

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT NYERI**

**ELC CASE NO. 126 OF 2016**

**ISAAC KIRUBI KINYUA alias**

**KIRUBI S/O KINYUA ..... PLAINTIFF**

**VERSUS**

**GITHAKA KINYUA ..... DEFENDANT**

**AND**

**JAMLECK MAINA KINYUA ..... INTERESTED PARTY**

**JUDGMENT**

**Background**

1. By a Plaint dated 14<sup>th</sup> June 2016 as amended on 17<sup>th</sup> December 2024, Isaac Kirubi Kinyua (the Plaintiff) prays for:

**1) A declaration that all that parcel of land known as LR No. Kirimukuyu/ Mutathini/40 measuring 4.8 acres is solely owned by the Plaintiff herein to the exclusion of others;**

**2) An order be directed at the Land Registrar, Nyeri to rectify the register in respect of LR No. Kirimukuyu/Mutathiini/40 changing the share of**

**ownership from equal shares as between the Plaintiff and the Defendant herein to the suit land being solely owned by the Plaintiff herein;**

**3) An order directing the Land Registrar Nyeri and the Deputy Registrar of this Court to dispense with any necessary document or consent of the Defendant and sign any document needed for the rectification of the register of the suit land and a title deed in the sole name of the Plaintiff for the suit land to be issued forthwith;**

**4) Costs of the suit plus interest; and**

**5) Any other relief that this Court may deem fit to grant.**

2. Those prayers arise from the Plaintiff's contention that together with the Defendant, they are the registered proprietors of the said LR. No. Kirimukuyu/Mutathiini/40. The Plaintiff avers that at the time of demarcation, the share of ownership of the suit land was erroneously registered as equal whereas the correct position is that the Plaintiff owns and occupies the whole suit land.

3. It is the Plaintiff's case that there was a mistake by the Demarcation Committee and the Land Registrar who failed to take into account that the suit land was actual family land owned by three (3) widows of the late Kinyua Kirubi. In addition, he avers that the Demarcation Committee and the Land Registrar failed to take into consideration that the Plaintiff inherited his mother's portion and that of his step mother, Wangui Kinyua.
4. The Plaintiff further avers that the Defendant was not entitled to the suit land as he was born after the death of the original owner. It is the Plaintiff's case that the Demarcation Committee failed to take into consideration the fact that the Defendant's mother failed to co-operate with her co-wives in securing family land and actually sold off part of the land. The Plaintiff avers that he has on several occasions approached the Defendant so as to have the issue of co-ownership rectified but the Defendant has refused to comply.
5. Githaka Kinyua (the Defendant) is opposed to the Plaintiff's claim. In his Statement of Defence dated 18<sup>th</sup> August 2016,

the Defendant avers that the suit property was indeed family land owned by the three (3) widows of the late Kinyua Kirubi for their own benefit and that of their children. The Defendant avers that at the time of demarcation the 3 widows had two (2) sons amongst them. It is his case that the land register of the suit land should be rectified to reflect the interest of not only the Plaintiff and the Defendant but also that of the Interested Party in equal shares of 1.6 acres each.

6. The Defendant denies that the Plaintiff is entitled to a bigger portion of the land on account of the alleged bequest to him by one of the widows. He avers that there was no mistake in the registration of the suit land as at the time of demarcation there were only 2 sons.
7. Jamleck Maina Kinyua (the Interested Party) is equally opposed to the suit. In his statement of claim dated 21<sup>st</sup> December 2016, he avers that in the year 1959 when the suit land was adjudicated and demarcated, he was not yet born. He further avers that one of the late Kinyua Kirubi's

widows had no son and asserts that the suit property should be divided equally between the three parties herein.

### **Analysis and Determination**

8. By this suit as amended, the Plaintiff prays for a declaration that all that parcel of land known as LR No. Kirimukuyu/Mutathiini/40 measuring 4.8 acres is solely owned by himself to the exclusion of all others. In that respect the Plaintiff urges the court to direct the Land Registrar Nyeri to rectify the register in respect of the suit property to reflect that position.
9. It was the Plaintiff's case that at the time of land demarcation, the suit property was erroneously registered in his name and that of the Defendant to hold in equal shares while the correct position was that it was the Plaintiff who owns and occupies the whole parcel of land.
10. Upon service of summons, the Defendant did enter appearance and filed a Statement of Defence dated 18<sup>th</sup> the August 2016. The Defendant asserted in the said Statement of Defence that the suit property was their family land. He denied that the same was erroneously registered as stated

by the Plaintiff and urged the court to have the land divided in three (3) equal shares taking into account the interests of his brother Jamleck who was later on joined as an Interested Party herein.

11. As it turned out, both the Defendant and the Interested Party did not testify at the trial. It was therefore only the Plaintiff who testified at the trial.
12. In support of his case, the Plaintiff adopted his written statement dated 18<sup>th</sup> May 2023 as his evidence-in-chief. It was the Plaintiff's case that the registration of the suit property as belonging to both himself and the Defendant was done in error since the whole parcel of land belonged to his father the late Kinyua Kirubi who passed on in 1943 leaving the Plaintiff as the sole beneficiary of his estate.
13. The Plaintiff told the court that the Defendant was born in the year 1953, some 10 years after the demise of the Plaintiff's father and that he was therefore not a beneficiary of the estate and was therefore not entitled to any share of the suit property. The Plaintiff accused the land demarcation committee of acting in error and without any basis in

proceeding to award a share of the suit land to the Defendant.

14. From the material placed before the court, there was no dispute that the suit property was registered in the names of both the Plaintiff and the Defendant on 12<sup>th</sup> May 1959 as the first registered proprietors thereof. While the Plaintiff pegged his claim to the land on the basis of an error or mistake on the land demarcation committee, it was not clear why it took him some 57 years from 1959 to realize that an error or mistake had been made by that committee.
15. While the copy of the Green Card exhibited by the Plaintiff does not make any reference to the late Kinyua Kirubi, it was apparent that the said registration was out of the recognition that the two were the sons of the said Kinyua Kirubi who was said to have left behind three (3) widows. The Plaintiff represented the household of his mother Muthoni Kinyua while the Defendant represented the household of Wangari Kinyua. Kirubi's other wife Waguthi was said to have given birth to three (3) daughters and therefore had no son who could inherit the land.

16. Before he amended his claim some eight (8) years after he filed the suit, the Plaintiff's position was that the demarcation committee had erred in apportioning the land equally between himself and the Defendant yet he was entitled to two thirds (2/3) thereof. In his earlier statement dated 14<sup>th</sup> June 2016, the Plaintiff had claimed that he was entitled to the larger portion as his elder step mother Waguthi had upon her death in 1968 left her portion of the land to the Plaintiff while the Defendant's mother only utilized one third of the land which had been given to her by the local committee.
17. While neither the Defendant nor the Interested Party testified at the trial herein, I was not persuaded that the Plaintiff's version of the events leading to their joint registration as proprietors in common was credible. There was no evidence placed before the court on which the court could rely to come to the conclusion that the land demarcation committee had made an error registering the two as the proprietors of the land. Even if that were the

case, no reason had been adduced why the challenge to the said registration had arrived so late in the day.

18. In the premises I was not persuaded that there was any merit in the Plaintiff's suit. I dismiss the same with no order as to costs.

**Judgment dated, signed and delivered in open court and virtually at Mombasa this 29<sup>th</sup> day of January, 2026**

.....  
**J.O. OLOLA**  
**JUDGE**

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Karanja Lawrence Advocate for the Plaintiff
- c) No Appearance for the Defendant
- d) No Appearance for the Interested Party