



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
ENVIRONMENT AND LAND COURT
CIVIL CASE NO.198 OF 2012

SAMUEL DAVIS KIRUNDI MURAYA & 14 OTHERS.....PLAINTIFFS

VERSUS

PETER KIGO & 4 OTHERS.....DEFENDANTS

RULING

The plaintiffs pray for an order that judgment be entered on admission against the defendant as prayed in the plaint and a declaration be issued that the defendants jointly and severally hold plot No.LOC.14/KAIRO/975/13 in trust for the plaintiffs and themselves in the following shares.

NAME OF BENEFICIARY NO. OF SHARES

1. Martha Wangui Njuguna	-21
2. Samuel Davis Kirundi Muraya	-12
3. Isaac Riithi Runo	-12
4. Joseph Muthee	-12
5. Isaac Njange Kairu	-12
6. Nahashon Maingi Kahara	-11
7. Isaac Wangethi Kimani	-11
8. Hanniel Gachuki Maina	-8
9. Martha Wangeci Gikonyo	-8
10. Martin Mutungu Macharia	-6
11. Bernard Mucheru Macharia	-6
12. Kariuki Mwaniki	-6
13. Julius Peter Muraya	-6
14. Florence Wambui Macharia	-5
15. Laban Karwe Mwangi	-3
16. Mary Wanjugu Waiharo	-3
17. Julius Waiganjo Rungo	-12

The application is **grounded** on the facts that the defendants have all admitted the plaintiffs' claim in Notices of Admission dated 26/10/2012 and have stated that they do not intend to defend the suit and therefore the plaintiffs are entitled to judgment on the defendants' admissions. It is supported by the affidavit of Samuel Davis Kirundi Muraya who deposes their advocates have shown him copies of the Notices of Admission dated 26/10/2012 and filed in court on 29/10/2012 signed by Peter Geoffrey Njuguna Wangethi, Njeri Kibuthu, Martha Wangui, Njuguna Peter Kigo and Waiganjo Runo who are defendants herein and the deponent has read and understood them to mean that the defendants have

admitted the plaintiffs' claim wholly without reservations except on the issue of costs. He believes that based on those documents his co-plaintiffs and himself are entitled to all the prayers in the plaint save for the issue of costs which they are willing to forego in the interests of good relations with the defendants.

When the matter came up for submissions, Mr. Gichuki briefly stated that the defendant had admitted the claims. The application was not opposed.

Order 13 rules 1 & 2 of the Civil Procedure rules 2010 provides that any party to a suit may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or part of the case of any other party.

The jurisprudence relating to applications made for judgment on admission is set out in the following cases CHOITRAM -V- NAZARI (1984)KLR 327-

“For the purpose of Order XII Rule 6, admission can be expressed or implied either on the pleadings or otherwise, e.g. in correspondence. Admissions have to be plain and obvious, as plain as a pikestaff and clearly readable because they may result in judgment being entered. They must be obvious on the face of them without requiring a magnifying glass to ascertain their meaning.”

CASSAM -V- SACHANIA [1982] KLR 191-

“The judge’s discretion to grant judgment on admission of fact under the order is to be exercised only in plain cases where the admissions of fact are so clear and unequivocal that they amount to an admission of liability entitling the Plaintiff to judgment.”

I do find the application merited as this is a plain case of admission and do grant prayers 1 and 2 of the Notice of Motion dated 13/3/2013.

Dated, signed and delivered at Nyeri this 4th day of July 2014.

A. OMBWAYO

JUDGE