



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**ENVIRONMENT AND LAND COURT**  
**CIVIL CASE NO.21 OF 2011**

**JOSEPH GACHANJA GITUTO.....PLAINTIFF**

**VERSUS**

**GIDEON MWANGI CHEGE.....DEFENDANT**

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

Mr. Joseph Gachanja Gituto (*hereinafter referred to as the plaintiff*) took out this originating summons against Gideon Mwangi Chege (*hereinafter referred to as the defendant*) in respect of 1½ acres of land out of L.R NYERI/WATUKA/1680.

The *issues* that are to be determined by this court are whether the plaintiff purchased 1½ acres out of L.R NYERI/WATUKA/1104 and whether the defendant subdivided the above piece of land and that one of the resultant portions is L.R NYERI/WATUKA/1680 in which the plaintiff been in occupation of 1½ acres out since 1998 and therefore has become entitled to the said 1½ acres out of the said land by way of purchase and therefore whether he should be registered as he proprietor of 1½ acres out of the same.

The plaintiff also seeks for determination whether the defendant has refused/failed to transfer 1½ acres out of L.R NYERI/WATUKA/1680 to the plaintiff and therefore if the plaintiff can be declared the sole owner of 1½ acres out of L.R NYERI/WATUKA/1680 and If the answer is in the affirmative, should the Deputy Registrar of this court be authorized to sign all the transfer forms, mutation forms, partition forms and or other documents necessary on behalf of the defendant to facilitate registration of 1½ acres in favour of the plaintiff. And lastly whether the Land Control Board consent for the partition and transfer should be dispensed with and the production of the original title deed No.L.R NYERI/WATUKA/1680, the defendant's passport size photograph, his P.I.N certificate or his Identity Card should be dispensed with while registering the transfer forms in favour of the plaintiff.

The plaintiff prayed for orders that a declaration and order that 1½ acres out of L.R.NYERI/WATUKA/1680 belongs to the plaintiff *and* that the Deputy Registrar of this Honourable Court be authorized to sign all the transfer forms, mutation forms, partition forms and all other documents necessary on behalf of the defendant to facilitate registration of 1½ acres out of L.R.NYERI/WATUKA/1680 in favour of the plaintiff. Moreover, an order that the Land Control Board consent for the partition and transfer, the production of the original title deed No. L.R.NYERI/WATUKA/1680, the production of the defendant's passport size photographs, P.I.N certificate or his Identity Card be dispensed with while registering the transfer forms in favour of the plaintiff with Costs of this suit and interest at court rates

In the supporting affidavit, the plaintiff states that on or about 8th December 1998 he entered into a sale

agreement with the defendant wherein the defendant agreed to sell a parcel of land measuring one acre which was to be excised from L.R.NYERI/WATUKA/1104 at a consideration of Kshs.120,000/=. That on or about the 8th day of November 1999, they entered into another sale agreement wherein the defendant agreed to sell a parcel of land measuring one and half acres which was to be exercised from L.R.NYERI/WATUKA/1104. In total, he purchased one and half acres (1½) out of L.R.NYERI/WATUKA/1104 from the defendant and the purchase price had been paid in full. That he had been in occupation of the said 1½ acres excised out of L.R.NYERI/WATUKA/1104 for more than thirteen years. He has developed the same by fencing and has erected semi permanent buildings therein. The defendant has refused/neglected and/or ignored to pass a good title to him despite demand issued.

The Defendant filed a replying affidavit whose import is that he intended to sell a parcel of land out of L.R.NYERI/WATUKA/1104 to the plaintiff. He was not a party to the subdivision of L.R.NYERI/WATUKA/1104 neither was he aware of parcel L.R.NYERI/WATUKA 1680. He discovered that his parcel of land L.R.NYERI/WATUKA/1104 was subdivided as he played no role and has been pursuing the matter in court. The plaintiff should wait until he sorts out the matter concerning L.R.NYERI/WATUKA/1104. He claims that he has not breached the agreement of sale but it is the plaintiff who paid the money for over a period of 7 years thus between 1998 and 2005, and that the transaction has not been sanctioned by the land control board being an agricultural land, he should be allowed to refund the money within 7 years.

Directions were taken on 5/12/2012 where parties agreed to give viva voce evidence.

During the hearing, the plaintiff gave oral evidence when he stated that he is a resident of Watuka sub-location in Gatarakwa location and a teacher by profession. He states that on or about 8th December 1998 he entered into a sale agreement with the defendant wherein the defendant agreed to sell a parcel of land measuring one acre which was to be excised from L.R.NYERI/WATUKA/1104 at a consideration of Kshs.120,000/=. On or about 8th November 1999, they entered into another sale agreement wherein the defendant agreed to sell a parcel of land measuring ½ acre which was to be excised from L.R.NYERI/WATUKA/1104. In total he purchased 1½ acres out of L.R.NYERI/WATUKA/1104 from the defendant and the purchase price has been paid in full. He has been in occupation of the said 1½ acre excised out of L.R.NYERI/WATUKA/1104 for more than thirteen years. He has developed the same by fencing and has erected semipermanent buildings therein. The defendant has refused/neglected and/or ignored to pass a good title to him despite demand issued.

The first sale agreement dated 8/12/1998 was for one acre. The second sale agreement dated 8/11/1999 was for half an acre. The defendant acknowledged receipt of a total of Kshs.168,000/= being the purchase price. The plaintiff produced a green card for the suit land which shows that the land NYERI/WATUKA/1104 belonged to the defendant. According to the plaintiff, Nyeri/Watuka/1104 was as a result of subdivision of Nyeri/Watuka 979.

The plaintiff testified at length that in 1989, the defendant was involved in a land dispute with his mother and brothers in respect of Land reference numbers Nyeri/Watuka1102,1103,1104 that had been created from Nyeri/Watuka979 which his Mother and brothers alleged was family land hence claimed shares. The Provincial Appeals Committee heard the parties and awarded The Defendant 7.5 acres. His mother Tabitha Wanja Chege was awarded 1.0 acres, while his brothers; James, Christopher and Simon Chege were awarded 5.0, 3.0, 3.0 respectively. The three parcels of land were combined and subdivided to comply with the decision of the Appeals' Committee hence No.Nyeri/Watuka/1679, 1680,1681,1682 and 1683 were created and the former parcels extinguished. The defendant was registered as the proprietor of No.Nyeri/Watuka/1680. Meanwhile as this was ongoing the plaintiff who had purchased part of No.Nyeri/Watuka/1104 and was in occupation had constructed a house on the parcel of land. During cross-examination and re-examination, the plaintiff reiterated that parcel No.1680 amongst others was created after the consolidation of 1102, 1103 and 1104 and the same was registered in the defendants name.

The defendant testified at length and stated that he sold land to Joseph Gachanja Gituto in 1998. The land he sold to him was in L.R.NYERI/WATUKA/1104. They made an agreement for one acre in

L.R.NYERI/WATUKA/1104. He is the registered proprietor of L.R.NYERI/WATUKA/1104. He sold him one acre for Kshs.120,000/= and the plaintiff paid Kshs.60,000/=. The defendant has a letter of allotment and receipt dated 13/11/1964 signed by Settlement Fund Trustee Mr. H.F.C Harike.

He was offered a loan of kshs.6000/= by the Settlement Fund Trustee and he repaid the loan in full. He was issued with a notification by the Chief Account Settlement Fund Trustee that he had paid the loan in full. He was given a discharge of charge and transfer of land in a settlement scheme. The transfer is dated 17/5/1989. Initially in 1964 the documents read Gideon Mwangi and later he was told to swear an affidavit and to get a letter from the chief to change his name to read Gideon Mwangi Chege. He was given a title for the land registration No.NYERI/WATUKA/636 and he subdivided the same. The mutation forms created NYERI/WATUKA/979 and 980. The title for 980 has a search certificate in another file. He subdivided 979 and got the consent from the Land Control Board dated 30/4/1991. The subdivision brought four parcels namely NYERI/WATUKA/1102, 1103, 1104 and 1105. He was issued with title deeds for L.R.NYERI/WATUKA/1102, 1103, 1104 and 1105. He sold 1105 to Peter Kihoria Nyaga and gave him title.

In the year 2000 he was sued before the Mweiga Land Disputes Tribunal. The applicants wanted land from him. The Tribunal allowed their request but he appealed to the Provincial Land Disputes Appeals Committee Central Province. The Appeals Committee ordered that he give them land. He went to the High Court in Nyeri in appeal No.153 of 2000. The court found that his appeal did not raise any point of law. He applied for review of orders via the application dated 2/7/2001 and filed on 29/8/2001. It was amended on 12/1/2004. Application was heard and a ruling delivered on 17/8/2012. The application No.153 of 2000 is still pending in court.

He sold to the plaintiff 1½ acres from L.R.NYERI/WATUKA/1104 and the agreement was for L.R.NYERI/WATUKA/1104. He urged the court to order that he refunds the money the plaintiff paid Kshs.168,000/= less 25% as per the agreement and claimed that the plaintiff was in breach of the agreement by suing him in court and by asking for another number. One acre was Kshs.120,000/= and the half acre was Kshs.48,000/=. This was at the end of the land bordering NYERI/WATUKA/631 and also boarding NYERI/WATUKA/980. The plaintiff fenced and has been ploughing.

On cross-examination by Mr. Kariuki he concedes that he sold the plaintiff 1½ acres out of Nyeri/Watuka/1104. However he did not have the official certificate of search for the said parcel of land.

This court finds that on the 8/12/1998, the plaintiff entered into an agreement with the defendant for the sale of land measuring 1½ acres which was to be excised from Nyeri/Watuka/1104 at a consideration of Kshs.120,000/=. Kshs.100,000/= was to be paid upon execution of the deed. The balance of Kshs.60,000 was to be paid in two instalments thus Kshs.20,000/= by last day of December 1998 and Kshs.40,000/= on or before the last day of April 1999.

The defendant was to show the plaintiff a parcel measuring 1 acre immediately on payment of the first instalment of Kshs.20,000/= to be cultivating pending the actual subdivision and transfer. The land was situated in between parcel Nyeri/Watuka/980 and 1104 and the plaintiff had viewed the same and accepted it on as it is basis and was to pay the survey fees. The Land Control Board fees were to be borne by the plaintiff save for transport fares which were to be borne by the vendor for his own transport. Transfer was to be effected upon payment of full consideration. In the event of breach the plaintiff was to be entitled to a refund of the money he had already paid less 25% if the breach is occasioned by him and likewise the defendant was to pay the money already paid to him plus 25% in case of breach occasioned by him. The agreement was subject to the Law Society OF Kenya condition of sale as long as the same are not inconsistent with the express provisions therein.

The plaintiff paid the total purchase price in full and was shown the parcel of land which he took possession and has been in occupation since 1999 to date. He has developed the land and constructed semi permanent buildings therein. The defendant has refused to pass to the plaintiff a good title. The defendant does not deny the allegation that he sold the land to the plaintiff and that the plaintiff is in occupation of the said parcel but he states that he discovered that the parcel No. Nyeri/Watuka/1104 was

subdivided without his consent. He has been pursuing the issue in court and states that the plaintiff should wait until the matter is sorted out.

Moreover he states that the plaintiff took a long period of time to pay the purchase price. Lastly that the consent of the Land Control Board was not obtained.

This court rejects the arguments that since the consent of the Land Control Board was not obtained, the defendant should refund the plaintiff his money because the plaintiff has been occupation of the parcel of land for more than 12 years and therefore has obtained prescriptive rights in respect of the portion he occupies. The court further rejects the argument that the plaintiff breached the agreement by taking long to pay the purchase price because the defendant never complained before the suit was filed. Moreover, he put the plaintiff in occupation and therefore that argument is an afterthought.

The request by the defendant that we should wait for him to sort out the matter concerning Nyeri/Watuka/1104 which was extinguished and Nyeri/Watuka/1680 created cannot be entertained as the cause of action for the two matters is not the same.

This court finds that L.R. Nyeri/Watuka/1104 was initially owned by the defendant before the combination with the other parcels and the subdivision. However after subdivision, Nyeri/Watuka/1680 was created and registered in the name of the defendant. When this was happening the defendant had sold the plaintiff one and half acres and put him in occupation of the same. The plaintiff has done an official search and produced a search certificate and insists that he is occupying 1½ acres of Nyeri/Watuka/1680 which is now registered in the defendants name a fact that was not controverted by the defendant. Equity demands that the plaintiff be vested with the prescriptive rights acquired on the parcel of land he has adversely possessed whether it is Nyeri/Watuka/1104 or Nyeri/Watuka/1680. The court further finds that the plaintiff is entitled to 1½ acres of land out of Nyeri/Watuka/1680 by way of adverse possession and should be registered as proprietor of the same.

The upshot of the above is that the court makes a declaration that 1½ acres of L.R. NYERI/WATUKA/1680 which the plaintiff occupies belongs him and should be vested to the plaintiff. The Deputy Registrar of this court is hereby authorized to sign all the transfer documents, mutation forms, partition forms and all other necessary documents to facilitate registration of 1 ½ acres out of L.R. Nyeri/Watuka/1680 in favour of the plaintiff.

The Land Control Board consent for the partitioning and transfer be dispensed with. The production of the original title deed No.L.R.Nyeri/Watuka/1680, production of the defendants passport sized photograph, P.I.N certificate or his Identity Card are dispensed with while registering to transfer in favour of the plaintiff. Cost of the suit and interest to the plaintiff.

***Dated, signed and delivered on 20th day of June 2014.***

**A. OMBWAYO**

**JUDGE**