



**REPUBLIC OF KENYA**

**High Court at Nyeri**

**Civil Case 59 of 2010**

**JAMES MATHENGE MWAI**

**GRACE GACHEKE MWAI**

**CATHERINE WANGUI NGENGI).....PLAINTIFFS**

**VERSUS**

**SURINDER KINGH DHANJAL..... DEFENDANT**

**RULING**

The application before court is dated 31st May 2010. The same was commenced by way of Originating Summons pursuant to the provisions of Order XXXVI rule 1 of the Civil Procedure Rules as it then was but now order 37 rule 1 of the said rules. The summons is supported by the affidavit of Grace Gacheke Mwai.

The questions framed by the applicants are as follows:

- **Has the applicants become lawful owners of the above plot in place of SURINDER SINGH DHANJAL.**
- **Ought the Land Registrar, Nyeri rectify the register pertaining to NYERI MUNICIPALITY/BLOC 1/330 and register the same in the joint names of the applicants herein?**

The gist of this matter is that Isaiah Mwai Mathenge (deceased) was a plaintiff in High Court Misc. Civil Application Number 74 of 1989 in which Surinder Singh Dhanjal was a respondent.

On the 29th November, 2006, the High Court in its probate and administration division issued letters of administration in the estate of Isaia Mwai Mathenge to James Mathenge Mwai and Grace Gacheke, Mwai Mathenge and Catherine Wangui Ngengi Muigai.

Before his demise Isaia Mwai Mathenge wrote to Bali-sharma & Bali sharma advocates confirming that he was in possession of the plot in issue that is **NYERI MUNICIPALITY/BLOCK 1/330** situated in Nyeri Municipality but the same was registered in the name of Surinder Singh Dhanjal.

According to the applicants, Mr. Isaia Mwai Mathenge purchased the property from Mr. Surinder Singh Dhanjal, which property was charged due to a loan given to the letter by Barclays Bank. Mr. Mathenge paid the loan and the charge was discharged. Moreover the said Mathenge rates to the Nyeri Municipal Council in the sum of Kshs.847,425/=. It is deponed by Grace Gacheke Mwai that the Bank is

not interest in the property as the loan was fully repaid.

Mr. Surinder Singh Dhanjal is not available to transfer the property to the in the names of the applicants.

I have considered the originating summons, the supporting affidavit and submissions by the applicant and do find that though the respondent is the registered owner of the suit property, the late Mathenge was in possession and paid the loan that was being demanded by the Barclays Bank. Prior to the payment of the loan, the late Mathenge had entered into an agreement of sale of the property on the 22/9/1982 with Mr. Surinder Singh Dhanjal. The purchase price was Kshs.450,000/= which was to be deposited with Bali-sharma & Bali-sharma advocates. I do find that the contract upon which the suit is based is in writing, it is signed by the parties thereof and the signature of each party signing has been attested to by a witness who was present when the contract was signed.

The upshot of the above is that I do find that the applicants have satisfied the provision of section 38 (1) of the Registered Land Act (Repealed) now the Land Act No.6 of 2012. The question raised by the applicants are determined as follows:-

- that the applicants have become the proprietors of the parcel of land thus NYERI MUNICIPALITY/BLOCK 1/330 in to place of Surinder Singh Dhanja.
- That the Land Registrar Nyeri should rectify the register pertaining the Nyeri Municipality Block 1/330 and register the same in the joint names of the applicants.

Finally, each party to bear its own costs. Orders accordingly.

***Dated, signed and delivered at Nyeri this 19th day of March 2013.***

**A. OMBWAYO**

**JUDGE**