



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**MISC. APPLICATION NO. 141 OF 2010**

BERNARD KATHURI MBOOKERA..... APPLICANT

VERSUS

SERAPHINO N. NGUGI ..... 1<sup>ST</sup> RESPONDENT

JOSPHAT NJAGI NGUNGI ..... 2<sup>ND</sup> RESPONDENT

**RULING**

This is the Chamber Summons dated 28/6/2010. It's for orders that the Court Registrar signs transfer documents in respect of land No.NTHAWA/RIANDU/2956 on behalf of the 2<sup>nd</sup> Respondent who has refused to transfer the said land to Applicant. He has filed an affidavit in support of his application. He wants the land No.2956 transferred to him. He has annexed the proceedings of the ARBITRATION by the D.O. Siakago.

The 2<sup>nd</sup> Respondent has filed a Replying Affidavit in which he explained that pursuant to the arbitration the land No.260 was to be sub-divided. They sold part of the land to pay for the exercise. One Patrick bought the 9 acres.

There is no land to give to the Applicant. Justice Warsame had on 13/4/2011 ordered that the chief and village elder appear before this court to explain what transpired. The chief John Mwaniki Makenge and then Assistant Chief Gerald Njiru Githuario has filed affidavits in which they confirm that the Applicant and 2<sup>nd</sup> Respondent both part of their land to Patrick Muriithi Njogu to get money for sub-division.

There is no reason why the 1<sup>st</sup> Respondent was before the court. The Applicant has no quarrel with the Arbitration which awarded him 9 acres out of land No.260. In that arbitration the 2<sup>nd</sup> Respondent was to get 8 acres. The Applicant correctly says the sub-division created 3 parcels i.e.

Nthawa/Riandu/2954 (9 acres)  
Nthawa/Riandu/2955 (4 acres)  
Nthawa/Riandu/2956 (4 acres)

The Applicant has a title deed for No.2956 measuring 1.53 hectares. The 2<sup>nd</sup> Respondent too has a title for No.2955 measuring 1.53 hectares. The Applicant does not mention anything about No.2954. He wants the 2<sup>nd</sup> Respondent to transfer to him No.2955. Reason? That the 2<sup>nd</sup> Respondent only gave him 4 acres out of the 9 acres allotted to him.

The explanation by the 2<sup>nd</sup> Respondent, the chief and the former Assistant chief is that both the 2<sup>nd</sup> Respondent and Applicant needed money to pay for the sub-division and so the 2<sup>nd</sup> Respondent sold to Patrick 4 acres and was left with 4 acres; while the Applicant sold 5 acres and was left with 4 acres.

They were both paid and a total of 9 acres, was given to PATRICK MURIITHI NJOGU who is registered as the proprietor of land No.2954. The 2<sup>nd</sup> Respondent has in his Replying affidavit stated that for the sale of the portions of the land he got shs.124,000/= while the Applicant got shs.155,000/=. The Applicant has not said anything this. All he wants is the land transferred to him.

The Administration from the location and sub-location both confirm that what the 2<sup>nd</sup> Respondent is saying is the correct position. And secondly the court cannot issue the kind of orders the applicant wants out of the blues. If he believes that the 2<sup>nd</sup> Respondent go title fraudulently then for the same to be cancelled there ought to be substantive suit filed so that he can prove his claim.

The Applicant appears to know something about the sale of this land which he is not disclosing to court.

Infact there is no reason at all for his dragging the first Respondent to Court. I find no merit in the Chamber Summons dated 28/6/2010 which I dismiss with costs.

**DATED, SIGNED AND DELIVERED AT EMBU THIS 15<sup>TH</sup> DAY OF DECEMBER 2011.**

**H.I. ONG'UDI**

**JUDGE**