



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C CASE NO. 443 OF 2017

DANIEL KAMAU KIARIE.....PLAINITFF

VS

THOME FARMERS COMPANY NO.1 LIMITED.....DEFENDANT

JUDGMENT

1. The Plaintiff filed a plaint on the 29th April, 2016 seeking the following orders;-

(a) A declaration that Thome Farmers Co. (no.1) limited plot no. 39 situated in Thome area within Nairobi County is jointly owned by the Plaintiff and one Harrison Mwicharo Githogori vide Share Certificate No. 1121 dated 19th June 1987.

(b) An order compelling the Defendant Company either by itself or through its Advocate Dorcas Nanjero to rectify the Company register of the plots in their Advocate's custody by removing the name of one Solomon M. Wokogi from the suit property and in its place to reinstate the Plaintiff's name as joint owner of the said plot as per the original register.

(c) Costs of the suit and interest.

(d) Such other/further relief as this Honourable Court may deem fit and just to grant.

2. The Defendant was served with the summons to enter appearance and the Plaintiff but did not enter appearance. The Plaintiff then proceeded to set the case for formal proof. During the hearing of the formal proof the Plaintiff testified solely. He adopted the contents of his statement in its entirety.

3. In summary, his testimony was that he and one Harrison Mwicharo Githogori (now deceased) are the joint owners of one share in Thome Farmers Co. Ltd having acquired the same through purchase which entitled them to both plot No. 39 and the one share in the Defendant Company. He produced a copy of the Share Certificate **No.1121** to proof proprietorship. That the one share represents ownership in land **Plot. No. 39** which he and Harrison Mwicharo Githogori do own jointly as shown in the copy of the extract of the Register of members where both are listed as owners of the Plot.

4. That at the time of processing the title, he realized that the register of members had been altered by removing the name of Harrison Mwicharo Githogori and replacing it with a third party in the name of Solomon M. Wokogi. Resultantly the register of members now reflected the Plaintiff and Solomon M. Wokogi as joint owners, a position that he contends to be non-factual. That he has not transferred the ½ share of Harrison Mwicharo Githogori to Solomon M. Wokogi or to any other person. That Solomon M Wokogi is a stranger to him. That the deceased's wife is then the owner of the ½ share as shown by the

confirmation of grant of the estate of Harrison Mwicharo Githogori issued on 23rd February 2011, which grant was issued to Mary Nyokabi Githogori. Mary Nyokabi Githogori also filed a witness statement dated 8th March 2016 where she made a deposition on the ownership of the shares held by her late husband.

5. That the said removal of the name of Harrison Mwicharo Githogori and inserting the name of Solomon M. Wokogi was illegal, irregular, fraudulent and unprocedural and urged the Court to order its rectification and declare that the shares and the plot are jointly owned by the Plaintiff and Harrison Mwicharo Githogori and that the Defendant Company be compelled to rectify the register and remove the name of Solomon M. Wokogi and replace it with the name of Harrison Mwicharo Githogori.

6. He deponed that when he approached the representatives of Company one Dorcas Nanjero, he was advised that the register can only be rectified by a Court order and hence the suit and the prayers therein.

7. The evidence of the plaintiff is not contested and is further corroborated by the evidence deponed by Mary Nyokabi Githogori, the legal representative of Harrison Mwicharo Githogori.

8. The issues that commend themselves for determination by this Court are;

a). Whether Harrison Mwicharo Githogori and Daniel Kamau Kiarie are joint owners of the one share (share certificate No. 1121) in the defendant Company (represented by Plot 39).

b). Whether the plaintiff is entitled to the reliefs sought in the plaint.

9. I have examined the material evidence submitted before the Court to wit; the share certificate No. 1121 issued on the 19th June 1987 in the names of Kamau Kiarie and Harrison Githogori in respect to (1) One share of the shares in Thome Farmers No.1 Limited. There is also an extract copy of the Register on page 2 which bear the names of Kamau Kiarie and Harrison Githogori against Plot No. 39. These documents have been corroborated by the affidavit Mary Nyokabi Githogori, the wife of Harrison Githogori, the deceased Co-shareholder.

10. Given the facts of the case stated above and the fact that those facts have not been controverted, and no evidence has been brought before this Court giving reasons or legal basis why the names of Harrison Githogori and Solomon M Wokogi were removed from and entered into the register respectively, I find a clear case of rectification of the register. The owners of the said shares and the plot are being deprived their property in the asset by the name of Solomon W Mokongi remaining on the register. I rely on the case of **Prab Hual Tejpa Haria & Another vs. Pravin Chandra Meghji Dodhia & 2 Others [2007] eKLR**, where Warsame J (as he then was) expressed himself that the summary powers of the Court in rectifying a member register can be invoked in plain and clear cases,". **I find that this is such a case that is clear and plain.**

11. I have carefully considered the Plaint, the Witness statements and the written submissions by the Learned Counsel and the material placed before this Court. I find that the Plaintiff has proved his case on a balance of probability and grant the prayers sought in the plaint as follows;-

(a) That Thome Farmers Co. (No.1) Limited plot No. 39 situated in Thome area within Nairobi County is jointly owned by the Plaintiff and one Harrison Mwicharo Githogori vide Share Certificate No. 1121 dated 19th June 1987.

(b) That the Defendant Company either by itself or through its Advocate or agent Dorcas Nanjero to rectify the Company register of the plots in their custody by removing the name of one Solomon M. Wokogi from the members register and in its place to reinstate the name of Harrison Mwicharo Githogori and the plaintiff, Daniel Kamau Kiarie as joint owners of the said plot as per the original register.

(c) No orders as to the costs.

DELIVERED, DATED AND SIGNED AT NAIROBI, THIS 24TH MAY, 2017.

J. G. KEMEI

JUDGE

In presence of

Court Assistant – Wycliff Ojwang

Judgment delivered in open court in the absence of parties who had notice of the date for the delivery of judgment.