



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**HIGH COURT CIVIL CASE NO. 17 OF 1993**

MURITHI KAGUNDU ..... PLAINTIFF

VERSUS

MUNENE KAGUNDU ..... DEFENDANT

**J U D G M E N T**

This is a suit in which the plaintiffs states that there was of parcel of land later divided into 986, 987 and 988. This land, from the evidence before the court belonged to the older brother of PW1, PW1 and the defendant. The elder brother not called before the court in fact sold his portion of land plot No. 986 as the boundary was next to 987 – DW1 questioned this and stated that he believes that 986 may have taken the longer portion. It was then that he went to the surveyor in which case he requested they look into the issue of the boundary. It is thus that the surveyor came to confirm that PW1 owned land parcel 988, yet resided on land 987 and as a result the defendant who resided on parcel 988 but owned parcel 987 could therefore not claim that the boundaries be rectify. The court finds that the defendant was very co-operative and clear in his evidence. He states that he was aware of the error. The map before the court clearly shows that the said map sequence of number is plot 986, plot 988 and plot 987. Could this have been an error on the part of the lands department?

PW1 holds a title deed for plot 988. He has developed land 987. DW1 states he has developed land 988 and yet the title name is in the name of PW1. He has no problem. He in fact pointed out the error brought by the PW1 on the concept of paragraph 6 of his plaint.

It is quite clear that the parties wish to remain on the same piece of land that they have each developed. The problem, though, is that of the boundary of 988 and 986. It is DW1's concern and the court notes that PW1 should co-operate as to this.

The court therefore made the following orders.

1. That PW1 – holder of land title 988 do hereby reconfirm the boundary Between land 988 and 986 with the surveyors department and the same be an order to the surveyors to hereby confirm the boundary between 988 and 986.
2. That the defendant has agreed to execute the relevant forms for exchange and as a result this be so done.
3. That there be no orders as to costs
4. That this case be mentioned on 1.10.93.

**M. A. ANG'AWA**

**JUDGE**

**5.7.93**

**Court as before**

Judgment read in court. Exhibit to be returned to depot. Except Exhibit D1.

**M. A. ANG'AWA**

**JUDGE**

**5.7.93**

**Date: 1/10/93**

Coram: Before Hon. Lady Justice M. A. Ang'awa – Judge

Court Clerk: Mr. James Gikaria

Plaintiff – present

Defendant – present

Plaintiff – We have exchanged the titles.

Defendant – That is so.

**Plaintiff** – Each one of us are now on their said land. We have title deeds for our respective areas.

Orders of this court of 5.7.93 to request the order paragraph 1 for surveyors to reconfirm boundaries between 988 & 986. For mention 2.12.93.

**M. A. ANG'AWA**

**JUDGE**

**2-12-93**

Coram: Before Hon. Lady Justice M. A. Ang'awa – Judge

Court Clerk – Weru

Plaintiff – present

Defendant – present

The surveyors have not gone to the land.

**Order** – This court orders reissued of 5.7.93. That the District Land Surveyor Kirinyaga be summoned to court to show cause why the same has not been done. For mention 26.1.94.

**M. A. ANG'AWA**

**JUDGE**

**2.12.93**

**26.1.94**

Before Hon. Lady Justice Mary A. Ang'awa – Judge

Court Clerk – James Gikaria

Plaintiff

Defendant

**In the Registry**

Plaintiff – present in person

Defendant – present in person

By consent suit fixed for mention on 3.3.94 at 9.00 a.m. District surveyor informed to attend.

**SIGNED**

**D.R.**

**Date: 3.3.94**

Before Hon. Lady Justice M. A. Ang'awa – Judge

Court Clerk – Mr. James Gikaria

Plaintiff's advocate – Nil

Plaintiff – present

Defendant's Advocate – Nil

Defendant – present

Land Surveyor Sworn in English/Swahili

My name is Peter Njoroge. I am a district surveyor Kirinyaga. I recover the orders of 5.7.93. I did not know whose land it is. There is one of 986 who is not there. I request for the name be included in the order.

Application granted.

**Order:** Further to the court's order of 5.7.93, the owner of land 986 Eliud N. Gituto or his agent/servant be herein present in order to ascertain the boundary. Eliud N. Gituto has a right to make appearance in this suit.

**M. A. ANG'AWA**

**JUDGE**

**3.3.94**

Parties to meet on the suit premises on 10.3.94 at 10.00 a.m.

**M. A. ANG'AWA**

**JUDGE**

**3.3.94**

Report to be filed on the. For mention 21.3.94. Time for filing the award extended from 5.7.93 to 3.3.94 and thereafter from 4.3.94 to 21.3.94.

**M. A. ANG'AWA**

**JUDGE**

**3.3.94**

**21/3/94**

Before Hon. Lady Justice M. A. Ang'awa – Judge

Court Clerk – James Gikaria

Plaintiff – present

Defendant – present

Gituto present and in attendance

Surveyor reminded he is still on oath. I have filed my award. Award read in open court. Query Court – the portion of the island belongs to who?

The portion of land belongs to Gituto. Title deeds for those portions can be taken out and which they have got.

**Plaintiff** – no question

**Defendant** – I didn't rectify the boundary as the one still there is there. The order was for order 986 and 988. I inspected boundary up to where I saw our ..... I didn't look at 987 as it wasn't reported to me.

**RULING**

The dispute in this case is finalised. The surveyor has informed the court the boundary have been completed and need not look to rectify any boundary. The defendant is requested to follow up his case with the lands department.

**M. A. ANG'AWA**

**JUDGE**

**21.3.94**

Ruling read in open court.

**M. A. ANG'AWA**

**JUDGE**

**21.3.94**