



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**CIVIL SUIT NO. 89 OF 2001**

M'MANYARAM'MURITHI.....PLAINTIFF/RESPONDENT

VERSUS

NKANATA MURITHI.....1ST DEFENDANT/RESPONDENT

JAMLICK MURITHI MURUMIA.....2ND DEFENDANT/APPLICANT

**RULING**

This ruling concerns 2 applications. The first one is dated 30th July, 2014. It is stated by the applicant that it is brought under Order 51 Rule 1 of the Civil Procedure Rules, 2010 and sections 3 and 3A of the Civil Procedure Act, Cap 21 Laws of Kenya and all other enabling sections of the Constitution. It seeks orders:

1. **THAT** this application be certified urgent, service be dispensed with and it be heard ex-parte at the first instance.
2. **THAT** this Honourable Court be pleased to grant an order temporarily staying the Ruling and the Orders delivered by this Honourable Court on 10th July, 2014 pending the hearing and the determination of this Application.
3. **THAT** this Honourable Court be pleased to grant an order temporarily staying the Ruling and the orders delivered by this Honourable court on 10th July, 2014 pending the issuance of directions and/or consent on how the subdivision of L.R. No. ABOGETA/UPPER KITHANGARI/4, and the transfer of half share of all that parcel of land known as L. R. No. ABOGETA/UPPER KITHANGARI/4 to the plaintiff, shall be conducted.
4. **THAT** this Honourable Court be pleased to issue an order of temporary injunction restraining the plaintiff by himself, his agents, employees, nominees, appointees, servants and/or any other person purporting to act for the plaintiff from entering, subdividing, and/or in any other manner adversely interfering with all that parcel of land known as L. R. No. ABOGETA/UPPER KITHANGARI/4 pending the hearing and determination of this Application.
5. **THAT** this Honourable Court be pleased to issue an order of temporary injunction restraining the plaintiff by himself, his agents, employees, nominees, appointees, servants and/or in any other manner adversely interfering with all that parcel of land known as L.R. No. ABOGETA/UPPER KITHANGARI/4 pending the issuance of directions and/or consent on how the subdivision of L.R. No. ABOGETA/UPPER KITHANGARI/4, and the transfer of half share of all that parcel of land known as L. R. No. ABOGETA/UPPER KITHANGARI/4

to the plaintiff, shall be conducted.

6. **THAT** this Honourable Court be pleased to issue directions over the manner in which the subdivision shall be conducted and which side and/or part shall be allocated to and transferred to the the plaintiff and which side and/or part shall be allocated to and/or shall remain with the 2nd defendant.

7. **THAT** this honourable Court be pleased to issue Directions that in the side with and/or the part of the land with the 2nd Defendant's tea bushes, dwelling house and several other developments and/or structures thereon be the side that shall be allocated to and/or the side that shall remain with the 2nd Defendant/Applicant.

8. **THAT** this Honourable Court be pleased and at liberty to grant any other Orders as it deems fit and just.

It is stated to be predicated upon the following grounds:

(a) **THAT** the 2nd Defendant herein is currently the registered proprietor of all that parcel of land known as L. R. No. ABOGETA/UPPER KITHANGARI/4.

(b) **THAT** the appellant court directed that all that parcel of land known as L. R. No. ABOGETA/UPPER KITHANGARI/41 be subdivided and half share of it be transferred to the plaintiff.

(c) **THAT** on 10th July, 2014 the plaintiff obtained orders from this Honourable Court directing that the 2nd Defendant/Applicant do surrender the Original Title deed for L. R. No. ABOGETA/UPPER KITHANGARI/4 1st to enable the Plaintiff to register the mutation form and transfer half share of the said land to himself and have the sub-division registered by the relevant District Land Officers.

(d) **THAT** the Defendant/Applicant is yet to be served with the Order made on 10th July, 2014 but nevertheless the Plaintiff/Respondent is purporting to enforce the same.

(e) **THAT** unless and until the Orders made on 10th July, 2014 have been complied with and the plaintiff is registered as the owner of half share of the suit property, the plaintiff has no right to enter the suit premises or evict the applicant from any part of that land.

(f) **THAT** there is neither clear and specific directions on the side and the exact part that shall be transferred to the plaintiff nor is there a consent between the parties on which side and/or part that shall go to the plaintiff.

(g) **THAT** parcel of land known as L. R. No. BOGETA/UPPER KITHANGARI/4 is not evenly developed, cultivated, built and/or established and the buildings erected thereon and/or the developments thereon including but not limited to the cultivated tea bushes and several structures were established and conducted by the 2nd Defendant.

(h) **THAT** the plaintiff has invaded the said parcel of land with a very imminent threat to subdivide the land and transfer to himself the part of land with the 2nd defendant's tea, bushes, dwelling house and several other developments and/or structures thereon.

(i) **THAT** in view of the foregoing and in the absence of a consent between the involved parties, it is only fair and just that this honourable court do issue directions over the the manner in which the subdivision shall be conducted and which side and/or part shall be allocated to and transferred to the plaintiff.

(j) **THAT** in view of ground number 5 above, it is only fair and just that the side with

and/or the part of the land with the 2nd Defendant's tea bushes, dwelling house and several other developments and/or structures thereon be the side that shall be allocated to and/or the side that shall remain with the 2nd defendant/applicant.

(k) **THAT** the plaintiff has no legal and or any other justification whatsoever to want to allocate to himself the side with and/or the part of the land with the 2nd defendant's tea bushes, dwelling house and several other developments and/or structures thereon and he is only being driven by malice. Unless the said orders are granted there is an imminent risk of breach of peace in the course of the plaintiff's illegal enterprise to sub-divide the suit parcel without the applicant's involvement and/or direction of this honourable court.

The 2nd application is dated 12th August, 2014, is based upon Order 51 Rule 1, Sections 3 and 3A, CPA, and all other enabling sections of the Constitution and seeks Orders:

1. **THAT** this application be certified as urgent for hearing forthwith during the current High Court Vacation, service be dispensed with and it be heard ex-parte at the first instance.

2. **THAT** pending hearing and determination of this application, the honourable Court be pleased to restrain the district land Registrar from issuing a certificate of title to the plaintiff/respondent herein.

3. **THAT** this honourable court be pleased to grant an order nullifying the subdivision of L. R. NO. BOGETHA/UPPER KITHANGARI/4 conducted on 30th July, 2014.

4. **THAT** the Honourable Court be pleased to order the resurveying and marking of the boundaries.

5. **THAT** the honourable Court be pleased to grant any other orders as it deems fit and just.

It is predicated upon the following grounds;

(a) The 2nd Defendant is currently the registered proprietor of all that parcel of land known as L.R. No. ABOGETA/UPPER KITHANGARI/4

(b) The appellate court directed that all that parcel of land known as L. R. No. ABOGETA/UPPER KITHANGARI/4 be subdivided and half of it be transferred to the plaintiff.

(c) On 10 July, 2004, the plaintiff obtained Orders from this honourable court directing that the 2nd defendant/applicant do surrender the original title deed for the land to enable the plaintiff to register the mutation form and transfer half share of the said land to himself and have the subdivision registered by the relevant District Land Offices.

(d) On 30th July, 2014, the 2nd defendant filed an application under certificate of urgency seeking stay of the ruling and order of the court delivered on 10th July, 2014 on the grounds that the Court had not given directions as to which part should be allocated to the plaintiff.

(e) That on that very day the plaintiff in the company of the surveyor visited the suit land where it was surveyed and subdivided.

(f) The 2nd defendant was not consulted when the subdivision was taking place and it would be prudent for the parties to agree on which part of the land each of them should have. Specifically, the Applicant has invest millions of shillings to grow a tea plantation on one side of the farm which he is entitled to keep.

**(g) It is in the interest of justice that the orders sought should be granted.**

Both applications were heard inter partes orally on 13.8.2014. The main thrust of the applicant's arguments in support of the 2 applications is that the applicant has spent a lot of money in developing the portion of land which the respondent would take, if the orders sought are not granted. He claims that he was not consulted and that if the orders sought in the 2 applications are not granted, he will suffer/irreparable loss.

The respondent opposed the two applications. He said that this court's ruling delivered on 10th July, 2014 gave orders meant to facilitate the implementation of the Court of Appeal's Judgment in CA No. 151 of 2007, at Nyeri. He said that the subdivision of the suit land was done in strict conformity with the judgment of the Court of Appeal. The respondent stated that the 2nd application dated 12.8.2014 was an abuse of the court process as its effect is to get orders that spawn similar results as the one's sought by the first application. He therefore prayed that the 2 applications be dismissed with costs to the Appellant/Respondent.

I have considered the averments of the parties and their submissions. I do note that the prayers sought in the 2nd application could only be granted if this court's ruling dated 10th July, 2014 was set aside or otherwise dismissed by a higher court.

In my ruling dated 10th July, 2014, I held that this court did not have jurisdiction do delay or block the implementation of the judgment of the Court of Appeal. That remains this court's position.

At page 13 of the judgment of Rawal, JA, the Court of Appeal's Judgment was unequivocal. It said: "For the foregoing reasons, I allow this appeal and set aside the judgment and decree of the high Court and order the 2nd Respondent to transfer half-share of L. R. NO. ABOGETA/UPPER KITHANGARI/4 to the appellant". I find that this is exactly what has been done. No more, no less. This Court has no jurisdiction to interpret a decision of the Court of Appeal which is veritably pellucid.

I have handled 3 Applications in this matter in the last one month or so. On 10th July, 2014, I delivered a ruling concerning the 2nd defendant's application dated 15th January, 2013. This ruling concerns the other 2 applicants. I declare myself functus officio and will not entertain any further applications by the parties regarding this suit.

In the circumstances, both applications, one dated 30.7.2014 and the other one dated 12.8.2014 are dismissed.

Costs are awarded to the appellant/respondent.

It is so ordered.

**Delivered in Open Court at Meru this 13th day of August, 2014, in the presence of:**

Cc. Daniel/Lilian

Kiogora for Appellant/Respondent

Minjire h/b Kibe for Applicant/Respondent

**P. M. NJOROGE**

**JUDGE**