



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**

**Civil Suit 6 of 2007**

**EUNICE MUTHONI KARUGA.....1<sup>ST</sup> PLAINTIFF**

**AGNES MUMBI KARUGA.....2<sup>ND</sup> PLAINTIFF**

**DISHON KARUGA MBURIA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**NATIONAL IRRIGATION BOARD.....DEFENDANT**

**JUDGMENT**

The three Plaintiffs filed this suit against the defendant on 2/2/2007. The 3<sup>rd</sup> Plaintiff died during the pendency of the suit and the same proceeding with the 1<sup>st</sup> and 2<sup>nd</sup> plaintiff. The defendant who is the National Irrigation Board was duly served with the plaint. It filed a Memorandum of Appearance on 12/12/2007 but they never filed any defence. Interlocutory Judgment was therefore entered in favour of the defendant and the matter proceeded by way of formal proof. The defendant was also served with the hearing notice but he did not appear in court and so the matter proceeded in their absence.

The 1<sup>st</sup> plaintiff testified on behalf of the 2<sup>nd</sup> plaintiff who is her mother. She reiterated the contents of the plaint. She also called a Valuer who testified and produced a valuation report in respect of the property in question. The Plaintiff is seeking the following orders from the court:-

1. *A declaration that the withdrawal of a portion of 1.0 acres*

*out of plaintiffs rice holding No.2251 and its subsequent re-allocation to a 3<sup>rd</sup> party was unlawful and an order to reinstate the same to the plaintiffs.*

In the alternative that the defendant be ordered to compensate the plaintiffs for the withdrawn portion of 1.0 Acres at the current market rates. PW2's evidence was adduced in support of the alternative prayer. According to his assessment the open market value of the said plot is Ksh.500,000/= . He has also given amounts for the cost of preparation of the land at Ksh.123,000/= and an amount of Shs.390,000 as loss of income for the six years the plaintiffs have been denied the use of the said plot.

The facts of this case are not disputed. From the plaintiffs' evidence and the documentary evidence she has adduced, it is clear that her late father i.e the 3<sup>rd</sup> plaintiff transferred his licence over holding Number 2251 to her and the 2<sup>nd</sup> plaintiff. The said transfer was endorsed by the defendant's agents as per the applicable rules. Subsequently and without any notice, the defendant withdrew 1 acre from the plaintiffs and gave it to somebody else. The new licensee then took the plaintiffs to the Land Disputes Tribunal and they were removed from the 1 acre. The Appeals Tribunal nonetheless recommended that the plaintiffs be compensated by being given another 1 acre somewhere else. This was not done hence the filing of this suit.

According to the plaintiffs, the defendant's act of taking away the one acre from them without following the laid down procedure was unlawful and illegal and that is why they should be compensated. The National Irrigation Board chose not to defend this claim and no explanation had therefore been offered for the arbitrary decision to deprive the plaintiffs the use of

the 1 acre.

I have gone through THE IRRIGATION (NATIONAL IRRIGATION SCHEMES REGULATIONS) under Cap. 347 of the Laws of Kenya. The same outline clearly the circumstances under which a licence can be terminated. Regulations 23 stipulates what should happen when a licence is terminated. It provides for the assessment of costs to be paid to the outgoing licensee by the incoming licensee. Nothing like that happened in this case. The licence for the 1 acre was first terminated without notice, without a hearing and without any compensation whatsoever. Regulation 25 (b) further provides for the issuance of a 12 months notice in writing by the manager to the licensee informing him of his intention to terminate the licence.

The laid down procedures was clearly not followed here and the plaintiff's rights of being given a hearing were flouted. The law of Natural Justice was not followed and the decision by the defendant to allocate that 1 acre to another party was consequently illegal. From the foregoing, I am satisfied that the plaintiffs have proved their case against the defendants on a balance of probability as by law required. I therefore enter Judgment in their favour and grant them the orders as prayed. The defendant is ordered to reinstate the 1 acre to the plaintiffs or to give them another 1 acre of equivalent value in the same scheme within 90 days from the date hereof.

In the alternative, the defendant to pay the plaintiffs Ksh.500,000/= as per the Valuers valuation for the 1 acre. I will not award any money for loss of user as there was no documentary proof tendered to support the figures given in the valuation report.

I also award the costs of this suit and the 10,000/= which was supported by the receipts produced in court as exhibits.

**W. KARANJA**

**JUDGE**

Delivered , dated and signed at Embu this 15th day of Oct.2008.

In presence of:-