



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**Civil Case 4211 of 1992**

**ELI JOHN NJOGU WAINAINA & OTHERS.....1ST  
PLAINTIFF**

**JOHN KARIUKI.....2ND  
PLAINTIFF**

**SAMUEL MUCHIRI.....3RD  
PLAINTIFF**

**VERSUS**

**WANDIA WAINAINA ...../..... 1ST  
DEFENDANT**

**LIZZIE NJERI WAINAINA.....2ND  
DEFENDANT**

**NAOMI NJOKI NJIHIA.....3RD  
DEFENDANT**

**EMILY MBAIRE ALLAN.....4TH  
DEFENDANT**

**JUDGMENT**

This clam arises out of a dispute over the estate of the late Wainaina Njogu who died in 1952. He was the registered proprietor of the suit land **LR NO. GITHUNGURI/GITHIGA/30**. He left two widows namely Wandia Wainaina and Lizzie Njeri Wainaina. When he died the two widows filed a Succession Cause and were granted Letters of Administration. The estate of the deceased comprised only of the suit land. The court ordered that they be registered as joint proprietors. In 1980 the two widows petitioned the court to have the suit land subdivided into two houses in accordance to Kikuyu Customary Law so that each could have her share. The subdivision

into two equal portions resulted into **LR NO. GITHUNGURI/GITHIGA/1172** which was registered in the name of Wandia Wainaina and **LR NO. GITHUNGURI/GITHIGA/1173** which was registered in the name of Lizzie Njeri Wainaina.

In 1985 **LIZZIE NJERI WAINAINA** applied to have her land **LR NO. GITHUNGURI/GITHIGA/1173** subdivided into two portions resulting in **LR NO. GITHUNGURI/GITHIGA/1435** and **LR NO. GITHUNGURI/GITHIGA/1436**. Since she did not have a son she decided to transfer the two portions to her two daughters. **LR NO. GITHUNGURI/GITHIGA/1435** was registered in the name of

**EMILY MBARIRE** while **LR NO. GITHUNGURI/GITHIGA/1436** was registered in the name of **NAOMI NJOKI NJIHIA**.

The plaintiffs are sons of the deceased Wainaina Njogu of the house of **WANDIA WAINAINA**. They filed this suit against their own mother **WANDIA WAINAINA** their step mother **LIZZIE NJERI WAINAINA** and the two step sisters **NAOMI NJOKI NJIHIA** and **EMILY MBARIRE** seeking orders for:

(a) A declaration that **LR NO. GITHUNGURI/GITHIGA/1172**, **LR NO. GITHUNGURI/GITHIGA/1435**, **LR NO. GITHUNGURI/GITHIGA/1436** are held by the second, third and fourth Defendants for the benefit and trust for the plaintiffs.

(b) A declaration that the subdivision and transfer of **LR NO. GITHUNGURI/GITHIGA.1173** to the 3rd and 4th Defendants by the 1st Defendant is null and void.

The plaintiff's claim is based on the Kikuyu Customary Law which give only the sons the right to inherit from their fathers **ELI JOHN NJOGU WAINAINA** the 1st plaintiff is the eldest son. He gave evidence on his behalf and on behalf of his brothers the 2nd and 3rd plaintiffs. In his evidence he told the court that the plaintiffs are the only sons of the late Wainaina Njogu and are the only beneficiaries of **LR NO. GITHUNGURI/GITHIGA/1435**, **LR NO. GITHUNGURI/GITHIGA/1436** and **LR NO. GITHUNGURI/GITHIGA/1172** all of which were derived from the

original parcel **LR NO. GITHUNGURI/GITHIGA/30**.

The 2nd Defendant was the registered proprietor of **LR NO. GITHUNGURI/GITHIGA/1173**. Under the provisions of Section 27 of Registered Land Act Cap 300 interest in land is conferred by registration. It provides:-

**"27" Subject to this Act –**

**(a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or .....thereto;**

**(b) .....**

Once land is registered under the provisions of the Registered Land Act Cap 300, after the Land Adjudication process, customary law ceases to apply. A party cannot invoke the customary law rights to deprive another of land which is registered under the Act.

The 2nd Defendant acted within her legal rights to subdivide her portion of land **LR NO. GITHUNGURI/GITHIGA/1173** and effect the transfer to her daughters. She could as well have decided to sell the same if she so wished.

For the above reasons the plaintiff's suit is dismissed with costs to the defendants.

Dated and delivered at Nairobi this 19th day of September 2005.

**J.L.A. OSIEMO**

**JUDGE**