



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Civil Case 134 of 2003**

**CATHERINE KAWIRA MURUNGI ..... PLAINTIFF**

**VERSUS**

**MURUNGI KIRIGIA ..... DEFENDANT**

**JUDGMENT**

The plaintiff claim is for a declaration that the defendant hold land parcel No. IGOJI/KIANGUA/310 now IGOJI/KIANGUA/1498 – 1500 in trust for her. The plaintiff prayed that the said parcels of land be transferred to her. Although the defendant denied the plaintiff's claim in his filed defence at the hearing of this suit, he failed to attend court and accordingly the plaintiff's evidence was uncontroverted. The plaintiff's evidence which was supported by her mother (PW2) was that her father Muguna Kirigia died in 1973. He was married to her mother Esther Kamaa.

The plaintiff was born from that union in 1972. She was unable to produce her birth certificate because, as she stated, it had been confiscated by the defendant when the defendant evicted her and her mother following the death of her father. The defendant, she stated, is her deceased father's brother.

On the death of her father and after evicting the plaintiff and her mother from her deceased father's land, the defendant petitioned for grant of letters of administration over the estate of her father. In so petitioning, the defendant did not inform either the plaintiff or her mother. On inquiring at the court registry, she was informed that the succession cause of her deceased father was Succession Cause No. 3 of 1987 High Court Meru.

That, despite numerous searches at the court registry, that file has been reported as missing. The defendant distributed the land of plaintiff's deceased father to relatives and to himself. To do so, he subdivided the property into parcel Nos. 1498, 1499 and 1500. Parcel No. 1500 was further subdivided and became parcel Nos. 1519, 1518 and 517. Parcel No. 1519 was further sub divided and became 2036, 2037 and 2038. An official search of those three latter parcels of land revealed that they were registered in the defendant's names. The other parcels of land were registered in names of persons not before court.

On being cross examined, plaintiff stated that her mother re-married after the death of her father. The defendant, she said, when he filed the succession cause, she was a young child. PW2 stated that she was the plaintiff's mother and that she was married to Muguna Kirigia the deceased. They were both blessed with three children but two died and one survived. The one who survived was the plaintiff.

On the death of her husband, she said the defendant evicted her and as she left, all her documents were left behind. Such documents left behind was the death certificate of her late husband. The defendant evicted her in 1975. At the time of death of her husband, the defendant was residing on their land. He had been given one acre to cultivate by her deceased husband.

PW2 in chief finally stated that the defendant did not inform her when he filed the succession cause of her husband. On being cross examined, she stated that the plaintiff was one year when her husband died. When plaintiff became an adult, she began to follow up the issue of her late father's property.

PW3 was a nephew of the Muguna Kirigia deceased. He confirmed the deceased married PW2 and

they were both blessed with a daughter that is the plaintiff. That was the evidence adduced in court.

I find that the plaintiff has proved her case on a balance of probability. Her evidence was uncontroverted. She proved by producing before court a green card in respect of parcel No. IGOJI/KIANGUA/310 that the said property was registered in the name of Muguna Kirigia the deceased. She, in her evidence, said that she was the only surviving child of the said Kirigia, the deceased. The defendant was the brother of Kirigia the deceased. He petitioned for grant of letters of administration in respect of the estate of Kirigia the deceased and proceeded to sub divide his estate and transferred the sub divided land to names of other persons. The defendant had no right or interest over parcel No. IGOJI/KIANGUA/310 which he transferred its sub division to other persons.

Section 93 of the Law of Succession cannot shield the defendant from the court retransfer property wrongly registered, in his name to the plaintiff. In the case of **Jane Gachoki Gathecha Vrs. Priscilla Nyawira Gitungu** Civil Appeal No. 343 of 2002, the Court of Appeal, where the facts were similar to this case stated:-

***“A thief acquires no right of interest which is transferable in stolen property.”***

The defendant was a thief. The transfers he under took of the deceased properties are traceable. The plaintiff however only prayed for property in defendant’s name to be transferred into her name. The evidence before suffices for the court to issue the order she seeks.

The judgment of this court is:-

***(1) The registration of title Nos. IGOJI/KIANGUA/2036, IGOJI/KIANGUA/2037 and IGOJI/KIANGUA/2038 in the name of Murungi Kirigia are hereby cancelled.***

***(2) The Land Registrar is ordered to register IGOJI/KIANGUA/2036, IGOJI/KIANGUA/2037 and IGOJI/KIANGUA/2038 in the name of CATHERINE KAWIRA MURUNGI. In carrying that transfer the Land Registrar shall dispense with production of the original titles.***

***(3) The defendant shall pay plaintiff’s costs of this suit.***

Dated and delivered at Meru this 9<sup>th</sup> day of July 2009.

**MARY KASANGO**

**JUDGE**