



**Kamurwa (Suing as the administrator and personal representative of the Estate of Gachiri Njege (Deceased) v Gachiri & 3 others (Environment & Land Case 508 of 2014) [2023] KEELC 17041 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17041 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 508 OF 2014**

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

**BETWEEN**

**JOSEPH MWAI KAMURWA (SUING AS THE ADMINISTRATOR AND PERSONAL REPRESENTATIVE OF THE ESTATE OF GACHIRI NJEJE (DECEASED) ..... PLAINTIFF**

**AND**

**JOSEPH GACHIRI ..... 1<sup>ST</sup> DEFENDANT  
JOHNSON MURIITHI KINYUA ..... 2<sup>ND</sup> DEFENDANT  
DISTRICT LAND REGISTRAR, NYERI REGISTRY ..... 3<sup>RD</sup> DEFENDANT  
THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. By his Complaint dated 14<sup>th</sup> November 2011, Joseph Mwai Kamurwa suing as the Administrator and Personal Representative of one Gachiri Njege (the Plaintiff) prays for Judgment against the Defendants jointly and severally and for a declaration that:
  - (a) Land Parcel Number Iriaini/Cheche/371 belongs to the Estate of Gachiri Njege and the same to be registered in the name of Joseph Mwai Kamurwa as the Administrator of the said Estate;
  - (b) The Registrar, Nyeri District Land Registry do rectify the register with regard to the property known as Iriaini/Cheche/371 and the registration of Joseph Gachiri Njege and Johnson Muriithi Kinyua be accordingly cancelled; and



(c) Costs be borne by the Defendants.

2. Those prayers arise from the Plaintiff's contention that at all times material, the suit property was and remains the property of the said Gachiri Njege who died intestate in 1964 and the estate has not been distributed to date. It is the Plaintiff's case that sometime in the year 1988, the 1<sup>st</sup> Defendant fraudulently misrepresented himself to the District Lands Office Nyeri purporting to be the said Gachiri Njege (the Deceased) and thereby caused the rectification of the register by having his name inserted therein as the registered owner.
3. The Plaintiff accuses the 3<sup>rd</sup> Defendant of acting negligently and fraudulently by entering the 1<sup>st</sup> Defendant's name into the Register thereby materially affecting the interest of the registered proprietor without proper proof of who the registered owner was.
4. It is further the Plaintiff's case that sometime around the year 2004, the 1<sup>st</sup> Defendant purported to transfer his interest in the suit property to the 2<sup>nd</sup> Defendant by selling the land to the 2<sup>nd</sup> Defendant. The Plaintiff avers that the alteration of the Register and the insertion of the name of the 1<sup>st</sup> Defendant as the owner of the land as well as the subsequent purported transfer to the 2<sup>nd</sup> Defendant were invalid and void ab initio.
5. But in his Statement of Defence dated and filed herein on 5<sup>th</sup> March 2012, Joseph Gachiri (the 1<sup>st</sup> Defendant) denies that he obtained registration of the suit property into his name by way of fraud. The 1<sup>st</sup> Defendant avers that he is the registered proprietor of the suit property and that on 31<sup>st</sup> October, 1988, he applied for correction of his name in the Register, so as to include his baptismal name Joseph therein.
6. The 1<sup>st</sup> Defendant further avers that the Mathira Land Control Board gave its consent to the correction of the name in the Register and that the correction was lawful and regular. It is further the 1<sup>st</sup> Defendant's case that he had subsequently duly sold the suit property to the 2<sup>nd</sup> Defendant and had lawfully transferred the same to the 2<sup>nd</sup> Defendant's name.
7. Joseph Muriithi Kinyua (the 2<sup>nd</sup> Defendant) equally denies the Plaintiff's claim. The 2<sup>nd</sup> Defendant admits that he bought the suit property from the 1<sup>st</sup> Defendant as the registered owner and that the same was later transferred to himself through a Court Order issued in Kerugoya SRMCC No. 418 of 2005.
8. The 2<sup>nd</sup> Defendant avers that the suit is res judicata and that the Plaintiff lacks the locus standi to institute the same as he is not related to the owner of the land.
9. The District Land Registrar Nyeri as well as the Honourable the Attorney General sued herein as the 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed a joint Statement of Defence dated 13<sup>th</sup> December, 2011 wherein they aver that the Plaintiff discloses no reasonable cause of action as against themselves.

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

10. The Plaintiff testified as the sole witness in his case. Relying on his Statement filed in Court on 16<sup>th</sup> November 2011, the Plaintiff told the Court he is the Personal Representative and the Administrator of the Estate of Gachiri Njege (the deceased).
11. The Plaintiff told the Court the late Gachiri Njege died on 16<sup>th</sup> October, 1964 leaving behind a number of beneficiaries who also later died before petitioning the Court for a grant of representation. The deceased's daughter Beatrice Wairimu Gachiri had on 23<sup>rd</sup> April, 2008 been granted Letters of



Administration to enable her institute this suit for the preservation of the estate but she too passed away on 7<sup>th</sup> May, 2009 before the matter was concluded.

12. The Plaintiff told the Court that the suit property was initially registered in the name of the said Gachiri Njege. He told the Court the 1<sup>st</sup> Defendant being a grandson to the deceased was named like him Gachiri Njege in accordance with Kikuyu customs. The Plaintiff told the Court that since he shared the same names with his grandfather, the 1<sup>st</sup> Defendant applied to the Land Registrar for a change of name purporting that the land belonged to himself. His baptismal name “Joseph” was then entered in the Register by virtue of which the land was fraudulently transferred to himself.
13. The Plaintiff told the Court that after the 1<sup>st</sup> Defendant succeeded in inserting his baptismal name in the Register, he proceeded to sell the same to the 2<sup>nd</sup> Defendant who then proceeded to evict the deceased’s daughter Beatrice Wairimu Gachiri from the suit land. The Plaintiff told the Court that Beatrice resisted the eviction and was arrested by the Police and was arraigned before the Karatina Law Courts charged with assault. She later developed blood pressure complications and passed away on 7<sup>th</sup> May, 2009.
14. On cross-examination, the Plaintiff told the Court the late Gachiri Njege had 5 children but none of them was alive. The late Gachiri Njege was a brother to the Plaintiff’s grandfather. The 1<sup>st</sup> Defendant was a son of Njege Gachiri who was one of the 5 sons of Gachiri Njege. The Plaintiff told the Court the land ought to be distributed to the late Gachiri Njege’s grandchildren who were alive.
15. The Plaintiff told the Court he had taken possession of the property after Beatrice’s death and was currently utilizing the same. He however denied he wanted to take over the land for himself. He told the Court there was tea on the land which had been planted by one of the sons of Gachiri Njege. The Plaintiff is the one who now harvests the tea and sells the same to KTDA.

### **The Defence Case**

16. The Defence called two witnesses who testified on their behalf at the trial.
17. DW1 – Joseph Gachiri Njege is the 1<sup>st</sup> Defendant and a resident of Subukia. DW1 told the Court he had no relationship with the Plaintiff and that he does not even know him. He further told the Court he was previously known as Gachiri Njege.
18. DW1 told the Court he had gone to the Land Control Board to get a title. The Board told him to go get a Certificate of Search for the land. When he brought the Search Certificate, the Board told him it had only two names being Gachiri Njege. DW1 told the Court by then he had acquired an identity card in the name of Joseph Gachiri and that that was why they had to change the name on the title.
19. DW1 told the Court he followed due process to have his name “Joseph” inserted in the title. He told the Court he was taken to the Lands Registry by Beatrice Gachiri who was his aunt. The title deed for the suit property was then issued in his name.
20. DW1 further testified that he thereafter proceeded in the year 2005 to sell the land to the 2<sup>nd</sup> Defendant. The land had 4,000 tea leaves at the time of sale. The 2<sup>nd</sup> Defendant then took possession immediately. DW1 further told the Court that one day when the 2<sup>nd</sup> Defendant went to harvest the tea leaves, the Plaintiff assaulted him and confiscated various items from him.
21. DW1 testified that he was given the suit land by his clan in 1959. He told the Court the Plaintiff was not representing his aunt Beatrice and that the Plaintiff had no interest in the land as he was neither a relative nor a family member.



22. On cross-examination, DW1 told the Court he did not attend School and was unaware of how old he was when the clan gave him the land in 1959. He told the Court he was issued with a title in 1980 and that by then he had an Identity Card which was issued to him around 1966.
23. DW1 testified that when he went to take the title, he was told the names were not the same. He was then given some Forms which he took to the Area Chief and thereafter to the Land Control Board where he was accompanied by his aunt Beatrice and his father Njege Gachiri.
24. DW1 told the Court his grandfather had the following children – Beatrice Wairimu, Mumbi Gachiri, Njege Gachiri, King’au and Ngari Gachiri. The Plaintiff was not a son to his grandfather and DW1 was unaware if they share the same clan. He told the Court he sold the land to the 2<sup>nd</sup> Defendant in 2005 and that he was paid the entire purchase price before the 2<sup>nd</sup> Defendant took possession of the land.
25. On further cross-examination by the Plaintiff’s counsel, DW1 told the Court his Identity Card which he did not have in Court gives his year of birth as 1940. He told the Court he attended school upto Class 7 and that he was in Class 1 in 1959. He finished Class 7 at Muragara Primary School in Kirinyaga in 1966.
26. DW1 further testified that since 1970, he has been residing in Subukia in Nakuru. His father Njege Gachiri was residing with his family in Gikumbo village in Kirinyaga.
27. DW1 conceded that his grandfather was known as Gachiri Njege and that he (DW1) was named after him as the first born grandson. He told the Court he knew his father as a young man but he was unaware his father died in the mid-sixties.
28. DW1 further conceded that his uncle King’au Kamau was previously living on the suit land before his death in 1988. He further conceded that his aunt Beatrice Wairimu was also living on the suit property. DW1 however denied that Beatrice had built anything on the suit land. He told the Court it was only King’au who built the house which he left for Beatrice to live in.
29. DW1 testified that the tea leaves on the land were being harvested initially by King’au and later on by Beatrice. He was not aware if King’au had left behind a wife by the name Tabitha Wairimu King’au.
30. DW1 further testified that he did not tell Beatrice that he was selling the land. He had no reason to tell her as the land belonged to him. He also knew that Beatrice would object to the sale if she knew of it before hand. DW1 testified that he had told the buyer that even though Beatrice was living on the land, she was not the owner of the tea bushes. The tea bushes were planted by DW1 and his father.
31. DW1 denied knowledge of any suit filed by the 2<sup>nd</sup> Defendant against himself for his eviction from the suit land. He further told the Court he was unaware that the orders obtained in Kerugoya SRMCC Case No. 418 of 2005 which was filed against himself, were the same orders that were used to evict Beatrice from the land. He told the Court the 2<sup>nd</sup> Defendant was aware at the time of the sale that DW1 did not reside on the land.
32. DW2 – Johnstone Muriithi Kinyua is the 2<sup>nd</sup> Defendant and a businessman in Kagumo in Kirinyaga. He told the Court he purchased the suit property from the 1<sup>st</sup> Defendant who was the registered owner thereof. DW2 testified that sometime after paying the full purchase price, the 1<sup>st</sup> Defendant was reluctant to transfer the land. This forced him to file Kerugoya SRMCC No. 408 of 2015. It was then that the Court ordered that the suit property be transferred to himself.
33. DW2 testified that the Kerugoya Court also issued him with eviction orders against the person who was living on the land. He told the Court he did not know the 1<sup>st</sup> Defendant in 1988 and that if there



was any fraud committed then, he had no idea about the same. He told the Court he did a search before purchasing the land and there was no restriction or caution on the title.

34. On cross-examination, DW2 told the Court he was unaware that the 1<sup>st</sup> Defendant was not residing on the suit property at the time of sale. He however told the Court the 1<sup>st</sup> Defendant had taken him to the property where he showed him Beatrice and one Mumbi. The two had a house on the land and they served the 1<sup>st</sup> and 2<sup>nd</sup> Defendant with tea and food when they got into the house.
35. DW2 testified that he bought the entire parcel of land for Kshs.2.4 Million. He told the Court he took the 1<sup>st</sup> Defendant to Court vide Kerugoya SRMCC No. 418 of 2005 when he appeared reluctant to transfer the land.
36. DW2 conceded that his pleadings in the Kerugoya Court shows he had stated that he bought the land at Kshs.120,000/- and that the Sale Agreement he produced showed the land was bought at Kshs.2.1 Million. He further conceded that he obtained an order on 26<sup>th</sup> June, 2006 for the removal of a restriction which had been placed by Beatrice. He further admitted he did not sue Beatrice in the case he filed for eviction.
37. DW2 further told the Court that on 23<sup>rd</sup> November 2006, he had obtained an order for the eviction of anyone on the suit land. Although he knew Beatrice and Mumbi were on the land, he was only dealing with the 1<sup>st</sup> Defendant who was present during the eviction.

### **Analysis And Determination**

38. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence produced at the trial. I have similarly perused and considered the written submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
39. The Plaintiff has urged the Court to make a declaration that Land Parcel No. Iriaini/Cheche/371 belongs to the Estate of the late Gachiri Njege and that the same should be registered in his name as the Administrator of the said Estate. Accordingly he urges the Court to direct the 3<sup>rd</sup> Defendant herein to rectify the Register and to cancel the names of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants as the proprietors of the suit property.
40. Those prayers arise out of the Plaintiff's contention that the suit property was in the years 1959 registered in the name of one Gachiri s/o Njege who was a grandfather to the 1<sup>st</sup> Defendant. It is the Plaintiff's case that the said Gachiri s/o Njege died intestate in the year 1964 and that his estate had remained undistributed to-date.
41. The Plaintiff told the Court that in accordance with Kikuyu customs and traditions, the 1<sup>st</sup> Defendant was at the time of his birth named after his grandfather and that sometime in 1988, the 1<sup>st</sup> Defendant took advantage of the similarity in the names and fraudulently caused the 3<sup>rd</sup> Defendant to insert the 1<sup>st</sup> Defendant's baptismal name – Joseph, into the Lands Register thereby effectively transferring the suit property to the 1<sup>st</sup> Defendant.
42. It is further the Plaintiff's case that having succeeded in altering the records held at the Lands Registry, the 1<sup>st</sup> Defendant proceeded sometime in the year 2005 to sell the property to the 2<sup>nd</sup> Defendant who then proceeded to evict the beneficiaries of the Estate of the late Gachiri Njege from the suit property.
43. On his part, the 1<sup>st</sup> Defendant denies the allegations of fraud. It was the 1<sup>st</sup> Defendant's case that the suit property was given to him by their clan members before he obtained an Identity Card. The 1<sup>st</sup> Defendant told the Court that when he was issued with an Identity Card, he was named therein as



Joseph Gachiri Njege and that when he applied to be issued with a title deed, he was told the name in the Identity Card and the Lands Register were different.

44. It was the 1<sup>st</sup> Defendant's case that it was those circumstances which compelled him on 31<sup>st</sup> October, 1988 to apply for rectification of his name in the Register so as to include his baptismal name therein. He told the Court the correction was regular and lawful and that he had subsequently duly sold the suit property to the 2<sup>nd</sup> Defendant herein.
45. That position is supported by the 2<sup>nd</sup> Defendant who asserts that he properly purchased the suit property from the 1<sup>st</sup> Defendant who was the registered proprietor thereof.
46. The 3<sup>rd</sup> and 4<sup>th</sup> Defendants equally deny the allegations of fraud. It is their plea that at all material times, they acted lawfully and in good faith in relation to the transactions in issue as the 3<sup>rd</sup> Defendant merely carried out its statutory duties under the Registered *Land Act*.
47. From the material placed before me, there was no dispute that upon the process of land demarcation, adjudication, consolidation and registration, the parcel of land now known as Iriaini/Cheche/371 was registered in the name of Gachiri s/o Njege. While the 1<sup>st</sup> Defendant holds that that registered proprietor was none other than himself, it is the Plaintiff's case that that was the 1<sup>st</sup> Defendant's grandfather who passed on way back on 16<sup>th</sup> October, 1964.
48. According to the 1<sup>st</sup> Defendant, his grandfather as well as his own father Njege Gachiri were issued with their own different parcels of land as at that time. The suit property therefore solely belonged to him and he had been in rightful possession thereof before he transferred the same to the 2<sup>nd</sup> Defendant.
49. I was not however persuaded that Joseph Gachiri Njege (the 1<sup>st</sup> Defendant) was the same Gachiri Njege that was registered as the proprietor of the suit property in the year 1959. While it was probable that those days one could start attending school at a fairly advanced age, the 1<sup>st</sup> Defendant told the Court he was in Class 1 in 1959 and that he finished Class 7 in 1966. That would suggest that he had hardly attained the age of majority as at the time the land registration was taking place in the area.
50. That notwithstanding, it was apparent from his own testimony that the 1<sup>st</sup> Defendant had never been in occupation and/or possession of the suit property ever since its registration. Testifying during his cross-examination herein, the 1<sup>st</sup> Defendant told the Court he had attended Muragara Primary School in Kirinyaga until 1966 when he finished Class 7.
51. The 1<sup>st</sup> Defendant further told the Court that his own father – Njege Gachiri resided with his family in Gikumbo area in Kirinyaga and that they had at some point lived in a place called Githuthuma before they moved to Subukia area of Nakuru in 1970. It was his testimony that he resides in Subukia to-date.
52. According to the 1<sup>st</sup> Defendant himself, it was his uncle King'au Kamau and his aunt Beatrice Wairimu Gachiri who were residing in the suit property. From the evidence placed before the Court, the said King'au Kamau passed away in the year 1988, the same year that the 1<sup>st</sup> Defendant moved the Lands Registry to rectify the record by inserting his baptismal name in the Register.
53. It was further the 1<sup>st</sup> Defendant's own testimony that his uncle King'au Kamau had built on the land and that together with his aunt Beatrice, they were the ones who would pick and harvest the 4,000 mature tea bushes on the land. The 1<sup>st</sup> Defendant did not explain why his uncle and aunt were residing on his land and cultivating the same nor did he explain why the tea licence was in the name of his uncle.
54. The only conclusion one can arrive at from the totality of the circumstances herein is that prior to the purported sale, the 1<sup>st</sup> Defendant did not exercise any form of control over the suit land. That can only



- be so because the land did not belong to him but to his grandfather whose son and daughter resided thereon.
55. I was similarly not persuaded that the 2<sup>nd</sup> Defendant was an innocent purchaser for value without notice. His conduct before and during these proceedings betrayed his alleged innocence. From his testimony before the Court, he was fully aware of the fact that the 1<sup>st</sup> Defendant's aunt Beatrice Wairimu Gachiri as well as another lady he described as Mumbi were the people resident on the suit land.
56. There was no evidence that he made any enquiry as to why the two ladies were residing on the land and harvesting the tea thereon instead of the 1<sup>st</sup> Defendant. After executing the Sale Agreement with the 1<sup>st</sup> Defendant on 6<sup>th</sup> July 2005, he proceeded to file Kerugoya PMCC No. 418 of 2005 against the 1<sup>st</sup> Defendant seeking order listed as follows:
- (a) An order that the Plaintiff having paid the agreed consideration for a whole land parcel number Iriaini/Cheche/371 to the Defendant is entitled to the said parcel (sic);
  - (b) Alternatively the Defendant to refund the Plaintiff the paid purchase price as per paragraph 4 plus interest of 40% per annum as from 6<sup>th</sup> July, 2005 until payment in full.
57. That was the suit that was subsequently used to evict the 1<sup>st</sup> Defendant's aunt Beatrice Wairimu from the land and which eviction led to the filing of this suit. Clearly that suit made no reference to the two ladies that the 2<sup>nd</sup> Defendant acknowledged were on the land. And while he told this Court that he had paid a sum of Kshs.2.4 Million for the suit property, Paragraph 4 of the Plaint filed in the Kerugoya Court shows that he had only paid the 1<sup>st</sup> Defendant the sum of Kshs.120,000/-.
58. It was also apparent that it was only after her eviction that Beatrice and other members of the family came to learn of the fraudulent circumstances under which the title to the suit property had been transferred from the name of their father to that of the 1<sup>st</sup> Defendant. As fate would have it, Beatrice passed away on 7<sup>th</sup> May 2009, a few months after instituting a case against the Defendants herein.
59. As it were the 1<sup>st</sup> Defendant's dealing with the suit land were at best hideous and inconsistent with the dealings of a bona fide owner. He did not acquire any proper title to the land and had none to pass to the 2<sup>nd</sup> Defendant. From the 2<sup>nd</sup> Defendant's own actions, it was clear to me that he was acting in concert with the 1<sup>st</sup> Defendant in pursuit of a common purpose. Their aim was to deprive the beneficiaries of the Estate of the late Gachiri Njege of their entitlement.
60. In the circumstances herein I am persuaded that the Plaintiff has proved to the required standard a case of fraud as to warrant the grant of the orders sought. Accordingly I hereby declare and order as follows:
- (a) A declaration is hereby made that Land Parcel No. Iriaini/Cheche/371 belongs to the Estate of Gachiri Njege and the same should henceforth be registered in the name of Joseph Mwai Kamurwa as the Administrator of the said Estate;
  - (b) The Land Registrar Nyeri Land Registry is hereby directed to rectify the Register in regard to the property known as Iriaini/Cheche/371 and the registration of Joseph Gachiri Njege and Johnson Muriithi Kinyua be accordingly cancelled; and
  - (c) The costs of this suit shall be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants.



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

In the presence of:

Mr. Nderi for the Plaintiff

Mr. Asimwe holding brief for Magee for the 1<sup>st</sup> Defendant

Mr. Ndana for the 2<sup>nd</sup> Defendant

Court assistant - Kendi

**J. O. OLOLA**

**JUDGE**

