



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CIVIL APPEAL 18 OF 1990

DANSON KABATE NJIRU.....APPELLANT VERSUS

SIMON WANJOHI NJIRU..... RESPONDENT

AND

ANTHONY MUGO MORIS ..... APPLICANT

R U L I N G

By a notice of motion dated 8th March 2001, Antony Mugo Moris, the applicant seeks orders to review and or set aside the orders issued on 16th February 2001 under order XLIV rules 1 and Section 3A of the Civil Procedure Act.

It is the applicant's contention that the judgment does not correspond with the extracted order issued on the 16th February 2001. The applicant is aggrieved by the addition in the extracted order of the words "which comprises of 2/3 of original Plot 7 Kutus Township."

The applicant further contends that the court having set aside the judgment in the Lower Court, it ought to have declared the applicant the rightful owner of plot No.7B Kutus Township measuring ½ the original Plot No.7 and not 2/3 as extracted.

I have perused the judgment of this court dated 22nd September 1992 and the extracted order dated 16th February 2001. The Judgment was very specific in its conclusion which is in the following terms:-

***"I allow this appeal and set aside the orders of the learned trial Magistrate. It is ordered that the appellant is the legal owner of Plot No.7B Kutus township."***

In the body of the judgment it is stated that:-

***"The record shows that the original Plot No.7 Kutus was sub-divided into two portions – 7A and 7B the latter being the portion purchased by the appellant. The grant confirmed by the Senior Resident Magistrate's Court at Embu on 7/12/89 in favour of the Respondent was to subdivide the said plot in favour of Anthony Mugo who was to get 1/3 and Paul Ndungu Mwaura who was to get 2/3."***

It is evident that the judgment of this court of 22nd September 1992 set aside the orders of the Senior Resident Magistrate which confirmed the grant as above stated. The effect of that judgment is that the appellant is the owner of Plot No.7B. This court's judgment does not address the issue as to whether Plot No. 7B is 1/3, 2/3 or ½ the original plot. Indeed that was irrelevant in the judgment as the original plot No. 7 had already been sub-divided into plot No.7A and 7B and the appellant was adjudged the owner of Plot No.7B.

I find that there is no error apparent on the face of the record that warrants review. Nevertheless the extracted orders issued by the Deputy Registrar was not an accurate reflection of the judgment as the court did not state that plot No. 7B Kutus township comprised of 2/3 of the original plot No. 7 Kutus township. It is appropriate that this court exercise its inherent jurisdiction under section 3A of the Civil Procedure Act to correct this anomaly in order to meet the ends of justice and avoid abuse of the process of the court.

Accordingly I order that the order extracted and issued by the Deputy Registrar on 16th February 2001 shall be set aside and substituted with an appropriate order in accordance with the judgment of this court as aforesaid i.e. that the appellant is the legal owner of Plot No. 7B Kutus Township.

*Dated, signed and delivered this 11th day of May 2005.*

**H. M. OKWENGU**

**JUDGE**