



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU**

Civil Case 215 of 1990

M'IKUNYUA IBARI

STEPHEN KIJOGI IBARI.....PLAINTIFFS

versus

NKANATA M'IBARI.....DEFENDANT

28/1/91

Coram: SO Oguk – judge

Plaintiff in person

Defendant - absent

Court Interpreter – Murungi

JUDGMENT

The plaintiffs claim against the defendant in respect of land parcel No Abothuguchi/Kariene/69 measuring 1.644 hectares (approximately 4.10 acres or thereabouts) is founded on trust. It is their case that although the defendant is the registered owner of this land, he was so registered to hold the same as a trustee for himself and for both plaintiffs to the extent of 1.74 acres. The plaintiffs claim was not contended by the defendant.

It is the plaintiffs' case that the defendant is their eldest brother and now head of their family. They are both the sons of M'Ibari now deceased, who died in 1964. Before his death, their deceased father caused his land to be registered in the name of the defendant who was the son of his eldest wife Karoki. He was to hold that land as a trustee for himself (defendant) and also for the plaintiffs who were his younger step-brothers being the sons of his (M'Ibari's) second wife, Alice Nchune. The said family land was then registered in the name of defendant, Nkanatha Ibari as land parcel No Abothuguchi/Kariene/69 measuring 1.644 hectares (approximately 4.10 acres or thereabouts) as shown in the certified copy of the register (Ex.1). The plaintiffs testified that they have persistently asked the defendant to sub-divide this title and give them their portion of land which he has been holding title in trust for them but he has refused. Both of them are now living with their mother on a small piece of land: Abothuguchi/Kariene/169 measuring 0.33 acres (less than half an acre) which the 1st plaintiff had bought. They now claim from the defendant a portion of the suit land measuring 1.74 acres for them to share which according to their father before he died, the defendant was to give them.

As I have already stated, the plaintiffs' claim against the defendant has not been contested. I am satisfied that both of them are entitled to a portion of the suit land, Abothuguchi/Kariene/69 which I find that the defendant although registered as a proprietor thereof, is holding a portion of it to the extent of 1.74 acres as a trustee for the plaintiffs thus being their family land which was registered in the defendant's name by virtue of the fact that he was the eldest son in the family. The plaintiffs have not had any share of the family land and I now give them judgment against the defendant for the transfer of a portion of land parcel No Abothuguchi/Kariene 69 measuring 1.74 acres. I order that the defendant shall excise the said portion of 1.74 acres out of the said title and transfer the same to both plaintiffs as joint proprietors in common in equal shares each being entitled to one half thereof.

I order that the defendant shall sign all such documents for a sub-division and transfer of the said 1.74 acres to the plaintiffs and should he refuse or fail to do so, then I empower the Executive Officer of this Court to sign all such documents on behalf of the defendant so as to give effect to this judgment. The plaintiffs shall meet all the sub-division, survey and transfer charges.

As the defendant has not contested their claim, I do not find it necessary to burden him with the costs of this suit. I therefore order that each party shall meet his own costs.

Order accordingly.

Dated and delivered at Meru this 28th day of January, 1991.

SO OGUKE

JUDGE