



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI, MILIMANI LAW COURTS**

**E.L.C NO. 654 OF 2013**

**TABITHA WAITHIRA MUUGI .....PLAINTIFF**

**=VERSUS=**

**GITHURAI TING'ANG'A CO.LTD (FORMERLY)**

**GITHURAI CO-OPERATIVE SOCIETY LTD ..DEFENDANT**

**RULING**

The Plaintiff herein *Tabitha Waithira Muugi* has filed this suit against the Defendant, *Githurai Ting'ang'a Co Ltd* (formerly *Githurai Ting'ang'a Co. Ltd*) and has sought for the following orders:-

- a. That the Defendant be ordered to issue title deeds and/or share certificates for Plot No.1311 and plot No.1428 to the Plaintiff in her names .*
- b. Costs of this suit*
- c. Any other relief that the Court may deem fit to grant.*

The Plaintiff in her Complaint had alleged that she is the widow of *Edward Mugi Karugu* alias *Edward Mugi* (deceased) who was the owner of plots no *1311* and *1428* respectively which are within the Defendant's Company. That she was issued with Limited Grant of letters of *Administration Ad Litem* on *3<sup>rd</sup> October 2012*. It was her further allegation that on *19<sup>th</sup> March 1978*, the Plaintiff's husband who is now deceased had bought plots *No.1311* for *Kshs.6330* and *Plot No. 1428* for *Kshs.7,200/=* on *30<sup>th</sup> April 1978*, from *Stephen Kimani* alias *Njinu* or *Kimani Njinu*. Therefore at all material times, the deceased was the legal owner of Plots *No.1311* and *no. 1428* until his demise on *6<sup>th</sup> March 2012*. Further that since 1978 when the Plaintiff's late husband purchased the said plots from *Stephen Kimani* alias *Njinu*, or *Kimani Njinu*, the Defendant has never issued the title deeds and or Share Certificates for the said *plot No.1311* and *plot No.1428*. It was her further allegation that she requested the Defendant to issue her with the ownership documents for the said plots *no.1311 & 1428* but the Defendant directors insisted that they had given the Share Certificates to the deceased which allegation is denied by the Plaintiff.

That despite demand and Notice of intention to sue having already been issued upon the defendant, none of the ownership documents have been issued hence rendering necessary the filing of this suit. She urged the Court to allow her claim.

The Defendant did not enter appearance though served with the summons to enter appearance. Interlocutory judgement was entered against the Defendant on **24<sup>th</sup> November 2014**, and matter proceeded for formal proof on **3<sup>rd</sup> May 2016**.

The plaintiff herein **Tabitha Waithira** gave evidence for herself and adopted her witness statement which is dated **22<sup>nd</sup> May 2013**, and filed in Court on **31<sup>st</sup> May 2013**. She also produced exhibits by a sale agreement dated **19<sup>th</sup> March 1978**, between **Kimani Njiru** and **Edward Mugi** for sale of **plot of 50 x 50** for **Kshs.6,330/=**. There was also another sale agreement dated **30<sup>th</sup> April 1978**, for sale of plot **No.1428** for **Kshs.7200/=** and the plot was allegedly at **Githurai Ting'ang'a Co.Ltd**.

I have also seen a receipt dated **19<sup>th</sup> March 1978**, received from **Edward Mugi** for **Githurai Ting'ang'a Co.Ltd** for **Kshs.2,000/=** being transfer of plot **No.1311**. Further there is a demand letter to the Directors of **Githurai Ting'ang'a Co.Ltd** dated **4<sup>th</sup> September 2012**, requesting for Share Certificates or title deeds for plots **no.1311** and **1428** to **Edward Mugi**.

I have also seen the certificate of death for **Edward Mugi Karugu** who died on **6<sup>th</sup> March 2012**, and Limited Grant of letters of Administration of **Edward Mugi Karugu** issued to **Tabitha Waithera Muugi**. There is therefore no doubt that the Plaintiff herein is the administrator of the estate of **Edward Karugu** alias **Edward Mugi** who died on **6<sup>th</sup> March 2012**. The Plaintiff therefore has power as provided by **Section 73 of the Succession Act** to deal with the estate of the deceased.

After the Plaintiff gave evidence in Court and adopted her statement as part of her evidence, she filed written submissions through the Law Firm of **L.M Kinuthia & Associates Advocates** on **3<sup>rd</sup> June 2016**. The plaintiff therein set out issue for determination. Since the Defendant did not file any defence or controverted the Plaintiff's evidence, the court will fully adopt the Plaintiff's issues for determination.

The 1<sup>st</sup> issue is whether the Plaintiff is the widow of the deceased **Edward Mugi Karugu** alias **Edward Mugi**. There's no doubt that as per the limited grant of letters of Administration issued by the Court on **30<sup>th</sup> October 2012**, that the Plaintiff is the widow of **Edward Mugi Karugu**. The deceased died on **6<sup>th</sup> March 2012**, as per the Death Certificate produced in Court. The Plaintiff being the widow and legal representative of the Estate of the deceased, then she has power to file this suit on behalf of the Estate of the deceased.

The second issue is whether the deceased **Edward Mugi Karugu** alias **Edward Mugi** was the owner of **plots No.1311** and **1428** within the Defendant's Company. There is no doubt that on **19<sup>th</sup> March 1978**, and **30<sup>th</sup> April 1978**, the deceased **Edward Mugi Karugu** alias **Edward Mugi** purchased plots **No.1311** for **Kshs.6,330/=** and plot **No.1428** for **Kshs.7,200/=** respectively from one **Stephen Kimani** alias **Kimani Njiru**. The said plots were within **Githurai Ting'ang'a Co.Ltd** formerly **Githurai Co-operative Society Ltd**. The said allegations have not been disputed by the Defendant and the Court do find and hold so.

The 3<sup>rd</sup> issue is whether the deceased was issued with title deeds and/or Share Certificates for the two plots **No.1311** and **1428**. It was alleged that in **1978** when the deceased bought the two plots, the said **Stephen Kimani Njiru** alias **Kimani Njiru** had never been issued with a ownership documents. The said allegation was not been disputed by the Defendant. I have seen a demand letter dated **4<sup>th</sup> September 2012**, in which the Plaintiff had sought for Share Certificates and/or title deeds for the two plots to be issued in the name of the deceased **Edward Mugi Karugu**.

The 4<sup>th</sup> issue is whether the Plaintiff made any effort to get the title deeds and Share Certificates for the two plots from the Defendant's Company.

The plaintiff has alleged in her Complaint that she has severally sought for the ownership documents from the Defendant to no avail. The said allegation has not been disputed and the demand letter dated **4<sup>th</sup>**

**September 2012**, by the plaintiff's advocates to the Directors of the defendant was not responded to or disputed. The Court will hold and find that the Plaintiff has made such effort to obtain the said ownership documents from the Defendant to no avail.

The 5<sup>th</sup> issue is whether the Plaintiff is entitled to the prayers sought. There is evidence that the deceased purchased the two plots in the year **1978** from **Stephen Kimani Njiru** alias **Kimani Njiru**. There is evidence that **Edward Mugi** paid for transfer of the plots to him but no evidence that such transfer was effected. The plaintiff has alleged that she has severally sought for title deeds for two plots to no avail. The Defendant has not offered any explanation or disputed the allegations made by the plaintiff. The Plaintiff is therefore entitled to the prayers sought.

Lastly who should bear costs of the suit?. Ordinarily costs usually follow the event. The Plaintiff has stated that she has sought for the title deed's herein but the Defendant failed to issue them.

The said failure caused the Plaintiff to file this suit. Had the Defendant complied, then this suit would not have seen the light of this day. The Court therefore finds that the Defendant should bear the costs of this suit.

Consequently, the court enters judgment for the plaintiff against the Defendant as prayed in the plaint and directs that;-

***a. That the Defendant do issue share certificates for plots no.1311 and 1428 to the Plaintiff who is the administrator of the Estate of the late Edward Mugi Karugu alias Edward Mugi and thereafter facilitate the issuance of the title deeds for the two plots in her name.***

***b. The Defendant to bear the costs of this suit.***

It is so ordered.

**Dated, Signed, and Delivered this 26<sup>th</sup> of September,2016.**

**28 days Right of Appeal.**

**L.GACHERU**

**JUDGE**

In the presence of

Mr Wawire holding brief R. M Kinuthia for the Plaintiff

None attendance for the Defendant

Court Clerk : Hilda

**L.GACHERU**

**JUDGE**

**Court:**

Judgement read in open court in the presence of the above stated advocates.

**L.GACHERU**

**JUDGE**