



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Civil Case 17 of 1995

NICASIO NGURU KINANDA.....1ST PLAINTIFF

NJOKA NGOROI.....2ND PLAINTIFF

MRS NJOKA GITHUMBU.....3RD PLAINTIFF

VERSUS

NELSON MUSUNGU.....DEFENDANT

JUDGMENT

This suit is commenced by way of plaint filed on 8/6/1995 by three plaintiffs against one defendant. The dispute relates to land under Land Adjudication Process but it is pleaded that mandatory consent had been obtained under Land Adjudication Act. The plaintiff therefore claim land parcel Block No. 104 Gichiche Adjudication Section be shared out equitably into two portions, one for defendant and his family and one portion for 3 plaintiffs and their family members. The defendant filed Defence denying all the plaintiffs claims. Evidence was firstly taken before this court (H. Okwengu Judge) on 14/6/2005

By consent the matter was ordered to proceed to further hearing before another Judge. The subject matter of the suit is Mbeere District Block 104 Gichiche Adjudication Section. The officer described as District Land Adjudication Officer Mbeere District gave evidence. She produced the file in respect of the suit land. After the process of Land Adjudication, the customary rights of the persons entitled were sorted out and the register was compiled showing that 10 persons were registered as members of the Block 104 she produced a list of names of owners of the disputed land (See Exhibit 11) Owners are registered as:-

1. Njeru Kirumbi
2. Mugo Kirumbi
3. Sebastiano Mwaniki Kibuti
4. Kibuti Kirumbi
5. John Nyaga Kirumbi

6. Njeru Njiru
7. Munene Mugane
8. Njoka Gitimbi
9. Njoka Ngira
10. Nichasius Nguru Kinanda.

These are the persons who will be registered as proprietors of land titles issued by Adjudication Department under registered Land Act Cap. 300. The officer also produced as exhibit 12 consent dated 15/5/1995 authorizing suit. She further testified that members above stated were unable to agree on how to share the land. On cross examination she confirmed that she took over the office in the year 2006. (last year). The defendant was Chairman and was given the document of consent as he was Chairman of persons owning the land. The evidence of the officer is clear and undisputed. The system of Land Adjudication was established to enable the owner of land to be issued with individual title dated. I do not dispute the procedure outlined by PW4. It is the law under the Land Adjudication Act. The issue now is not to whom the Block 104 belongs to but how owners are to share the land. DW1 Nelson Musugu testified that he was a member of Magwi clan just like the plaintiffs and his father Defendant. Therefore denial that there is no such clan is not tenable. Therefore the Block 104 must be partitioned in accordance with the rights of the owners. The witness (PW4) stated that the owners named above did not agree as the partner of land. The plaintiffs' claim 1/3 share and agree that the Defendant ought to take 2/3 with the other owners. I think this is a reasonable proposal and there being no other evidence, I enter Judgment for plaintiffs as prayed in the plaint and order that the land Block 104 Gichiche Adjudication Section be subdivided accordingly within the next 30 days. The Plaintiffs shall bear the cost of survey. The defendant shall pay the costs of this suit to the plaintiffs.

It is so ordered.

Dated this 9th April, 2008.

J. N. KHAMINWA

JUDGE

9/4/2008

Khaminwa – Judge

Solomon – Clerk

Mr. Muraguri

Mr. Kathungu

Read in open court.

J. N. KHAMINWA

JUDGE