



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Environmental & Land Case 762 of 2012**

**WANJA KIRABA .....PLAINTIFF**

**=VERSUS=**

**AGNES W NGANGA.....1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR KIAMBU.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT.**

The Plaintiff herein **Wanja Kiraba** has sued the Defendants **Agnes Wanjiru Nganga and Land Registrar, Kiambu** for various orders:-

- a) The combination of **LR Githunguri/Githiga/2172, 2173, and 2174** be declared null and void.
- b) The 2<sup>nd</sup> Defendant be ordered to rectify the land register and the Plaintiff be issued with the Title Deed for **LR. Githunguri/( Githiga/ 2172.**
- c) An order of eviction against the 1<sup>st</sup> Defendant from **LR Githunguri/Githiga 2172.**
- d) Costs of this suit.

The Plaintiff averred in her Complaint and evidence in court that she is a sister to **Agnes Wanjiru Nganga**, the 1<sup>st</sup> Defendant herein. That their mother Phyllis Wambui Kiraba subdivided her land **LR Githunguri/Githiga / 1091** among her three daughters. That the resultant parcels of land were **Githunguri/Githiga 2172, Githunguri/Githiga 2173, Githunguri/Githiga 2174.**

The Plaintiff herein Wanja Kiraba was given LR No. Githunguri/Githiga 2172. **Felistus Njeri Kiraba** was given **Githunguri/Githiga 2174** and 2173 remained in the name of their mother but the same was later to be registered in the names of **Agnes Wanjiru**, the 1<sup>st</sup> Defendant.

Plaintiff further stated that LR No. **Githunguri/Githiga 2172** was registered in her name on 25/9/1997 as evidenced by Exhibit 1. She further testified that the 1<sup>st</sup> Defendant without colour of right has occupied a part of her land and the 2<sup>nd</sup> Defendant without any colour of right caused the closure of the Plaintiffs' title deed without plaintiff's knowledge or consent.

Thereafter, the Plaintiff issued notice of intention to sue to the 1<sup>st</sup> Defendant but the 1<sup>st</sup> Defendant has declined to honour it.

The Defendants herein were served with summons to Enter Appearance as evidenced by the Affidavit of service filed on 11/12/2012 by one **Moses Njoroge**. The Defendants failed to Enter Appearance nor file Defence. Interlocutory Judgement was entered against them on 11/12/2012.

On 12/3/2013, the case proceeded for formal proof whereby the plaintiff reiterated her averments in her statement and in the plaint. She further stated that after her mother sub- divided the land among the three sisters, Agnes, the 1<sup>st</sup> Defendant filed a claim at the **Kiambu Land District Tribunal**.

The Tribunal ruled in favour of the 1<sup>st</sup> Defendant. Their mother, Phyllis Wambui Kiraba appealed at Provincial Land Disputes Appeals Committee, Central Province as per exhibit **IV**. The Appeals Committee ruled in favour of their mother. However, Agnes continued to interfere with Plaintiff land and even dug a borehole. The Plaintiff reported the matter to the District Officer who sent Agnes, the 1<sup>st</sup> Defendant a warning as evidenced by exhibit **No. III**.

Furthermore, Agnes the 1<sup>st</sup> Defendant caused the three parcels of land i.e. **L R Githunguri / Githiga/ 2172, 2173, 2174** to be combines to produce land parcel No. **Githunguri/ Githiga/ 2319**.

That combination of the three parcels of land was without the knowledge and consents of the plaintiff and her other sisters. Plaintiff however still retains her title deed in her name as per exhibit **1**. That the Land Registrar was requested to combined the three Titles by Agnes the 1<sup>st</sup> Defendant. Later, Plaintiff requested 1<sup>st</sup> Defendant to move out of the land as evidenced by **exhibit 6**. The 1<sup>st</sup> Defendant has not done so and that is why Plaintiff moved to court.

Her evidence was supported by Felistus Njeri who is a sister to the Plaintiff and 1<sup>st</sup> Defendant. She confirmed that the land was divided among the three of them. However, Agnes the 1<sup>st</sup> Defendant objected and filed a claim at the Land Tribunal in Kiambu. The Provincial Land Committee later ruled in favour of their mother.

Felistus still has the title deed in her name but when she carried a search at the Lands Office, she found the three parcels had been consolidated without her consent or knowledge.

Veronica Muthoni who is the other sister of Plaintiff, PW2 and 1<sup>st</sup> Defendant also confirmed that their mother distributed the land to the three sisters i.e **Wanja, Wanjiru and Njeri**. Agnes Wanjiru the 1<sup>st</sup> Defendant was not satisfied and she sued their mother.

1<sup>st</sup> Defendant has built on Wanja's parcel of land and thus this suit.

The Court has considered the available evidence. There is an interlocutory judgement entered against the Defendants.

During the formal proof, the Plaintiff produced exhibits in court. Exhibit No1 showed that **LR No. Githunguri/Githiga/2172** is registered in her name. The same was a result of sub-division of **LR No. Githunguri/Githiga/1091**. Wanja was registered as the proprietor in 1997 ( 25/9/1997).

There is evidence that Plaintiff and 1<sup>st</sup> Defendant have had a conflict over the suit land. The same culminated in the District Officer, one **Moranga Morekwa** writing **Exhibit III** to **Agnes Wanjiru Nganga** .

There is also evidence that one **Phyllis Wambui Kiraba** appealed at **Provincial Land Disputes Appeals Committee** as per exhibit **No. IV** . The Respondent was Agnes Wanjiru Nganga the Tribunal ruled in favour of **Phyllis Wambui Kiraba**.

There is no evidence at all that Agnes Wanjiru ever appealed that decision of the Provincial Land Disputes Appeals Committee. It is worth to note that through exhibit **No. V**, the three parcels of land

2172, 2173, and 2174 were combined to produce parcel No. 2319.

The Plaintiff and PW2 told the Court that was done without their knowledge. The 1<sup>st</sup> Defendant did not even Enter Appearance nor file defence to dispute that allegation. There was also no Defence filed by 2<sup>nd</sup> Defendant.

The Court finds that, there is sufficient evidence to proof that Plaintiff herein Wanja Kiraba was given the parcel of land **LR Githunguri/Githiga/ 2172** by her mother. She did not consent to the same being combined to produce title **2319**. Agnes Wanjiru Nganga has illegally occupied her land and has refused to move out and has even dug a borehole.

For the above reasons, the Plaintiff is justified in her claim. Plaintiff has proved her case on a balance of probabilities. Consequently, the Court allows the Plaintiff's Claim as stated in the Plaint.

· Plaintiff also entitled to costs of this suit.

Dated, signed and delivered this 17<sup>th</sup> day of May 2013

28 days Right of Appeal.

**L.N. GACHERU**

**JUDGE**

In the Presence of:-

.....For the Plaintiff/Respondent

.....For the 1<sup>st</sup> Defendant

.....For the 2<sup>nd</sup> Defendant

.....Court Clerk

**L.N. GACHERU**

**JUDGE**