



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ENVIRONMENTAL & LAND DIVISION**  
**CIVIL CASE NO. 1661 OF 1980**

**MUTHONDU NDUTI.....PLAINTIFF/RESPONDENT**

**-VERSUS-**

**WANYOIKE KAMAU & OTHERS.....DEFENDANT/APPLICANT**

**RULING**

The Defendant by an application dated 25<sup>th</sup> August 2010 seeks the following orders:

1. That the court be pleased to review the decree of the court dated 30<sup>th</sup> July, 1992 and order that the Defendants are entitled to 20 acres out of Land Parcel NGNDA/KAHUGU-INI/1274 which is a subdivision of NGENDA/KAHUGU-INI/16.
2. That the Plaintiff be directed to execute documents to effect the transfer of the said 20 acres of land from NGENDA/KAHUGU-INI/1274 which is a subdivision of NGENDA/KAHUGU-INI/16 in and default the Deputy Registrar be authorised to execute all the necessary documents to effect the transfer.
3. That the plaintiff be ordered to pay the costs of this application.

The application is grounded on the grounds set out on the face of the application as follows:-

1. That the plaintiff in order to defeat the decree of this Honourable court subdivided the suit premises Ngenda/Kahugu-ini/16.
2. That it is necessary to review the decree so as to effect the order to transfer 20 acres of the suit land to the defendants.

The application is further supported by the affidavit of Wanyoike Kamau one of the Defendants sworn on 25<sup>th</sup> August 2010. The said Wanyoike Kamau has deponed that after the court gave its decree awarding the defendants 20 acres out of title number Ngenda/Kahugu-ini/16 the plaintiffs subdivided the same and created 3 subtitles namely Ngenda/Kahugu-ini/1274, 1275 and 1276. The defendant depones that the plaintiff has transferred title numbers 1275 and 1276 but title number Ngenda/Kahugu-ini/1274 is still in the plaintiff's name and it is more than 20 acres and therefore sufficient to satisfy the decree in favour of the Defendants.

A copy of the Green Card (abstract of title) in respect of L.R. Ngenda/Kahugu-ini/16 has been annexed to Wanyoike Kamau's affidavit and it shows that indeed the title has been subdivided into 3 titles which

have been transferred as follows:-

- i. James Njuguna Mbugua – 0.5 acres
- ii. James Muriuki Kamau – 2.83 acres
- iii. Muthondu Nduti – 26.322 acres

There has been no formal response to the application but one Lucy Kigio Kamau has filed an affidavit sworn on 22<sup>nd</sup> May, 2012 protesting the grant of the 20 acres to the defendants stating the land should not only be transferred to the defendants but to all the beneficiaries for whom the plaintiff was holding the land in trust for. Quite clearly that is a separate claim from the one the defendants made against the plaintiff. If the beneficiaries have any valid claim to the land they can lodge the claim against the defendants after they have become registered as owners of the 20 acres in terms of the court decree.

I have reviewed and considered this matter and I am satisfied that the plaintiff subdivided the suit land and that title number Ngenda/Kahugu-ini/1274 now registered in favour of the plaintiff is a product of title number Ngenda/Kahugu-ini/16 and hence sufficient cause exists to enable the court to order a review of the decree to enable the decree to be effectuated.

In the premises I accordingly grant the orders sought in the Notice of Motion by the Defendants.

I make no order as to costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF JULY 2013.**

**J. M. MUTUNGI**

**JUDGE**

In the presence of:

..... for the Plaintiffs

..... for the Defendants