



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
MILIMANI LAW COURTS**

CIVIL SUIT 1055 OF 2001

NJENGA GACHATHI.....PLAINTIFF

VERSUS

NJOROGE MWORORO.....DEFENDANT

RULING

At the centre of these proceedings is a parcel of land known as LR No.Githunguri/Giathieko/431. This parcel of land has been subject to several litigation. The application before me is by way of Notice of Motion under Section 3A of the Civil Procedure Act seeking orders that, the purported sub-division of the said parcel of land creating parcels Nos. 855, 856 and 857, or any other parcels or such resultant sub-divisions and their registrations into the names Njoroge Mwororo, Joseph Mburu Njoroge, and Samuel M. Njoroge and further such transferees and resultant beneficiaries on 22nd July, 2008 and thereafter be cancelled and the register be reverted to LR. No.Githunguri/Giathieko/431 forthwith and that the costs of this application be paid by Joseph Mburu and Patrick Kiarie.

The grounds set out for such orders are that;

1. The closure of LR. NO. Githunguri/Giathieko/431 on 23rd July, 2008 and its subdivision into LR.855,856 and 857 and their transfer to Joseph Mburu Njoroge and Salome Nungari Njoroge was contemptuous and an abuse of the process and an affront to the dignity of this court.
2. That the plaintiff was awarded 5 acres out of the said parcel of land on 8th October, 2001 and both Joseph Mburu and Patrick Kiarie have filed numerous but unsuccessful applications to forestall the execution of the said decree.
3. The said Patrick Kiarie and Joseph Mburu together with their families resisted the valuation of the subject property on 15th and 18th November, 2005 after which they filed an application to set aside the decree but the said application was dismissed by this court on 28th February, 2008.
4. That both Salome Nungari Njoroge and Joseph Mburu Njoroge have actively participated in the deliberations before the court and are aware that 5 acres was to be transferred to the plaintiff, but they have physically obstructed the agent of law from effecting court orders and in particular the District Valuer, Kiambu.
5. That they have connived to defeat justice by purporting to extinguish the subject matter of the orders of this court.
6. That this court is duty bound to redeem its dignity by ordering the immediate reversal into title No.Githunguri/Giathieko/431 without according them a hearing.

There is an affidavit sworn by Njega Gachathi in support of the said application which annexed an order of this court made on 11th October, 2001. Because of the issues involved, it became necessary to summon the District Land Registrar, Kiambu to shed some light in respect of the transactions relating to this title. The said District Land Registrar Mr. Jonathan Ndirangu King'ori appeared in court and gave evidence to assist the court in this matter. He said that unknown to his office while this matter was going on, another case had been concluded in Githunguri Tribunal Case No.18 of 2002 and a decree issued on 20th November, 2002. That decree was later quashed by this court in this case but his office was not made aware. When this court ordered that the applicant be registered as the proprietor, the applicant went to his office and had all the restrictions removed from the title.

The respondents then used this opportunity to transfer the land to themselves and partition the same into 3 parcels. When the applicant went to the District Land Registry to register the order of the High Court, it is when the Registrar became aware of the orders quashing those of the Githunguri Tribunal. It is his evidence that, he now requests the court to issue orders

cancelling the subdivisions in respect of title Nos. Githunguri/Githaieko/855,856 and 857.

He confirms that the registrations of the said parcels were wrongful as the office was misguided and therefore the said parcels should be dispensed with.

At the conclusion of his evidence I made orders that both learned counsel for the parties herein should file submissions to address the Notice of Motion. The learned counsel for the plaintiff complied, but the defendant did not.

I have looked at the record and the evidence of the District Land Registrar alongside the submission by the learned counsel for the plaintiff. It is true that the defendants stole a march on the plaintiff and this cannot be allowed to stand because there is a court order which should be respected. Accordingly, I allow the application dated 14th and filed on 15th October, 2008. The entries said to be subdivisions of title No.Githunguri/Giathieko/431 which were given title numbers 855, 856, 857 or any other subdivisions thereunder shall now be cancelled forthwith. The title number Githunguri/Giathieko/431 is hereby restored with immediate effect. The costs of this application shall be paid to the plaintiff by Joseph Mburu and Patrick Kiarie.

Orders accordingly.

Dated, signed and delivered at Nairobi this 28th day of October, 2010.

A. MBOGHOLI MSAGHA

JUDGE