



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERUGOYA

ELC CASE NO. 119 OF 2013

GEORGE NJERU 1ST
 PLALINTIFFF

NAHASHON MUGO KABEU 2ND
 PLAINTIFF

ELIJAH NJERU GACHOKI 3RD
 PLAINTIFF

(SUING AS THE REPRESENTATIVE OF THE MEMBERS OF UGACIKU, UNJIRU, UCERA,
 UNGUI, UITHERAANDU, UICAKAMUYU, UGATHIGIA AND UMBUI CLANS)

VERSUS

HON. ATTORNEY GENERAL DEFENDANT

JUDGMENT

The plaintiffs herein suing as the representatives of the members of ugaciku, Unjiru, Ucera, Ungui, Uithirandu, Uicakamuyu, Ukiuru, Ungari, Ugathigia and Umbui Clans collectively known as Kirinyaga Mihiriga Kenda filed this suit against the Government of Kenya seeking the following reliefs:-

- a. *A declaration that the Government of Kenya holds L.R MWEA/TEBERE 1314 in trust for the plaintiff*
- b. *That the aforesaid trust be determined and the land do revert back to the plaintiffs*
- c. *That the Court be pleased to issue such further and/or better orders as the Court may deem fit and just*
- d. *Costs of this suit*

According to the pleadings herein, the above mentioned clans collectively known as the MIHIRIGA KENDA clans are the owners of the parcel of land MWEA/TEBERE/1314 (hereinafter the suit land) although the same is registered in the names of the Government of Kenya which holds the same in trust for the said clans. The land was given to the Government in 1962 on the condition that it would revert back to the clan which retained the beneficial interest therein. However, the Government of Kenya has failed/neglected to determine the interest and rights of the beneficial owners of the suit land hence this suit.

Though served with the plaint and summons herein, the defendant did not file any defence nor attend the hearing on 11th February 2014.

The plaintiffs testified that the suit land belonged to the nine clans known as the Kirinyaga Mihiriga Kenda and that in 1962, the Government of Kenya entered into a twenty year agreement with the said clans for purposes of carrying out research with respect to the growing of rice on the land. However, at the expiry of the twenty years, the Government failed to return the land to the plaintiffs thus necessitating this suit. The plaintiffs produced as evidence proceedings of cases that they have successfully instituted against other third parties that had invaded the land in order to protect their interests in the suit land as well as a map showing the location of the suit land, the agreement, the Green Card and plaintiffs Identity Cards – see Exhibits 1 to 5. The agreement in question is dated 30th September 1962 and is headed **“AGREEMENT OF RICE EXTENSION”**. It is signed by nine clans following advice of Hon. J.J. Nnyagah M.L.C., the District Commissioner and other parties including the A.D.C. From what I can discern from it, the agreement sets aside some land for production of rice in the Mwea Scheme. The said agreement also has the following provision which may be useful for the purposes of this judgment i.e.:

“Provided that the Government will issue title deeds to the clans for the rice blocks which will be leased for at least 20 years to the scheme management”.

Having heard the un-controverted evidence of the plaintiffs herein and having also looked at the documentary exhibits herein, I am satisfied on a balance of probability that indeed the suit land herein was the property of the clans represented by the plaintiffs and the same was given to the Government of Kenya for research for twenty years as per the agreement produced herein. I am also satisfied from the evidence therefore that although registered in the name of the Government of Kenya, the suit land is held in trust for the clans as represented by the plaintiffs and the same was given to the Government of Kenya for research for twenty years as per the agreement produced herein I am also satisfied from the evidence therefore that although registered in the name of the Government, the suit land is held in trust for the clans as represented by the plaintiffs herein.

Ultimately therefore, judgment is entered for the plaintiffs as per their plaint.

It is so ordered.

B.N. OLAO

JUDGE

31ST JULY, 2014

31/7/2014

Before

B.N. Olao – Judge

Mwangi – CC

Ms Kiragu for Magee for Plaintiff – present

Attorney General for Defendant – absent

COURT: Judgment delivered this 31st day of July 2014 in open Court

Ms Kiragu for Magee for Plaintiff present

Attorney General for Defendant absent

Right of appeal explained.

B.N. OLAO

JUDGE

31ST JULY, 2014