



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**

**ELC CASE NO. 159 OF 2013**

JOSEPH M. MURIITHI R. NJIRU ..... PLAINTIFF

VERSUS

ELIUD NJAU MBAI .....1<sup>ST</sup> DEFENDANT

FREDRICK MURIUKI NJERU ..... 2<sup>ND</sup> DEFENDANT

**JUDGMENT**

By an amended plaint filed herein on 15/11/2011, the plaintiff sought judgment against the two defendants jointly and severally with respect to the parcel of land known as NGARIAMA/NYANGENI/318 (hereinafter referred to as the suit land) in the following terms:-

- a. ***A declaration that the respective registrations of IRERI NJAGI and ELIUD NJAU MBAI and FREDRICK MURIUKI NJERU were wrongful and illegal and they are null and void.***
- b. ***The registration of the said ELIUD NJAU MBAI and FREDRICK MURIUKI NJERU as proprietors of land parcel No. NGARIAMA/NYANGENI/318 be cancelled by the Land Registrar Kirinyaga District and the name of the plaintiff JOSEPH M. MURIITHI R. NJIRU be reinstated as the registered proprietor thereof.***
- c. ***The costs of this suit be borne by the defendants jointly and severally.***
- d. ***Such further or other reliefs as may be just.***

The suit was initially filed against the two defendants together with IRERI NJAGI in Embu High Court on 30/8/2011 and a defence thereto was filed on 17/7/2012. However, in a ruling delivered on 13/12/2012, Justice Ong'udi struck out the defence as having been filed out of time without leave. Following the establishment of this Court, the suit was then transferred to the Environment and Land Court at Kerugoya and came up for hearing before me on 26/6/2013.

The plaintiff gave his testimony and called one witness JAMES KABURI in support of his case.

According to the pleadings herein and the oral testimony of the plaintiff and his witness, the plaintiff has since 1976 been the registered owner of the suit property having bought it from IRERI NJAGI (now deceased) and has developed it extensively apart from planting 1,380 coffee trees and 800 tea bushes. He produced the abstract of Title (Exhibit 1) adding that Title deed had been cancelled by the Gichugu Land Disputes Tribunal and his names replaced with those of IRERI NJAGI but that order was quashed by the Nyeri High Court in Judicial Review Case No. 147 of 2002 (see Exhibit 2 and 3). The plaintiff remained in occupation of the said land but un-known to him, IRERI NJAGI had fraudulently transferred the same to ELIUD NJAU MBAI and FREDRICK M.

NJERU the defendants herein who were never in possession of the same and who were aware of the decision of the High Court in Nyeri Judicial Review Case No. 147 of 2002 as they were parties to it and therefore knew that IREI NJAGI had no interest in the suit land which he could transfer to them.

His witness JAMES KABURI confirmed that he is a neighbour to the plaintiff and was aware that plaintiff bought the land in 1976 from IREI NJAGI and has been in occupation of the same since then.

The defendants defence having been struck out, the plaintiff's case is un-challenged and neither Mr. Gichuki for the plaintiff nor Mr. Ngangah for the defendants made any submissions at the end of the trial.

As stated above, the plaintiff's case is un-controverted following the striking out of the defendant's defence. Further, the plaintiff's evidence which is very cogent and supported by his witness confirms that he has been in possession of the suit property since 1976 when he purchased it from IREI NJAGI and has developed it extensively. The cancellation of his Title by the Gichugu Land Dispute Tribunal was clearly outside the jurisdiction of that Tribunal as was confirmed by the Judicial Review proceedings. The plaintiff is therefore entitled to the orders which he seeks so that he can continue to enjoy the rights conferred upon him by both **Section 24 of the Land Registration Act of 2012 and Section 27 of the now repealed Registered Land Act** under which the suit property was registered.

Ultimately therefore, there shall be judgment for the plaintiff against the defendants jointly and severally as prayed for in paragraphs (a) (b) and (c) of his plaint as amended and filed on 15/11/2011.

B.N. OLAO

JUDGE

2/7/2013

2/7/2013

Before B.N. OLAO – JUDGE

CC – Muriithi

Mr. Gichuki for Plaintiff present

Mr. Ngangah for Defendant absent

COURT: Judgment delivered this 2<sup>nd</sup> day of July 2013 in open Court.

Right of appeal explained.

B.N. OLAO

JUDGE

2/7/2013