



**REPUBLIC OF KENYA**

**IN THE HIGH COURT**

**AT MALINDI**

**CIVIL SUIT NO. 18 OF 2010**

**WILLIAM CHEA MWABAYA .....**

**.....PLAINTIFF**

**VERSUS**

**EMMANUEL NGUMBAO KENGA  
KAHINDI NGUMBAO MWAMBODZE .....**

**.....RESPONDENTS**

**RULING**

THE Notice of Motion dated 4<sup>th</sup> June 2010 is made under Order L Rule 1 and Order XXI rule 30(1) Civil Procedure Rules and section 3A of the Civil Procedure Act it seeks that

- (1) The applicant be granted leave to appoint a surveyor to subdivide all that parcel of land situated at Majanheri village in Magarini District known as Title No. Ngomeni/Squatter Settlement Scheme/1241 measuring 0.69 hectares into two equal portions each measuring 0.349 hectares.
- (2) That one of the portions measuring 0.349ha subdivided from the said parcel initially apportioned to JUMWA SARE MWARINGA and KACHE SARO MWARINGA do vest in the name of the applicant, WILLIAM CHEA MWABAYA.
- (3) The portion of land measuring 0.349 hectares subdivided from Title No. Ngomeni Squatter Settlement Scheme/1241 be delivered into the possession of the applicant William Chea Mwabaya by removing any person who refuses to vacate therefrom.

The grounds upon which this application is based are that:

- 1) Applicant is the beneficial owner of the portion of land measuring 0.345 hectares, having purchased the same from the respondents and their family and the same having been decreed to the applicant
- 2) Respondents subsequently initiated a claim against the applicant for vacant possession of the suit land at the Malindi Land Disputes Tribunal.
- 3) The applicant appealed to the Provincial Land Appeals Committee constituted for the Coast Province and the Appeal was allowed in the applicant's favour.
- 4) The tribunal made a decision in favour of the respondents.

5) The appeals Committee ordered for the subdivision of Title No. Ngomeni Squatter Settlement Scheme/1241 into two equal portions, one of which was to be awarded to the applicant. The respondents have not appealed against the decision but have persistently refused to have the land subdivided in execution of the decree.

6) The Land Disputes Tribunals Act No. 18 of 1990 which established the Land Disputes Tribunals (forms and procedure) Rules 1993 do not provide for the manner in which judgment and decree in an appeal may be executed and the court in which the decree may be enforce.

The magistrate's court has jurisdiction under section 7(1) and (2) of the Act to enter judgment in accordance with the decision of the Land Disputes Tribunal and also issue its process for the execution of the Decree but the court has no jurisdiction to enforce the judgment and decree made in an appeal by the Land Appeals Committee.

The supporting affidavit sworn by applicant gives a history of the matter and he has annexed a copy of the proceedings and judgment made in his favor as WC4 and WC5.

The judgment stated that the parcel be subdivided into two equal portions and the portion initially apportioned to JUMWA SARO MWARINGA and KACHE SARO MWARINGA be given to him.

The application is opposed by respondents who say the decision did not take into account the proper boundaries. 1<sup>st</sup> admitted that appellant bought a portion of the said land and he does not object to a surveyor being appointed. He however objects to plot 124 being sub-divided into two portions, saying that is a very large plot which was then subdivided by the deceased into small but which he sold.

In the replying affidavit, the respondents fault the decision by the Provincial Land Appeals Committee, saying it was erroneous and has no effect in the eyes of the law. They urge that the application be dismissed.

It is not disputed that a decision in favour of the applicant, was made by the Provincial Lands Committee stated 21<sup>st</sup> May 2009 stated as follows;

***“The disputed land, plot no. 1241 Ngomeni Squatter Settlement Scheme measuring approximately 0.69Ha is to be subdivided into two (2) equal portions. One portion of the two wives JUMWA SARO MWARINGA and KACHE SARO MWARINGA to go to the appellant WILLIAM CHEA MWABAYA. The other half to go to the two (2) remaining wives who were not involved in who were not involved in the sale, this is in accordance to customary law.”***

**This decision is based on the understanding that the land in question is a government land under land adjudication, should it be found that there is existence of a Title Deed in force, this decision is invalid.**

The respondents are pegging their objection on what appears to be an inconclusive finding because of the possibility left open by the decision. However they have not challenged that decision by way of appeal despite having been given a right of appeal.

This then means that as matters stand, the Appeals Committee's decision remains valid and must be given effect. I therefore allow the prayers as sought.

Costs be borne by respondents

Delivered and dated this 21<sup>st</sup> day of **March 2011** at Malindi.

**H. A. OMONDI**  
**JUDGE**