



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI
CIVIL SUIT NO. 72 OF 1994

PIUS NDANDI WARUI 1ST PLAINTIFF

DANIEL NJIRI WARUI 2ND PLAINTIFF

JOEL KARANI WARUI 3RD PLAINTIFF

VERSUS

LEONARD KIRAGU WARUI DEFENDANT

J U D G M E N T

The three Plaintiffs are brothers to the Defendant by the same mother. All of them are the sons of Geoffrey Warui Ndandi (hereinafter referred to as the deceased). The Defendant is a son of the deceased by same mother.

The Defendant was registered, on first registration, as the proprietor of Land Parcel Number MUTIRA/KAGUYU/775. The deceased and two sons from the other house Stephen Ngiri Warui and Benson Muriuki Warui filed Nyeri HCCC No. 140 of 1983 in which they sought interlia, orders that the Defendant herein subdivide Land Parcel No. 775 aforesaid into two equal portions and to transfer the same to each of the two houses of the deceased. Land Parcel Number 775 measured about 4.4 acres in size. The dispute was referred by court to arbitration. The award was to the effect that the land be subdivided into two parties with one portion being registered in the name of the Defendant to hold it on behalf of his mother's house while the other portion was awarded to Stephen Ngiri Warui and Benson Muriuki Warui. The award of the arbitrators was made a judgment of the court on 3rd February 1984. Subsequently Land Parcel No. 775 was subdivided and this gave rise to Land Parcels Nos. MUTIRA/KAGUYU/ 1337 MEASURING 0.85 hectares and registered in the name of the Defendant; MUTIRA/KAGUYU/1338 measuring about 0.44 hectares and registered in the name of the Defendant and MUTIRA/KAGUYU/1339 measuring about 0.44 hectares registered in the name of J. B. Muriuki Warui.

The Plaintiffs' case is that Land Parcel No. 775 was given to the Defendant by their clan to hold it in trust for the two houses of the deceased. They want the suit land subdivided equally amongst themselves and the Defendant as sons of one house of the deceased. Since they contend that the Defendant holds the same land in trust for them they are seeking an order that the trust be dissolved and that the Defendant transfers an equal share of the suit land to themselves and the Defendant. For the alternative they are seeking an order that the Defendant's title to the portions of the suit land occupied by the Plaintiffs has been extinguished by virtue of their being in adverse possession for over 12 years and the suit land should be subdivided and registered in the names of the Plaintiffs in place of the Defendant.

The Defendant's case is that he was registered as the absolute proprietor of Land Parcel No. 775 since he was making contributions to the clan and that he is not holding the land in trust for the plaintiffs. He

stated that his parents did not have any land. He added that the plaintiffs have their own pieces of land given to them by the clan. He gave the particulars of those parcels of land.

The award of the arbitrators as contained in the umpires decision dated 4-10-83 is unequivocal. It sets out the background and the history of the Land Parcel Number MUTIRA/KAGUYU/775. It is clear that the Parcel was given to the Defendant by the clan to hold it in trust for his family. The deceased had agreed that the Defendant be registered as proprietor thereto as was the most learned in the family.

The award of the arbitrators was made a judgment of the court. Pursuant to that judgment Parcel Number 775 was subdivided into 3 portions. The certified copy of the register in respect of Land Parcel No. MUTIRA/ KAGUYU/1339 indicates that the said parcel was registered in the name of J. B. Muriuki Warui on 3-2-88. A title deed was issued on the same date. At the hearing of this suit the Defendant did not give any reason(s) why he did not appeal against the judgment in Nyeri HCCC No. 140/83. That judgment is binding on him and he cannot in my view wriggle out of it.

I am satisfied that the plaintiffs have proved their case on a balance of probabilities. I give them judgment in terms of prayers (a) and (b) of the plaint dated 14th February, 1994. I also award them the costs of the suit.

The second plaintiff and the Defendant's first witness Daniel Mugo Kambo testified that it is only the first plaintiff who resides on the suit land. It was not established how long the first plaintiff has been on the suit land. I was therefore unable to find that the plaintiffs had been in uninterrupted occupation of the suit land for at least twelve (12) years at the time they instituted this suit. Right of appeal explained.

Dated this 13th day of August, 2003.

J. K. MITEY

JUDGE

13-8-2003

Mitey – Judge

Mahinda for plaintiffs

N/A for Counsel for Defendant

Parties present

Gikaria – C/C

(Ms. Mukuha comes in)

J. K. MITEY

JUDGE