



REPUBLIC OF KENYA



**Kariithi v Muita & another (Environment & Land Case 30 of 2019)
[2023] KEELC 16409 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16409 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 30 OF 2019**

**A OMBWAYO, J
MARCH 23, 2023**

BETWEEN

JANE WANJIKU KARIITHI PLAINTIFF

AND

DAVID MICHEMI MUITA 1ST DEFENDANT

JOYCE THANJI MUITA 2ND DEFENDANT

JUDGMENT

1. Jane Wanjiku Karithi (hereinafter referred to as the plaintiff) has come to the court against David Muchemi Muita and Joyce Thanji Muita hereinafter referred to as defendants praying that the plaintiff and 2nd defendants do exhume the remains of the late Andrew Muita Kienja. That there be a perpetual injunction restraining the 1st and 2nd defendants their agents and servants from entering, interfering or in any way dealing with LR Elburgon/Elburgon Block 7/1 (Gatura)
2. Moreover, she prays for a declaration that the plaintiff is the absolute owner of LR Elburgon/Elburgon Block 7/1 (Gatura) to the exclusion of all others. Last but not least, she prays for costs of suit and interest.
3. The plaintiff avers that she is the registered owner of LR Elburgon/Elburgon Block 7/1 (Gatura) which she inherited from her late husband the late Chege Muita.
4. On or about April 10, 2005, Andrew Muita Kienja the 1st defendants father and the 2nd defendants husband died on the defendant's herein buried him on April 15, 2005 on LR Elburgon/Elburgon Block7/1 (Gatura)
5. The plaintiff avers that in total disregard of the pending civil suit, the defendants clandestinely buried Andrew Muita Kinja on LR Number Elburgon/Elburgon block 7/1 (Gatura) which is registered in the plaintiff name.



6. The plaintiff avers that despite announcements made by the defendants that the deceased Andrew Muita Kienja would be buried at his farm in Gatura, the defendants and other family members interred the deceased remains in the plaintiff's land LR Elbugon/Elbugon block 7/1 (Gatura).
7. The plaintiff avers that the 2nd defendant own 27 acres of land where she lives and where the deceased who was her husband ought to have been buried.
8. The plaintiff avers that the defendant's act of burying the deceased on her land is meant to disinherit her land acquired by her late husband
9. The plaintiff avers that there exists in court civil suit number 256 of 2000 pending hearing and determination over LR Elbugon/Elbugon Block 7/1(Gatura).
10. The plaintiff further avers that despite the pendency of Nakuru HCC number 256 of 2000 the deceased instituted Elbugon Land Dispute Number 8 of 2005 over the suit premises.
11. The defendant filed a statement of defence and counterclaim denying the allegations in the plaint and averred that the defendant's father now the plaintiff in the counter-claim was a registered shareholder of Gutura Farm Company Ltd holding 250 shares of Ksh.20/= each equivalent to 4.0 hectares of land reference Number 9067/1 issued vide share certificate number 6 dated, 2nd December 1967.
12. At the material time relevant to this suit the defendants' father (now the plaintiff) was the registered and/or legal owner of 4.9 Hectares being part of Land Reference Number 9067/1 originally owned by Gutura Farm Company Ltd and the defendant's father (now the plaintiff) was entitled to possession of the said land.
13. At a time unknown to the defendant' father Gutura Farm Co. Ltd transferred the defendants' father's 250 shares equivalent to 4.9 Hectares of land known as Elbugon/Elbugon Block 7/1 (Gatura) to one John Chege Muita (deceased) without the Defendants' father's knowledge and/or consent.
14. That the plaintiff (now the defendant) and Gutura Farm Co. Ltd jointly with the deceased (Chege) dishonestly and fraudulently transferred the defendants father's said shares/land to John Chege Muita (deceased) without the defendants fathers' consent and knowing very well that the same lawfully belonged to the defendants' father.
15. Before the defendants' father's deceased son Chege died in August 1997, the Defendants' father requested the said son to deliver and transfer back the land to the defendants' father forthwith.
16. The said request became family issue and the deceased (Chege) agreed to transfer back the said land to the defendants' father. The said deceased son of the defendants' father died before he could transfer the said land back to the defendant's father.
17. Following the death of the said Chege, the plaintiff (now the defendant) herein unlawfully and fraudulently had the said land transferred and registered in her maiden name Jane Wanjiku Kariithi.
18. When the matter came up for hearing the plaintiff testified under oath but the defendant did not attend court despite being served by the plaintiff. The plaintiff's evidence was therefore not controverted. This court find that the plaintiff has proved her case on a balance of probabilities that she is the wife of the late John Chege Muita who passed away on the August 10, 1997. He was buried in their farm in Elbugon. He had a title deed for the same land which title deed was issued on the December 22, 1993. After her husband's death she filed Nakuru succession cause No. 527 of 1998 and was granted letters of administration after the cause was gazetted in the Kenya Gazette Notice No.2556 in the issue of May 14, 1999. There was no objection to the making of grant and the grant issued on 23rd June 1999



was duly confirmed on February 2, 2000. Among the parcels of land, she inherited from her deceased husband was LR Elbugon/Elbugon Block 7/1 (Gatura and she was consequently registered as the owner of parcel LR Elbugon/Elbugon Block7/1 (Gatura). That after her husband died in 1997, her father in law and his children started attacking her and wanted to take away all her inheritance from her husband. They took her cows, sheep and finally they took away her posho mill which posho mill was in premises owned by her brother in law David Muchemi Muhia. From then the whole family engaged in persecution and she was always threatened by the family to move out of the land. Her father in law later died sometimes in April 2005 and was to be buried on April 16, 2005 at Gatura where she used to live. She came to court and filed Nakuru Civil Suit No.636 of 2005 where she sought an injunction preventing the burial in her land. The court granted an injunction on April 15, 2005. The same was served to the OCS Elbugon Police Station the same day who was to enforce the court order. However, the OCS indicated the deceased had been buried the same day at 2.00 p.m. the funeral announcement read that the deceased Adrew Muita was to be buried on April 16, 2005 and that his body would be removed from Nakuru Municipal Council. She could do nothing as he was buried in her land. Due to the respect for the dead I did not pursue the matter for exhumation. However, the family keeps on terrorizing the people she rents out the land to. She planted avocados in 2016 and they have uprooted and grazed the cows on her land. She has not known peace from when her husband died. She prays that the court protects her and order the defendants to keep away from her land. She prays for injunction restraining the defendants from interfering with her quiet possession of the land.

19. Section 24 of the *Land Registration Act* provides: -

24. Subject to this Act—

Interest

conferred by registration. (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and

(b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

20 Section 25 of the *Land Registration Act* provides:-

25.

Rights

of

a

proprietor.

(1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free



from all other interests and claims whatsoever, but subject—

- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

(2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

21. Section 26 of the *Land Registration Act* provides

26.

Certificate of title to be held as conclusive evidence of proprietorship.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.

22. It is evident that the plaintiff is the registered owner of the suit land and therefore is entitled to the orders sought. The plaintiff has abandoned the prayer for the exhumation of the body of the late



Andrew Muita Kienja. I do grant judgment in the terms that there be, and is hereby issued, a perpetual injunction restraining the 1st and 2nd defendants their agents and servants from entering, interfering or in any way dealing with LR Elburgon/Elburgon Block 7/1 (Gatura)

23. Moreover, I do grant a declaration that the plaintiff is the absolute owner of LR Elburgon/Elburgon Block 7/1 (Gatura) to the exclusion of all others. Last but not least, I do grant costs of suit and interest to the plaintiff. Orders accordingly.

JUDGEMENT DATED, SIGNED AND DELIVERED AT NAKURU VIA EMAIL THIS 23RD DAY OF MARCH 2023.

A O OMBWAYO

JUDGE

