

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Civil Case 5 of 1992

JACOB KINGORI GIKONYO.....PLAINTIFF

Versus

SAMUEL NDEGWA KANIARU.....DEFENDANT

RULING

Judgment was entered in favour of the Plaintiff on 2nd March 1993 for a declaration that the Plaintiff and the Defendant and 3rd party jointly owned land parcel No. 47 at Othaya town. Further the terms of that judgment were that the Plaintiff's share was to be transferred to Francis Wanjohi Macharia. The Defendant being aggrieved with that judgment applied for a review or in the alternative that the 3rd party do compensate the Defendant for the built up area in excess of 1/3. The Court by its order of 19th July 1993 granted orders as prayed in that application for review and in the alternative ordered that the Plaintiff would compensate the Defendant for the excess built up area. The Court ordered that an assessment be done after independent valuers of both parties have submitted their valuation report on the portion claimed within 150 days of that ruling. There is now an application by Chamber Summons dated 20th January 2004 which seeks the following orders:

- 1. THAT the valuation report be admitted in court.**
- 2. THAT the Estate of Kamwitha do pay Kshs.5,900/= with interest at 12% from 1984 until payment in full.**
- 3. THAT Francis Wanjohi do pay Kshs.38,000 with interest at 12% from 1984 until payment in full.**
- 4. That the Court do order the rates be apportioned in the said percentages.**
- 5. That the excess paid for the rates for one third plot or in the alternative they do surrender the portion in excess of their portion and share all the proceeds accrued to date.**

Those prayers are extremely hard to follow bearing in mind the history as laid out herein before. Even considering the affidavit in support I find that I am unable to follow what the Applicants are seeking from this court. There is indeed a valuation report on the Court record and looking at that valuation report it does seem that the valuer valued the land in question which valuation excluded any improvements thereon. That valuation does not meet the requirements of the order of the Court of 19th July 1993. The Court ordered that compensation be on the basis of the built up area. Since the valuation does not consider the improvements it does not assist this court. I am of the view that the application in the form that it is cannot be granted. The same is therefore struck off with no orders as to costs.

MARY KASANGO

JUDGE

Dated and delivered at Nyeri this 11th day of October 2007.

By M. S. A. MAKHANDIA

JUDGE