

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL CASE NO. 221 OF 1997

PUBLIC TRUSTEES..... PLAINTIFF

V E R S U S

GITHINJI MARARO & 5 OTHERS DEFENDANT

J U D G M E N T

The dispute in this matter relate to plot Number 61/5 which is commonly referred to as Mary Vale Farm (suit property). From the available history the suit property was offered for sale to Kahugi Gituro (deceased) by its previous owner. The agreed purchase price was Kshs.100,000/-. The issue for determination is the ownership and the respective share if any, of each of the parties herein to the suit property. The particular herein recorded a consent before Sheikh Amin, J. on 26.1.99 to the effect that the ownership of the suit property be determined by this court. This matter was filed by way of an appeal by the Public Trustee (Appellant) from the judgment of the Senior Principal Magistrate Thika dated 18.7.97. The respondents presented their case first.

Nduta Kole (PW1) testified that the suit property was acquired in 1967 and that the previous owner required a deposit of Kshs.45,000/-. According to her the deceased could only raise dKshs.15,000/- and the balance of Kshs.30,000/= was raised through the acquisition of loan at Standard Chartered Bank Kiambu Branch using as security the title to premises the parties owned at Pangani Nairobi. Pw1 could not, however, establish how the balance of the purchase price i.e. Kshs.55,000/- was raised. She pointed out that the deceased was entitled to a share of the suit property through his personal contribution and being a member of the group that owned the Pangani property. Mwaura Mbugua (Pw2 testified he was in bar business with the deceased. He also stated that the deceased contributed only Kshs.15,000/- towards the purchase of the suit property. He denied that any loan was obtained from the Agricultural Finance Corporation to purchase the suit property. On cross-examination this witnesses admitted not knowing or even ever seeing the seller of the suit property.

The respondents called peter Francis Kuria (Pw3) who was formerly employed by the Standard Bank and was based at Kiambu at the time the suit property was purchased. He confirmed that the parties herein in conjunction with the deceased obtained a loan from the bank in the sum of Kshs.30,000/- for the purchase of the suit property. He produced a copy of a letter dated 12.5.81 written by the then Branch manager of the bank confirming the fact that the loan was indeed given to the parties Five (5) witnesses testified in support of the Appellants case. Gituro Kahungi (DW1) is a son the deceased. He testified that his brother obtained a loan of Kshs.45,000/- from the AFC for the purchase of the suit property and that the balance was raised through sale by the deceased of his assets in Kiambu District. He denied that the loan of Kshs.30,000/- went towards the purchase of the suit property and was unable to state how the loan was utilized. The significant evidence presented in support of the appellant's case was that of Richard Kipyegon Molel (DW3) a loan officer with the AFC. He produced records that clearly confirm that the deceased alone acquired a loan of Kshs.45,000/- from the AFC to purchase the suit property. The records show the deceased either through his family or the Public Trustee repaid the loan.

I have given greet consideration to this matter. It comes out quite clearly that one of the respondents knew that the deceased obtained a loan from the AFC. Their claim that the suit property was acquired through proceeds from businesses they conducted with the deceased has not been established. But I find that there is ample evidence from the testimony of PW3 that a loan of Kshs.30,000/- was obtained from the Standard Chartered Bank for purposes of purchasing the suit property.

I find that the deceased made the following contributions towards the purchase of the suit land:

(1) Kshs.45,000.00 from the loan from AFC

(2) 1/3 share from the loan acquired from Standard Chartered Bank Kiambu.

As the respondents were unable to prove their individual contribution I find that the balance of Kshs.25,000/- was raised by the deceased. That makes the total contribution by the deceased to be Kshs.80,000/-. That translates to 65 acres of the suit land. The balance of 16 acres go to the respondents.

There will therefore be an order that the family of the deceased gets 65 acres of the suit land and the respondent 16 acres. I make no order as to costs.

Dated this 15th day of March, 2001.

J.K. MITEY

JUDGE