



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 272 OF 2017

STEPHEN MUGAMBI RAINI.....PLAINTIFF

VERSUS

CHRISTINE GACHERI RAINI.....1ST DEFENDANT

STELLA KATHAMBI.....2ND DEFENDANT

JUDGMENT

1. In his plaint dated **21st day of July, 2017**, the plaintiff states as follows:

1. The plaintiff is an adult male person of sound mind and a resident of Chuka within Tharaka Nithi County. His address of service for the purpose of this suit shall be Stephen Mugambi Raini, P. O. Box 19 Chuka, 60400.
2. The defendants herein are adult female persons of sound mind and at all material times residents of Meru South Sub County. Service of summons thereof shall be through a registered court process server.
3. The plaintiff and defendants are blood brother and sisters respectively.
4. The defendants are the registered owners of land parcel number Karingani/Ndagani/9128 measuring 2.25 acres which land constitutes an ancestral parcel having inherited the same from their father.
5. And it is the plaintiff contention t(sic) that the defendant (sic) were jointly registered with the suit premises to hold in trust of themselves, their deceased father and the entire family of the late Raini Mutue Randu.
6. Further the plaintiff avers that the defendants are only entitled to 0.25 acres to be exercised from land parcel No. Karingani/Ndagani/9128 and the balance thereof should be shared amongst the sons of the deceased.
7. However, in blatant breach of trust bestowed upon the defendants by the family, the defendants intend to dispose off the suit land which hosts the gravesite of family members.

PARTICULARS OF TRUST

- a. Be (sic) registered with suit property on behalf of family of Raini Mutue Randu.
- b. Being the title holders of land parcel number Karingani/Ndagani/9128 in trust of entire family of Raini.
- c. Being trusted to take care of family grave site for interest of all including the plaintiff.

PARTICULARS OF BREACH OF TRUST

- a) Intending to dispose off the suit land to 3rd parties in total disregard of plaintiff's interest.
- b) Intending to sell family grave side.
- c) Selling land contrary to the deceased wishes.

d) Refusing to transfer 0.50 acres to the plaintiff as ordered by their father.

8. And the plaintiff seeks restraining orders restraining the defendants from disposing off all that property known as Karingani/Ndagani/9128.

9. Consequently thereof the plaintiff prays that the defendants be compelled to transfer 0.50 acres to be exercised from all that property known as Karingani/Ndagani/9128.

10. There is no other pending suit between the parties herein over the subject property.

11. Demand and notice of intention to sue has been issued to the defendant in vain.

12. This honourable court has the requisite jurisdiction to hear and determine this suit.

REASONS WHEREFORE the plaintiff prays for judgment to be issued against the defendants jointly and severally for:-

A. An order of permanent injunction to issue against the defendants whether by themselves, their agents, assigns or anyone acting on their behest from selling, disposing off, transferring, evicting, changing ownership and or in any other manner from interfering with all that parcel of land known as Karingani/Ndagani/9128 and or any of its sub-division (sic) thereof.

B. An order compelling the defendants to transfer 0.50 acres of land to be exercised (sic) from all that parcel of land known as Karingani/Ndagani/9128 and transfer the same to the plaintiff herein and in default thereof the executive of this court be directed to execute such documents.

C. Costs and interest of the suit.

DATED AT CHUKA THIS 21ST DAY OF JULY, 2017

STEPHEN MUGAMBI RAINI.

2. The defendants are lay persons. Their defence, titled "Defendant" is written in poor English. So that this court is not accused of having not considered all the issues it raises, it is reproduced in full without any erasure or addition at all.

DEFENDANT (SIC)

1. The defendant is a female person of sound mind, resident of Chuka within Tharaka Nithi County. Defense (sic) of these summons, (sic) suit shall be Christine Gacheri Raini of P. O. Box 19, Chuka.

2. The plaintiff is adult male of sound mind and all material time (sic) resident of Chuka, within Tharaka Nithi County, having been the first boy born of the late Raini Mutuerandu.

3. The plaintiff and defenders (sic) are brothers and sisters of the late Raini Mutuerandu sons who include:

i. Frankline Muteti Raini

ii. Gervasions Njiru Raini

iii. Benjamin Muriungi Raini

iv. Lawrence Mugendi Raini

4. The defendants are the registered owners of land parcel number: Karingani/Ndagani/9128, measuring 0.91 acres which land constitutes an ancestral parcel having inherited the same from their father.

5. And it is the defendants who were the registered trust (sic) of the said parcel, for their same and those of three brothers namely:

i. Benjamin Muriungi Raini ID NO. 20844912

ii. Lawrence Mugendi Raini ID NO.

iii. Gervasions Njeru Raini ID NO. 10593759

6. Further, the defendants are entitled (sic) 0.11 acres to be exercised (sic) from land parcel No. Karingani/Ndagani/9128 and the balance thereof shall be shared between

- i. Benjamin Muriungi
- ii. Lawrence Mugendi
- iii. Gervasio Njeru

7. The sharing excludes the grave place which will be entitled to the family of the second wife children's including the plaintiff.

8. Sharing formula was as follows:

- a. Three daughters 0.11 acres
- b. Three brothers stated above each 0.25
- c. The balance of 0.05 acres will remain as a family grave site as agreed before the demise of the late Raini Mutuerandu.

9. The parcel Ndagani/Karingani 9128 (sic) part of the family land 5012 Ndagani/Karingani.

10. The plaintiff and his brother Frankline Muteti Raini were entitled to parcel Ndagani/Karingani 9122 which was 0.47 acres to be shared as follows:

- a) Plaintiff 0.27 acres and
- b) Frankline Muteti Raini 0.22 acres being the wish of our late father.

PARTICULARS OF TRUST

- a) Being registered with the said parcel on behalf of the said above members son, brother are in agreement without any tinell (sic).
- b) Being the title holders of land parcel No. Karingani/Ndagani/9128 in trust of the said brothers: Benjamin, Lawrence and Gervasions.

1. Have any right on the said land parcel without prejudice to any other family members except the mentioned brothers above.

2. Family grave site to remain in their custodian (sic) until family decide otherwise.

3. Right to do whose-so-ever we wish except for the grave parcel.

4. Defendant seek orders restraining the plaintiff from even interfering or stepping in the said parcel except the grave site as it was the wish of the late father, Raini Mutuerandu.

5. Having his share already the plaintiff should be stopped from claiming anything from the said parcel or interfere with anything within the said parcel. Ndagani/Karingani 9128.

6. There has been no complaint before or after the agreed matter. Before the father (sic)

7. The plaintiff was also called to the chief and didn't turn up for family matters.

8. The-honourable court has the requisite jurisdiction to hear and determine the suits reasons wherefore. (sic) The defendant prays for the judgment to be issued against the plaintiff (sic)

- a) An order of permanent injunction to be issued against the plaintiff whether by himself, their (sic) agents, assigns or anyone acting on the (sic) behest from interfering or doing any activity in the said parcel Ndagani/Karingani 9128.

9. The court order that we hve a right to transfer and to allow brother (sic) as agreed before our beloved father passed on.

It is my wish to state as follows:

- Christine Gacheri has three children
- Kathambi has no children
- Gervasion has 4 children
- Benjamin has 3 children

- Lawrence has 3 children and
- Paschalina has 1 child

The plaintiff lives alone having messed his family hence without anyone depending on him.

It is our wish that if you don't give the order as we sought the family and sibling will suffer a lot.

Young children who are yet to be in secondary school (sic).

Cost and interest of the suit hoping that the judgment will be in the favor of the defendant (sic) not the plaintiff

DATED AT CHUKA 4 DAY OF AUGUST 2017

CHRISTINE GACHERI RAINI

STELLA KATHAMBI RAINI

PASCHALENA KAGENI RAINI - DECEASED

3. It should be noted that this document admits that one of its drawers, Paschalina Kageni Raini, is deceased. Perhaps the drawers mean to say that they are representing her interests. As the defendants are Christine Gacheri Raini and Stella Kathani Raini, I opine that the mention of the deceased Paschalina Kageni Raini as one of the drawers of the defence, whose language is veritably garbled, is not fatal to the defendants' defence.

4. PW1, Stephen Mugambi Rainin, told the court that the defendants were his sisters who are registered owners of L.R. Karingani/Ndagani/9128 which he claimed was ancestral land. He told the court that the suit land was 0.91 hectares in size.

5. PW1 told the court that the defendants should have got 0.25 acres out of the suit land. Each of his five brothers should have got 0.40 hectares and the remainder, being 0.70 acres, should have gone to his father. He told the court that upon his father's death, the 5 brothers should have equally shared the 0.70 acres that should have gone to their father. He, however, told the court that the defendants had the whole parcel of land registered in their names.

6. During cross-examination by DW1, he told the court that he did not want to take over the suit land, all by himself. He told the court that he wanted the 0.70 acres which should have belonged to his deceased father shared by all the brothers. He also said that the portion that contained tea bushes should devolve to him as he was family's eldest brother. He also admitted that he solely harvested the tea that had belonged to his deceased father.

7. DW1- Christine Gaceri Raini, the 1st defendant, asked the court to adopt her witness statement dated 4th August, 2017 as her evidence in this suit. On perusal of her pleadings, it is pellucid that what she calls her witness statement is her rather inchoate defence dated 4th August, 2017.

8. During cross-examination by the plaintiff she said that the family land was sub divided by their deceased father when he was still alive. She told the court that even when their father was alive, the plaintiff had refused to cooperate with the family regarding how their ancestral land should be shared out. She further said that the plaintiff did not respect their father and was a person of bad character who had been imprisoned for three and a half of years after being convicted of the crime of rape. She also said that he had been imprisoned for defiling his own daughter.

9. DW1 told the court that the plaintiff had burnt his son's clothes which led his father to issue a curse that his share of the family land should devolve to the plaintiff's son and not to the plaintiff. She also told the court that the plaintiff had shot his brother on his leg with an arrow and had expelled his wife and children from their matrimonial home.

10. I find that the plaintiff did not controvert the evidence proffered by DW1.

11. DW2, Stella Kathambi Raini, told the court that she would rely on the evidence given by DW1 and DW3. She told the court that they lived on the suit land and knew all apposite facts.

12. During cross-examination by the plaintiff, she told the court that the plaintiff had refused to attend a meeting called by their uncle to discuss issues concerning their ancestral land. She also told the plaintiff that if he agreed that the tea portion be shared out, there would be no problem.

13. DW3, Benjamin Muriungi, told the court that when the family land was subdivided and allocated to its family members, there was a unanimous agreement. He and his brothers were given the responsibility to have the land subdivided and everybody was happy.

14. He went on to say that out of the family's two parcel of land only one was subdivided as the family lacked enough funds to subdivide all of them. However live fences (Mikungugu) were used to delineate the boundaries to the portions each family member would take.

15. DW3 went on to say that his father had retained one of the portions and after his death the family gave the plaintiff the responsibility to look after it. This portion had tea leaves but after some time he claimed that the tea bushes belonged to him. He also refused to have the matter discussed by the family. DW1 also told the court that parcel No. Ndagani/Karingani/9128 was transferred to the defendants in trust for the family as the plaintiff, the eldest son in the family, was not a trustworthy man.

16. DW4, Gervasio Njiru Raini, told the court that he, out of his father's children was closest to him. He testified that his father had asked members of the family to choose where they wanted their portions of land to be placed. He testified that each one of them, including the plaintiff, elected that their parcels of land be placed where they had built their homes.

17. DW4, explained that all subdivisions were done in accordance with what the family and his father had agreed. He also explained that the plaintiff had got his fair share of the family land. He was categorical that the plaintiff was not entitled to a bigger portion of their family land than the other brothers.

18. During cross-examination by the plaintiff he told him that upon subdivision of one of the family's parcels of land, to wit, Karingani/Ndagani./6987, his father had asked all beneficiaries to pay Kshs.2,000/= for surveying and incidental expenses but the plaintiff had refused to cooperate and this fact explained why he did not obtain a title to his land.

19. I have carefully examined the pleadings and the evidence proffered by the plaintiff and by the defendants and their witnesses in support of their diametrically incongruent assertions.

20. Whereas the defendants had 4 witnesses, including themselves, the plaintiff was his only witness. The two plaintiffs and their witnesses proffered congruent evidence to the effect that their family land was given to the various family members in accordance with the wishes of their deceased father and which wishes had been accepted by the family members with the exception of the plaintiff.

21. DW1 gave evidence, which the plaintiff did not controvert, that the plaintiff did not respect their common father. She also testified that he was a person of bad character who had served prison terms for rape and for defilement of his own daughter. She also testified that he had shot his brother with an arrow.

22. The plaintiff's evidence was that he wanted he and the other brothers to share equally the portion of land measuring 0.7 acres which was the portion his father was using before he died. In his plaint, he prays that the defendants do transfer 0.50 acres of land to be excised from L.R. Karingani/Ndagani/9128. He did not deny that he had converted the tea bushes that had belonged to his deceased father to his use, to the exclusion of all family members. I opine that demanding 0.5 acres of the suit land does not constitute equal sharing when the suit land is 0.7 acres.

23. I find, on a balance of probabilities, that the plaintiff has not proved his case. This suit is, therefore, dismissed.

24. I find that the defendants have proved their case.

25. The parties in this suit are close family members. To promote harmony in the family, I will not award costs to any of the two sides.

26. I issue judgment in the following terms:

a) The plaintiff's suit is hereby dismissed.

b) A permanent order of injunction is hereby issued restraining the plaintiff or any other person acting at his behest from in any way interfering with L.R. Karingani/Ndagani/9128.

c) The defendants are entitled to subdivide and allocate to the defined beneficiaries L.R. Karingani/Ndagani/9128 in accordance with their deceased father's wishes.

d) No costs are awarded.

Judgment delivered in open court at Chuka this **26th day of June, 2018** in the presence of:

CA: Ndegwa

Stephen Mugambi Raini – Plaintiff

Christine Gacheri Raini - 1st Defendant

Stella Kathambi – 2nd Defendant

P.M. NJOROGE

JUDGE