



**REPUBLIC OF KENYA**

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

**MERU ELC CASE NO 93 OF 2011**

**FELICITA KATHURE KINOTI.....PLAINTIFF**

**VERSUS**

**EDWARD NTEERE MUTUNGI.....DEFENDANT**

**JUDGMENT**

1. In his plaint dated 11<sup>th</sup> July, 2011, the plaintiff prays for judgment against the defendant as follows:

a) Revocation of land title Nos. ABOTHUGUCHI/GAITU/2391 and ABOTHUGUCHI/GAITU/2392 and the same be registered as Title No. ABOTHUGUCHI/GAITU/1602.

b) Upon resurvey from the road downwards to the river, the plaintiff do get 2 acres in ABOTHUGUCHI/GAITU/2391 and the defendant to get 2 acres named as ABOTHUGUCHI/2392.

c) A boundary be properly established between the two land parcel No's ABOTHUGUCHI/GAITU/2191 and ABOTHUGUCHI/GAITU/2392.

d) Costs and interest.

e) Any other or better relief that the honourable court may deem expedient to grant.

2. PW1, Felicita Kathure Kinoti, the plaintiff told the court that she wished to rely on her witness statement as her evidence in this matter.

3. In her witness statement, the plaintiff avers that she and the defendant bought land from one SILVERIA MUKIRI KAREGI. She says that the defendant bought 2 acres and was registered as the proprietor of Land Parcel No. ABOTHUGUCHI/GAITU/2391 measuring 0.81 Hectares (Approximately 2 acres). She says that she is the registered owner of Land Parcel No. ABOTHUGUCHI/2392 which measures 0.46 Hectares (approximately 1.13 acres). she says that there arose a dispute and she filed a case at the Meru Central LDT Tribunal which was LDT NO.31 of 2005. She avers that the LDT delivered a decision which was read in Meru CM's LTD No.18 of 2006 wherein she was to get 1½ acres and the defendant was to get 2 acres. The balance of half an acre ½ acre was to be used for roads.

4. Inexplicably, the plaintiff avers that the half (½) acre which was to be for the roads was sold to her by the defendant with the result that she now owned 2 acres. For this reason she wanted the original title cancelled and the land be resurveyed so that the records reflected that both she and the plaintiff owned 2 acres each. She asked the court to grant her the prayers she sought in the plaint.

5. PW2, Silveria Mukiri Karegi asked the court to adopt her witness statement dated 11<sup>th</sup> July, 2011 as her evidence in this matter. The gist of her evidence is that she sold 1 ½ acres to the plaintiff and sold 2 acres to the defendant. She goes on to say that she sold another ½ acre to the plaintiff. She supported the cancellation of the titles belonging to the plaintiff and to the defendant so that the true position would be reflected on the ground and in the ownership documents.

6. During cross-examination by the defendant's advocate she contradicted what she and the plaintiff had averred in their written statements by stating that the defendant's land was not after all sold to him by her BUT was sold to her by her mother, LYDIA KAJUJU.

7. DW1, the defendant, Edward Nteere Mutugi, asked the court to adopt his witness statement as his evidence. He denied that he and the plaintiff bought land from the same person. He testified that he bought his land from Lydia Kajuju, whereas the plaintiff bought her land from Silveria Mukiri Karegi.

8. DW1, told the court that his land parcel No. ABOTHUGUCHI/GAITU/2392 devolved to him through a succession cause. He also said that the plaintiff's land devolved to Silveria Mukiri Karegi, who sold it to the plaintiff.

9. DW1 averred that he bought 2 acres and had nothing to do with the land sold to the plaintiff by Silveria Mukiri Karegi. I opine that the plaintiff's advocate did not shake the integrity of the DW1's evidence. DW1 gave evidence which was not controverted that he had not blocked the plaintiff's access to her land. He said that the plaintiff had a road of access and even invited the court to visit the scene. He laconically and sardonically wondered how the plaintiff reached her land if, as she alleged, access to the land had been blocked.

10. The parties filed written submissions. The plaintiff did not proffer any authorities in support of her assertions.

11. The defendant proffered the following cases in support of his assertions:

1. JAMES NJUGUNA CHUI VERSUS JOHN NJOGU KIMANI – NAIROBI ELC NO.711 OF 2012, eKLR. In proffering this case the defendant argued that this suit was res judicata MERU CM LDT NO. 18 OF 2006.

2. AMOS MPESHE & 2 OTHERS VERSUS SALAU OLE SOKON MODO – NAIROBI ELC NO. 760 OF 2004, eKLR. In proffering this case, the defendant argued that section 21 (4) of the defunct Registered Land Act which is replicated in Section 18 (2) of the Land Registration Act bars courts from entertaining proceedings apposite to disputes on boundaries.

12. I have carefully considered, the pleadings, the submissions and the authorities proffered by the parties in support of their respective positions.

13. I find that the plaintiff and her witness contradicted themselves in at least one very material aspect regarding how the parties obtained their respective parcels of land. Whereas it is pellucid that the defendant obtained his land through a succession cause, the plaintiff and her witness had misled the court and were untruthful when they told the court that both the plaintiff and the defendant had bought their parcels of land from Silveria Mukiri Karegi, PW2.

14. I find that the issues revolving around this case concern a boundary dispute. For this reason, I would find that this suit merits dismissal.

15. I, however, will go further. The Certificate of Confirmation of grant in Nairobi Succession Cause No 60 of 2000 (In the matter of the estate of the late SEKUNDO M'TUMA [deceased]) describes the shares concerning land parcel No. ABOTHUGUCHI/GAITU/1602 as follows:

L.P. NO. ABOTHUGUCHI/GAITU/1602

(i) SILVERIA MUKIRI KAREGI – BALANCE

(ii) EDWARD NTEERE MUTUNGI – 2 ACRES

16. The plaintiff has proffered zilch evidence to demonstrate that Land Parcel No. ABOTHUGUCHI/GAITU/1602 had an area of 4 acres.

17. It is clear from the registration records that what was sold to her by PW2 was land measuring 0.46 Hectares. Approximately this measures 1.13 acres. Even assuming that PW2 sold her ½ an acre which should have been used for roads, which transaction would raise veritable eyebrows, then the total land which should have been sold to her by PW2 would amount to slightly over 1 ½ acres. Her maths do not add up. How then would have both the plaintiff and the defendant have obtained 2 acres each? Which phasmagoric sleight of hand would PW1 have employed to expand land which she does not demonstrate was originally 4 acres in area to the size she wants it to be?

18. I find from the Certificate of Confirmation of Grant that after the defendant got 2 acres, PW2 was to get the balance which in accordance with the land registration documents is 0.46 Hectares (Approximately 1.13 acres)

19. In the circumstances, I find that this suit merits dismissal.

20. This suit is dismissed.

21. Costs are awarded to the defendant.

Delivered in open court at Chuka this 12<sup>th</sup> day of April, 2017 in the presence of:

CA: Ndegwa

Mark Muriithi for the defendant

Plaintiff and her advocate absent

**P. M . NJOROGE,**

**JUDGE.**