



**REPUBLIC OF KENYA**

**IN ENVIRONMENT AND LAND COURT AT KITALE**

**ELC NO. 80 OF 2014**

**WILLIAM KIPTOO KIPTUMARIL :::::::::::::::::::: PLAINTIFF**

**VERSUS**

**1. TAPYOTIN KANDA**

**2. DANIEL KETURE**

**3. WILLIAM KETURE :::::::::::::::::::: DEFENDANTS**

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

**INTRODUCTION**

1. The Plaintiff brought this suit against the defendants claiming the following reliefs;-

*(a) A declaration that the plaintiff is the lawful owner of Title No. Cherangany/Koitogum/732 measuring 2 acres.*

*(b) A permanent injunction restraining the defendants and all those claiming under them from interfering with the plaintiff's user and quiet enjoyment of the suit land.*

*(c) Costs*

*(d) Any other relief this Honourable court may deem just and fit to grant.*

2. The defendants who were duly served with summons to enter appearance and file defence neither entered appearance nor filed defence. The hearing proceeded by way of formal proof.

**PLAINTIFF'S CASE**

3. The Plaintiff testified that he is owner of Parcel No. Cherangany/Koitogum/732 (suit land). He bought the suit land in 1996 from one Keture Komen who is now deceased. He bought two acres at Kshs.25,000/= per acre. The surveyor came to the ground and excised his two acres from Keture Komen's land which was seven acres. The consent of the land control board was duly given.

4. After the death of Keture Komen in June, 2013, the defendants who are the deceased's nephews invaded part of his land and blocked an access road to his houses. The defendants claimed that now that the person who had sold him the land had died, he was not going to enjoy the land. The defendants later turned violent and assaulted the plaintiff and his son. The defendants were charged with a criminal offence vide Kitale Chief Magistrate's Court Criminal Case No. 2631 of 2013.

## ANALYSIS OF EVIDENCE

5. The Plaintiff produced a sale agreement dated 3/8/1996 [Exhibit 1]. The agreement was entered into by the plaintiff and the late Keture Komen. This agreement was duly signed before the assistant chief of Chebai Sub-location Mr Daniel Kibor. There were other witnesses who were present. A surveyor went to the land and prepared a mutation [exhibit 3]. The deceased's land was sub divided into two portions of 5 and 2 acres each. Consent of the land control board was duly given as per letter of consent (exhibit 4). The deceased had also provided a copy of his identity card [exhibit 2]. The plaintiff's evidence has not been controverted. There is no reason why the defendants should interfere with the plaintiff's land which he has been enjoying for over 18 years. I find that the plaintiff has proved his case on a balance of probabilities.

## DETERMINATION

6. A declaration is hereby issued declaring that the plaintiff is the lawful owner of LR No. Cherangany/Koitogun/732 measuring 2 acres. A permanent injunction is hereby granted restraining the defendants and all those claiming under them from interfering with the plaintiff's user and quiet enjoyment of LR Cherangany/Koitugun/732. The plaintiff shall have costs of this suit.

**Dated, signed and delivered at Kitale on this 4th day of December, 2014.**

**E. OBAGA**

**JUDGE**

In the presence of Mr. Chebii for plaintiff.

Court Clerk – Isabellah.

**E. OBAGA.**

**JUDGE.**

**4/12/2014.**