



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**Coram : Nyarangi, Platt & Apallo JJ.A.**

**CIVIL APPEAL NO. 70 OF 1984**

**BETWEEN**

**BENARD KAGIA .....APPELLANT**

**AND**

**MBUTHI NJ-CROCE .....RESPONDENT**

**(Appeal from the order of the High Court of Kenya at Nairobi (Gachuhi J) dated 17th May, 1983**

**in**

**Civil Appeal No. 49 of 1982)**

**JUDGMENT OF NYARANGI J.A.**

This appeal arises from an action in which the appellant was the Defendant and the Respondent the Plaintiff:

The short facts, so far as it is necessary to state them, are as follows; The Kiambu County Council (the County Council) a council established under section 28 of the Local Government Act, cap 265, and registered proprietor of parcel number Karai/Karai/340 measuring approximately 4.7 hectares allotted six acres of the arable land in plot numbered Karai/Karai 340 to Karanja Kamau who had two wives Wangui and grace Wanjiru. The respondent and Kamau Karanja were the sons of Karanja Kamau and Wangui. After Karanja Kamau died the land was allocated to Kamau Karanja who had died by the time the county council decided to sell the land to the allottee Land being what it is, a dispute involving the widows of Kamau Karanja ensued about the material parcel. The county council, through its arable scheme committee, heard the various protagonists and recommended to the county council, the registered owner, that six acres of the land should be registered in the names of Kamau Karanja Wangui, and Francis Wabururu, jointly and other portion of six acres would similarly registered in the names of Wanjiru Karanja and Benard Kagia. The country council accepted and adopted the recommendation. So far, so good.

The subsequent actions in this matter were contrary to the law. For instance, on January 4, 1931 the respondent notified an administrative officer of the death of Kamau Karanja and at the same time incorrectly stated that the deceased man was the registered proprietor and asked that section 120 (which was then in operation) of the Registered Land Act, cap 300 be invoked. That section was subsequently

repealed. The District officer of the area where the land is situate, the magistrate, the elders who participated in the arbitration proceedings and the judge all proceeded on the erroneous basis that the parties to the action could invoke section 120. In law there was no occasion for applying section 120.

The fact of the matter is that the registered proprietor of the land, ie the Kiambu country council, had not died interstate or at all. It was a misdirection for the magistrate to have sought to determine the persons entitled to inherit in a succession case which had no legal basis. The moment a dispute about re-allocation of the particular land of the county council arose, the parties ought to have reported the dispute to the registered proprietor, the country council which council alone could properly hear and determine the dispute. The three courts before which the parties battled could not in law hear and determine the disputes. It was a grand waste of time and money for the parties to have come to courts instead of seeking the views and decision of the county council. The persons who are quarrelling about the land had better go to the county council double quickly and state their grievances to that body. The county council and it alone can decide what to do about the land, its property. No doubt the country council will seize the opportunity to explain simply and clearly what registration, jointly means. The county council could also helpfully inform the parties to this dispute and all other allottees what would become of a particular parcel of land which was allotted to and registered jointly in two persons in the event of the death of one of the two. Would the other inherit the portion of the deceased?

For the reason stated I must differ with regret and respect with the decision of Gachuhi J (as he then was).

It follows that I would allow the appeal, set aside the judgment and orders of the High Court dated May 17, 1983 and declare the so called succession proceedings a nullity. I would award the costs here and below to appellant. As Platt and Apaloo JJA agree, it is so ordered.

**Platt JA.** I agree and have nothing to add.

**Apaloo JA.** I agree with the judgment of my brother Nyarangi, JA. There is nothing I can usefully add.

**J.O. NYARANGI**

.....

**JUDGE OF APPEAL**

**H.G. PLATT**

.....

**JUDGE OF APPEAL**

**F.K. APALOO**

.....

**JUDGE OF APPEAL**

**I certify that this is a true copy of the original**

DEPUTY

REGISTRAR