



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (MILIMANI LAW COURTS)**

**ENVIRONMENTAL & LAND CASE 604 OF 2010**

**SERAH WAMBUI KIRIIRA..... PLAINTIFF**

**VERSUS**

**CHRISTINE NJERI (Sued as the mother and best friend  
of**

**SWK (minor).....1ST DEFENDANT**

**JOHN MWENDIA KAMAU.....2<sup>ND</sup> DEFENDANT**

**STEPHEN NDUATI KAMAU.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

1. The plaintiff Serah Wambui Kiriira has sued Christine Njeri 1<sup>st</sup> defendant, John Mwenda Kamau 2<sup>nd</sup> defendant and Stephen Nduati Kamau 3<sup>rd</sup> defendant through a plaint dated 7th December 2010. In her plaint she seeks judgment that parcel no. L.R. Karai/Gikambura/2587 measuring 0.53 hectares registered in the names of the Defendants be subdivided into two parcels measuring 0.36 hectares and 0.17 hectares to be registered in the names of the defendant and Jane Wanjiku Muruga respectively and Costs of this suit with interest. In her plaint she avers the following; that she is the registered owner of all that piece or parcel of land known as L.R. Karai/Gikambura/549 situated in the Kikuyu area of Kiambu County measuring approximately one point eight one hectares (1.181 ha) or thereabouts. That being desirous of subdividing and distributing the said piece or parcel of land amongst herself and her sons and daughters she caused the said land to be subdivided into six portions. That her real intentions and wish was that the said six portions should measure as follows;-

- a) 0.39 hectares to go to the plaintiff
- b) 0.36 hectares to go to her son Paul Njoroge Nduati
- c) 0.36 hectares to go to her other son Edward Kiriira Nduati

- d) 0.36 hectares to go to the Children of her deceased son (the defendants herein)
- e) 0.17 hectares to be shared jointly between her daughters Mary Wairimu and Edith Wanjiru.
- f) 0.7 hectares to go to her other daughter Jane Wanjiku

That during the subdivision exercise the portion that was to go to her daughter Jane Wanjiku measuring 0.17 hectares was erroneously put together with the portion given to her deceased son's children with the effect that the said children (the defendants herein) were issued with a Title Deed No. L.R. Karai/Gikambura/2587 for a parcel measuring 0.53 hectares thereby disinheriting her said daughter. All the other children got their rightful shares as per her wishes. She avers that 0.17 hectares out of the parcel No. Karai/Gikambura/2587 belongs to her daughter Jane Wanjiku and the same should be excised from the said parcel and registered in the name of Jane Wanjiku.

2. Interlocutory judgment was entered against the defendants on the 18 march 2011 after they were served with summons to enter appearance and failed to enter appearance or file defence within the stipulated period. The plaintiff testified as follows, she is the registered owner of L.R Karai/Gikambura/549in kikuyu. She has children. She wanted to subdivide the land as stated in paragraph 5 of her plaint. She has a child call Jane Wanjiku whom she wanted to give part of the land. After subdivisions when she obtained the titles Jane Wanjiku did not get her share of 0.17 hectares, instead the portion was combined with her late son Kamau's portion. Kamau's children got the title. She has sued his wife and the two sons. She also gave portions to her other children as stated in paragraph 5 of her plaint. She wants Jane Wanjiku to get her portion of 0.17 hectares and to get her title.

3. Counsel made oral submission in Court which I have considered. He submitted that what the plaintiff wants is that the defendant should get 0.36 hectares. The title should be cancelled and two titles issued in the size of 0.36hectares for the defendant and 0.17 hectares for Jane Wanjiku.

4. I have considered the plaintiff's evidence adduced in Court. I find it reiterates her claim in her plaint. Her evidence was not challenged as the defendant did not file a defence to challenge her claim. She has clearly state what her intentions were when she caused a subdivision of her plot. From her evidence it is clear that her daughter Jane Wanjiku was to get 0.17 hectares which was erroneously put togetherwith the portion given to the plaintiff's decease son's Children with the effect that the said children(the defendants herein) were issued with a Title Deed No. L.R. Karai/Gikambura/2587 for a parcel measuring 0.53 hectares thereby disinheriting the plaintiff's said daughter. The plaintiff as the registered proprietor has a right to subdivide the land as she wishes. I therefore for find that she is entitled to the orders sought being proprietor of the land. I enter judgment for the plaintiff as follows.

- a) That parcel No. L.R. Karai/Gikambura/2587 measuring 0.53 hectares registered in the names of the Defendants be subdivided into two parcels measuring 0.36 hectares and 0.17 hectares to be registered in the names of the defendant and Jane Wanjiku Muruga respectively.
- b) The plaintiff is awarded costs of this suit.

Orders accordingly.

**Dated, Signed and delivered this 26th day of June 2012**

**R. OUGO**  
**JUDGE**

In the Presence of:-

..... For the Plaintiff

.....For the Defendants

.....Court Clerk