



**Flooring & Interiors Limited v Muriithi & 2 others (Environment & Land Case 237 of 2013) [2023] KEELC 17040 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17040 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 237 OF 2013**

**JO OLOLA, J  
APRIL 27, 2023**

**BETWEEN**

**FLOORING & INTERIORS LIMITED ..... PLAINTIFF**

**AND**

**PETER NDEGWA MURIITHI ..... 1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 2<sup>ND</sup> DEFENDANT**

**THE DIRECTOR OF SURVEY ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By its Complaint dated November 20, 2013 as amended on March 10, 2016, Flooring & Interiors Limited (the Plaintiff) prays for Judgment against the Defendants jointly and severally for orders lumped up as follows:

- (a) A declaration that all the subsequent sub-division of Land Reference No 9395/103 by the 3<sup>rd</sup> Defendant and issuance of a deed plan and registration of transfer and issuance of title document by the 2<sup>nd</sup> Defendant to the 1<sup>st</sup> Defendant for LR No 9393/236, and equally the issuance of deed plans and registration of transfers and issuance of title documents by the 2<sup>nd</sup> Defendant to those other people, was illegal, void ab initio and a nullity, and hence are of no legal consequence (worthless); cancellation of all the subsequent deed plans and certificates titles forthwith, that is to say, the 1<sup>st</sup> Defendant's for LR No 9395/236, and equally, for those other persons, and reversal/restoration and/or vesting back the land in its original form/status to the Plaintiff Company intact, that is to say Land Reference No 9395/103, injunction to restrain the 1<sup>st</sup> Defendant, whether by himself, his agents, servants, workers, employees and/or any other person purporting to act in that behalf, and those other



persons themselves, their agents, servants, workers, employees and/or any other person purporting to act in that behalf, from encroaching, trespassing, their forcible eviction together with such workers, servants and/or any other person thereat, and delivery of vacant possession of the aforesaid illegally seized and occupied 0.6 Acre portion and the rest parts, out of Land Reference No 9395/103, and/or any other person's purporting to act in that behalf, pursuant to the purported sub-division into several portions by the 3<sup>rd</sup> Defendant and certificate of title issued to those other people by the 2<sup>nd</sup> Defendant. And if need be, by forcible eviction together with their workers and/or any other person(s) thereat, and specifically, the demolition and carting away of the structures erected and being thereon, and also construction materials deposited thereat, by a court Bailiff assisted by Police at their expense, mesne profits for loss of user, and general damages for trespass; and

(b) Costs of the suit plus interest.

2. Those prayers arise from the Plaintiff's contention that at all times material, it was the registered proprietor of LR No 9395/103 measuring about 1.6 Ha. situated along Kiganjo-Chaka Road. The Plaintiff avers that in or around October 2013, the 1<sup>st</sup> Defendant without any colour of right invaded the said property and excised off about 0.6 Acres thereof, fenced it off and started depositing construction materials thereon.
3. The Plaintiff avers further that there have been other attempts to invade and occupy parts of the land by other persons and it has since learnt from the Survey Office that the suit property was sub-divided into several portions without its knowledge or authority by the 3<sup>rd</sup> Defendant after which other titles were issued to other people by the 2<sup>nd</sup> Defendant and hence the prayers herein.
4. Peter Ndegwa Muriithi (the 1<sup>st</sup> Defendant) is opposed to the orders sought. In his Statement of Defence dated and filed herein on November 29, 2013, the 1<sup>st</sup> Defendant denies that he is in possession or occupation of the parcel of land referred to by the Plaintiff. On the contrary, the 1<sup>st</sup> Defendant avers that he is legally and lawfully occupying his own parcel of land known as IR 86165 or LR No 9395/236.
5. The 1<sup>st</sup> Defendant further avers that he became registered as the proprietor of his parcel of land on January 14, 2010 and that he has been developing and working on the same to the exclusion of the Plaintiff.
6. The Chief Land Registrar and the Director of Survey sued herein as the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants respectively are similarly opposed to the grant of the orders sought in the Plaint. In their joint Statement of Defence filed on their behalf by the Honourable the Attorney General on May 25, 2016 the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants deny the Plaintiff's claim and invite it to strict proof.

### **The Plaintiff's Case**

7. At the trial herein the Plaintiff called one witness in support of its case.
8. PW1 Wahome Gitonga is a director and shareholder of the Plaintiff. Relying on his Statement dated and filed herein on November 20, 2013, PW1 testified that the Plaintiff Company purchased LR No 9395/103 measuring about 4 acres in the year 2012.
9. PW1 told the Court that in October 2013, he received a call that the 1<sup>st</sup> Defendant herein had invaded the land and had excised 0.6 acres thereof, fenced it off and had started depositing some construction



materials thereon. PW1 testified that he went to the ground and confirmed that the 1<sup>st</sup> Defendant had indeed commenced construction of some structures on the land.

10. PW1 further testified that by a demand letter issued by his lawyers and dated October 25, 2013, he asked the 1<sup>st</sup> Defendant to cease the trespass but the 1<sup>st</sup> Defendant replied on October 29, 2013 stating that the land was his own. He told the Court a fixed survey had been done on the land and the same was registered with the relevant Government offices. PW1 further told the Court that the 1<sup>st</sup> Defendant could only have obtained a fake title and that he should not be allowed to remain on the Plaintiff's parcel of land.
11. On cross-examination, PW1 testified that the original allottee of the suit property was E K Wachira and Sons. He had no blood relationship with the said allottee from whom they purchased the land in 2013.
12. PW1 told the Court he was not aware that Land Parcel No 9395/236 had been in existence since 1999. When they had purchased their portion of land in 2013, the Plaintiff had brought in Surveyors to establish their beacons and they had established that their portion included the area occupied by the 1<sup>st</sup> Defendant.

### **The Defence Case**

13. The Defence called two witnesses in support of their respective cases at the trial.
14. DW1 – Peter Ndegwa Mureithi is the 1<sup>st</sup> Defendant and a businessman in Nyeri town. Relying on his Statement dated March 10, 2017, DW1 told the Court that on or about the year 2010, he entered into a sale agreement with one Peter Gichohi Muriithi for the purchase of all that parcel of land known as IR 86165 (LR No 9395/236).
15. DW1 told the Court that prior to the execution of the agreement, he had done due diligence from which he established that the vendor was the registered proprietor of the said parcel of land since the year 2001 and had in fact charged the same to the Co-operative Bank. Subsequently and upon payment of the purchase price, the land was transferred to DW1 after the discharge of charge on November 3, 2010.
16. DW1 told the Court he immediately thereafter took possession of the land and that in 2012 he started developing a manufacturing and value addition business thereon.
17. On cross examination, DW1 told the Court he did not find it necessary when he was buying the land to obtain a Letter of Allotment from the vendor. He conceded he had no documentary proof to show he had moved into the land in 2010. DW1 told the Court when he moved into the land, it had scattered trees and was not fenced. His parcel of land measured 0.65 acres.
18. DW2 – Kennedy Kimathi Muteria is a Surveyor working with the 3<sup>rd</sup> Defendant as the County Surveyor, Nyeri. He produced the Registry Index Map (RIM) as contained in their records.
19. On cross-examination, DW2 told the Court he had requested the Survey of Kenya office to provide him with both the RIM and the Folio Register for the land but he was not supplied with the RIM. He told the Court he was not aware of any sub-divisions of the land and that he would only be sure of the existence of the land if he visited the same. DW2 further told the Court that the regime of titles involved shows the land ought to have had Deed Plans. He had however neither seen the Deed Plans nor the title.



20. DW2 further told the Court the Survey Plan indicated two parcels of land being LR No 9395/235 and 9395/236. The original title had not been captured. The coordinates of the original parcel were shown on the Plan but the computations did not show the original number.

### **Analysis and Determination**

21. I have carefully perused and considered the pleadings filed herein by the parties, the testimonies of their witnesses as well as the evidence adduced before the Court. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
22. As can be seen from Paragraph 1 of this Judgment, Prayer ‘a’ of the Plaintiff’s claim herein is an amalgam of a raft of all sorts of prayers. For whatever purpose it was meant to achieve, it is certainly a big departure from the manner in which pleadings ought to be done. Mercifully in its closing submissions to the Court, the Plaintiff has endeavoured to separate and clarify the same.
23. From the perusal thereof, the Plaintiff prays for a declaration that all subsequent sub-divisions of LR No 9395/103 as well as the issuance of deed plans and registration of transfer to the 1<sup>st</sup> Defendant together with other unnamed persons was illegal, void ab initio, a nullity and hence of no consequence. The Plaintiff thus craves an order directing the 2<sup>nd</sup> Defendant to cancel all the subsequent deed plans and certificates of titles issued to the 1<sup>st</sup> Defendant as well as the said unnamed persons.
24. In addition, the Plaintiff prays for an order of injunction to restrain the 1<sup>st</sup> Defendant and those other persons from encroaching upon, trespassing into or dealing with the suit property. The Plaintiff further urges the Court to direct the 1<sup>st</sup> Defendant to deliver vacant possession of the 0.6 acre portion of land that he is said to have illegally and unlawfully seized and occupied failure to which he should be forcibly evicted therefrom by the Court Bailiff with the assistance of the Police.
25. Ultimately the Plaintiff prays for mesne profits for loss of user, and general damages for trespass.
26. In support of its case, the Plaintiff told the Court that sometime in the year 2012, it did purchase the parcel of land known as LR No 9395/103 measuring some 1.6 Ha. (or 3.952 acres) from Messrs E K Wachira & Sons (Kenya) Limited. Pursuant to that sale, the Plaintiff was on February 15, 2013 registered as the proprietor of the suit property.
27. It was the Plaintiff’s case that a few months after being registered as the proprietor, its director and shareholder Wahome Gitonga (PW1) received a phone call in October, 2013 whereupon he was informed that the 1<sup>st</sup> Defendant had invaded the Plaintiff’s land and had hived off some 0.6 acres. On receipt of the information, PW1 proceeded to the suit land whereupon he confirmed that indeed the 1<sup>st</sup> Defendant had fenced off part of the suit land and had commenced the construction of some structures thereon.
28. Subsequently, by a demand letter dated October 25, 2013, the Plaintiff asked the 1<sup>st</sup> Defendant to vacate the land and to cease any further trespass thereon within 7 days from the date of the letter. Instead the 1<sup>st</sup> Defendant wrote back on October 29, 2013 justifying his occupation on the land on account that he was the lawful owner thereof.
29. The Plaintiff told the Court that upon further investigations, it did discover that the land it had purchased had been re-surveyed by the 3<sup>rd</sup> Defendant herein and that on account of the resurvey, the 2<sup>nd</sup> Defendant had proceeded to issue various Certificates of Titles to various people, including the 1<sup>st</sup> Defendant herein. It was accordingly the Plaintiff’s case that the 1<sup>st</sup> Defendant’s title had been procured irregularly and hence the prayers made in the Plaintiff.



30. On his part, the 1<sup>st</sup> Defendant denied that he was in occupation or possession of the Plaintiff's parcel of land aforesaid. On the contrary he told the Court that he was the registered proprietor of a separate and distinct parcel of land being LR No 9395/236 (IR No 86165). It was this parcel of land that the 1<sup>st</sup> Defendant admitted to have occupied and developed.
31. The 1<sup>st</sup> Defendant told the Court he had purchased the said parcel of land for value in the year 2010 from one Peter Gichohi Mureithi who was previously the proprietor thereof. It was his case that prior to the said purchase, he had conducted due diligence which not only revealed that the property was registered in the name of the vendor but also that it had been charged to Co-operative Bank Limited to secure a loan.
32. While the Plaintiff does not expressly state so, it was apparent that it was its case that the 1<sup>st</sup> Defendant's title had been fraudulent created subsequent to its own and that the same was a sub-division of its own parcel of land. That being the case, it was incumbent upon this Court to be persuaded that LR No 9395/236 in the name of the 1st Defendant had been excised or hived off by the Defendants from the Plaintiff's LR No 9395/103.
33. As it turned out, very little was put before the Court by way of evidence to prove any such fraud on the part of the three Defendants. While the Plaintiff acquired possession of its parcel of land LR No 9395/103 in the year 2012, it was apparent from the material placed before the Court that the 1<sup>st</sup> Defendant's title had been in existence since August 1, 1999, some 13 years before the Plaintiff procured its title.
34. It was also evident that on September 2, 2002, the 1<sup>st</sup> Defendant's predecessor in title one Peter Gichohi Mureithi had charged the same title to Messrs Co-operative Bank of Kenya Limited to secure a loan. That charge remained in place and was not discharged until December 17, 2009 subsequent to which the title was transferred to the 1<sup>st</sup> Defendant's name on August 18, 2010.
35. While the Plaintiff's position was that a re-survey had been done after it acquired its title pursuant to which the Plaintiff and other unnamed persons were issued with various portions of its land, there was no evidence adduced before the Court to back up that position.
36. In such a scenario, it was incumbent upon the Plaintiff to particularise the acts of fraud complained of and to call evidence to back up the fraud or illegality. In the matter herein, the Plaintiff left the matter to the Court to speculate and conclude that the 1<sup>st</sup> Defendant's land and title ought not to exist in view of the existence of the Plaintiff's title.
37. It follows that I was not persuaded that the Plaintiff had discharged its burden of proof to the required standards. Accordingly the Plaintiff's suit is hereby dismissed with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THE 27<sup>TH</sup> DAY OF APRIL, 2023.**

**In the presence of:**

**Mr Peter Muthoni for the Plaintiff**

**Mr Nderi for the 1<sup>st</sup> Defendant**

**No appearance for the Attorney General**

**Court assistant - Kendi**

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**J O Olola**  
**JUDGE**

