

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

(MILIMANI LAW COURTS)

CIVIL CASE ELC 556 OF 2007

JOSEPH KINUTHIA MWANGI.....PLAINTIFF

VERSUS

GEOFFREY IRUNGU.....DEFENDANT

RULING

The Plaintiff and the Defendant are brothers. The Defendant is the registered proprietor of the suit land being LR LOC 18/kirere/201. The Plaintiff sued the Defendant for orders claiming half share of the suit property on the ground that it was jointly purchased.

The suit was heard by Aluoch J (as she then was) but was elevated before she concluded it. The Plaintiff had closed his case and the Defendant has also testified and only one witness was left.

When the matter came to me for directions, Miss Manengere learned Counsel for the Plaintiff applied that the suit be heard de novo while Miss Kinuthia applied that the matter do proceed from where it was left relying on Order XVII Rule 10 of the Civil Procedure Rules which provides:

“XVII 10(1) where a judge is prevented by death, transfer or other cause from concluding the trial of suit or the hearing of any application, his successor may deal with any evidence taken down under the foregoing rules as if such evidence had been taken down by him or under his direction under the said rules, and may proceed with the suit or application from the stage at which his predecessor left it .”

I have considered the submissions by both Counsel. The Plaintiff having closed his case and the Defendant having testified and only one witness is left, it would be only fair that the suit proceeds from where it was left and it is so ordered.

Dated and delivered at Nairobi this 7th day of May 2009.

J. L. A. OSIEMO

JUDGE