



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CIVIL SUIT NO.50 OF 1994**

**MURIMI KIMOTHO KIMIRIO.....1ST PLAINTIFF**

**BATHOLOMEW GATHOGO KIMOTHO.....2ND PLAINTIFF**

**VERSUS**

**LINCOLN MIANO KIMOTHO.....DEFENDANT**

**RULING**

This Judgment is the outcome of two Consolidated Suits namely: This Suit and Nyeri H.C.C.C no.51 of 1997. In Nyeri H.C.C.C no.50 of 1994 vide the Plaint dated 7th February 1994, **Murimi Kimotho Kimirio** and **Bartholomew Gathogo Kimotho** the Plaintiffs herein, sought for judgment against **Lincoln Miano Kimotho**, the Defendant, herein in the following terms:

- a. **That the Defendant do transfer land parcel No.Iriaini/Kaguyu/743 to the 1st Plaintiff.**
- b. **That the Defendant do transfer land parcel No.Iriaini/Kaguyu/745 to the 2nd Plaintiff.**
- c. **That the Defendant be ordered to execute all necessary documents required to effect the transfer and in default the executive officer of this court be ordered to execute the same on behalf of the defendant.**
- d. **Costs of his suit.**

In Nyeri H.C.C.C no.51 of 1997 Lincoln Miano Kimotho the Plaintiff therein, vide the Plaint dated 20th March 1997 sought for Judgment against Moffat Murimi Kimotho (now deceased), the then Defendant, in the following terms:

- a. **A declaration that L.R.Iriaini/Kaguyu/747 is the exclusive property of the Plaintiff and a permanent injunction restraining the Defendant from trespassing thereon.**
- b. **A declaration that L.R.Kiine/Kangai/156 is family land as well as all necessary orders terminating the said trust and compelling the defendant to transfer the said parcel of land to the family members entitled thereto as outlined in paragraph 5 of the Plaint.**
- c. **Cost of the suit.**

When this suit came up for hearing, learned counsels from both sides recorded a consent order in the following terms:

- i. The hearing of this case be limited as to who between Bartholomew Gathogo Kimotho and Thompson Gichohi shall occupy L.R.no.Iriaini/Kaguyu/744 and L.R.no.Iriaini/Kaguyu/745. The same be disposed of by affidavit evidence and submissions.**
- ii. Murimi Kimotho to occupy L.R.no.Iriaini/Kaguyu/743.**
- iii. Lincoln Miano Kimotho to occupy L.R.no.Iriaini/Kaguyu/747.**
- iv. Rhoda Thuguri Murimi Kimotho Kimiro to occupy L.R.no.Iriaini/Kaguyu/746.**
- v. Two acres (2) to be excised from L.R.Kiine/Kiangai/156 and transferred to John Kiai Kimotho and the remainder to be transferred to the five brothers in equal measure.**

Before considering the substance of the suit, let me set out the brief facts of this case. Lincoln Miano Kimotho and Moffat Murimi Kimotho are the first and second born sons of respectively the late Kimotho Miano who passed away before land consolidation and registration exercise. Almost the entire family live in L.R.no.Iriaini/Kaguyu/165 measuring 9.2acres which is registered in the name of Lincoln Miano Kimotho. Moffat Murimi is the registered proprietor of L.R.no.Kiine/Kiangai/156 measuring 3.40acres which is occupied by Kiai Kimotho. On 9th March 1991, the family of Kimotho Miano held a meeting in which it is claimed they agreed to share the aforesaid parcels of land as follows:

- i. L.R.no. Iriaini/Kaguyu/165 to be subdivided into five subdivisions and shared out as follows:**

**(a)Iriaini/Kaguyu/743 – Moffat Murimi**

**(b)Iriaini/Kaguyu/744 – Bartholomew Gathogo**

**(c)Iriaini/Kaguyu/745 – Thompson Gichohi**

**(d)Iriaini/Kaguyu/746 – Rhoda Thuguri**

**(e)Iriaini/Kaguyu/747 – Lincoln Miano**

- ii. L.R.no.Kiine/Kiangai/156 to be shared out as follows:**

**(a) The fifth son of Kiai Kimotho – two (2) acres.**

**(b)1.3 acres to be shared equally between the five sons namely:**

**1.Lincoln Kimotho**

**2.Moffat Murimi**

**3.Bartholomew Gathogo Kimotho,**

**4.Thompson Gichohi Kimothi**

**5.Kiai Kimotho.**

In their Submissions and their Affidavits, the Plaintiffs have recommended that Bartholomew Gathogo Kimotho should move to L.R.no.Iriaini/Kaguyu/745 while Thompson Gichohi Kimotho should go to L.R.no.Iriaini/Kaguyu/744 and to further find that Bartholomew Gathogo Kimotho has discharged his burden of proof on a balance of probabilities. After a careful consideration of the material placed before me I am convinced that the dispute is not as complex as I thought. What comes out clearly is that

the Plaintiffs have all along been reluctant to treat the dispute on the basis of give and take attitude. In my estimation of the evidence, there appears to be hardly any permanent developments by either of the parties as to present difficulties for either uprooting or compensation. In the end, I am satisfied that the following orders should and I hereby direct as follows:

a. **L.R.no.Kiine/Kiangai/156 is registered in the name of Moffat Murimi Kimotho in trust for himself and the other members of the family of Kimotho Miano, deceased.**

b. **That L.R.no.Kiine/Kiangai/156 be shared as follows:**

**(i) Kiai Kimotho- 2 acres.**

**(ii)The remainder of 1.3 acres to be shared equally between**

**1.Lincoln Kimotho**

**2.Moffat Murimi**

**3.Bartholomew Gathogo Kimotho,**

**4.Thompson Gichohi Kimothi**

**5.Kiai Kimotho**

**(iii)Lincoln Miano is hereby directed to effect transfer of L.R.no.Iriaini/Kaguyu/743 to Murimi on condition that Moffat Murimi Kimotho transfer two acres to be excised from L.R.no.Kiine/Kiangai/156.**

**(iv) Lincoln Miano Kimotho is hereby ordered to transfer L.R.no.Iriaini/Kaguyu/744 in favour of Bartholomew Gathogo Kimotho.**

**(v) That any compensation for any developments be a matter between the parties and in default everyone concerned to uproot and transfer all their improvements to their portions of land.**

The parties who have been directed to perform the above mandates should do so and in default the registrar of this court to step in and execute the relevant documents in place of those unwilling to comply with the order. This being a matter involving close family members, I direct that each party meets his or her own costs.

**Dated, Signed and delivered in open court this 21st day of February, 2014.**

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**J.K.SERGON**

**JUDGE**

**In the presence of:**

Miss. Nderitu holding brief for Miss. Mwai for the Defendant

N/A for Macharia for Plaintiffs but with Notice