



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CIVIL CASE 597 OF 1984**

**WAMAI GITHERE.....PLAINTIFF**

**VERSUS**

**WANJIKU NJOROGE AND.....1<sup>ST</sup> DEFENDANT**

**WANGARI GITAU.....2<sup>ND</sup> DEFENDANT**

**RULING**

1. Wamae Githere the plaintiff/applicant in this suit has sued the defendants Wanjiku Njoroge the 1<sup>st</sup> defendant and Wangari Gitau the 2<sup>nd</sup> defendant/applicants.

The application is brought under section 1A, 1B 3 & 3A of the Civil Procedure Act Cap 21 of the Laws of Kenya order 21 rule 49, Order XXXIX rule 1, 2 and 9 of the Civil Procedure rules. He is seeking the following orders that.

- i. The 1<sup>st</sup> defendant/respondent their servants, agents and or employees or otherwise howsoever be restrained from in any manner howsoever from transferring, selling, charging or in any manner howsoever dealing with the plaintiffs 1.6 acres share in land parcels Nos. Loc 3/Mukuria/649 & Loc 3/Mukuria/650 in addition to the plaintiff's/applicant's current share of 2 acres to make the plaintiff's/applicant's total share thereof to be 3.6 acres.
- ii. That land parcels Nos. Loc 3/Mukuria/649 & Loc 3/Mukuria/650 be re-surveyed, subdivided and thereafter separate titles to issue in respect to the applicant's and the 1<sup>st</sup> Respondent's respective 3.6 acres shares.
- iii. That the 1<sup>st</sup> Defendant/respondent, her servants, agents and or employees or otherwise howsoever to yield and give to the plaintiff/applicant vacant possession of 1.6 acres in land parcels Nos. Loc 3/Mukuria/649 & Loc 3/Mukuria/650 in addition to the plaintiff's/applicant's current share of 2 acres thereby making the plaintiff's/applicant's total share thereof to 3.6 acres.

The application is based on grounds (a) to (d) as specified on the face of the Notice of Motion.

The application was supported by the affidavit of Wamai Githere dated 16/12/10 and a further affidavit dated the 28/3/11.

2. The 2<sup>nd</sup> respondent filed a replying affidavit in which she deponed facts in opposition. I have read the affidavits filed , the annexures plus I have also carefully gone through the Court proceedings and I find as

follows:

The applicant in this suit filed an Originating Summons and then a plaint. The suit was heard and a judgment was delivered. In the said judgment it was ordered that.

- 1) That judgment be and is hereby entered in terms of the award Herein.
- 2) That the land parcel Nos. Loc.3/Mukuria/649 and Loc 3 Mukuria 650 be shared equally between Wamai Githere and Wanjiku Njoroge.
- 3) That the defendants jointly and or severally do pay the plaintiff's costs of this case to be taxed and controlled by the taxing master of this Honourable Court

The judgment was delivered on 23/10/87 and the decree was issued on the 18<sup>th</sup> February 1988. The plaintiff/applicant has now come to Court seeking the orders already stated in this ruling. Having considered the affidavits I find as follows: the applicant states that he has judgment from the Court, the respondent did not appeal against the said judgment what he therefore want is for the orders he was given to be effected as prayed in prayers 1, 2 and 3 of the Notice of Motion. The 1<sup>st</sup> respondent whom the application has filed this application against did not file any response but a replying affidavit has been sworn by the 2<sup>nd</sup> defendant who claims to have the authority of the 1<sup>st</sup> defendant. This affidavit has been challenged by the applicant.

3. I noted all that is deponed and submitted in the written submissions which was reiterated in court. I do note that the Court's orders were clear on what was to be done with the parcels No. Loc 3/Mukuria/649 and Loc 3/Mukuria/650. From the affidavit attached of the 2<sup>nd</sup> defendant it is apparent that the titles of the said properties have transferred to other parties who are not enjoined as 3<sup>rd</sup> parties. It is apparent that too the 2 defendants acted in contempt of the Court order in a bid to frustrate the applicant. However even though the applicant has a legal claim over the said suit properties, I find that I cannot grant the orders as sought as one of the property has been transferred to 3<sup>rd</sup> parties namely Mwangi Gitau and Samuel Samson K. Njoroge, Daniel Maina Njoroge, Christopher Kiarie Njoroge, David Mwangi Njoroge and Jesse Chege Njoroge. The injunction sought therefore cannot be granted for the properties have been transferred to the 3<sup>rd</sup> parties. Secondly if I were to grant prayer 1, I would be doing so in vain as the properties have been transferred to other parties who are not parties to this suit properties. I do note that the applicant did not lodge a caution on the said properties. On the 3<sup>rd</sup> prayer sought of the resurvey I find that applicant ought to have enjoined the Land Registrar to seek such orders. Counsel for the plaintiff has asked this court to give compelling orders suo moto that there be rectification of the land register. The prayer sought in prayer No. 3 is not for rectification but for resurvey and subdivision. I have noted the provisions of section 143 of Registered Land Act Cap 300 (repealed ) which empowers this Court to direct that a registration be cancelled or amended if it is satisfied that registration was obtained or made or committed by fraud or mistake. The 1<sup>st</sup> defendant/respondent is in contempt of the Court orders. The suit properties have been transferred to other parties who are not enjoined. For the Court to effect an order of rectification it would be important for the affected parties to be aware that their titles would be either be cancel or amended as stated in the said section which is the section 79 of the Land Registration Act 2012. I therefore decline to grant the orders sought on the reasons stated in this ruling. I make no orders as to costs.

Orders accordingly.

**Dated, signed and delivered this 20<sup>th</sup> day of July 2012**

**R. OUGO  
JUDGE**

In the Presence of:-

..... For the Plaintiff/Applicant  
..... For the 1<sup>st</sup> Defendant/Respondent  
..... For the 2<sup>nd</sup> Defendant/Respondent  
..... Court Clerk