



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI
Civil Case 3009 of 1983

KARIUKI NJUGUNA & 17 OTHERS.....PLAINTIFFS

VERSUS

NGATHO KAIRU & 2 OTHERS.....DEFENDANTS

JUDGMENT

The plaintiffs and the defendants acquired shares in land parcel in LR NO.13166 at Kamiti. They took possession and they are all residing there since 1973 and each member has constructed a house there although some members have sold their portions to 3rd parties. They decided to subdivide the suit land so that each can get title to his land. But differences arose as to the mode of subdivision and sharing. The plaintiff came to court seeking judgment against the defendants for:

- (a) That the plaintiffs and the defendants own **ALL THAT** piece or parcel of land known as **Land reference Number 13166** as tenants in common in equal shares.
- (b) That an order of injunction restraining the Defendants, their servants and agents from subdividing **ALLTHAT** piece or parcel of land known as **Land Reference Number 13166**.
- (c) Costs of the suit.

The plaintiffs wanted equal subdivision while the defendants wanted unequal subdivision. Both the plaintiffs and the defendants called one witness each **PW1 BETH WAKONYO WARUIRURU** gave evidence on herself and on behalf of all the plaintiffs. She told the court in her evidence that they were landless and squatters at Njiru. The late President Mzee Jomo Kenyatta removed them from there and took them to the present land LR NO.13166 near Kamiti and settled them there. They were 21 squatters who were settled on the suit land and they each had equal shares. Each of them has constructed a house on his piece of land and they are all doing farming activities. She urged the court on behalf of all the plaintiffs to order that the suit land be subdivided in equal shares among all the beneficiaries.

On cross examination she said that the suit land was given to

them free by the late President Mzee Jomo Kenyatta and she denied that there were contributions made towards its purchase. **DW1 CHEGE MWANGI** gave evidence on his own behalf and on behalf of all the defendants. In his evidence he told the court that both the plaintiffs and the defendants were landless. They came together and contributed money and purchased land LR. NO.8442 from one **JANE STEWARD**. They had entered into a Sale Agreement. Each member was supposed to pay Shs.10,000/= but some paid less and some more according to each members financial ability.

They were later transferred to the present parcel of land which is the subject matter of this suit. They were removed from L.R. NO. 8442 because it was between the land owned by Mzee Kenyatta and the

other one owned by his brother Muigai. On cross examination he admitted that some of the people were settled in Nyahururu and others in Githanga and Lamu and that the certificate of registration shows that they were to hold the land as tenants in common in equal shares. The court was referred to the case of **MBOTHU AND OTHERS VS. WAITIMU AND 11 OTHERS CIVIL APPEAL NO. 22 OF 1984.**

In that case ten people intending to enter into farming partnership purchased a piece of land and registered it as tenants in common in equal shares. A dispute later arose between the parties as to subdivision with one group claiming unequal and the other equal subdivision. It was held that under Section 23(1) of the Registration of Titles Act Cap 281, a certificate of title issued to a purchaser of land upon a transfer or a transmission by the proprietor is conclusive evidence of proprietorship and the title of the proprietor shall not be subject to challenge except on grounds of fraud or misrepresentation to which he is proved to have been a party.

In the present case both the plaintiffs and the defendants were removed by the late President Mzee Jomo Kenyatta from Njiru to Kamiti where they were settled. This was in 1973 and each member has been occupying a particular portion where he was settled. Each has erected a house and has been doing farming activities on that particular portion since 1973. They all concede that they were removed from Njiru and were settled on the suit land LR NO. 13166

Kamiti by the Late Mzee Jomo Kenyatta.

The defendants allege that they had contributed money to purchase Land Reference No.8442 from one Jane Steward at Njiru and they were only removed from there and settled on the subject suit because the former piece of land was adjacent to that of the late Mzee Jomo Kenyatta. He further told the court that the contributions were not equal as some member had financial problems. But the certificate of registration he produced indicated that all the members were registered as tenants in common in equal shares.

That being so and there being no evidence to the contrary I enter judgment for the plaintiffs as prayed in the plaint and declare that land parcel LR NO. 13166 at Kamiti is held by both the plaintiffs and the defendants as tenants in common in equal shares.

Costs of this suit are warded to the plaintiffs.

Delivered and dated at Nairobi this 27th day of July 2005.

J.L.A. OSIEMO

JUDGE