



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**Civil Case 33 of 2005**

**MURIUKI NGERANO.....PLAINTIFF**

**VERSUS**

**NJERU REUBEN NJUKI.....1<sup>ST</sup> DEFENDANT**

**REUBEN NJUKI THAGICHA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

The plaintiff seeks orders to force the defendants to retransfer parcels No. Riachina block 3622 and block 3629 to himself and eviction of the defendant from the suit lands. He also asks for costs and interest.

The cause of action is the fraudulent subdivision and registration of the pieces of said land to themselves. The subdivision was out of plaintiff's parcel known as Riachina Settlement Scheme block 3211. There is consent granted under Section 30 Land Adjudication Act Cap 284. The evidence is that of the Plaintiff. He testified that the Defendants entered into his land parcel No. 3211 and they subdivided the land and Njeru Njuki took 3622 and Reuben Njuki Ragicu 3629 Plaintiff says he has been residing on the land for 13 years and has developed the same planting Mikau trees 115mango trees 26 Mutathini trees 4. He has never heard anyone asking him about the land. But he saw Reuben and a surveyor coming into the land.

On cross-examination he said his home is on plot No.3622. He also said the land was allocated by clan. He also confirmed that he was ready to take traditional oath on his claims.

PW2 is the witness who sold the land to the plaintiff Bock 12. There was a piece which remained and he sold to Thagichu 2<sup>nd</sup> Defendant.

PW3 also testified that he was present when plaintiff was purchasing the land in 1994.

PW4 comes from Plaintiff's clan. His evidence supported the plaintiff's case. DW1 first defendant, denied the plaintiff's claim and said he was given the land by clan in 1982. He produced a sketch D Exh. 1 certified by land Adjudication officer. That sketch does not show any names of owners of the land except the members. It shows that No. 3211 is bordering 3629 which borders No. 3622. And the document was certified in March 2007. Defendant says he was allocated the land by clan.

The evidence of the two defendants mentions plots No.3637 and 3611 which are not in their Exhibit. It is clear the land in dispute is in an adjudication section namely Riachina Adjudication Section. The Registrar is not completed therefore the sketch exhibit D Exh/1 is what is prepared by Adjudication officers. What I understand the plaintiff to say is that he purchased Plots 3211, 3629, and 3622 as block before the adjudication was commenced. The defendants came and caused subdivision to be carried out and defendants took for themselves plot No.3629 and 3622 respectively. This is the truth before land adjudication there was no reason to survey land and the boundaries were known and marked. The registration alleged is only in the records of Adjudication officers. The Plaintiff called witnesses who confirmed that the land comprised in the 3 marked plots was purchased by the plaintiff. The allegation that the Defendants were given land by the clan cannot be true. In any case the Defendants do not show any belief in their claims. They did not call any witnesses to support their claims while the plaintiff called 3 witnesses who supported his claim against the defendants.

It is my finding that the plaintiff has proved his claims on a balance of probability. It is an act of fraud to survey another persons land and to claim ownership. The defendants do agree that the plaintiff cultivated the land and planted trees. He also claims the house on the land claimed by the defendants. The Defendants have no evidence to controvert the plaintiff except their words of mouth.

I find for the plaintiff and enter Judgment for him against the defendant as prayed in the plaint.

Costs to the plaintiff.

It is so ordered.

Dated this 4<sup>th</sup> June, 2008.

**J. N. KHAMINWA**

**JUDGE**

**4/6/2008**

**Khaminwa – Judge**

**Njue – Clerk**

**Muriuki Ngarano present in person**

**Njeru Reuben Njuki present in person**

**Reuben Njuki Thagichu present in person**

Read in open court.

**J. N. KHAMINWA**

**JUDGE**