro/Kibuswa Block 1 Kapcheplanget/40. The plaintiffs shall also have costs and interest of this suit.

Dated, signed and delivered at Kitale on this 23rd September, 2014.

**E. OBAGA**

**JUDGE**

**In the presence of Mr Kiarie for Plaintiff. Court Clerk Kassachoon.**

**E. OBAGA**

**JUDGE**

**23/9/2014**