



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC APPEAL NO. 2 OF 2014

KAGUNYU MURIGU.....APPELLANT

VERSUS

PAUL NJAGI KAGUNYU.....1ST RESPONDENT

SAMUEL MURIGU KAGUNYU.....2ND RESPONDENT

(BEING AN APPEAL FROM THE AWARD OF GICHUGU LAND DISPUTES TRIBUNAL DELIVERED ON 6TH AUGUST 2006 IN KIRINYAGA DISTRICT LAND DISPUTES TRIBUNAL AT GICHUGU CASE NO. 51 OF 2008 AND THE AWARD OF THE CENTRAL PROVINCIAL LAND DISPUTES APPEALS COMMITTEE AT NYERI UNDATED)

RULING

On 14th October 2016, this Court delivered a judgment setting aside the award of the Gichugu Land Disputes Tribunal and the decree issued by the Kerugoya Principal Magistrate's Court Case No. LDT 12 of 2009 which had ordered the sub-division of land parcel No. BARAGWE/GUAMA/1293 into BARAGWE/GUAMA/3305, 3306, 3307, 3308, 3309, 3310 and 3311. That judgment was arrived at on the basis that the Gichugu Land Disputes Tribunal had no jurisdiction to order the sub-division of registered land.

The Appellant has now moved to this Court vide his application dated 9th March 2017 citing the provisions of ***Order 51 (1) of the Civil Procedure Rules 2010*** seeking the following orders:

1. That the Honourable Court be pleased to order the Land Registrar Kerugoya Land Registry to cancel/deregister the title deeds number BARAGWE/GUAMA/3305, 3306, 3307, 3308, 3309, 3310 and 3311 emanating from the sub-division of land parcel No. BARAGWE/GUAMA/1293 and the same to revert to BARAGWE/GUAMA/1293 and be registered in the names of KAGUNYU MURIGU the Appellant herein.

2. That the Officer Commanding Karumandi Police Station be ordered to facilitate adherence by the Respondent.

The application is premised on the grounds set out therein and is also supported by the Appellant's affidavit.

The gravamen of the application is that this Court having heard this appeal delivered its judgment but the Respondents are now threatening to sell the land parcels registered in their names following the decision of the Gichugu Land Disputes Tribunal.

The Respondents have filed grounds of opposition to the application describing it as frivolous, vexatious and an abuse of the process of the Court only meant to punish them.

Though the date for hearing of the application was taken in the registry by consent, there was no appearance by the Respondents and so I directed that I would deliver a ruling based on the application and grounds of opposition thereto.

I have considered the application and the grounds of opposition thereto.

Although the application is premised on the wrong provision of the law, I will invoke the inherent jurisdiction of this Court under **Section 3A of the Civil Procedure Act** and also **Article 159 of the Constitution** to save it bearing in mind that the parties are acting in person.

This Court having set aside the judgment of the Gichugu Land Disputes Tribunal as adopted by the Kerugoya Principal Magistrate's Tribunal Case No. 12 of 2009 which sub-divided the land parcel No. BARAGWE/GUAMA/1293 for want of jurisdiction, it follows that the resultant sub-divisions being land parcels No. BARAGWE/GUAMA/3305, 3306, 3307, 3308, 3309, 3310 and 3311 are all illegal and the title must revert back to the original land parcel No. BARAGWE/GUAMA/1293 and be registered in the names of the Appellant **KAGUNYU MURIGU**. That is clearly the result that must follow this Court's judgment dated 14th October 2016. If the Land Registrar has any difficulties in that respect, then the Deputy Registrar should extract a decree to that effect upon application by the Appellant.

With regard to the prayer for the Police to facilitate adherence to that order by the Respondent, no Police assistance is required by the Land Registrar to comply with such an order. The Appellant must realize that this order does not allow him to evict the Respondents who are his children and who have always resided on that land. Besides, the Police have no role to play in the civil process. Their role is to maintain law and order as provided under the **National Police Service Act** and they do not require any prompting or directions from the Court or any other person to do so. It seems to me from the Appellant's replying affidavit that his fear is that the Respondents may sell the land portions registered in their names. That fear is not unfounded and as the proprietor of the land parcel No. BARAGWE/GUAMA/1293, it is fair that it remains in his names. For his benefit, therefore, I allow the application dated 9th March 2017 and make the following orders:

1. Following this Court's judgment dated 14th October 2016, the result is that any sub-division of land parcel No. BARAGWE/GUAMA/1293 that gave rise to land parcels No. BARAGWE/GUAMA/3305, 3306, 3307, 3308, 3309, 3310 and 3311 are illegal and are cancelled. The title to revert to the names of the Appellant KAGUNYU MURIGU.

2. That order does not allow the Appellant KAGUNYU MURIGU to evict the Respondents who shall continue to live and work on whatever portions they now occupy.

3. No order as to costs.

B.N. OLAO

JUDGE

28TH JULY, 2017

Ruling delivered, dated and signed in open Court this 28th day of July 2017

Appellant present

Respondents absent.

B.N. OLAO

JUDGE

28TH JULY, 2017