



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYERI**

**Civil Appeal 25 of 1992**

**JEREMIAH WANJAU**

**GITHAE.....APPLICANT**

**-versus-**

**FRANCIS GITHAE.....1ST**

**RESPONDENT**

**JOSEPH MUNDIA MUCHEMI.....2ND**

**RESPONDENT**

***(Being an appeal from the Ruling of J. S. Mushelle, Senior Resident Magistrate, in Nyeri Senior Resident Magistrate's***

***Civil Case No.21 of 1989 delivered on 17th March 1992 at Nyeri).***

**R U L I N G**

This ruling is the outcome of the motion dated 8th September 2011 in which Jeremiah Wanjau Githae has sought for the following orders:

***“1. That the ruling of the court read on 1st April 2011 be reviewed and set aside.***

***2. That the fake mutation forms in regard to sub-division of land parcel Number Iriani/Chehe/950 signed by M/s C. N. Githae and Joseph Mundia Muchemi dated 6/6/92 be nullified and cancelled including titles issued pursuant to that mutation.***

***3. That the titles issued pursuant to that mutation form dated 6/6/92 be cancelled and Number Iriani/Chehe/950 be reinstated to enable registration of mutation form signed by Githae Guthua, Francis C. N. Githae, Joseph Mundia Muchemi and Jeremiah Wanjau Githae dated 6/11/85 to be registered and acted upon as per court order.***

***4. That costs of this application be ordered against Joseph Mundia Muchemi.”***

The motion is supported by the affidavit of Jeremiah Wanjau Githae. The 2nd Respondent, Joseph Mundia Muchemi, filed grounds of opposition to resist the motion.

The Applicant argued that the 2nd Respondent falsely told the Principal Magistrate's Court at Nyeri that the appeal had been finalized yet he knew that was not true. It is also stated that the 2nd Respondent used fake mutation forms to obtain title of a portion in L.R. No. Iriani/Chehe/950. It is said that the Land Control Board's consent was obtained long after Githae had passed away. The 2nd Respondent stated that

the mutation forms were not fake but were duly executed by the parties and acted upon. I have carefully perused the ruling of this court delivered on 1st April 2011 and it is clear that the issues raised in this motion were also raised and argued in the motion dated 25th January 2010. Those issues were canvassed and determined. In order to appreciate what I am saying, let me refer to pages 7 and 8 of that ruling in which I stated as follows:

***“I have carefully perused the application referred to as ex parte Chamber Summons dated 22nd December 1992 plus the supporting affidavit. In the aforesaid application, the 2nd Respondent simply applied for the order of injunction issued on 21st March 1989 which had halted any move to sub-divide L.R. NO.IRIAINI/CHEHE/950 pending the hearing and determination of Nyeri P.M.C.C. 21 of 1989. By that time, the aforesaid suit had been referred to arbitration and the award filed and adopted by the court on 17th March 1992. The order was granted. By then there was no order of stay issued. Surely, the 2nd Respondent cannot be faulted when he averred that Nyeri P.M.C.C. No.21 of 1989 had been finalized. It is alleged that fake mutation forms had been used to obtain title deeds. With respect, the alleged fake mutation forms have not been availed to this court. On this score, the Applicant has miserably failed to discharge the burden of proof. Even if the Applicant had discharged the burden of proof, I doubt whether he could come through this file to seek for the orders.*”**

***In the end, I see no merit in the Motion. It is dismissed with costs to the 2nd Respondent.”***

It is clear therefore, that this court is enjoined by law not to go back to some issues it has made a finding on. I am convinced the matters raised in this motion are *resjudicata*. I dismiss the motion with costs to the 2nd Respondent.

**Dated and delivered this 17th day of August 2012.**

**J. K. SERGON  
JUDGE**