



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**MILIMANI LAW COURTS**  
**ELC. CASE NO. 150 OF 2010**

**GEOFREY WANYATURA MWANGI..... PLAINTIFF**

**VERSUS**

**PAUL NDIRANGU MWANGI .....1<sup>ST</sup> DEFENDANT**

**DANIEL MUHORO MWANGI.....2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR MURANG'A.....3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

This suit was commenced by way of a Plaint dated and filed on 26<sup>th</sup> March 2010 in which the Plaintiff sought for judgment to be entered against the Defendants for:

- a) A declaration that the subdivision of the parcel of land known as Loc3/Mukuria/57 into Loc3/Mukuria/1123, 1124 and 1125 are fraudulent, illegal, null and void *ab initio*.
- b) That the 3<sup>rd</sup> Defendant do revert the initial subdivision done by Mwangi Nganga deceased into Loc3/Mukuria/1047 in the name of the Plaintiff and Loc3/Mukuria/1048 in the name of David Kamau Mwangi or his legal representative.
- c) The 2<sup>nd</sup> Defendant be evicted from Loc3/Mukuria/1123 forthwith.
- d) General damages for unlawful cancellation of Loc3/Mukuria/1047 and 1048.
- e) Mesne profits for illegal sale and use of Loc3/Mukuria/1123.
- f) The Registrar High Court do execute any documents necessary to effect the change of the said land into Loc3/Mukuria/1047 and 1048.
- g) Costs of this suit.
- h) Interest on (c) and (d) at court rates.

It is the Plaintiff's case that he and the 1<sup>st</sup> Defendant as well as David Kamau Mwangi (now deceased) are brothers. Their late father, Mwangi Nganga, as the registered proprietor of the parcel of land known as

Loc3/Mukuria/57, subdivided this parcel into two parcels being Loc3/Mukuria/1047 and 1048. It was the Plaintiff's testimony that their late father allocated parcel Loc3/Mukuria/1047 to him and Loc3/Mukuria/1048 to his brother David Kamau Mwangi (now deceased). His further testimony was that their father allocated to the 1<sup>st</sup> Defendant the parcel of land known as Loc3/Githumu/245. The Plaintiff informed the court that the 1<sup>st</sup> Defendant was not satisfied with this state of affairs and proceeded to file a series of suits against his father, Mwangi Nganga, in an effort to have the two subdivisions revoked and to get a portion of Loc3/Mukuria/57. The first case was Maragua District Tribunal Case No. 43 of 2002 Paul Ndirangu Mwangi versus Mwangi Nganga which ordered the revocation of the subdivisions done by Mwangi Nganga. It was the Plaintiff's testimony that his father, Mwangi Nganga appealed against those orders at the Provincial Land Dispute Appeal Tribunal where on 12<sup>th</sup> February 2003, the award of the Maragua District Land Tribunal was declared null and void with the result that the subdivision of Loc3/Mukuria/57 done by Mwangi Nganga was upheld. It is the Plaintiff's testimony that despite being given 60 days to appeal from that decision, the 1<sup>st</sup> Defendant did not file any appeal against that decision. The Plaintiff informed the court that instead, the 1<sup>st</sup> Defendant fraudulently and maliciously misled the Senior Resident Magistrates Court in Thika on 14<sup>th</sup> October 2003 to enforce the overthrown decision of the Maragua District Land Tribunal without disclosing that his father had passed away on 21<sup>st</sup> March 2003, 7 months before. He further informed the court that the 1<sup>st</sup> Defendant also failed to disclose to the court that the award of the Tribunal had been overturned on appeal before the Provincial Land Dispute Appeal Tribunal with the result that the court granted him orders revoking the subdivisions of Loc3/Mukuria/57 into Loc3/Mukuria/1047 and 1048. The Plaintiff further testified that the 1<sup>st</sup> Defendant immediately proceeded to subdivide Loc3/Mukuria/57 afresh into three parcels namely Loc3/Mukuria/1123, 1124 and 1125, which he allocated as follows:

- 1) Loc3/Mukuria/1123 to himself which he sold to the 2<sup>nd</sup> Defendant.
- 2) Loc3/Mukuria/1124 to the Plaintiff.
- 3) Loc3/Mukuria/1125 to David Kamau Mwangi (now deceased).

The Plaintiff testified that the 1<sup>st</sup> Defendant did all this without involving him or their now deceased brother David Kamau Mwangi with the result that the Plaintiff's rightful land as bequeathed to him by his father being 1.75 acres was now reduced by 0.58 acres and the portion bequeathed to David Kamau Mwangi was reduced from 1.75 acres to 1.17 acres while the 1<sup>st</sup> Defendant benefitted by getting Loc3/Mukuria/1123 which he sold to the 2<sup>nd</sup> Defendant while still retaining Loc3/Githumu/245. The Plaintiff further informed the court that upon his application, the orders given on 29<sup>th</sup> January 2004 and 8<sup>th</sup> March 2004 pursuant to the 1<sup>st</sup> Defendant's fraud were set aside by the Hon. Mrs. L. Gicheha SRM Thika on 10<sup>th</sup> February 2006. On those grounds, the Plaintiff sought for judgment in terms of the prayers set out in his Plaint.

The main issue for determination before this court is the issue of who is entitled to the parcel of land known as Loc3/Mukuria/57 and the subdivisions thereof. The Defendants did not attend the hearing of this suit and the same proceeded ex parte. The issue for determination in this suit is clearly the very same issue before the Senior Principal Magistrate's Court in Thika D.O. Suit No. 43 of 2002, to which the Plaintiff was made a party vide the Ruling of Hon. Mrs. L. Gicheha on 10<sup>th</sup> February 2006. Further, Mrs. Gicheha set aside orders granted by her on 29<sup>th</sup> January 2004 and 8<sup>th</sup> March 2004. It is not clear why the Plaintiff, even after being made a party to that suit, did not file a counterclaim therein and pursue his interest in the suit property before that court. He instead opted to file a fresh suit being the instant suit. What is before this court is not an appeal but a fresh claim. This court does not know the contents of the orders that were set aside by Mrs. Gicheha. This court does not also know what stage the suit before Mrs. Gicheha has reached. Has judgment been delivered? What is clear to this court is that the Plaintiff's claim for the suit property cannot be pursued before two parallel courts. Further, there is no appeal before this court.

In the circumstances, this court finds that it is not in a position to make a final finding on the issues placed before it in this suit in light of the pending suit being SPM D.O Suit No. 43 of 2002. The Plaintiff should pursue his claim through that suit to final determination and if dissatisfied with the outcome in that suit, may file an appeal before this court. For now, this suit stands dismissed with no orders as to costs.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 1<sup>ST</sup> DAY OF SEPTEMBER 2017.**

**MARY M. GITUMBI**

**JUDGE**