



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**CIVIL APPEAL NO. 327 OF 2007**

**PETER KAMONDIA NJUGUNA.....APPELLANT/ORIGINAL  
RESPONDENT**

**VERSUS**

**PAUL NGANGA GACHIE.....RESPONDENT/ORIGINAL  
APPLICANT**

***(Being an appeal from the Ruling of the District Land Registrar Kiambu East, Ndirangu J. Kingori Esq in boundary dispute hearing under***

***Section 21 of Cap 300 Laws of Kenya on 12<sup>th</sup> April 2007 – relating to Kiambu SRM Land Case No. 76 of 1982)***

**J U D G M E N T**

**I. BACKGROUND**

1. Veronica Mumbi Njuguna and Peter Kamondia (the appellant herein) are related to each other as sister and brother respectively. Veronica alleged in another matter, that her brother held land in trust of her and her mother when their later father passed away. The land that he held consisted of a town plot that he sold. The second parcel of land was original land LR Kiamba/Kanungu/486 measuring 1½ acres.
2. Veronica was a single mother. She had five children, four girls and one boy. She looked after her ailing mother until the mother passed away. The appellant upon the death of their mother proceeded to evict her from the land. Veronica took the matter to the elders. The elders awarded her ½ an acre out of the main suit land. This was it appears an award in accordance with the Kikuyu customary law where an unmarried daughter is permitted to have a portion of her father's land.
3. The appellant refused to sign sub division forms. Veronica filed a suit in 1982 in the Senior Resident

Magistrate's Court at Kiambu whereby she filed the award of the elders (SRM 76/83).

4. The appellant sought to set aside the award by the elders. The said application was rejected by the Senior Resident Magistrate Court at Kiambu. Judgment for Veronica was entered. The application to sign the transfer forms was made by Veronica to court when again the appellant refused to sign the same. The court accordingly granted her the said application.

5. I believe, unknown to the appellant, the sister sold the land to the respondent. The appellant filed a land case in the High Court in 2006 being HCCC 1307/06 now EL HCCC 2101/07. The respondent on being sued went to the Registrar to determine the issue of the land boundary.

6. The District Land Registrar relying on the decision delivered in the Senior Resident Magistrate's court case 76/82 stated that the boundary would be maintained as per the said decision. One acre to the appellant and ½ acre to the respondent (through Veronica).

7. Being dissatisfied with this decision, the appellant filed this present appeal. It was admitted for hearing on 13<sup>th</sup> November 2009.  
(Mbogholi Msagha J.)

## II APPEAL

8. The appellant, who all along had been acting in person, stated in his grounds of appeal that the District Land Registrar erred

9. When the appellant addressed this court, he most certainly was not aware his sister had sold her portion of ½ an acre of land. He admitted that she was entitled to that ½ acre and wished to know how the said respondent came to be in possession.

10. This explanation was given by the respondent's advocate that upon refusal to sign the transfer forms as ordered by the court, the sister was granted leave to have the executive officer sign the form in place of the appellant. This is the reasons why the respondent now had locus in the matter.

## III OPINION

11. The District Land Registrar was bound by the magistrate court's findings. He/she had no alternative but grant orders as to the boundaries concerning the two parties.

12. The respondent's share is ½ acre.

13. There was therefore no irregularities as to the actual boundary dispute to the land.

14. I hereby find that this appeal has no merits. It is actually dismissed with costs to the respondent in this appeal. The costs before the District Land Registrar had been awarded and the same be and is hereby ordered to be paid by the appellant.

DATED THIS 13<sup>TH</sup> DAY OF OCTOBER 2011 AT NAIROBI

**M.A. ANG'AWA**

**JUDGE**

*Advocates* :

- i) *Peter Kamondia appellant/original respondent present in person*
- ii) *F. N Kinyanjui instructed by Kinyanjui Njau & Co Advocates for the Respondent/original applicant*