



**MIRIAM WANJIRU MWANGI (Suing as the legal representative of Estate  
of GEOFFREY MWANGI KABUTHIA (DECEASED) ..... PLAINTIFF**

**VERSUS**

**NORTH TETU FARMERS CO. LTD. .... DEFENDANT**

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

This suit proceeded by way of formal as the defendant when served with the summons to enter appearance accompanied with the plaint failed to enter appearance and file a defence within the period prescribed. Accordingly on the application of the Plaintiff, the Deputy Registrar of this court entered interlocutory judgment against the defendant on 23<sup>rd</sup> January 2009.

The facts leading to the Plaintiff's suit are that her husband, **Geoffrey Mwangi Kabuthia**, deceased was a fully paid up shareholder in the defendant's company. As a result he was entitled to be allotted a parcel of land by the defendant out of **Daiga/Umande/Block II/2876** hereinafter referred to as "*the suit premises*". Pursuant to the foregoing the deceased was given ballot paper number 521 and duly paid the survey fees as well as title clearance fees. He was thereafter shown the parcel of land on the ground. Just before his death on 18<sup>th</sup> July 2007, he learnt that the same parcel allotted to him as aforesaid had been fraudulently allotted to a stranger and despite his pleas to have the matter rectified, the defendant had refused, failed and or neglected to do so. Hence the suit.

When the case came up for hearing, the Plaintiff testified that her deceased husband passed on. Thereafter she proceeded to obtain a limited grant with regard to his estate for purposes of initiating these proceedings. She tendered in evidence the certificate of death as well as the limited grant. She went on to testify that her late husband was a share holder of the defendant company. He balloted for the land owned by the defendant and was allotted a portion out of the suit premises. He was shown the suit premises on the ground in 1972. He was to collect the title deed in the same year that he passed on. However just before he passed on he had been informed that the suit premises had been allocated to someone else. However to date that person has never occupied the suit premises and is unknown to the Plaintiff. She therefore prayed for this court's intervention so that the suit premises could revert to her by way of transmission.

That marked the close of the Plaintiff's case. There after her counsel elected to put in written submissions. He subsequently did so. I have carefully read and considered the same.

The Plaintiff brings this suit on behalf of the estate of her deceased husband to recover the suit premises due to him from the defendant on account of the deceased being a shareholder of the defendant company, a land buying company. The suit premises had been allotted to the deceased in his lifetime. However he passed on before the transfer could be effected despite having met all the prerequisite requirements. On the unchallenged and uncontroverted evidence tendered, it is apparent that the deceased had been issued with a ballot card number 521 which entitled him to a portion of the suit premises. The ballot card was issued to him after the deceased had fully paid up his shares as well as requisite survey fees and money for the title deed. He was thereafter shown his suit premises on the ground.

However the deceased later discovered that his share aforesaid had been alienated to a stranger by the defendant. Since then the defendant has refused to correct the anomaly. It has indeed refused to effect the transfer of the plaintiff's portion of the suit premise to her. From the evidence, I have no doubt in my mind that the deceased was entitled to the portion of land comprised in the ballot card number 521 issued to him by the defendant. The consideration of the said portion was duly paid up. As correctly submitted by **Mr. Kingori**, learned counsel for the Plaintiff, the deceased had discharged his obligation under the contract and acquired the right over the portion of land. The defendant on its part was enjoined to

specifically perform its part of the contract. The cause of action having survived the deceased, the defendant had the outstanding obligation of registering the specific portion of land comprised in the suit premises in favour of the personal representative of the deceased and I so order. Accordingly I grant prayers (a) and (b) as sought in the plaint dated 15<sup>th</sup> September 2008 and filed in court on the same day.

*Dated and delivered at Nyeri this 22<sup>nd</sup> day of October 2009*

**M. S. A. MAKHANDIA**

**JUDGE**