



Guda & 18 others v Kaara t/a Ringuiti Youth Resource Center alias Renguti Resources Youth Centre & 2 others (Environment & Land Case 414 & 3 of 2019 (Consolidated)) [2023] KEELC 17096 (KLR) (27 April 2023) (Judgment)

Neutral citation: [2023] KEELC 17096 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 414 & 3 OF 2019 (CONSOLIDATED)**

MN GICHERU, J

APRIL 27, 2023

BETWEEN

JOHN ASANGA GUDA AND 18 OTHERS PLAINTIFF

AND

**MARGARET WARIARA KAARA T/A RINGUITI YOUTH RESOURCE
CENTER ALIAS RENGUTI RESOURCES YOUTH CENTRE .. 1ST DEFENDANT
FRANCIS JOMO MURATHE T/A RENGUTI YOUTH RESOURCE CENTER
ALIAS RENGUTI RESOURCES YOUTH CENTRE 2ND DEFENDANT
ESTHER NDUTA KIMANI “PURPORTED ADMINISTRATOR” TO THE
ESTATE OF DAVID KIMANI WANG’ANG’A 3RD DEFENDANT**

JUDGMENT

1. The Plaintiffs in this case and the Plaintiff in ELC Case No. 3 of 2019 seek the following reliefs against the three Defendants jointly and severally.
 - a. The third Defendant as the purported administratrix of the estate of David Kimani Wang’ang’a be compelled by this court to execute transfer in favour of the Plaintiffs in respect of their shares of Ngong/Ngong/6010, suit land.
 - b. The Deputy Registrar of this court to execute the transfer documents if the third Defendant fails to do so. In the alternative,
 - c. The three Defendants do compensate the Plaintiffs the sum of Kshs. 12 million which was the market value of the suit land without development at the time of filing this suit.



- d. Full compensation to each of the twenty Plaintiffs at the current market value for the developments on the parcels that they occupy subject to fresh and comprehensive valuation being conducted prior to the determination of the suit.
 - e. A permanent injunction restraining the three Defendants, their agents, servants, employees and anyone claiming through them from entering, possessing, alienating, wasting or in any way dealing with the Plaintiffs' portions of the suit land,
 - f. Damages.
 - g. Costs of the suit.
 - h. Any other relief the court may deem fit.
2. The Plaintiffs' case is as follows. Between the years 2009 and 2015, they entered into written agreements for the purchase of portions of the suit land. The suit land was registered in the name of David Kimani Wang'ang'a even though it was co-owned by Waithimba Kondu Kori. Both David Kimani Wang'ang'a and Waithimba Kondu bought the suit land from one William Kitali Mutii between 1973 and 1974.
 3. The first Plaintiff bought one share which was half of an eighth of an acre. He was issued with a share certificate number 054. He occupied the land by building a permanent house in which he lives. The purchase price was Kshs. 100,000/-. It was received by the first and second Defendants on behalf of the registered owner.
 4. The second Plaintiff bought half of eighth of an acre at Kshs. 100,000/-. He occupied the land by building a storeyed house which was under construction at the time of filing the suit.
 5. The third Plaintiff bought an eighth of an acre at Kshs. 80,000/= per share so he paid a total of Kshs. 160,000/- for two shares. He then built a semi-permanent house which he lives in together with his family.
 6. The fourth Plaintiff bought two shares at Kshs. 370,000/-. He built a permanent house which has a stone wall all round. The house is inhabited.
 7. The fifth Plaintiff bought two shares numbers 42 and 49 from David Lempampa Hamisi who had bought from the Defendants. He has built a permanent house which he occupies with his family. The plot is fenced all round with a stonewall and the compound is paved with cabro blocks.
 8. The sixth Plaintiff bought two shares which are plot numbers 7 and 12. At first the plot number in the share certificate was given as Ngong/Ngong/23838. When he noticed the anomaly, the first and second Defendants corrected the anomaly and now the share certificates reflect the suit land. Each of the two shares costs the sixth Plaintiff Kshs. 80,000/-.
 9. The seventh Plaintiff bought his land from Éclair Phoebe Lakoko on 1/12/2015 at Kshs. 300,000/-. The seller Eclair Lakoko had bought from the Defendants on 26/8/2011. For the transfer to be effected the first and second Defendants asked for Kshs. 10,000/= transfer fees which the Plaintiff paid to them.
 10. The eighth and ninth Plaintiffs bought the shares from Addah Omunga and Scevah Dandass Manyala on 28/1/2015 at Kshs. 300,000/= per share. The two sellers had bought from the first and second Defendants who also charged Kshs. 10,000/- as transfer fees.
 11. The tenth Plaintiff bought two shares 24/8/2013 at Kshs. 375,000/- per share. At the time of the filing of this suit, there was an unpaid balance of the purchase price amounting to Kshs. 40,000/-. This is the reason why he has no share certificate. The land is fenced with barbed wire and chain link.



12. The eleventh Plaintiff bought two shares together with one Njogu Kiarie at Kshs. 180,000/- in 2009. They were issued with share certificates numbers 060 and 067. The plots are developed and there is a permanent house occupied by the Plaintiff and his family.
13. The twelfth Plaintiff bought two shares at Kshs. 160,000/-. He was issued with two share certificates for plot numbers 43 and 48. He has built a house which he occupies with his family.
14. On 28/1/2010, the thirteenth Plaintiff and S.D. Manyala bought four shares at Kshs. 80,000/- per share. They were issued with share certificates for plot Numbers 39, 40, 51 and 52. They were husband and wife. When they differed, all the four shares were transferred to the Plaintiff who sold half of the land to the eighth and ninth Defendants.
15. On 24/8/2020, the fourteenth Plaintiff bought two shares of L.R. Ngong/Ngong/23838 from Mine Wambui Mbae but the agents were the first and second Defendants. She paid a total of Kshs. 160,000/= for shares numbers 75 and 76. The land shown to her is in fact part of the suit land of which she is in occupation.
16. The fifteenth Plaintiff bought four shares at Kshs. 80,000/- per share and was issued with share certificate numbers 57, 58, 69 and 70. The land is fully fenced.
17. The sixteenth Plaintiff bought four shares at Kshs. 140,000/- per share. This was on 16/11/2011. At the time of filing this suit, there was a balance of Kshs. 190,000/- and that is why the share certificates were not yet issued to her.
18. The seventh Plaintiff bought two shares on 18/7/2009 and he was issued with share certificates for Plot Numbers 059/068. The plot is fully fenced and some materials for construction deposited thereon.
19. On 22/12/2009, the eighteenth and nineteenth Plaintiffs bought four shares at Kshs. 70,000/- per share. They were issued with share certificates numbers 23, 24, 31 and 32. They built houses which they occupy with their families.
20. The Plaintiff in ELC No. 3 of 2019 bought four shares on 16/11/2009. She was issued with share certificates for Plot Numbers 025, 026, 029 and 030. The plots are fenced with barbed wire and wooden posts.
21. In support of their cases, each of the plaintiffs filed the following exhibits.
 - a. Copy of eviction notice dated 12/1/2017.
 - b. Copy of certificate of official search for the suit land dated 30/1/2016 in the name of David Kimani Wang'ang'a.
 - c. Copies of agreements for sale of the land parcels that they occupy.
 - d. Copies of receipts issued by Renguti Resource Centre in acknowledgment that purchase price had been paid by the Plaintiff.
 - e. Copies of share certificates issued to the Plaintiffs by Renguti Resource Centre.
 - f. Photographs of buildings put up by the Plaintiffs on the suit land.
 - g. Valuation report for the suit land dated 30/1/2017.
 - h. Many other relevant documents.



22. In their written statement of defence dated 17/5/2017, the first and second Defendants, through their counsel on record generally deny the Plaintiffs' claim against them. They also filed witness statements dated 12/2/2018 in which they say that they were approached by the third Defendant to act as her agent and sell the suit land. They collected a total of Kshs. 775,000/- from the Plaintiffs. They then remitted the money to the third Defendant on various dates from 26/1/2010 to 14/8/2014 in a total of 28 transactions all of which are well documented. The payments were in form of funds transfers, cash payments or cheques.
23. In support of their case, the two Defendants filed various exhibits which included the following.
- i. Various receipts issued by Rumba Kinuthia Advocates for money paid on behalf of the third Defendant by the first and second Defendants.
 - ii. Cash deposit slips to prove payment of money to account No. 07301948885015 Equity Bank in the name of Esther Nduta Kimani.
 - iii. Cash acknowledgment receipts by the third Defendant.
 - iv. Cheques issued by the first Defendant to the third Defendant.
 - v. Similar modes of payment as above to Waithumbi Kondu Kori with the authority of the third Defendant.
24. The third Defendant in a written statement of defence dated 17/7/2018 denies the entire claim by the Plaintiffs and avers that she is a stranger to them and their claim against her.
- In support of her defence, she filed a witness statement dated 5/11/2018 in which she says that the Plaintiffs are unknown to her. She also denies any association with the first and second Defendants or receiving any money from them. She however says that she knows Waithumbi Kondu Kori who was owed some money by her late husband David Kimani Wang'ang'a.
- In further support of her case, the third Defendant filed a copy of the title deed for the suit land, a copy of her husband's certificate of death and a copy of grant of letters of administration.
25. At the trial all the twenty Plaintiffs testified. They produced the original documents in support of their case and they were cross examined by counsel for the Defendants. Also to testify was Waithumbi Kondu Kori whose evidence is to the effect that he is a co-owner of the suit land with the third Defendant's deceased husband and that he and the third Defendant have sold the land to the Plaintiffs even though the first and second Defendants owe him some little money.
26. The third Defendant testified on 21/10/2021 and adopted her witness statement as her evidence. She said that the original title deed is with her advocate Rumba Kinuthia who has refused to release it to her. She admitted having received money from the first and second Defendants which she said was a loan.
- The first and second Defendants did not testify because they did not come on the hearing date.
27. Counsel for the parties filed written submissions on 30/10/2021, 12/1/2022 and 7/4/2022 respectively. They identified many issues for determination. They include the following ;
- i. Whether the Plaintiffs occupy the suit land unlawfully?
 - ii. Whether the third Defendant is entitled to vacant possession of the suit land?
 - iii. Whether there are any remedies available to the Plaintiffs in law?
 - iv. Whether the third Defendant is entitled to general damages for non-user of the land?



- v. Whether the first and second Defendants are agents for the third Defendant?
- vi. Whether the Plaintiffs are bona fide purchasers for value without knowledge of any defect in title?

There are other issues raised but I find that the above six are sufficient to determine the dispute.

28. I have carefully considered all the evidence adduced by the parties including their witness statements, documents and testimony in court. I have also considered the submissions by learned counsel for the parties and the issues raised therein.

I make the following findings of fact before I delve into the issues.

29. Firstly, I find that the third Defendant and Waithumbi Kondu Kori sold the suit land to the Plaintiffs and they hired the first and second Defendants to be their agents. In this regard, I have relied on the evidence of the Plaintiffs which is credible and consistent. This evidence is corroborated sufficiently in all the material particulars by the evidence of Waithumbi Kondu Kori and that of the first and second Defendants even though they did not testify. They have filed documentary evidence to prove that the third Defendant received money from them.

When the third Defendant was confronted with this evidence, she claimed that it was a loan. I do not believe her evidence. There is therefore overwhelming evidence that the third Defendant sold the suit land to the Plaintiffs.

30. Secondly, I find that the Plaintiffs occupied the suit land with the knowledge and consent of the third Defendant and Waithumbi Kondu Kori. That is why they were able to not only occupy the land but also to fence it and put up residential houses that they currently occupy. If they did not have the consent of the third Defendant and Waithumbi Kondu Kori, they duo would have sought to evict the Plaintiffs as soon as they started developing the suit land.

31. Coming to the issues, on the first one, I find that the Plaintiffs occupy the land lawfully with the authority of the third Defendant and Waithumbi Kondu Kori.

32. On whether the third Defendant is entitled to vacant possession of the suit land, I find that she is not. The only thing that she is entitled to is the balance of the unpaid purchase price by a few of the Plaintiffs.

33. The doctrine of bona fide purchasers for value without notice of any defect in title does not apply in this case because the Plaintiffs are seeking the title documents directly from the third Defendant and first and second Defendants are in support of the Plaintiffs in this quest.

It would have been different if the first and second Defendants were denying receiving the purchase price from the Plaintiffs. In this case, the two Defendants have proved that they not only received the purchase price from the Plaintiffs but also that they remitted the same to the third Defendant and Waithumbi Kondu Kori.

34. I find that the third Defendant is not entitled to general damages for non-user of the land because she has been paid the purchase price.

35. The facts of this case are similar to those of the case of Willy Kimutai Kitilit –versus- Michael Kibet Civil Appeal No. 51 of 2015 Eldoret where the Appellant had sold land to the Respondent who had occupied it after paying the entire purchase price. The Appellant sought to evict the Respondent on the grounds that though he had paid the purchase price, there was no consent of the land control board to transfer the land. Both the High Court and the Court of Appeal were emphatic that such consent



was immaterial because doctrines of constructive trust and proprietary estoppel applied to the case and where they do, absence of the consent of the land control board is immaterial.

36. The court of Appeal had this to say at paragraph 25 of the judgment,

...Thus, since the current constitution has by virtue of Article 10(2) (b) elevated equity as a principle of justice to a constitutional principle and requires the courts in exercising judicial authority to protect and promote that principle, among others, it follows that the equitable doctrines of constructive trust and proprietary estoppel and applicable to and supersede the Land Control Act where a transaction relating to an interest in land is void and unenforceable for lack of consent of land Control Board”.

37. Applying this principle in the *Willy Kitilit* case to this case, I find that the Plaintiffs are entitled to prayers (a) and (b) of the plaint which I allow. The tenth and sixteenth Plaintiff to pay the balance of the purchase price to the third Defendant and interest at the rate of 14% per annum until payment in full. I also find that the Plaintiffs and the first and second Defendants are entitled to costs against the third Defendant which I award to them.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

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HON. JUSTICE M.N. GICHERU JUDGMENT ELC NO. 414/2017 4

