



**Mugo & 2 others v Muriuki & 2 others (Environment & Land Case  
1369 of 2014) [2023] KEELC 18468 (KLR) (16 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 18468 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 1369 OF 2014  
LC KOMINGOI, J  
MARCH 16, 2023**

**BETWEEN**

**CLIVE THUMBI MUGO ..... 1<sup>ST</sup> PLAINTIFF  
SAMUEL GITHAIGA MUGO ..... 2<sup>ND</sup> PLAINTIFF  
LEAH WANGUI MUGO ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**RICHARD MBURU MURIUKI ..... 1<sup>ST</sup> DEFENDANT  
NAIROBI CITY COUNTY ..... 2<sup>ND</sup> DEFENDANT  
PERMINAS N KIARIE ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated October 24, 2014, the Plaintiffs pray for judgement against the Defendant for:-
  - a. A declaration that the Plaintiffs are the lawful and bonafide proprietors of the suit properties plot No.442 and 444 situated at Kariobangi Light Industries having validly purchased the same and an order to the 2<sup>nd</sup> Defendant to re-transfer plot No.442 to the Plaintiffs.
  - b. An order of permanent injunction restraining the Defendants either by themselves, their servants and or agents from interfering with the Plaintiffs' ownership and possession of the suit properties plot No.442 and 444 Kariobangi Industries.
  - c. Costs of this suit.



2. It is the Plaintiffs' case that they are the beneficiaries of the estate of David Mugo Thumbi (deceased). They averred that their late father entered into a sale agreement with the 1<sup>st</sup> Defendant in 1982 whereby the deceased purchased two plots being Plot No.442 and 444 situated at Kariobangi Light Industries and took possession but he passed away on January 25, 1996 before transfer and registration of the two plots could be effected in his favour.
3. They averred that on December 31, 2010, they entered into a sale agreement with the 1<sup>st</sup> Defendant whereby he agreed to transfer the two plots to them and the transfer was effected by the 2<sup>nd</sup> Defendant on 1 October 6, 2012.
4. It is their case that around July 2014, they received a letter from the Chief valuer Nairobi City County dated 1<sup>st</sup> July 2014, which alleged that their ownership to the suit land had been annulled and the same registered in the 3<sup>rd</sup> Defendant's name.
5. In response, the 2<sup>nd</sup> Defendant filed the statement of defence dated 8<sup>th</sup> March 2017. It contended that it has never transferred the suit land to any party and has never approved any plans for construction hence any construction on the suit land is illegal and unlawfull. It also contended that it has no record of payment of land rent and rates by the Plaintiffs or their alleged deceased father.
6. The 3<sup>rd</sup> Defendant filed a defence and counterclaim dated 11<sup>th</sup> February 2015. He averred that he is the lawful owner of plot No.442 within Kariobangi Light Industries. He contended that he purchased the property from Eliud Manyeki in 1991 and that the said Eliud was allocated the suit land by the 2<sup>nd</sup> Defendant in 1982. He averred that he has been in possession until 2013 when on a routine check of the property, he discovered that the Plaintiffs had trespassed and put up a temporary structure. He sought a declaration that he is the lawful owner.

### **Evidence of the Plaintiff**

7. PW1, Samuel Githaiga Mugo, the 2<sup>nd</sup> Plaintiff testified on 20<sup>th</sup> January 2020. He produced documents in the Plaintiff's bundle of documents dated 26<sup>th</sup> April 2019 as exhibits in this case. He told the court that plot No.442 situated at Kariobangi Light Industries belonged to his father David Mugo Thumbi who purchased it together with Plot No.444 from the 1<sup>st</sup> Defendant. He stated that his father passed on in 1996 before a transfer could be effected.
8. It was his testimony that the 1<sup>st</sup> Defendant executed a Power of Attorney in their favour and that thereafter their mother Murugi Mugo and Clive Thumbi were granted letters of administration of the estate of his late father. They presented documents relating to the suit land to city hall and after paying the stand premium and ground rent of ksh.300,000/= , Plot No.442 and 444 were transferred to them and they have been paying rates since then.
9. He further stated that they have occupied the suit plots since 1994 and that he was raised there having been born in 1986 and that there is a bakery and workshop on the plot. They reside behind the bakery. He also stated that they did not get a letter from City Hall notifying them that their ownership to the suit plots had been cancelled. He testified that in the year 2014, the 3<sup>rd</sup> Defendant claimed ownership of plot No.442 relying on a letter dated 1<sup>st</sup> July 2014 from Nairobi City County claiming that plot No.442 belongs to him. He claimed to have purchased it from Eliud Manyeki, the original allottee.
10. When he was cross-examined, he stated that there is a copy of the letters of offer for plot No.442 and 444 dated 12<sup>th</sup> September 1979 addressed to the 1<sup>st</sup> Defendant who was the original allottee but he cannot confirm that they have any alterations. When he was referred to the agreement dated 1<sup>st</sup> December 2010 between the Plaintiffs and the 3<sup>rd</sup> Defendant, he stated that it was in reference to plot No.444 which



was formalized to present to City Council while the agreement for plot No.442 between his late father David Mugo Thumbi and the 1<sup>st</sup> Defendant is dated 23<sup>rd</sup> April 1982. He further stated that he does not know where the 1<sup>st</sup> Defendant is at the moment and that they sued him since he sold the suit property to their father. He added that the plots are adjacent to each other and they are surrounded by one wall while Plot No.442 has a small bakery and a small house where they reside.

11. He stated that when they went to the 2<sup>nd</sup> Defendant, it did not give an explanation why they wanted to cancel the transfer of plot No.442 prompting them to lodge a complaint through their Advocates, Peter Gachuhi & Company Advocates who wrote the letter dated 3<sup>rd</sup> September 2014 to the 2<sup>nd</sup> Defendant protesting the invasion by the 3<sup>rd</sup> Defendant.
12. When he was re-examined, he stated that they used the Power of Attorney donated by the 1<sup>st</sup> Defendant to effect transfer the plot to themselves. He further stated that their parents passed on in 1996 and 1998 respectively thus there was accumulation of rates. He added that the 2<sup>nd</sup> Defendant transferred the suit plots to them without any objection and that it did not object to them paying rates. He produced the receipts for payment of rates.
13. When he was referred to the letter dated 16<sup>th</sup> October 2012 addressed “to whom it may concern”, he stated that the letter states who the owners of the suit plots are and it was to stop any intruders from dispossessing them of the plots.
14. PW2, Leah Wangui Mugo, the 3<sup>rd</sup> Plaintiff testified on 30<sup>th</sup> November 2021. Her witness statement dated 24<sup>th</sup> October 2014 was adopted as part of her evidence in chief. She produced documents in the Plaintiff’s supplementary bundle of documents dated 28<sup>th</sup> September 2021 as exhibit D2. She told the court that they have resided on plot 442 as a family in Kariobangi since 1980’s.
15. It was her testimony that the plot belonged to her father David Mugo Thumbi (deceased) who bought from the 1<sup>st</sup> Defendant.
16. She stated that when her father died in 1996, the suit was transferred to her and her siblings. She stated that they pay rates. They were served with a copy of the letter dated 1<sup>st</sup> July 2014 addressed to the 3<sup>rd</sup> Defendant from the Nairobi City County.
17. When she was cross-examined, she stated that she was raised on plot No.442 and that their father bought it from the 1<sup>st</sup> Defendant. She further stated that they pay rates of between Ksh.3000-5000 per month and have so far paid over Ksh.300,000/=. She also stated that she does not know that when one does not pay rates their plot is sold to someone else.
18. She further stated that she knows the 1<sup>st</sup> Defendant as he transferred the plot to them and they sued him because he is the one who sold it to their father. She added that she saw the original letter of allotment for plot No.442 to the 1<sup>st</sup> Defendant and that it is not altered. She also stated that they got the letter dated 1st July 2014 from the Chief Valuer of the County Government of Nairobi, addressed to the 3<sup>rd</sup> Defendant. She maintained that they pay rates. She added that they inquired from the 2<sup>nd</sup> Defendant and they were told that the plot is theirs.
19. DW1, Perminas Ngugi Kiarie, the 3<sup>rd</sup> Defendant testified on 30<sup>th</sup> November 2021. His witness statement dated 11<sup>th</sup> February 2015 was adopted as part of his evidence. He told the court that Plot No.442 is his plot which he bought from Eliud Manyeki Muchoki in 1991 but he did not occupy it immediately. It was his testimony that in 2013, he went to the plot and found some people had put up timber sheds and so he went to the 2<sup>nd</sup> Defendant to confirm ownership.



20. He further stated that he got a letter dated 1<sup>st</sup> July 2014 which states that Eliud Mnyeki was allocated the suit plot .He produced an allotment letter dated 17<sup>th</sup> April 1985, a sale agreement between him and Eliud Manyeki dated 29<sup>th</sup> November 1991 and a letter dated 10<sup>th</sup> December 1991 to G.G Wanjie & Company Advocates confirming transfer from Eliud Manyeki to himself.
21. When he was cross-examined, he stated that he bought the plot in 1991 from Eliud Manyeki Muchoki but does not recall what documents he (Eliud) had to prove ownership but he checked with the 2<sup>nd</sup> Defendant and saw that the said Eliud Manyeki was the registered owner.
22. When he was referred to the Gazette Notice of Number 1042 of August 1982, he stated that it shows owners of plots but he was not familiar with the process of allocation of plots by the 2<sup>nd</sup> Defendant. He further stated that he relied on his lawyers to confirm the letter of allocation from Eliud Manyeki was legal and that he bought the plot from him (Manyeki) in 1991.
23. When he was referred to the letter of allotment dated 5<sup>th</sup> May 2009 addressed to him by City Council of Nairobi allocating him plot No.442, and directing him to pay ground rent and premium, and the letter dated 17<sup>th</sup> April 1985 addressed to Eliud Manyeki, he stated that he does not have the letter of allotment addressed to Eliud Manyeki ,that he does not know if stand premium was paid and that he has never occupied the suit plot. He stated that he paid rates in 1991 but he was not able to obtain a title for the plot and relies on the Kenya Gazette Notice.
24. When he was cross-examined, he stated that Mr. Manyeki showed him the letter dated 17<sup>th</sup> April 1985 and the Kenya Gazette of 1982 which shows plot No.442 is owned by Eliud Manyeki and that they are the documents he relied on. He also stated that he paid stand premium and ground rent in 2009 and the records are in his name.
25. DW2, Isaac Njuguna Nyoike, a chief valuer with the 2<sup>nd</sup> Defendant testified on 15<sup>th</sup> March 2022. His witness statement dated 27<sup>th</sup> January 2022 was adopted as part of his evidence while a list of documents of the same date was marked as exhibits.
26. He told the court that plot No.442 was originally allotted to Eliud Manyeki in 1985. He testified that in 2012, documents were received from Kiagayu & Co. Advocates who were acting for David Mugo (deceased)stating that plot No. 444 and 442 be transferred to his heirs. A transfer to the Plaintiffs was then effected on the belief that documents presented for transfer were genuine and that the transfer was acknowledged vide county's letter dated 16<sup>th</sup> October 2012.He further stated that the 2<sup>nd</sup> Defendant's directorate of investigation carried out investigations and prepared a report on 25<sup>th</sup> November 2012 recommending that the transfer of plot No.442 and 444 be cancelled and the plots be reverted back to the previous owners.
27. He also stated that it was noted during investigations that plot No.442 was allocated to Eliud Manyeki in 1985 and transferred to the 3<sup>rd</sup> Defendant in 1991 and that the 1<sup>st</sup> Defendant had never owned the plot. He testified that in a letter dated 1<sup>st</sup> July 2014 addressed to the 3<sup>rd</sup> Defendant and copied to the 1<sup>st</sup> Plaintiff and the 2<sup>nd</sup> Defendant it was acknowledged that plot 442 belongs to the 3<sup>rd</sup> Defendant and that the transfer to the beneficiaries of David Mugo's estate had been cancelled.
28. When he was cross-examined, he stated that he wrote a letter to the 3<sup>rd</sup> Defendant informing him that he is the owner of plot No.442. When he was referred to the letter dated 16<sup>th</sup> October 2012 stating that the Plaintiffs herein are the owners of the suit land, he stated that it was overtaken by the letter dated 1<sup>st</sup> July 2014 as the bona fide owner for the plot is the 3<sup>rd</sup> Defendant.



29. He also stated that allocation had to be approved by council minister then allottees would be gazetted then actual survey would be done before titles would be issued and that one has to comply with the conditions of allotment regarding payments.
30. He stated that the has a copy of the gazette allocating the plot to Eliud Manyeki.He also stated that he had a copy of allotment to Eliud Manyeki but he did not have it and the receipt confirming payment and the acceptance letters from Eliud Manyeki in court.
31. He stated that he is not aware if the family of the Plaintiffs paid stand premium but they have a receipt and as per his letter dated 16<sup>th</sup> October 2012,the plot belongs to the Plaintiffs. He added that he cannot confirm that Eliud Munyeki paid any stand premium.
32. He stated that the transfer to the Plaintiffs was cancelled vide the letter dated 1<sup>st</sup> July 2014 but he did not summon n the Plaintiffs before issuing the letter but it was copied to them. He stated that he does not know who the person in possession of the plot but the owner is the 3<sup>rd</sup> Defendant.
33. When he was re-examined, he stated that the letter dated 1<sup>st</sup> July 2014 was based on the investigation that was carried out and that collection of revenue was done by the chief revenue officer.
34. At the close of the oral testimonies parties tendered final written submissions.

### **The Plaintiffs' Submissions**

35. They are dated 20th May 2022.The Plaintiffs submitted on the following issues;
  - a. Between the Plaintiff and the 3<sup>rd</sup> Defendant, who is the lawful allottee of plot No.442 Kariobangi Light Industries?
  - b. Between the Plaintiffs and the 3<sup>rd</sup> Defendant, who is legally entitled to the ownership of plot No. 442 Kariobangi light industries?
36. It was the Plaintiffs' submission that DW2 testified that the procedure for allocation of plot by the country government starts with issuance of an allotment letter and the allottee is expected to accept the allocation in writing and later pay the stand premium. They pointed out that their late father purchased plot No.442 from the 1<sup>st</sup> Defendant who had a letter of allotment but since he passed on before transfer was effected, they entered into another sale agreement with the 1<sup>st</sup> Defendant and had the transfer effected in their favour by the 2<sup>nd</sup> Defendant. They added that vide a letter dated 16<sup>th</sup> October 2012 and issued by the 2<sup>nd</sup> Defendant himself, it was confirmed that the suit plot originally belonged to the 1<sup>st</sup> Defendant had been transferred to the Plaintiffs.
37. It was also submitted that the 3<sup>rd</sup> Defendant had alleged to have bought the suit plot from one Eliud Manyeki Muchoki yet he did not have an allotment letter issued to the said Eliud Manyeki and only sought to rely on a Kenya Gazette Notice which related to payment for a road construction. They further submitted that he failed to explain why he did not affect transfer in 1991 immediately after buying the plot.
38. They also submitted that if it be assumed that it was a case of double allocation, then the 1<sup>st</sup> priority rule should be in the Plaintiffs favour since their registration was confirmed by the 2<sup>nd</sup> Defendant's letter dated 16<sup>th</sup> October 2012 but the 3<sup>rd</sup> Defendant was not registered . They relied on the case of *James P.Maina Muriuki v Moses Maina Ngugi and another* [2012]e KLR.



### The 2<sup>nd</sup> Defendant's Submissions

39. They are dated 27<sup>th</sup> July 2021. The 2<sup>nd</sup> Defendant submitted that DW1 confirmed that the 2<sup>nd</sup> Defendant's records indicate the subject plot belongs to the 3<sup>rd</sup> Defendant not the Plaintiffs. It was also his submission that the Plaintiffs could not produce original allotment letter and that the photocopy they relied on was not clear and looked disjointed. He pointed out that the gazette notice produced by the 3<sup>rd</sup> Defendant clearly confirms the original allottee of the suit land was Eliud Manyeki Muchoki.
40. It was also submitted that since the Plaintiffs did not call the 1<sup>st</sup> Defendant to prove their claim, it cements the assertion by the 2<sup>nd</sup> Defendant that plaintiffs were relying on forged documents.

### The 3<sup>rd</sup> Defendant's Submissions

41. The 3<sup>rd</sup> Defendant's submissions are dated 8<sup>th</sup> June 2022. It was the 3<sup>rd</sup> Defendant's submission that he lawfully purchased the subject plot vide the agreement dated 29<sup>th</sup> September 1991 from one Eliud Manyeki Muchoki who had been allocated the plot by the 2<sup>nd</sup> Defendant vide the allocation letter dated 17<sup>th</sup> April 1985. They pointed out that the 2<sup>nd</sup> Defendant which is the allocating authority disowned the Plaintiffs' documents as forgeries.
42. The 3<sup>rd</sup> Defendant also submitted that the Plaintiffs have admitted that they have been on the suit land since 1982 which is trespass in terms of Section 3(1) of the *Trespass Act*, cap 294. He sought general damages of ksh.5 million. He relied on the case of *Rhoda S Kiilu v Jiangxi Water and Hydropower Construction Kanya Limited* [2019] e KLR and the case of *Eunice Nkirote Ringera v Kenya Power & Lighting Company* [2020] e KLR.
43. I have considered the pleadings and the evidence on record. I have also considered the written submissions and the authorities cited. The issues for determination are:-
- i. Who between the Plaintiffs and the 3<sup>rd</sup> Defendant is the rightful owner of Plot Nos 442 and 444 situated in Karibongi Light Industries?
  - ii. Are the Plaintiffs entitled to the reliefs sought?
  - iii. Who should bear costs of this suit?
44. The dispute herein is over plot No.442. It is not titled. The Plaintiffs claim ownership based on a sale from the 1<sup>st</sup> Defendant whose case was withdrawn by the Plaintiffs due to the unavailability of the 1<sup>st</sup> Defendant. The agreement between the 1<sup>st</sup> Defendant and their father is dated 26<sup>th</sup> October 1982. Richard Mburu Muriuki was allocated the plot on 12<sup>th</sup> September 1979.
45. On the other hand, the 3<sup>rd</sup> Defendant claims that he purchased the suit plot from one Eliud Manyeki in 1991. And that the said Eliud Manyeki was allotted the same in 1982. There is no letter of allotment issued to the said Eliud Manyeki.
46. The 2<sup>nd</sup> Defendant had effected a transfer of the suit plot to the Plaintiffs on 16<sup>th</sup> June 2012 but according to DW2, investigations revealed that the land was allotted to Eliud Manyeki who sold to the 3<sup>rd</sup> Defendant therefore the 2<sup>nd</sup> Defendant cancelled the transfer vide the letter dated 1<sup>st</sup> July 2014. DW3 produced a Kenya Gazette Notice with Eliud Manyeki's name listed and stated that allottees would be gazetted then compliance with conditions regarding payments would follow. He however could not confirm that Eliud Manyeki paid the requisite stand premium.



47. In *Stephen Mburu & 4 others v Comat Merchants Ltd & anor* [2012] eKLR it was stated : “... from a legal standpoint, a letter of allotment is not a title to property. It is a transient and is often a right or offer to take property”
48. Similarly, in the case of *James P. Maina Muriuki vs Moses Maina Ngugi & another* (2012) eKLR Nyamweya J while relying on the Court of Appeal decision in *DR. N. K. Arap Ngok vs Justice Moiyo Ole Keiwua & 4 others* NBI Civil Appeal No 60 of 1991 observed thus:-
- “Title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter of allotment and actual issuance thereafter of title document and therefore so long as parties meet the condition of any allocation then that allocation is valid and the court went ahead to state that incase of double allocation of equitable rights the court has to apply the fundamental priority rules which is that for competing equitable interests the first in time prevails as it is established principle that equitable interest rank in order of creation”.
49. The evidence of payment relating to the suit land indicates that payment for ground rent was made by the Plaintiffs. PW1’S testimony that they have been on the suit plot since 1985 was corroborated by PW2 who told the court that they were raised there.
50. DW1’s testimony regarding possession was that he bought the plot in 1991 but he never took possession until 2013 when he attempted to gain entry. I find that the first allocation was made to Richard Mburu Muriuki in 1979. Based on the evidence, Mr. Richard Mburu Muriuki’s allotment was the first allotment and the Plaintiffs lawfully acquired the suit plot through purchase.
51. DW1, Perminas Ngugi Kiarie admitted on cross examination by the Plaintiffs’ counsel that he could not recall what documents Eliud Manyeki had to prove ownership. He did not have a letter of allotment in the name of Eliud Manyeki. He also stated that he stopped paying rates when this suit was filed.
52. DW2, Issac Nyoike Njuguna, Chief valuer with the 2<sup>nd</sup> Defendant confirmed that he did not have the letter of allotment in the name of Eliud Manyeki. He also confirmed that the memo dated 22<sup>nd</sup> November 2012 stated that Richard Mburu Muriuki was the owner of plot numbers 442 and 444.
53. He also stated that he did not take part in the investigations culminating into the issuance of the letter dated 1<sup>st</sup> July 2014 stating that the plot 442 belonged to the 3<sup>rd</sup> Defendant.
54. In fact, there is no evidence that such an investigation was undertaken. No report was produced to confirm this position.
55. I agree with the plaintiff’s submissions that if indeed Eliud Manyeki was ever allotted the suit plot then it was a case of double allocation. If this be the case then the allotment to Richard Mburu Muriuki takes priority.
56. DW2 admitted on cross examination that before he wrote the letter dated 1<sup>st</sup> July 2014 he did not summon the Plaintiffs.
57. I find that the Plaintiffs have demonstrated that their late father David Mugo Thumbi bought the plots from the 1<sup>st</sup> Defendant.
58. In conclusion, I find that the Plaintiffs have proved their case as against the Defendants on a balance of probabilities.
59. Consequently, I enter judgment in the Plaintiffs favour as against the Defendants as follows:-



- a. That a declaration is hereby issued that the Plaintiffs are the lawful and bonafide owners of Plot Numbers 442 and 444 situated at Kariobangi Light Industries having validly purchased them.
- b. That the 2<sup>nd</sup> Defendant is hereby directed to re-transfer to the Plaintiffs Plot numbers 442 within sixty (60) days from the date of this judgment.
- c. That an order of permanent injunction is hereby issued restraining the Defendants by themselves their servants and or agents from interfering with the Plaintiffs ownership and possession of Plot Numbers 442 and 444 situated at Kariobangi Light Industries.
- d. That the Plaintiffs shall have costs of the suit.

60 It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUARLLY AT KAJIADO THIS 16<sup>TH</sup> DAY OF MARCH 2023.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiffs

No appearance for the Defendants

Mutisya- Court Assistant

