



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU Civil Case 105 of 2009**

**JOHN NGULI KAMWITHI .....PLAINTIFF**

**VERSUS**

**JACOB THURANIRA M'MUJURI alias**  
**THURANIRA M'MUJURI .....1<sup>ST</sup> DEFENDANT**  
**MUTHIRU M'MUJURI .....2<sup>ND</sup> DEFENDANT**  
**GRACE KAUMA ..... 3<sup>RD</sup> DEFENDANT**  
**RICHARD MUTETHIA ..... 4<sup>TH</sup> DEFENDANT**  
**DAVID GITONGA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

The plaintiff sued the five defendants seeking for an order to direct the first defendant to transfer parcel number *L.R. 9408 NDOLELI ATHIRU RUUJINE ADJUDICATION SECTION* to him. He also sought in this action an order of injunction to stop the defendants from interfering with his occupation of the said property amongst other orders. All the defendants are family members. It seems from the plaint that the 4<sup>th</sup> and 5<sup>th</sup> defendants are sons of the first defendant. The plaintiff alleged to have purchased the aforesaid property from the first defendant and had obtained possession. He alleged that the 1<sup>st</sup> defendant had not however transferred it into his name because he had been prevented by the other defendants from doing so. One of the ways that the other defendants had prevented the first defendant according to the plaint was that they had filed a Land Dispute Tribunal matter relating to the suit property. The plaintiff in his plaint failed to give particulars of that tribunal matter. It is not clear who was sued and what the claim was. On the summons and plaint being served on the defendants, the first defendant filed a letter admitting the plaintiff's claim. In part, he stated:-

**“3.8.2009**

**ALIAS THURANIRA M'MUJURI**  
**KAWIRU LOCATION**  
**BAIBARIU S/LOCATION**

**THE HIGH COURT OF KENYA, MERU CIVIL CASE NO. 105 OF 2009**

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## **MUTHIRU M'MUJURI**

I, Thurairaja M'Mujuri had sold a piece of land to John Nguli 157x158 feet square 630 feet at a price of 10,000/= and paid the whole amount. I have no debt with John let him be given his land from parcel No. 9408. I sold a piece of land because I had a problem of circumcising my children and they were circumcised and they are the ones who are refusing John to be given his piece of land. I have no debt (sic) with him so I ask the court to give him his piece of land."

The letter as can be seen admits the plaintiff's claim and shows the first defendant's willingness to transfer the land to the plaintiff. The third, 4<sup>th</sup> and 5<sup>th</sup> defendants filed a defence denying the plaintiff's claim. They denied that the plaintiff was in possession of the land:-

"Further, it is the 3<sup>rd</sup>, 4<sup>th</sup>, and 5<sup>th</sup> defendants assertion that the first defendant is recorded in the adjudication register of NDOLELI/ATHIRU RUUJINE ADJUDICATION SECTION to hold land parcel number 9408 in trust for himself and the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants and ipso facto the first defendant could, and cannot lawfully dispose of or alienate any interest therein without express, unequivocal and written consent and authority from the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants."

The plaintiff has applied by Notice of Motion dated 13<sup>th</sup> October 2009 for judgment to be entered against the first and 2<sup>nd</sup> defendants as prayed in the plaint. The application is brought under Order XII Rule 1 and 6 of the Civil Procedure Rules. These Rules provide:-

"1. Any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or part of the case of any other party.

6. Any party may at any stage of a suit, where admission of facts has been made, either on the pleadings or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."

The court in the case of **Choitram Vs. Nazari** [1984] KLR. It was held:-

"For the purpose of O.XII rule 6, admission can be expressed or implied either on the pleadings or otherwise, e.g. in correspondence. Admissions have to be plain and obvious, as plain as pikestaff and clearly reasonable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning."

Further, in the case of **Cassam Vs. Sachania** [1982] KLR it was held:-

"The judge's discretion to grant judgment on admission of fact under the Order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to admission of liability entitling the plaintiff to judgment."

The letter of admission by the first defendant alone makes it clear that there is admission by the first defendant of the plaintiff's claim. I do not see the name of the 2<sup>nd</sup> defendant in that letter and it is therefore not clear to me why the plaintiff seeks judgment against the 2<sup>nd</sup> defendant on admission. However, although the first defendant admits he sold the land to the plaintiff and says that he desires to transfer the same to him, the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants raised an important issue in their defence. The issue they raised in my view cannot be overlooked. They stated that the land which the plaintiff seeks to be registered in his name is already registered in the 1<sup>st</sup> defendant's name to hold in trust for them. The same is therefore not held in the first defendant's name alone. That issue raised by that defence blocks the plaintiff's attempt to enter judgment against the first defendant on admission. In addition, the fact that there is likely to be an outstanding tribunal matter between the parties as pleaded by the plaintiff himself makes this court even more reluctant to entertain the plaintiff's application. This is not a simple case where one defendant can have judgment entered against him in isolation. The defendants are in my view entwined in this claim and even if one of them admits the claim it cannot be taken as a licence for judgment to be entered against such a

defendant. As stated in the case of Cassam (supra) this is not a plain case where admission can be said to be plain and unequivocal. As I sat to consider this ruling, it also occurred to me that the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants needed to be served with the present application. They are parties in this case and ought to be served with any application in this matter. The application by the plaintiff dated 13<sup>th</sup> October 2009 fails and is dismissed with no orders as to costs.

Dated and delivered at Meru this 19<sup>th</sup> day of March 2010.

**MARY KASANGO**  
**JUDGE**