



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT THIKA**  
**THIKA LAW COURTS**  
**ELC.NO.25 OF 2017(OS)**  
**[ FORMERLY NAIROBI ELC.384 OF 2012(OS) ]**  
**IN THE MATTER OF SECTION 80(1) OF THE**  
**LAND REGISTRATION ACT, NO.3 OF 2012**

**THE ADMINISTRATORS OF THE ESTATE**

**OF THE LATE JOHN KIONDO KAHUHU.....APPLICANT**

**-VERSUS-**

**DISTRICT LANDS REGISTRAR, KIAMBU.....RESPONDENT**

**JUDGEMENT**

The former Applicant herein *John Kiondo Kahuhu* filed this *Originating Summons* on *13<sup>th</sup> June 2012*, and sought for various orders. However, the said Applicant died on *13<sup>th</sup> July 2014*, as is evident from the certificate of death marked *MNK1*. Vide a *Notice of Motion* dated *7<sup>th</sup> October 2015*, the Applicant herein was substituted with *Mary Njoki Kiondo*, *Robert Kabiru Kiondo* and *Mary Waruguru Mucheru*, who are joint administrators of the estate of the deceased Applicant. The joint administrators were appointed as such vide the grant of Letters of Administration Intestate issued on *10<sup>th</sup> February 2015*. The orders sought vide this *Originating Summons* are:-

*1) The Director of the Criminal Investigations Department of the Kenya Police be directed to release the original Certificate of Freehold Title issued in respect of the property known as Githunguri/Gathangari/142, which is currently being held at the Criminal Investigations Department's headquarters for investigation under Kiambu Criminal Investigations Department Inquiry No.5 of 2004, to the District Lands Registrar, Kiambu.*

*2) The District Lands Registrar, Kiambu be directed to rectify the Certificate of Freehold title issued in respect of the property known as Githunguri/Gathangari/142 as follows:-*

*a) The said certificate of Freehold Title be rectified so as to correct the names of the registered proprietors, which are misspelt as 'Muriu Kabiro' and 'John Kiondo Kahoho' respectively, so that they may henceforth appear as 'Muniu Kabiro' and 'John Kiondo Kahuhu' respectively.*

**b) The said certificate of freehold title be rectified to indicate the property is owned by the registered proprietors as Tenants in Common in the following shares:**

**i. Muniu Kabiro - 10.2 acres**

**ii. John Kiondo Kahuhu - 2.5 Acres**

**3) The District Lands Registrar, Kiambu be directed to rectify all relevant entries in the Kiambu District Land Register in respect of the property known as Githunguri/Gathangari/142 with the 142 with effect henceforth.**

**a) The said Register entries shall show the names of the registered proprietors of the said property to be ‘Muniu Kabiro’ and ‘John Kiondo Kahuhu’ respectively.**

**b) The said Register entries shall indicate that the property is owned by the registered proprietors as tenants in common in the following shares.**

**i. Muniu Kabiro - 10.2 acres**

**ii. John Kiondo Kahuhu - 2.5 Acres**

**4) The District Lands Registrar, Kiambu be directed to issue afresh the certificate of freehold title in respect of the property known as Githunguri/Gathangari/142 with the rectifications aforementioned.**

**5) The costs of this suit be provided for.**

**6) Any other relief that the Honourable Court may deem fit to grant.**

This **Originating Summons** is premised on the grounds stated on the face of the application and Supporting Affidavit of the applicant, **Mari Edna Muriu**, the **daughter-in-law to Muniu Kabiro** and **Simon Kamau Muchai**, a proposed co-administrator to the estate of the late **Muniu Kabiro**. These grounds are:-

**a) The certificate of freehold title in respect of the property known as Githunguri/Gathangari/142(hereinafter referred to as ‘the property’) was issued while containing mistakes thereon as follows:**

**1) The names of the registered proprietors are misspelt as ‘Muriu Kabiro’ and ‘John Kiondo Kahoho’ respectively, while the proper names of the registered proprietors are ‘Muniu Kabiro’ and ‘John Kiondo Kahuhu’ respectively.**

**2) The said certificate of freehold title does not indicate that the registered proprietors ought to hold th property as Tenants in Common with Muniu Kabiro (now deceased) holding 10.2 acres and consequently suggests that the property is subject to joint ownership which is not correct.**

**b) By reason of the aforesaid mistakes, there grew great mistrust and subsequently serious acrimony between the applicant and the family of the late Muniu Kabiro as a result of which the Applicant was reported to the Criminal Investigations department of the Kenya Police(hereinafter referred to as ‘the CID’) by the son of the late Muniu Kabiro, one Stanley Muiruri Muniu (now Deceased), for investigation and possible prosecution on grounds of forgery and obtaining false registration of ownership of the property.**

**c) Following the aforementioned report to the CID, the certificate of freehold title in respect of the said property was confiscated and retained by CID officers under their file reference**

***Kiambu CID Inquiry no.5 of 2004 for investigation.***

***d) The CID subsequently registered a restriction against the said property prohibiting any dealings thereon.***

***e) The applicant has been under investigation by the CID for over 8 years now and the same has not been resolved either way.***

***f) The delay in having the matter resolved by the CID has caused delay in the conclusion of the pending matters filed by the family of the Applicant's co-proprietor Nairobi High Court Succession Cause Number 389 of 1990 – In the Matter of the Estate of Muniu Kabiro (deceased) by reason of the fact that the property is now deemed as being subject to joint ownership, which it is not.***

***g) The applicant and the representatives of the family of the late Muniu Kabiro have now, by mutual written agreement, acknowledged the existence of the aforementioned mistakes contained in the certificate of freehold title in respect of the property and are desirous of having the same rectified in the manner sought herein.***

***h) It is the greatest interests of justice that the orders sought be granted.***

In their affidavits, the Applicant and the other two deponents reiterated the contents of the above grounds. ***Mari Edna Muniu*** and ***Simon Kamau Muchai***, the proposed co-administrator of the estate of the late ***Muniu Kabiro*** averred that the family of the late ***Muniu Kabiro*** is in agreement with the orders sought. They supported this application that the Certificate of Freehold Title in respect of the property known as ***Githunguri/Gathangari/142***, be rectified in the manner sought. The Applicant in his Affidavit had deponed that it was the wish of both the family of his Co-proprietor and himself to have the restriction registered on the suit

property by the CID removed forthwith so that both the family of his co-proprietor and himself can put the matter to rest. He urged the Court to rectify the certificate of Freehold title in respect of the suit property herein ***Githunguri/Gathangari/142***, in the manner so sought.

This application was served on the District Land Registrar, Kiambu on ***17<sup>th</sup> July 2012***, as evidenced from the ***Affidavit of Service*** sworn by ***Moses M. Wambua*** on ***4<sup>th</sup> February 2013***. Even with the said service, the Respondent failed to enter appearance nor file its Response to the ***Originating Summons***. This ***Originating Summons*** is therefore unopposed.

The Court on ***26<sup>th</sup> April 2013***, issued a directive to the effect that:-

***“Before the court can appropriately make a determination of the matter herein, it is proper for it to be in possession of the original title in respect of the property. The said original title is being held by the CID at their Headquarters. In the interim therefore, I hereby direct that the Director of Criminal Investigations Department of Kenya Police, to release the original certificate of Freehold title issued in respect of the property known as Githunguri/Gathangari/142 to the Deputy Registrar of this court within 14 days of the date hereof”.***

The matter was to be mentioned on ***10<sup>th</sup> May 2013***, for further orders. The matter was mentioned severally but eventually on ***7<sup>th</sup> November 2016***, the Applicant filed a certified copy of the title serial ***No.1681054*** in respect of the suit property and a copy of the Green Card thereof. The Applicants also filed their written submissions on ***24<sup>th</sup> June 2016***.

This Court has now carefully considered the instant Originating Summons and the annexures thereto. The Court has also considered the written submissions, the cited authorities and the relevant provisions of law and the Court renders itself as follows:

The Originating Summon is premised under Section 80(1) of the Land Registration Act 2012, which provides:-

**“Subject to sub-section (2) the Court may order the rectification of the Register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made is omitted by fraud or mistake”**

The application is further premised under Sections 1A 1B of the Civil Procedure Act which deals with the overriding object of the Act which is to facilitate the **just, expeditious, proportionate** and **affordable** resolutions of disputes. It is further anchored under Section 3A of the same Act which grants the Court the inherent power to grant orders that are necessary for the end of justice and to prevent abuse of the court process.

With the above provisions of law in mind, the Court now considers the annexures attached to the Originating Summon and especially a copy of the certificate of Freehold title issued on **26<sup>th</sup> October 1962**, to **John Kiondo Kahoho** and **Muriu Kabiro**. The Green Card shows that the two were to hold the same as proprietors in common. The Applicants have alleged that the said certificate of Freehold title in respect of the suit property was issued with mistakes or errors in that the proprietors names were spelt as **‘Muriu Kabiro’** instead of **‘Muniu Kabiro’** and **‘John Kiondo Kahoho’** instead of **‘John Kiondo Kahuhu’**. It is also evident that the said **Muniu Kabiro** died on **24<sup>th</sup> April 1964**, and there is a pending **Succession Cause No.389 Of 1990** over the distribution of the estate of the late **Muniu Kabiro**.

Further, it is evident that the suit property herein **Githunguri/Gathangari/142**, comprising of 12.7 acres is indicated as the asset held by the deceased **‘Muniu Kabiro’** at the date of his death. It is also evident that the family of **‘Muniu Kabiro’**, reported a case of fraudulent registration of this suit property in the name of **‘Muriu Kabiro’** and **John Kiondo Kahoho** in the year **1962**. They had requested the office of the CID to investigate the said allegations. However vide a letter dated **8<sup>th</sup> June 2009**, **Edna Mari Muniu**, one of the proposed Co-Administrator of the estate of **Muniu Kabiro** wrote the DCIO intimating that the family of **‘Muniu Kabiro’** had agreed to withdraw the complaint against **John Kiondo Kahoho**. Further, that the family had also decided to leave **2 ½ acres** to the said **John Kiondo Kahoho** and the balance was to be distributed vide the succession cause.

It was also alleged that vide the complaint raised by the family of the late **‘Muniu Kabiro’**, the CID had confiscated the original title of the suit property and on **5<sup>th</sup> December 1989**, they caused a restriction to be registered on the title indicating that **“No dealings until this matter which is with CID is finalized”**. The restriction was placed on **5<sup>th</sup> December 1989** and by **8<sup>th</sup> June 2009**, when the letter **JKK 3** was written to the DCIO, the said restriction had not been removed. That is such a long period for an investigation to remain pending.

The deponents have all deposed that they are in agreement that the orders herein should be granted. The District Land Registration Kiambu did not oppose the instant Originating Summons. It is not in doubt that the suit property is registered in the names of **‘Muriu Kabiro’** and **‘John Kiondo Kahoho’**. The Applicants have alleged that there was a mistake on the spelling of the name **‘Muniu’** to read **‘Muriu’**. Further that The said allegations were not opposed. Indeed there is a mistake on the spelling of the names of the proprietors. The Court finds that Section 80(1) of the Land Registration Act allows such rectification of Register where entry was done by mistake.

Further, the Court has seen that the Green Card indicates that the proprietors are holding the suit land as **proprietors in common**. However, there is no indication what share each proprietor is holding. This Court has seen the settlement agreement between the family of **Muniu Kabiro** and **John Kiondo Kahuhu**. On acknowledgement of ownership, it is indicated in clause no.2 that **Muniu Kabiro** (deceased) was to hold **10.2 acres** and **John Kiondo Kahuhu** to hold **2.5 acres**. The above stated terms of settlement has not been objected to by anyone. The Court will therefore hold and find that the parties have agreed that the shares of each of the proprietor in common is as per clause no.2 of the acknowledgement of ownership.

As already stated earlier, Section 80(1) of the Land Registration Act gives the Court discretion to make an order of rectification of a title document where there is a mistake. The misspelling of the names of the proprietors is a mistake which is capable of rectification under Section 80(1) of the Land Registration Act. Further failure to indicate the shares that each of the proprietor in common held over the suit property is also an omission which is capable of being rectified under Section 80(1) of the Land Registration Act.

Section 3A of the Civil Procedure Act also allows the Court to issue orders that are necessary for the end of justice to be met. By ordering rectification of the Register as prayed by the parties herein, the Court would in essence be issuing an order that is necessary in ensuring that the end of justice is met. Courts have had occasions to deal with issue of rectification of the register. In the case ***of Esther Ndegi Njiru & Another..Vs..Leonard Gatei (2014) eKLR***, the Court held that:-

***“...my view therefore is that where fraud or mistake is proved even what would qualify to be a first registration would under the provisions of the Land Registration Act be liable to be rectified and/or cancelled”.***

Further, in the case of ***Mary Ruguru Njoroge...Vs...Samuel Gachuma Mbugua & 4 Others (2014) eKLR***, the Court held that:-

***“...It is however upto the party seeking rectification to prove to the court’s satisfaction that there has been fraud or mistake in the registration. In any view the mistake referred to under***

***Section 80(1) includes both a slip like a typographical error and a substantive mistake like the registration of a wrong or erroneous name.... The Court too has powers to order the rectification of the title or register in appropriate circumstances.....Registration vide the said Section refers and includes a title or entry in the registry or on the title itself”.***

Having considered the available affidavits evidence and the annexures thereto, the Court finds that the Applicants herein have proved on the required standard of balance of probabilities that the orders sought are merited.

Consequently, the ***Court enters Judgement for the Applicants*** herein who are the legal administrators of the estate of ***John Kiondo Kahuhu in terms of prayers no.1, 2, 3 and 4 of the instant Originating Summons***. Further costs of the Originating summons be in the cause.

It is so ordered.

Dated, Signed and Delivered at Thika this 13<sup>th</sup> day of **October 2017**.

**L. GACHERU**

**JUDGE**

In the presence of

No appearance for Applicant

No appearance for Respondent

Timothy - Court clerk.

**Court** – Judgement read in open court in the absence of the parties though served with Judgement Notice.

**L. GACHERU**

**JUDGE**