



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU**

**CIVIL CASE 52 OF 2007**

**DAVID WANJOHI MUGO.....1<sup>ST</sup> PLAINTIFF**

**TIMOTHY NYAMU MUGO.....2<sup>ND</sup> PLAINTIFF**

**JACOB MBANYA MUGO.....3<sup>RD</sup> PLAINTIFF**

**HARUN MURIITHI MUGO.....4<sup>TH</sup> PLAINTIFF**

**VERSUS**

**MUGO MBANYA.....DEFENDANT**

**JOHNSON KARIMI NGIRIGACHA.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

This matter was filed on 9/12/2004 initially before the High Court of Kenya at Nyeri. After several applications, the same was sent here for hearing and final disposal. I took over this matter after it had passed through the hands of not less than 4 Judges- I took over the matter from my sister **Judge Khaminwa** after the plaintiff had already testified. I took the evidence of PW2, PW3, DW1 and DW2. I also took the submissions. When I set to go through the file for purposes of preparing this Judgment, I realized albeit belatedly that all the effort and resources in terms of human resources, time, thought, material resources were all wasted. I say so because in my view, this is a matter that ought not to have come this far. In the plaint dated 8/12/2004 the plaintiffs have clearly admitted that the matter had been heard and determined before by the ***Kirinyaga Central Land Disputes Tribunal vide L.D.T. No. 56 of 2001***. Indeed, the only prayer in their plaint is;

***“The Award of the Kirinyaga Central Land Disputes Tribunal vide L.D.T. No. 56 of 2001 be set aside and any sequent numbers sub-divided from Land Parcel No. INOI/KARIKO/59 be removed to revert to the original Title which should be registered in the names of the plaintiff’s jointly with the defendant. Any caution, restriction, injunction and/or prohibitory order lodged on the said parcel be lifted to facilitate execution of these orders.”***

Following the award by the Land Disputes Tribunal, the Principal Magistrate Kerugoya confirmed the same and issued a decree dated 6/6/2001 – a copy of which is annexed to one of the applications herein. Following that decree, the land was partitioned and given 2 numbers i.e 2214, 2215 and 2216 in the

names of Susan Njoki, Margaret Wamina Mugo and Mugo Mbanya –who were parents of the plaintiffs herein. Having taken the matter to the L.D.T and having accepted the decision and complying with the decree, that matter was closed. The cause of action existing then was exhausted. The only recourse open to any of the aggrieved parties or interested parties in respect of that award was either to move to the High Court within 6 months of the said award and/or decree by way of Judicial Review, or follow the appeal procedure as set out under Section 8 of the Land Disputes Tribunal Act (No. 18 of 1990).

Incidentally, before the parties went to the Tribunal the matter had been heard and determined before the Resident Magistrate Court in Kerugoya. That court had ordered that the land be sub-divided into 3 portions among the 1<sup>st</sup> defendant herein and his 2 wives instead of going to the High Court on Appeal, the defendants (who include the plaintiffs herein) filed the reference before the Tribunal. This in itself was an infringement of the provisions of Section 13 (3) of the Land Disputes Tribunal Act which provided as hereunder;

***“For the avoidance of doubt, it is hereby provided that nothing in this Act shall confer jurisdiction on the Tribunal to entertain proceedings in respect of which the time for bringing such proceedings is barred under any law relating to the limitation of actions or to any proceedings which had been heard and determined by any court” (emphasis mine).***

Even the proceedings before the Land Dispute Tribunal were a nullity ab initio and the Judgment of the Kerugoya Resident Magistrate which was never appealed against is still a valid Judgment of the court.

This therefore means that any orders made in this matter or which draw their life from the said plaint are also null and void. This would include the changes made in the Register of Title in respect of the suit land pursuant to any orders-by consent or otherwise of this court. The only valid changes in the Register of Title would be those made pursuant to the Kerugoya Resident Magistrate’s court in **Principal Magistrate Civil Case No. 287/99** if there were any such changes.

In pith and substance, this suit should never have been and it is a pity that it has dragged in court for the last almost 5 years. The same is therefore dismissed with orders to the District Land Registrar Kerugoya that the Title to the land reverts to the pre-Land Disputes Tribunal Case No. 56/2001 position.

The plaintiffs and 1<sup>st</sup> defendant are all members of the same family and appear to have been acting in concert. They will each bear his/her own costs of the suit. The 2<sup>nd</sup> defendant is nonetheless awarded the costs of the counter-claim as against the plaintiff’s jointly and/or severally.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 7th day of Oct 2009.

**In the presence of:-Mr. Ithiga for Ms Thungu for plaintiff**