



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT MURANGA**

**ELC NO 226 OF 2017**

**LENNY MUIRURI NYOIKE (suing as the personal representative ad litem of  
GERALD NYOIKE MUIRURI, deceased).....APPLICANT**

**VS**

**CATHERINE NJERI KANYI.....1<sup>ST</sup> RESPONDENT**

**DAVID KAMAU KAMEMIA.....2<sup>ND</sup> RESPONDENT**

**JAMES MAINA MUKURA.....3<sup>RD</sup> DEFENDANT**

**OFFICIAL LIQUIDATOR – METHI & SWANI FARMERS**

**CO-OPERATIVE SOCIETY LTD.....4<sup>TH</sup> DEFENDANT**

**ATTORNEY GENERAL (sued on behalf the**

**Land Registrar, Muranga).....5<sup>TH</sup> DEFENDANT**

**RULING**

1. What is before me is a Notice of Motion filed by the Applicant on the 24/9/19 seeking the following orders;

- a. That the Court do issue an order directed to the 4<sup>th</sup> Respondent compelling him to produce all the original land records documentation including certificates land registers touching on share certificates 3690 and 1098 currently MITUMBIRI WEMPA BLOCK 2/132 and its register of former officials in their custody.
- b. That the Court do direct the 4<sup>th</sup> Respondent to testify on the records documentation and registers in their custody
- c. Costs of the application be provided for.

2. The application is based on the grounds set out as; the issue in controversy is the authenticity of the documents produced by the 1<sup>st</sup> Respondent; whether the suit land was held by the Applicant's father absolutely or in joint ownership with the 1<sup>st</sup> Respondent; fraud has been pleaded against the Respondents in the plaint and the production of the documents sought will assist in determining the issues in controversy; the documents sought will not prejudice the Respondents as they will have the opportunity to test its veracity during the hearing.

3. The application is supported by the supporting affidavit of the Applicant where he deponed that the dispute revolves around the suit land which he avers was owned by his late father Gerald Nyoike Muiruri absolutely as against the 1<sup>st</sup> Respondents contention that she and Muiruri acquired the suit land jointly through purchase. That the joint ownership was severed at some point. That the share certificate produced by the 1<sup>st</sup> Respondent only bears the name of the 1<sup>st</sup> Respondent

4. Maintaining that the cause of action is founded in fraud, he contended that the documents being sought will assist the Court and the parties to get to the root of the transactions and the title in dispute.

5. That his Advocate visited the offices of the 4<sup>th</sup> Respondent in February 2019 and on making inquiries on the documents he was advised by the liquidator that he did not have the original documents in respect to the suit land but the liquidator promised that he would produce the records in his custody and testify in Court. That it is for this reason that the Applicant is urging the Court to order that the liquidator produces those documents in their records.

6. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents informed the Court that they are not opposing the application.

7. The 1<sup>st</sup> and 4<sup>th</sup> Respondents sought time to file their responses to the application and written submissions but by the time of writing this ruling none have been filed. The application is therefore unopposed.

8. The Applicant filed written submissions which I have read and considered.

9. Section 22 of the Civil Procedure Act provides as follows;

“Subject to such conditions and limitations as may be prescribed, the Court may,

(a) make such orders as may be necessary or reasonable in all matters relating to the delivery and answering of interrogatories, the admission of documents and facts, and the discovery, inspection, production, impounding and return of documents or other material objects producible as evidence;

(b) issue summonses to persons whose attendance is required either to give evidence or to produce documents or such other objects as aforesaid;

(c) order any fact to be proved by affidavit”.

10. Going by the above proviso of the law, it follows that the Court has power to order for discovery of documents at any time either on its own motion or upon the application by a party.

11. The function of discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength and weakness of their relevant cases and thus provide the basis for the fair disposal of the proceedings before or at the trial. Each party is enabled to see before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made by or against him to eliminate surprises at or before the trial relating to the documentary evidence and to reduce the cost of litigation. **See Halsbury’s Laws of England, Vol 13 para 1.**

12. Discovery is therefore limited to matters in contention. In this case the Applicant avers that the 1<sup>st</sup> – 3<sup>rd</sup> Respondents were fraudulent in registering themselves as owners of the suit land that belonged to his late father. That the 1<sup>st</sup> Respondents contention that she owned the suit land jointly with his father is in question and he avers that the documents in the custody of the 4<sup>th</sup> Respondent will assist the Court to determine the controversy. See the supporting affidavit of the Applicant at para 8-15.

13. I have relooked at the pleadings of the parties and am satisfied that the documents being sought are relevant in the resolution of the dispute.

14. The Court is alive to the fact that the Applicant herein has testified in Court and that he is not fishing to patch up his case. I note that the 1<sup>st</sup> Respondent did file a list of documents some of which are being questioned by the Applicant and the documents being sought are generally not new as the Respondents have alluded to them in their pleadings. I am satisfied that in the circumstances of this case, the Respondents will not be prejudiced as they are yet to give evidence and will have the opportunity to cross examine on the said documents.

15. To meet the ends of justice, I allow the application as prayed.

**16. It is so ordered.**

**DELIVERED, DATED AND SIGNED AT MURANG’A THIS 11<sup>TH</sup> DAY OF DECEMBER, 2019.**

**J G KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

Njagi HB for Mwariri for the Plaintiff/Applicant

Kuria HB for Mugo Moses for the 1<sup>st</sup> & 4<sup>th</sup> Defendants/Respondents

2<sup>nd</sup> & 3<sup>rd</sup> Defendants/Respondents: Absent

5<sup>th</sup> Defendant: AG is absent

Irene and Njeri, Court Assistants