



REPUBLIC OF KENYA



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**Muiva & another v Limurinke & another (Environment & Land Case
720 of 2017) [2023] KEELC 16590 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16590 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 720 OF 2017
MN GICHERU, J
MARCH 22, 2023**

BETWEEN

CECILIA MUNYIVA MUIVA 1ST PLAINTIFF

NDINDA KUSU 2ND PLAINTIFF

AND

SALAU OLE SOKON LIMURINKE 1ST DEFENDANT

MIDARI PROPERTIES AGENCIES LIMITED 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs seek the following reliefs against the Defendants.
 - a. A declaration that the Plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of all those land parcels known as Kajiado/Kitengela/ 21074, 29622 and 29623, suit land.
 - b. An order of permanent injunction restraining the Defendants either by themselves, agents, servants or otherwise howsoever from remaining on or continuing in occupation of the suit land, trespassing on, or in any way interfering with the Plaintiffs' quiet possession thereof.
 - c. General damages for trespass.
 - d. Costs of the suit and interest thereon.
 - e. Any other or further relief that the court may deem fit and just to grant.
2. The Plaintiffs' case is as follows. On July 5, 2004, the first Plaintiff purchased LR Kajiado/Kitengela/21074 which measures 10 acres from the first Defendant. She paid Kshs 1, 040,000/- for the land. In the transaction, the second Defendant was the agent for the first Defendant. All the procedural requirements in land purchase were complied with. They include reducing the agreement for sale into



- writing, paying the purchase price, obtaining the consent of the Land Control Board and execution of the necessary transfer instruments.
3. The second Defendant bought LR No 29622 on November 22, 2006. The purchase price was Kshs 1,000,000/-. She too complied with all the procedural and legal requirements before she was registered as the owner of the land measuring 10 acres.
 4. On January 19, 2007 the two Plaintiffs bought LR 29623 jointly. The land which also measures 10 acres was sold at Kshs 1 million. All the three parcels that the Plaintiffs bought were excised from LR Kajiado/Kitengela/21077. In total, they measured 30 acres. The two Plaintiffs dug a dam at the center of the land. Before filing this suit, the Plaintiffs wished to subdivide their land but when they went to the ground, they were denied access by the first Defendant. That is why they filed this suit.
 5. In support of their case, the Plaintiffs filed the following evidence.
 - i. Witness statements by the Plaintiffs.
 - ii. 3 copies of sale agreement dated July 5, 2004, November 22, 2006 and January 19, 2007
 - iii. Copies of title deed for LR 21074, 29622 and 29623.
 - iv. Applications for consent and consents for transfer of LR 29622 and 29623.
 - v. Copies of register for LR No 29622 and 29623.
 - vi. Copies of transfer forms for LR 29622 and 29623.
 - vii. Copy of certificate of official search for LR 29622,
 - viii. A very blurred and unclear black and white photograph.
 - ix. Copies of certificates of official search for LR 21074 and 29623 both dated January 18, 2011.
 - x. Copy of sale agreement dated September 1, 2001.
 - xi. Copies of mutation forms for LR Kajiado/Kitengela/21074 dated 20/05/2009 and LR 13907 dated December 29, 2004.
 - xii. Copies of various cash vouchers between the two Defendants.
 6. The first Defendant through his counsel on record filed a defence and an amended counterclaim dated July 8, 2014. In the defence, he denies having entered into any sale agreement with the Plaintiffs, receiving any payment from the Plaintiffs, signing any transfer form and having anything to do with the Plaintiffs.
 7. In the counterclaim, the first Defendant prays for the following orders against the Plaintiffs, his co-Defendant Midari Properties Agencies Limited and the Honorable the Attorney General.
 - i. An order nullifying all dealings and subdivisions relating to Kajiado/Kitengela/21074, 29622 and 29623.
 - ii. An order directing the Land Registrar to delete, exclude and effect correction of the untrue and misleading information as to the ownership of LR Nos 21074, 29622 and 29623.
 - iii. An order reinstating the first Defendant's title as the true, legal and lawful title of all that property know as LR 21074, 29622 and 29623 as subdivided from LR 64540.
 - iv. An order for compensation for unlawful trespass.



- v. Costs of the proceedings.
 - vi. Interest on prayers 4 and 5 above at court's rates until payment in full.
 - vii. Such other orders or reliefs as the suit shall deem just.
8. The first Defendant's case is as follows. He intended to sell 40 acres of his land Kajiado/Kintengeal/21077 to the second Defendant through its representative one Michael Ngila who posed as a surveyor. The only thing that he owes the said surveyor is Kshs 50,000/- which is the costs of the subdivision. The said Ngila made the first Defendant execute some documents which he thought were for the subdivisions. He must have colluded with the Plaintiffs to illegally and fraudulently transfer the suit parcels.
 9. A look at the transfer forms shows that they were executed by an advocate based at Machakos where he has never been as he is an old man residing at Kitengela in the periphery. Again the postal address used in the documents is unknown to him. He filed Tribunal Case No TC/269/03/011 at the Land Disputes Tribunal Kajiado North at Ngong. The tribunal held that out of the 40 acres fraudulently registered in the name of the objector Michael Ngila, only 20 acres should be returned to him. He was not happy with this decision of the tribunal. According to the first Defendant the Plaintiffs' claim is not lawful as it is tainted with fraud.
 10. In support of his defense, the first Defendant filed the following orders.
 - i. An affidavit dated March 21, 2014.
 - ii. A copy of a letter dated March 9, 2011 written by the first Defendant to the chairman of the Land Disputes Tribunal at Ngong.
 - iii. Copy of verdict by the tribunal dated July 26, 2011.
 11. The second Defendant did not file any appearance or file a defence.
 12. The fourth Defendant in the counterclaim filed a written statement of defence dated July 20, 2015 denying the averments in the counterclaim. No witness statement or document was filed by the Honourable the Attorney General.
 13. At the trial only the Plaintiffs testified. They adopted their witness statements and documents as their evidence. The Defendants and their counsel did not turn up even though they had been duly served with a hearing notice for November 18, 2021.
 14. The Plaintiffs' counsel filed written submissions on February 25, 2022 in which four issues for determination were identified as follows.
 - i. Whether the Plaintiffs are the registered and legal owners of the suit parcels?
 - ii. Whether a permanent injunction should issue against the Defendants?
 - iii. Whether the Plaintiffs are entitled to the reliefs sought in the plaint?
 - iv. Who should bear the costs?
 15. I have carefully considered the evidence adduced by the Plaintiffs in their statements and documents. I have also considered the issues raised by the Defendants in the pleadings. I have also considered the submissions by the Plaintiffs' counsel and the law cited therein. I agree with the Plaintiffs' counsel that the four issues he has identified will resolve the dispute herein.



I make the following findings on the four issues.

16. On the first issue, I find that the Plaintiffs are the lawfully registered owners of the three parcels in dispute. The Plaintiffs have adduced sufficient evidence to prove that they bought the land from the two Defendants and that all the procedural requirements were complied with. They have evidence of agreements for sale of land, consent of the Land Control Board and Transfer forms.

I am satisfied that the Plaintiffs paid the agreed consideration and there is ample evidence of the first Defendant receiving money from the second Defendant on many occasions. It is therefore incredible for the first Defendant for the first Defendant to say that he never sold the suit parcels when he applied for the consent of Land Control Board and voluntarily transferred the suit parcels to the Plaintiffs. The first Defendant has not proved even a single of fraud incident on the part of the Plaintiffs. The tribunal case that he referred to did not concern the Plaintiffs because they were not parties. Finally, the tribunal did not have jurisdiction to cancel title deeds. Under Section 3(1) of the Land Disputes Tribunal Act, the narrow jurisdiction of the tribunal was restricted to the following, '(a) the division of, or the determination of boundaries to land, including land held in common (b) a claim to work or occupy land or (c) trespass to land'. This narrow jurisdiction did not include cancellation of title to land.

17. On the second issue, I find that an injunction should issue because the Plaintiffs are entitled to all the rights of a proprietor as envisaged under Section 25 of the Land Registration Act (Act No 3 of 2012).

18. On the third issue, I find that the Plaintiffs are entitled to reliefs sought in the plaint. However, when it comes to the general damages for trespass, not much evidence was adduced in this regard. It is on record that the Plaintiffs built a dam on the land. I do not know when the resistance to their occupation started and when it ended. No evidence is available in this regard.

As registered owners of the land, the Plaintiffs cannot be impeded in the enjoyment of the rights of the owners. I find that the Plaintiffs are entitled to all the reliefs in the plaint except the one for damages for trespass.

19. On costs, I find that the Plaintiffs are entitled to them as costs follow the event.

For the above stated reasons, I enter judgment against the Defendants jointly and severally in terms of prayers (a), (b) and (d) of paragraph 19 of the plaint dated October 14, 2013.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 22ND DAY OF MARCH, 2023.

M.N. GICHERU

JUDGE

HON. JUSTICE M.N. GICHERU JUDGMENT ELC NO. 720/2017 3

