



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 394 of 2006**

**MESHACK APPOLOS MWANGI .....PLAINTIFF**

**VERSUS**

**DORA NYAMBURA MWANGI .....DEFENDANT**

**RULING**

So far as I can see, there are two files consolidated into one in this matter. In one, *High Court Civil Case Number 394 of 2006*, one Meshack Apollos Mwangi is suing Dora Nyambura Mwangi over Land Reference Numbers Waitaluk/Kapkoi Block 9/Gutongorio/11, Waitaluk/Kapkoi Block 9/Gutongorio/14 and Waitaluk/Kapkoi Block 9/Gatongorio 31 all of which the plaintiff alleges he caused to be registered in the name of the defendant to hold in trust for herself and all the children of her husband, **Apollos Mwangi Muna** (the deceased) including the plaintiff.

In the Complaint, the Plaintiff stated that he has been in occupation of the said land together with his family awaiting the defendant to determine the trust by subdividing and transferring the respective portions to the plaintiff and other children of the family but that this had not been done despite demand and notice of intention to sue having been given.

Paragraph 7 of the Complaint refers to a *High Court Miscellaneous Application No. 74 of 2006* between the defendant herein and one **Moses Wasike Vs Honourable Attorney General; District Commissioner, Trans Nzoia and District Land Registrar Trans Nzoia District** over the subject matter.

The prayers in the complaint are for

- (a) A declaration that the defendant holds L.R. Nos. Waitaluk/Kapkoi Block 9/Gutongorio/11, Waitaluk/Kapkoi Block 9/Gutongorio/14 and Waitaluk/Kapkoi Block 9/Gutongorio/31 in trust for herself and her children who are the grand children of Apollos Mwangi Muna (Deceased),**
- (b) An order for the subdivision of L.R. No. Waitaluk/Kapkoi Block 9/Gutongorio/11, Waitaluk/Kapkoi Block 9/Gutongorio/14 and Waitaluk/Kapkoi Block 9/Gutongorio/31 into (9) equal portions each and transfer of the respective portions of each land to the plaintiff.**
- (c) Costs and interest of the suit.**
- (d) Any further and/or other relief this honourable Court deems fit and just to grant.**

This suit was filed in Court on 19<sup>th</sup> April 2006 with **Kinyua Muriithi** and Company being Counsel for the plaintiff and Wachakana & Company being Counsel for the defendant.

As stated earlier in this ruling while **Muriithi** was filing this suit, he was aware of the Miscellaneous Application pending in the **High Court, No. 74 of 2006** filed there in form of a Judicial Review on 10<sup>th</sup> February 2006 by Wachakana & Company Advocates on behalf of the defendant herein and one **Moses Wasike**. He mentions this application in paragraph 7 of the plaint.

This application is based on an undated agreement where the defendant herein is alleged to have sold a portion of **Waitaluk/Kapkoi Block 9/Gutongorio/11** to **Moses Wasike**.

As is indicated earlier, this application is directed at the Honourable Attorney-General, The District Commissioner, Trans Nzoia District and the District Land Registrar Trans Nzoia. It was made by Judicial Review for an order of mandamus to be issued to compel the 2<sup>nd</sup> and 3<sup>rd</sup> respondents to issue a certificate of title for **Waitaluk/Kapkoi block 9/Gutongoro/128** in the names of the 2<sup>nd</sup> Applicant **Moses Wasike**.

The application was made under **Order LIII Rules 1(1) and 2** of the Civil Procedure Rules.

It is not known as to how this new plot **Waitaluk/Kapkoi Block 9/Gutongoria 118** came about because if there is any order of subdivision of any of the plots, then this was by order of Court dated 30<sup>th</sup> June 2006 but that order does not give the number of the subject land to be subdivided.

And if the record does not show how and when **L.R. No. Waitaluk/Kapkoi Block 9/Gutongorio/128** came into existence how would the Court tell whether the application under Judicial Review was filed in Court within the time allowed by the Law Reform Act – *Section 26*?

I also find it very difficult to believe that issues relating to mandamus, certiorari and prohibition which are catered for by the special Jurisdictional Procedure under **Order LIII** can be consolidated with those filed by ordinary suit under general Civil Procedure Rules.

Even then the application under **Order LIII** was so shoddy that it did not strictly follow the required procedure as to the parties and their address and the reliefs sought in the statement.

Given these sort of circumstances, on what basis does this Court grant the applicant leave to file amended plaint in which so many plots have been mentioned including **Waitaluk/Kapkoi Block 9/Gutongorio/118 to 130** all from **Waitaluk/Kapkoi Block 9/Gutongorio/11** when owners of those plots are not mentioned and/or that they are not parties to either of the consolidated cases? There is none.

Given that the applicant left out prayer 2 of the application dated 25<sup>th</sup> October 2006, does it make any difference when she pursues prayer 4 which seeks the cancellation of titles in respect of plot numbers **Waitaluk/Kapkoi Block 9/118 to 130** without giving the names of the owners thereof a chance to be heard on their proprietorship of those plots? It does not.

In any case this is tantamount to seeking a final order on an interlocutory application which this Court cannot allow to happen.

Counsel appearing for their respective parties caused the confusion surrounding these cases as herein before disclosed and must bear the wrath of their clients for this and for misleading the Court which initially handled **High Court Miscellaneous Application No. 74 of 2006**.

There are so many questions in this application begging answers such that I find it misconceived and an abuse of the Court process and ***I dismiss it with no order as to costs.***

**Delivered, dated and signed** at Nairobi this 23<sup>rd</sup> day of July 2007.

**D. K. S. AGANYANYA**

**JUDGE**