



**REPUBLIC OF KENYA**

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

**ENVIRONMENT & LAND COURT**

**CIVIL CASE NO.30 OF 1989**

**RICHARD MUTHEE METHO)**

**FRANCIS WANJOHI METHO).....PLAINTIFFS**

**VERSUS**

**MIGUI KIBECHU..... DEFENDANT**

**R U L I N G**

The plaintiffs **Richard Muthee Metho and Francis Wanjohi** owners of **GIKONDI/KIIRINGU/36** sued **Mugui Kibechu** owner of **GIKONDI/KIIRINGU/35** in 1989 for trespass in that the defendant had encroached on the plaintiffs' land. The matter was referred to arbitrators who found that the District Land Registrar and District Land Surveyor were the right persons to decide on the matter. The court therefore directed that the District Land Registrar to determine the boundary between the two parcels of land. This was not done as parcel of land No.**GIKONDI/KIIRINGU/35** was subdivided to create 1035 – 1040. The plaintiff now intends to join the proprietor of 1035, Mr. David Mbuthia Karogo to enable the court properly determine the matter.

Mr. Theuri opposes the application because he believes the suit has abated because the original defendant died in 14/10/2007. This court does not agree with him and finds that at the time of the defendant's death, the matter had been determined and therefore what is pending is the execution of the decision of the court. **Order 24 rule 10 of the Civil Procedure Rules** provides that nothing in rules 3, 5 & 7 shall apply to proceedings in execution of the decree.

This matter was decided on 9/3/1999 what is pending is the implementation. However, to execute the decree it is necessary to join the persons who benefited from the subdivision of plot No.Gikondi/Kiirungi/35.

I do find the application merited as Mr.David Mbuthia Karogo is the proprietor of parcel of land Gikondi/Kiirungi 1035 that resulted from subdivision **Gikondi/Kiirungi 35** and borders **Gikondi/Kiirungi 36**,

The upshot of the above is that Mr. David Mbuthia Kerogo is hereby enjoined in this suit as a defendant in this matter together with the other beneficiaries of the subdivision of the said parcel of land **No.Gikondo/Kiirungi/35**. The addition be done within 30 days. Mention on 30/6/2014.

***Dated, signed and delivered at Nyeri this 16th day of May 2014.***

**A. OMBWAYO**

**JUDGE**