



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

LAND CASE NO. 1792 OF 1975

NEWTON KABUI MURUHI

JOSEPH NGUGI MURUHI

KINYANJUI MURUHI

GAD GITHINJI MURUHI.....APPLICANTS

=VERSUS=

LEAH WAMBUI KARENGE

MBURU KINYANJUI.....RESPONDENTS

RULING

BACKGROUND

1. The Ruling herein relates to a dispute which was brought to Court over four decades ago. The dispute was filed in Court on 20th August 1975, by **Wanjiku Muruhi** against **Ruge Karenge**. The Plaintiff in the original Plaintiff was the wife of **Muruhi Kinyanjui** who died in 1972. The Plaintiff was later amended and **Wanjiku Muruhi** who had died was replaced by her four sons one of whom is the applicant in this application.

2. The dispute in Court revolved around five properties known as **LR No. Nhecha/ Mbari-ya-igi/25** measuring **2.08 hectares**, **LR No. Limuru/ Ngecha/205**, **LR No. Limuru/ Ngecha/T.206**, **LR No. Limuru/ Ngecha/ T.209** and **LR No. Limuru/Ngecha/T.210** all of which are registered in the name of the defendant **Ruge Karenge**. The plaintiff's contention was that the five properties aforementioned had been jointly purchased by their father and the defendant's grandfather **Ruge Kinyanjui**. At the time of demarcation, the defendant's grandfather and his father **Karenge Ruge** had passed on. The Plaintiff's father was old. It was therefore decided that the five properties be registered in the defendant's name in trust for the two families. Prior to demarcation, the two families were cultivating and utilising the properties jointly. When the defendant started claiming that all the properties were his, a suit against him was filed in which the plaintiff prayed for a declaration that the defendant held 3.25 acres in trust for the plaintiffs and further that he was holding three out of the six town plots in trust for the plaintiff.

3. The dispute between the plaintiffs and the defendant was referred for arbitration under the chairmanship of the District Officer, Limuru. The verdict of the District Officer was brought back to court

where it was adopted as Judgement of the Court on 22nd October 1984 by Justice O'kubasu as he then was. what followed after the adoption of the award was a litany of applications culminating to one in which Justice Mbogholi Msagha ruled that the applicant in this case should not file any more applications without leave of the Court.

APPLICANT'S APPLICATION

4. The applicant has now come to court seeking leave to be allowed to file an application in compliance with the orders with Justice Mbogholi Msagha made on 21st October 2010. In the same application for leave, the applicant has prayed for substantive prayers. In an ideal situation, the applicant should have come for leave first and once granted he should then have filed the application thereafter. It would appear that the applicant assumed that leave was going to be granted and therefore made an omnibus application. I will however deal with the issue of leave and the prayers at the same time.

5. The original defendant passed on and was replaced by the administrators of his estate. In the application , the applicant who has brought this application on behalf of his brothers is seeking that this court do approve issue of a decree as follows:=-

a. **LR No. Mbari ya Igi/Ngecha/25** measuring **2.08 hectares** be shared equally among the two households.

b. The six town plots in Limuru to be shared as follows:-

1st household plot Nos.

i. **Limuru/Ngecha/T.208**

ii. **Limuru/Ngecha/T.209 and**

iii. **Limuru/Ngecha/T.210**

2nd household plot Nos.

i. **Limuru/Ngecha/T.215**

ii. **Limuru/Ngecha/T.206 and**

iii. **Limuru/Ngecha/T.207**

6. The applicant also seeks an order directed at the Land Registrar Kiambu County to remove the cautions registered by **Hannah Wanjiku** on **LR Nos.Limuru/Mbari ya igi/25** and **Limuru/Ngecha/T.210**.

7. The applicant contends that there is no decree herein capable of being executed and that unless one is drawn as prayed for in the application, this case will still be pending. That the respondent's family is illegally occupying two of their plots in Limuru town namely **Limuru/ Ngecha/T.208 and Limuru/ Ngecha/T.210**. That **LR No. Limuru/Mbari ya-igi/25** has never been subdivided equally as per the award. That the award was clear that the subject matter of the suit was to be shared equally.

RESPONDENTS' CONTENTION

8. The respondents have opposed the applicant's application based on replying affidavit sworn on 21st April 2017. The respondents contend that the application by the applicant is an abuse of the process of the court. That the applicant has filed numerous applications all of which have either been dismissed for non-attendance or have been dismissed on merit.

ANALYSIS.

9. I have gone through the applicant's application as well as the opposition thereto by the respondents. I have also gone through the submissions filed by the parties herein. This is perhaps the oldest case in the land court if not one of the oldest. I have tried to dig out the reason why this case has been pending in court for such a long time. The delay in finalizing this matter can be traced to the award by the District Officer, Limuru and partly because of the advocates of the applicant. The award of the District Officer which was finally adopted as Judgement of the court on 22nd October 1984 was not clear as to which plots were to be taken up by each disputing family. In other words there was no decree capable of being extracted which would have been executed.

10. Lack of clarity of the award was noticed and the applicant came back to court where they sought orders that the District Officer do identify the specific plots. The applicant's request was granted on 24th April 2002. The applicants advocates realized that the original defendant had passed on as at the time the orders of 24th April 2002 were given. They came to court through application dated 17th January 2003 seeking to set aside the orders of 24th April 2002. This application was however struck out on grounds that the supporting affidavit had not been sworn.

11. The applicant filed a fresh application dated 28th February 2003 seeking similar orders as the application whose affidavit had been struck out. Four months later a similar application dated 11th June 2003 was filed. This application came up before Justice Ransley on 22nd January 2004 when the same was allowed. The one filed on 28th February 2004 was also withdrawn. The orders of 24th April 2002 having been set aside, the applicant filed a fresh application dated 6th February 2004. This application was dismissed for non-attendance on 24th January 2005. Two other applications seeking to set aside dismissed applications were dismissed for non-attendance. The applicant finally was heard on his application dated 6th March 2008 which sought to set aside dismissal order of application dated 15th October 2007. This application was fully heard and a ruling delivered on 8th October 2008 dismissing the same.

12. The dismissal of the application dated 6th March 2008 meant that there was no order in place directing the District Officer to identify the specific parcels to be taken up by the disputing families. This is because the orders of 24th April 2002 had been set aside on 22nd January 2004. A new firm of Advocates took over and without properly perusing the court file filed an application seeking to review orders of 24th April 2002 which had already been set aside on 22nd January 2004. This is the application dated 29th April 2009 which was dismissed by Justice Mbogholi Msagha who ordered that no further application should be filed without leave of the court.

13. It is clear that this case has been delayed due to mistakes of the applicant's lawyers who were not keen on attending court. Had the issue of the award by the District Officer been clear, this matter would have been settled a long time ago. Having traced the origin of the problem, I have now to decide on whether to allow the applicant's prayers. Firstly I will allow him to bring this application owing to what I have detailed hereinabove which was not a mistake of his own making.

14. It is not in contention that the dispute which was referred to the District Officer revolved around six plots in Limuru town and another plot being **LR No. Ngecha/Mbari ya igi/25**. This plot is about six acres. The applicants are claiming half of it and the District Officer in his award found that the applicant's mother was staying on it. He therefore found that the applicant's mother was entitled to it. On the issue of the six plots, the award is clear that the applicant's mother was entitled to three of the six plots. Already she was occupying one of the three plots that is **Limuru/Ngecha/T.209**. She was to get two additional ones to make it three. The respondents in their submissions do not oppose this. What they seem to oppose is that **LR Ngecha/Mbari ya igi/25** was not specifically mentioned in the award. They seem to imply that since it was not specifically mentioned it should not be the subject of this application. What they do not seem to understand is that this plot was the subject of the claim before court. The applicants are on it and they wanted it subdivided into two equal portions. The District Officer found that

the applicants' mother was entitled to it.

15. All through, the applicants have been trying to get orders to enable them execute the decree. The problem has however been their lawyers who have not done their work as required. The applicants did not prefer any appeal against the order of Justice Osiemo who refused to reinstate their application dated 15th October 2007. In as much as I sympathize with the applicant's I do not think that I can grant the orders prayed for as to do so will amount to amending the District Officer's award or going round the orders of Justice Osiemo who refused to set aside the order of 27th February 2008 dismissing the application dated 15th October 2007.

16. The caution on the two properties that is *Limuru/Mbari ya igi/25* and *Limuru/Ngecha/T.210* was put in place by the applicants' mother. As the administrator of the estate of their late mother, they can simply write a letter asking the Registrar to remove the cautions because that is one mode of removing a caution. Though the court can order removal of a caution, I do not think that it is appropriate to make such an order when the administrators of the estate of the cautioner can move the Registrar to remove the same.

CONCLUSION

17. From the analysis hereinabove, I find that the application by the applicants has no merit. They have been guilty of unreasonable delay and it is high time that this matter came to an end. I therefore dismiss the applicants' application with costs to the Respondents.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of December 2017.

E.O.OBAGA

JUDGE

In the presence of;-

M/s Kamau for M/s Kinuthia for applicants

Court Assistant: Kevin

E.O.OBAGA

JUDGE