

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Case 33 of 2001

LIVIRIN KITHINJI PLAINTIFF

VERSUS

SAMUEL MWIRIGI DEFENDANT

RULING

The suit brought by way of originating summons by the plaintiff/applicant concerned Nkuene/Kathera/37 (the suit land) registered in the name of the defendant/respondent. The main question in the originating summons was whether the plaintiff/applicant had any beneficial interest in the suit land by reason that he is a natural son of the deceased, M’Ndegwa Baitanyai. That question was resolved in this court’s judgment (Sitati, J) delivered on 17th May 2006 in favour of the plaintiff/applicant as follows:-

“In the result, I do enter judgment for the plaintiff but to the extent of only forty (sic) (40) points out of land parcel number Nkuene/Kathera/37 measuring 0.48 Ha or thereabout. Accordingly, I order that certificate of succession being P exhibit 2, be duly amended to show that the suit land shall be shared in the ratio of 60 points to 40 points between the defendant and the plaintiff respectively.”

The plaintiff/applicant has now brought the present application arguing that the defendant/respondent has refused to sign the necessary documents to effect the above order.

For that reason, he is seeking that the Executive Officer of this court be authorized to sign the transfer instruments in accordance with the judgment of the court.

I have reproduced in the foregoing paragraph the exact order issued as to how the suit land was expected to be shared out. I have not had the benefit of hearing from the defendant/respondent as to the difficulty, if any, why he has not complied with the order of the court. Twice he was represented in court by counsel, Mr. Ringera, who it was hoped would file a replying affidavit or appear on the day this application was canvassed, but failed to do any of this. This application was therefore unopposed and heard *ex parte*.

The defendant/respondent has not challenged the decision of this court. In order to give effect to that judgment and in exercise of my discretionary powers, I order that the Executive Officer, Meru High Court shall execute, on behalf of the defendant/respondent all transfer documents necessary to facilitate the transfer of parcel of land No. Nkuene/Kathera/37 measuring 0.48 Ha in the ratio of 40:60, plaintiff/applicant and defendant/respondent.

I make no orders as to costs.

Dated and delivered at Meru this ...8th....day of February 2008.

W. OUKO

JUDGE