

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NYERI

CIVIL CASE NO. 88 OF 1984

JEFITHA GIKUJU

FRANCIS KARANI NJAGIPLAINTIFF

VERSUS

MWAI NJAGIDEFENDANT

RULING

The applicant brings his application dated 3/6/2003 and he says that his father Njagi Motaritho who passed away in 1954 had one wife, Felicia Wagichugu and had several sons who are Mwai Njagi, John Mugo, Jefitha Gikunju (the applicant), Francis Karani and Jane Wambere. The applicant says that he left behind land parcel Number INOI/KARIKO/334 sized 4 acres. He says that he filed a case and was given 2 acres while his brother Mwai Njagi got 2 acres. The applicant says that the respondent is the wife to Mwai Njagi, now deceased. He prays that he be allowed to give ½ acre each to Jane Wambere, John Mugo and Francis Karani. The respondent says that she is the wife to Mwai Njagi. She avers that before her husband died, he called all his brothers at Kenyatta National Hospital and gave each ½ an acre. He says that Jefitha Karani, John Mugo and Jane Wambere were given ½ an acre each. The respondent says that the applicant only wants to encroach on the land left behind by her husband. In reply the applicant prays that he wants ½ acre be ordered excised from his INOI/KARIKO/2384 and another ½ acre be excised from the respondent's parcel, the same to be given to Jane Wambere, John Mugo and Francis Karani.

From the foregoing it appears that the applicant is concerned that the three brothers and a sister were entitled to a share of land from their father's share of land. It is evident that before the applicant's brother Mwai Njagi died he called all his brothers and gave them land, which was their respective shares derived from their late father's land entitlement. They were before court, by themselves or their representatives and all agreed that they had been given their share of land, and were contented and did not ask for anymore.

It is not true therefore as per applicant's version that the brothers and sisters herein named did not get any portion from their father's share of land. Indeed there is even evidence that a brother, Karani has already sold his share to a third party who is a teacher. It is without doubt that the applicant's application is coated with mischief and is only brought so that he can get a share from his deceased brother's land.

He wants the court to believe that he is fighting on behalf of his brothers and a sister. This looks like a noble thing to do. However, the brothers and sister have told the court that they all got a share, were satisfied and do not need a share from their deceased brother's estate. The application is therefore dismissed. The applicant shall bear the costs of this application.

Right of Appeal within 28 days.

J.N. MUNIU

DEPUTY REGISTRAR

3/10/2003