



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO 57 OF 2017**

**FORMERLY MERU ELC CASE NO.220 OF 2016**

**KOOME SAMUEL MWIRARIA.....PLAINTIFF**

**VERSUS**

**NICKSON MUGAMBI RUCHA.....DEFENDANT**

**JUDGMENT**

1. In his plaint dated **9<sup>th</sup> November, 2016**, the plaintiff prays for judgment against the defendant for:

i) A declaration that the plaintiff is entitled to a half (50%) share in **Karingani/Ndagani/6281** or the resultant subdivisions **Karingani/Ndagani/10453, 10454, 10455, 10456, 10457, 10458, 10459, 10460 and 10461**.

ii) An order directing the Land Registrar, Chuka land registry, to rectify the relevant register and have land parcel numbers **Karingani/Ndagani/10455, 10456, 10459, 10460 and 10461** registered in the names of **Koome Samuel Mwiraria**.

iii) Costs of the suit and interest thereon.

2. On **13<sup>th</sup> December, 2016**, orders of inhibition were granted with a view to preserving the suit lands.

3. The defendant's defence was struck out on **23<sup>rd</sup> March, 2017**. An application dated **24<sup>th</sup> April, 2017** which sought orders to review, vary or set aside the orders striking out the defence was dismissed on **11<sup>th</sup> July, 2017**. This had the effect that for all practical purposes, the defendant had no defence in this suit.

4. This suit was fixed to be heard on **27<sup>th</sup> February, 2018**. I am satisfied that hearing notice had been duly served upon the defendant's advocates. When this suit was called on outside court, the court confirmed that the defendant was not present. In terms of the provisions of **Order 12 Rule 2**, I allowed the hearing of the suit to proceed ex-parte.

5. PW1, Koome Samuel Mwiraria referred the court to his witness statement which was filed on **9<sup>th</sup> November, 2016** and asked the court to adopt it as his evidence-in-chief.

6. In his witness statement PW1 avers that his father and the defendant had agreed to purchase land parcel No. **Karingani/Ndagani/621** from one Justus Ntwiga Ntuba in the year 2003 or thereabouts. The **purchase price was Kshs.4,000,000/=** and **each contributed Kshs.200,000,000/=**. However, the defendant had the land registered in his name and subdivided the land into 9 portions and subsequently sold 4 portions of the land. He asks the court to declare that the remainder of the parcels of land which had not been sold be registered in his name as per the prayers in his plaint. PW1 asked the court to grant him costs pertaining to this suit.

7. PW1 asked the court to adopt the witness statement of his deceased father, Daudi Mwiraria, as his evidence in this suit. I find that the said witness statement remains part of the apposite pleadings in this suit. The statement avers that he, Daudi Mwiraria (deceased) and the defendant had agreed to jointly purchase land parcel Number Karingani/Ndagani/6281 from one Justus Ntwiga Ntuba at a consideration of Kshs.4,000,000/=. Each paid Kshs.2,000,000/= . The parcel of land measured approximately two acres (0.80 Hectares). In terms of their agreement the property was to be shared on a 50% basis to each of them basis.

8. PW1 proffered the following exhibits:

a) A certified copy of the green cards for original parcel of Land Number **Karingani/Ndagani/6281**.

b) Certified copies of the green cards for 4 subdivisions of the original suit land which had already been sold by the defendant, that is, **Karingani/Ndagani/10453, 10454, 10457 and 10458.**

c) Certified copies for the green card concerning the unsold portions, that is, **Karingangi/Ndagani/10455, 10456, 10459, 10460 and 10461.**

d) A copy of an agreement dated **3.12.2014** between the plaintiff's father, the defendant and the plaintiff transferring the interest of the plaintiff's father in the original suit land to the plaintiff.

e) A copy of a death certificate indicating that the plaintiff's father died on **13.4.2017.**

9. The statement of Daudi Mwiraria goes on to aver that the defendant fraudulently had the land registered in his name. He subdivided the land into 9 portions and sold 4 of the portions to one Felix Kamunde Njeru who had in turn charged the properties to obtain a loan from Equity Bank Limited.

10. The statement avers that on **3<sup>rd</sup> December, 2014**, he, Daudi Mwiraria, had transferred his 50% of the original parcel of land (Karingani/Ndagani/6281) to his son Koome Samuel Mwiraria. He states that it is only fair and equitable that the remaining 5 portions arising out of the subdivision of the original suit land be transferred to the plaintiff, his son.

11. PW2, Joseph Muthinja Ringera, asked the court to adopt his witness statement filed on **13<sup>th</sup> December, 2017** as his evidence in this suit. The tenor of the statement is to the effect that he was aware of the dealings between Daudi Mwiraria, the deceased father of the plaintiff, and the defendant.

12. I find that the only point for determination is if or if not the plaintiff is **entitled to 50%** of the **Original Suit land** and its subdivisions.

13. I find that the plaintiff has, on a balance of probabilities, proved his case. However, I do find that he is entitled to be registered owner of four and a half plots only. I will therefore order that he be registered proprietor of 4 plots. The 5<sup>th</sup> plot will be registered in the joint names of the plaintiff and the defendant.

14. Judgment is entered for the plaintiff against the defendant in the following terms:

i) It is hereby declared that the plaintiff is entitled to a half (50%) share in **Karingani/Ndagani/6281** or the resultant subdivisions, which are, **Karingani/Ndagani/10453, 10454, 10455, 10456, 10457, 10458, 10459, 10460 and 10461.**

ii) As the defendant has sold some of the subdivisions of the original suit land, the Lands Registrar, Chuka is ordered to rectify the apposite register and have Land Parcel Nos. **Karingani/Ndagani/10455, 10456, 10460 and 10461 registered in the names of Koome Samuel Mwiraria forthwith.**

iii) The Lands Registrar, Chuka is ordered to rectify the apposite register and have Land Parcel No. **Karingani/Ndagani/10459 registered in the joint names of Koome Samuel Mwiraria and NicksonMugambi Rucha**, the plaintiff and the defendant in this suit respectively, forthwith.

iv) Costs are awarded to the plaintiff and interest thereof will accrue from the date of delivery of this judgment.

**Delivered in open court at Chuka this 14<sup>th</sup> day of March, 2018 in the presence of:**

CA: Ndegwa

Gitonga for the Plaintiff

DJ. Mbaya for Defendant - absent

**P. M. NJOROGE,**

**JUDGE.**