



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

**Civil Appeal 662 of 2002**

**[Being an appeal from the judgment and order of Senior Principal magistrate F.F. Wanjiku  
in the S.P. M. C.C. No. 46 of 1994 dated 7<sup>th</sup> December, 2001.]**

**NAHASHON NJENGA NGANGA .....1<sup>ST</sup> APPELLANT**  
**AGNES GATUYA ..... 2<sup>ND</sup> APPELLANT**  
**JOHANA KIMANI .....3<sup>RD</sup> APPELLANT**  
**IBRAHIM KINYUA MAINA ..... 4<sup>TH</sup> APPELLANT**

**VERSUS**

**KINYUA NGANGA & OTHERS .....1<sup>ST</sup> RESPONDENT**  
**PETER MBURU NGANGA..... 2<sup>ND</sup> RESPONDENT**  
**RAPHAEL NGARIBU NGANGA ..... 3<sup>RD</sup> RESPONDENT**

**JUDGEMENT**

This suit was filed by four Plaintiffs, now Appellants in 1994, claiming half of each parcel of land No. Loc.2/MAKOMBOKI/581 then registered in the name of Peter Mburu Ngang'a measuring approximately 1.44 hectares; parcel No. Loc.2/MAKOMBOKI/582 then registered in the name of Raphael Ngaribu Nganga measuring approximately 1.12 hectares and parcel No. Loc.2/MAKOMBOKI/583 then registered in the name of Kinyua Ngang'a measuring 0.81 hectare. The above registered owners were the Defendants, now Respondents in the appeal before me.

The suit having been filed in the Senior Resident Magistrate's Court at Murang'a was subsequently referred to elders for arbitration under the Chairmanship of the area District Officer. But after the Elders heard the case and decided it and filed their decision back in the now Senior Principal Magistrate's Court at Murang'a, that decision was, on the application of one of the parties, set aside thereby giving way for the Murang'a Senior Principal Magistrate's Court to hear and decide the case.

When the case was therefore heard, the Plaintiff's lost and they came to this Court and filed this appeal at the end of the year 2002.

From the pleadings the Appellants instituted this suit against the Respondents claiming that they were half brothers of the Respondents and that the First Respondent who is the senior brother of all the Respondents in 1988 got registered as owner of land parcel No. Loc.2/MAKOMBOKI/399 in trust and on behalf of the Appellants so that he could later share out the land among the Appellants and the Respondents. But he disregarded that and shared the land among the Respondents only. That was why this suit was instituted. The parcels of land respectively registered in names of the Respondents are as a result of the sub-division of parcel No. Loc.2/MAKOMBOKI/399.

Evidence was adduced during proceeding in the subordinate Court that the First Respondent got registered as owner of parcel No.Loc.2/MAKOMBOKI/399 following land case No.25/1970 he filed against one Rukahu Mwangi to recover that land on the basis that the land belonged to his father called Ngang'a. That evidence shows that Rukahu Mwangi was Nganga's brother who had got registered because Ngang'a had died, or had been kidnapped and disappeared before Land Consolidation and registration. Although Rukahu Mwangi said that Ngang'a had sold the land belonging to the mother of Respondents and that the Respondents could not be entitled to that land the First Respondent succeeded through court to get the suit parcel of land as Loc.2/MAKOMBOKI/399 from Rukahu Mwangi; who held the view that the land ought therefore be shared between the Respondents and the Appellants in this appeal.

Although the learned Senior Principal Magistrate said she was not satisfied that the mother of the Appellants was wife of Ngang'a basing this on the evidence that payment of two goats and one cow only without more was not sufficient evidence of the marriage, the totality of the evidence is that Ngang'a had two wives, namely Njeri and Wahiki or Wanjiru. Njeri was also known of Nyakimere who was mother of the Respondents. Wahiki was the mother of the Appellants. These people partly lived in the Rift Valley and partly at Makomboki.

On the balance of probabilities therefore, the case comes out that the Appellants belong to one house of Ngang'a while the Respondents belong to the second house of Ngang'a and that two houses are entitled to share the land of Ngang'a equally; and the First Respondent having got the suit parcel of land from Rukahu on the ground that he was recovering his father's land, the First Respondent had to cause that land shared equally between the two houses of his father. Evidence of the little dowry put together with the evidence of cohabitation plus the children add up to something that cannot just be wished away in terms of the relationship between Ngang'a and the mother of the Appellants Monika Wanjiru Ngang'a.

In any case when the learned Senior Principal Magistrate said she was not satisfied there was marriage, she did not also say there were no children. If children are there, they are entitled to share in the suit parcels of land. True the Appellants did not contribute to the costs of conducting the case the First Respondent had against Rukahu, but as they say, was it not possible that during those days such a case could go on without their knowledge since apparently were not living in same home or same village or place?

From what I have been saying above therefore, I do hereby allow this appeal and set aside the Senior Principal Magistrate's judgment dated 7<sup>th</sup> December 2001 and enter judgment in terms of prayers (a) and (b) in the Complaint dated 1<sup>st</sup> February 1994.

Delivered, signed and dated at Nairobi this 5<sup>th</sup> day of December 2007.

**J.M. KHAMONI**

**JUDGE**