



**REPUBLIC OF KENYA**

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

**E.L.C. CIVIL CASE NO. 187 OF 2015 (O.S)**

**IN THE MATTER OF THE LAND ACT, 2012**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF ORDERS 27 AND 37 OF THE CIVIL PROCEDURE ACT**

**JAMES GATHANUA MUKOMA (Suing On His Own Behalf as a Beneficiary of the Estate of the Late Mukoma wa Njiriri).....PLAINTIFF**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> DEFENDANT**

**MINISTRY OF LAND, HOUSNG & URBAN DEVELOPMENT.....2<sup>ND</sup> DEFENDANT**

**JUDGEMENT**

1. The Plaintiff seeks a declaration in the Amended Originating Summons that L.R. No. Limuru/Kamirithu/201 (“the Suit Property”) belonged to the late Mukoma wa Njiriri and that the Plaintiff as his son and beneficiary is entitled to be registered as the owner of the Suit Property. He seeks a mandatory order directing the Defendants through the Kiambu Lands Registrar to register him and issue a title deed to him in respect of the Suit Property.

2. In the supporting affidavit filed in court on 4/3/2015, the Plaintiff states that he was the last born son of the late Mukoma wa Njiriri who died in 1966. He claims that Mukoma wa Njiriri bought the Suit Property in the 1920s from Mang’ara’s family. At the time his father died, his three brothers had already been given their share of his father’s property. Since he was still young and in school at the time, he claims his father bequeathed to him the suit land based on the fact that he was unmarried. Before the land demarcation and consolidation process which took place in 1957, his father sold a portion of his land to Moses Karuri and Mburu Kamiri. The two later subdivided their land into small plots and sold it to different parties.

3. The Plaintiff maintains that the suit land which measures approximately 2.789 hectares has remained vacant. Part of the land is swampy while the other part is on a gully with murrum.

4. His own family members do not dispute the fact that his father gave him this piece of land. One of his

step brothers, Jaziel Kimunya Mukoma who died in 1957 was buried on the portion of land that was sold to Moses Karori and his grave can be seen on the land. The Plaintiff tendered in evidence the letter dated 30/7/2014 written by the Chief, Limuru Location confirming that Mukoma Njiriri hailed from Limuru Location. He also produced a copy of sheet number 13 for the suit land as well as his brothers' letter dated 21/7/2014 in which they confirmed that their late father gave the suit land to the Plaintiff.

5. The Plaintiff called two other witnesses. He engaged Frank Njoroge Githu to analyse and compile the survey history and documentation on the suit land. Frank Njoroge applied for a search but he was informed that the land was not registered. He retrieved the area map for Limuru Division from the Survey Department at Ruaraka Nairobi. Sheet number 6 for Kamirithu Location which he produced shows plot number 201. The remarks "this is an index sheet compiled from land consolidation filed sheets" are endorsed on the map. He also produced sheet number 9 bearing the same remarks. Plot number 201 is shown on this map at the top right hand corner. It abuts the road on the right and plot number 287 the left. It is endorsed with the same remarks that appear on sheet number 6. Sheet numbers 6A and 10 for Kamirithu Sub location also show that the suit plot exists. He also produced the mutation forms in respect of the subdivision of the parcels of land that were bought by Moses Karori and Mburu Kamiri.

6. It was his evidence that the suit land fell under native land during the colonial period which belonged to the people in that area. After demarcation ought to have been registered in the Plaintiff's name or his late father. It was his opinion that if a native did not follow up the process of demarcation and registration of their land, they would still retain their land since the boundaries were properly defined.

7. The 1<sup>st</sup> Defendant called the Kiambu Land Registrar as a witness. He testified that the Suit Property was first registered in the name of Native Land Trust Board on 28/8/1958. The board came to be known as the County Council of Kiambu. He produced a copy of the green card and search dated 17/5/1996 showing that the County Council of Kiambu is the registered proprietor of the Suit Property.

8. He also produced a copy of the letter dated 27/10/1997 seeking the registration of Peter Kariuki and Japheth Thuge who claimed to have been allocated the suit land by the Commissioner of Lands. The letter sought the Chief Land Registrar's professional undertaking for registration since the plot belonged to the County Council of Kiambu. He also produced a copy of the letter dated 2/6/1999 in which Japheth Thuge and Peter Kariuki were following up on their registration as the owners of the suit land. He denied that the Plaintiff's deceased father was the legal owner of the suit land. He maintained that the Plaintiff had not followed the procedure for alienation of public land to private persons hence the court should not issue the orders sought.

9. He stated that the Native Land Act was what governed native land in Kenya. The purpose of demarcation was to show where a person owned land and once demarcated, a green card was issued for the land. He did not know what would happen back then if a native did not appear during the demarcation process.

10. Parties filed submissions. The issue for determination is whether the Plaintiff should be registered as the proprietor of the suit land. The 2<sup>nd</sup> Defendant submitted that it was wrongly joined in the suit and that the orders sought against it cannot issue since the process of registration of instruments of ownership of land is the preserve of the Chief Land Registrar who is responsible for administering land registries.

11. The 1<sup>st</sup> Defendant submitted that the Suit Property is trust land. It submitted that the Native Land Trust Ordinance Cap 100 of 1930 established the Natives Land Trust Boards to administer land in the Native Reserves which were set aside for the native residents in that area. The Natives Lands Trust Board held the land in trust for the natives. After independence the native reserve became trust land. She relied on Sections 114 and 115 of the Repealed Constitution of Kenya which defined trust land and vested it in the County Council within whose area of jurisdiction it was situated.

12. The 1<sup>st</sup> Defendant relied on Section 117 of the Repealed Constitution of Kenya which mandated a County Council to set apart an area of trust land for public use. The Defendant urged that since the green

card indicates that the land is reserved for common use this is equal to public purpose. The 2<sup>nd</sup> Defendant urged that its function is limited to registration of lands by relying on the documents presented to the Land Registrar in the relevant land registry. The 2<sup>nd</sup> Defendant urged the court to dismiss the suit.

13. The court has looked at Section 115 (2) of the Repealed Constitution which provided that each County Council would hold the trust land vested in it for the benefit of the persons ordinarily resident on that land and shall give effect to such rights, interests or other benefits in respect of the land as may, under the African customary law for the time being in force and applicable thereto, be vested in any tribe, group, family or individual.

14. The Plaintiff submitted that it is entitled to the orders sought since the County Council of Kiambu is merely holding the suit land for the benefit of the family or individual as the process of registration is awaited. The Plaintiff submitted that the function of the Natives Land Trust Board was transferred to the Trust Land Board pursuant to Sections 4 and 9 of the Kenya Land Order in Council (1960). The Plaintiff argued that the land meant for natives was demarcated and that the natives owned it in perpetuity. A native needed only to appear for the land to be registered in their name. Counsel distinguished between native and government land and maintained that the suit land was never public land.

15. The Plaintiff also relied on Section 13 (1) of the Trust Lands Act on the process that a Council could follow to set apart land for the benefit of its residents. She urged that the process was not followed in setting apart the suit land which belonged to the Plaintiff's father. She also relied on Section 13 of the Land Adjudication Act which entitled every person laying an interest in land within an adjudication section to make a claim to the recording officer and point out the boundaries. Where a person failed to attend, the adjudication would proceed in his absence. The court does not think this provision is applicable since the suit land was already adjudicated, surveyed and registered.

16. The Plaintiff gave the history of the suit land which remains vacant to date. The Defendants did not adduce any evidence to show that the suit land formed part of government land. The court believes the Plaintiff's assertion that the suit land belonged to his father who sold part of it to Karori Mwati and Mburu Kamiri and that the part sold has a grave of one of the Plaintiff's kin.

17. Based on Section 115 (2) of the Repealed Constitution, the court finds that the Plaintiff has proved on a balance of probabilities that L.R. No. Limuru/Kamirithu/201 belonged to Mukoma wa Njiriri and that he is entitled to this land as the beneficiary of the late Mukoma wa Njiriri.

18. The Land Registrar, Kiambu is directed to issue a title deed to the Plaintiff over L.R. No. Limuru/Kamirithu/201 upon payment of the requisite land registration fees. Each party will bear its own costs.

**Dated and delivered at Nairobi this 12<sup>th</sup> day of September 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Wambua for the Plaintiff

No appearance for the 1<sup>st</sup> Defendant

Mr. A. Kamau holding brief for Ms. Nyawira for the 2<sup>nd</sup> Defendant

Mr. V. Owuor- Court Assistant