



REPUBLIC OF KENYA



**Muriuki & 17 others v Njoroge & 3 others (Environment & Land Case
201 of 2016) [2023] KEELC 16935 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 16935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 201 OF 2016**

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

BETWEEN

**NANCY NJOKI MURIUKI 1ST PLAINTIFF
IRENE WANJIRU MURAGURI 2ND PLAINTIFF
CATHERINE NJERI MUCHOKI 3RD PLAINTIFF
MARGARET W. KARUNGARU 4TH PLAINTIFF
AGNES MUMBI MUCHOKI 5TH PLAINTIFF
AGNES WANJIRU WAMBUGU 6TH PLAINTIFF
PERPETUA WAIRIMU MURAGURI 7TH PLAINTIFF
PERPETUA NJERI 8TH PLAINTIFF
EUNICE NJERI KARIA 9TH PLAINTIFF
MARY MUTHONI KINYUA 10TH PLAINTIFF
LYDIA NYARUAI KAMUNYO 11TH PLAINTIFF
ESTHER NYATORO MURIUKI 12TH PLAINTIFF
ESTHER WANGUI NYUTHE 13TH PLAINTIFF
TERESA WANJIKU MUGO 14TH PLAINTIFF
ESTHER WAMBUI NDETHI 15TH PLAINTIFF
CECILIA WANGUI NJUNGU 16TH PLAINTIFF
MARY WANJIKU 17TH PLAINTIFF
NANCY NYAWIRA 18TH PLAINTIFF**

AND



ALICE WAMBUI NJOROGE 1ST DEFENDANT
JANE NJOKI WACHIRA 2ND DEFENDANT
JULIA WANGU IRUNGU 3RD DEFENDANT
ELENA WANJIRU NUNGO 4TH DEFENDANT

JUDGMENT

Background

1. By their Plaint dated 13th September 2016, Nancy Njoki Muriuki and 17 Others pray for Judgment against the four (4) Defendants and for:
 - (a) Revocation of the 4th Defendant's title to Land Parcel No. Iriaini/Kairia/1717 to be reverted back to (the name of) Muchungwa Women Group;
 - (b) Costs of (the) suit and interest thereon; and
 - (c) Any other order the Court may deem fit to grant.
2. Those prayers arise from the Plaintiffs' contention that at all times material, the 1st, 2nd and 3rd Defendants have been the officials of Muchungwa Women Group – a self-help Group duly registered s such since the year 1998. It is the Plaintiffs' case that both themselves and the four (4) Defendants herein have been members of the Self-help Group.
3. The Plaintiffs aver that on 2nd November 2009, the Group purchased the parcel of land known as Iriaini/Kiiria/1717 (the suit property) through membership shares of Kshs.1,000/- each in addition to other contributions received from well-wishers through a fund drive.
4. The Plaintiffs accuse the 1st, 2nd and 3rd Defendants of fraudulently, unlawfully and without any authority from the Group, proceeding to transfer the suit property to the 4th Defendant.
5. But in their 1st Joint Statement of Defence dated and filed herein on 17th October 2016, Alice Wambui Njoiroge and the other three co-Defendants deny that they acted fraudulently or in any unlawful manner. It is their case that on 12th June 2016, a resolution was made by the Group to dispose off the suit property and to have the proceeds thereof shared equally amongst the membership and that it is pursuant to that resolution that the land was sold and transferred to the 4th Defendant's name.

The Plaintiffs Case

6. The 18 Plaintiffs called one witness who testified in support of their case at the trial.
7. PW1 – Nancy Njoki Muriuki is the 1st Plaintiff and a farmer in Karatina. She told the Court the 18 Plaintiffs were members of Muchungwa Women Group who were dissatisfied with what had happened to a property purchased by the Group. PW1 testified that the 1st, 2nd and 3rd Defendants were officials of the said Self-help Group while the 4th Defendant was an ordinary member of the Group.
8. PW1 testified that as members, each and everyone of them contributed Kshs.1,000/- to buy land. Later on, the Group organized a fundraiser and invited well-wishers to contribute. It was thereafter that the Group purchased the suit property from one Francis Kabethi Muchui.



9. PW1 told the Court the Group wanted to use the land for business ventures in the Group's name. The land was meant to help the Group to generate some money. The Group fenced the land and built a house and a pit latrine thereon. PW1 told the Court that they were however unable to accomplish their mission after their Group's officials sold the land without consulting members. The officials only informed members after selling the land.
10. PW1 testified that a meeting was called but the officials invited even those who had left the Group and were no longer members. While some members of the Group agreed to the sale, PW1 and the Plaintiffs herein did not approve of the same.
11. DW1 told the Court the 4th Defendant was a member of the Group and that she knew there was no resolution to sell the land. She however went on to buy the land. As a result, the Plaintiffs as members of the Group had not been able to benefit from the use of the land as they had expected to.
12. On cross-examination, PW1 told the Court she was a founding member of the Group and a former official. Some of the Plaintiffs had also been officials at the time the suit property was acquired. PW1 further told the Court she was one of those who had signed the Sale Agreement alongside the 2nd and 3rd Plaintiffs.
13. PW1 testified that while there were minutes giving them the go-ahead to buy the land, there were none authorising the sale. PW1 however admitted there was a meeting called to discuss the sale of the land. She did not however attend the meeting as she was opposed to the idea of a sale. She told the Court she was not sure of the number of the members who were opposed to the sale.
14. PW1 told the Court the Group had 48 members and that she did not know the number of those who attended the meeting that was called to discuss the sale. She conceded that some of the Plaintiffs herein had attended the meeting. PW1 told the Court that no resolution was passed at the meeting to sell the land as 19 of them were opposed to the sale.
15. PW1 testified that she was aware the land was sold. She did not however know there was an agreement that the proceeds of the sale were to be shared equally. PW1 conceded that she was aware some people including the 9th and 18th Plaintiffs were given their money from the sale. PW1 further conceded that 4 people out of the 19 names she had presented to the Court did not sign for their names. She was aware the 4 had gone to the Group's officials and that they were paid.

The Defence Case

16. On their part the Defendants called two witnesses who testified in support of their case during the trial.
17. DW1 – Alice Wambui Njoroge is the 1st Defendant and a business woman in Karatina town. She told the Court she was formerly the Secretary of Muchungwa Women Group.
18. DW1 denied that the officials of the Group sold the land without authority. She told the Court they had permission of a majority of the members of the Group. DW1 told the Court the Group's resolutions were passed by the majority as per their Constitution. She told the Court they held a meeting on 12th June, 2016 where a resolution was passed to sell the land. The meeting was attended by 43 members and 35 of them voted for the sale.
19. DW1 told the Court another meeting was held on 10th July, 2016 wherein they resolved to sell the land and to share the proceeds thereof equally. DW1 told the Court 46 of the total membership of 67 members attended the meeting. After the resolution 51 members had since taken their share of the proceeds from the sale.



20. DW1 told the Court it was not true they had defrauded the Group. On the contrary, she told the Court that they were very transparent and that the land was sold to the highest bidder. She further told the Court that the 9th and 18th Plaintiffs who had received their shares turned around and sued them for selling the land. The officials were still keeping the shares of those who had not taken theirs.
21. On cross examination, DW1 told the Court that all members were invited for the meeting which was attended by the Area Location Chief and a representative of Ministry of Social Services. DW1 insisted their constitution required that they pass resolutions by majority and not by consensus. She further told the Court they had decided to give priority to members to buy the land.
22. DW1 further testified that they sold the land for KShs.1.5 million. She did not however have minutes of a meeting where they reported the amount of the purchase price and/or how they would share the same.
23. DW2 – Elena Wanjiru Nungo is the 4th Defendant and a teacher by profession. Relying on her Statement filed herein on 16th May 2022, DW2 told the Court she was a member of the Muchungwa Women’s Group when the Group acquired the suit property. DW2 testified that sometime in the year 2016 following discussions on how best to utilize the land, the Group resolved to sell the land as it was too small to be sub-divided amongst the members.
24. DW2 told the Court she was interested in the land and that she offered KShs.1,500,000/- to purchase the same. She was informed she was the highest bidder and on 22nd June 2016, she executed a Sale Agreement with the Group’s officials to buy the land. In addition, she paid KShs.30,000/- for the shed that had been constructed on the land by the Group.
25. DW2 further testified that the Group resolved to share the purchase price equally. In that respect DW2 attended a meeting at Ibis Hotel in Karatina where she was paid her share as a member of the Group.
26. On cross-examination DW2 told the Court she voted for the sale of the land and that at that time she had not expressed an interest to buy the land. She proceeded to buy the land because a majority had voted for the sale.
27. DW2 told the Court she was the highest bidder although she was not aware if other people had put in their bids to purchase the land. She told the Court she proceeded to deposit the purchase price of KShs.1.5 million into the Group’s Co-operative Bank Account. She however conceded the Account was not in the name of the Group but in the names of the 1st, 2nd and 3rd Defendants who were officials of the Group.

Analysis And Determination

29. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
30. The 18 Plaintiffs herein have urged the Court to revoke the 4th Defendant’s title to all that parcel of land known as Iriaini/Kairia/1717 and to have the same revert back to the name of Muchungwa Women Group. The Plaintiffs accuse the 1st, 2nd and 3rd Defendants of fraudulently and unlawfully colluding with the 4th Defendant to have the property which was initially in the name of the said Muchungwa Women Group, transferred to the 4th Defendant’s name.
31. On their part, while they admit that the said parcel of land was indeed transferred to the name of the 4th Defendant, the four (4) Defendants deny that they acted fraudulently or in any unlawful manner.



- It is the Defendants' case that the transfer was done pursuant to a resolution of the membership of the Muchungwa Women Self Help Group which determined that the property be sold and the proceeds of the sale be shared equally by the membership.
32. From the material placed before me, both the Plaintiffs and the Defendants were members of Muchungwa Women Group, a self-help Group registered as such under the Ministry of Gender, Children and Social Development. The Group which was registered on 14th December 1998 had its operations confined within Mathira in Nyeri County.
 33. It was not in dispute that sometime in the year 2009, members of the Group each contributed the sum of Kshs.1,000/- towards the purchase of a parcel of land. The amount collected from the members apparently being insufficient, the Group organized for a fundraiser from which they raised an undisclosed amount of money.
 34. Having raised sufficient funds, the Group members resolved to purchase the parcel of land known as Iriaini/Kairia/1717 measuring some 0.0405 Ha. or thereabouts. On 2nd December 2009, the Group purchased the said parcel of land from one Francis Kabethi Muchue at a consideration of Kshs.380,000/-. Subsequently upon transfer the Group was issued with a title deed in its name on 20th January, 2010.
 35. It is that title that by this present claim, the Plaintiffs accuse the 1st, 2nd and 3rd Defendants who are the Secretary, Chairlady and Treasurer respectively of the Group of fraudulently and unlawfully transferring to the 4th Defendant without the Group's authority.
 36. Testifying in support of that contention through Nancy Njoki Muriuki (PW1), the Plaintiffs told the Court that the Group had wanted to use the land for business ventures and that as a result of the fraudulent sale and transfer of the property to the 4th Defendant the Group members had been unable to benefit from their investment as they had expected to.
 37. It was PW1's testimony that while the officials called for a meeting before the sale, they invited persons who had long left the Group and who were no longer members. PW1 further told the Court that while indeed some members of the Group agreed to the sale, the Plaintiffs herein were opposed to the same. It was the Plaintiffs case that all members of the Group had to authorize the sale before the property could be disposed off.
 38. As it were, the Plaintiffs did not point out the names of the strangers or non-members of the Group who are said to have attended the meeting. From the Defendant's List of Documents it is apparent that the said meeting was held on 12th June, 2016. A copy of the minutes of that meeting (Dexh 1) reveals that the only other non-member who attended the meeting was the Area Location Chief who expended some advice on suitable investments for the members before she left the meeting to attend to other duties.
 39. Again while PW1 asserted that they opposed the resolution to sell, it was apparent from her testimony during cross-examination that she did not attend the meeting as she was opposed to the idea of the sale. She further conceded that some of the people in the list of 19 members whom she said were opposed to the sale, had attended the meeting and voted for the sale.
 40. From a perusal of the minutes of the Group's meeting held on 12th June 2016, it was apparent that the meeting was attended by 43 members. While 5 members abstained from the vote, 3 members are shown to have voted against the sale of the suit property. The Motion to sell was however passed by a majority of 35 members.



41. While the Plaintiffs asserted that any decision to sell the property ought to have been unanimous and not a mere majority decision, I was unable to find any basis for that contention. I have looked at the Group's constitution which is attached to the Certificate of Registration of the Group. *The Constitution* neither requires a unanimous consensus on decisions of the Group nor does it provide how the same are to be done.
42. This being an unincorporated self-help Group, its decisions can only be made through a majority resolution of the members present and voting. If it were to be as suggested by the Plaintiffs that the Group's decisions can only be valid if passed unanimously by all members including those who did not attend the meeting such as PW1, such Groups would be unable to conduct their affairs as it would lead to a paralysis in decision making where even only one member disagrees with a resolution of the majority.
43. In the circumstances of this case, I was not persuaded that the Plaintiffs had demonstrated any fraud or irregularity in the manner in which the suit property was transferred to the name of the 4th Defendant. It was apparent from the material placed before the Court that the 1st, 2nd and 3rd Defendants as officials of the Company had called for a meeting to ostensibly discuss the fate of the suit property. By a majority resolution, the Group did resolve to sell the land.
44. While it was not clear how many other bidders placed an interest to purchase the suit property, it was evident that the 4th Defendant offered to buy the property for Kshs.1,500,000/- and that the said amount was paid by the 4th Defendant into a Co-operative Bank Account in the name of the officials of the Group before the property was transferred and registered in the name of the 4th Defendant.
45. As Tunoi J.A (as he then was) stated in *Vijay Morjaria -vs- Nansingh Madhusingh Darbah & Another* (2000) eKLR:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleadings. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”
46. In the matter before me, the Plaintiffs have neither provided any evidence that distinctly proves any fraudulent conduct on the side of the three officials and the 4th Defendant nor have they provided any evidence that the Defendants herein made any improper gain from the transaction leading to the transfer of the property to the 4th Defendant. While they cast aspersions on the officials for withdrawing the money to private hands, the evidence before the Court was that the proceeds of the sale had been shared out equally amongst the membership and that all those who accepted, including the 9th and 18th Plaintiffs herein had been paid their entitlements while the officials retain the balance for those that are yet to accept payment.
47. In the premises, I did not find any basis for and/or merit in the Plaintiffs case. The same is dismissed with costs to the Defendants.

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

In the presence of:

No appearance for the Plaintiffs



Mr. P. Kahiga for the 1st, 2nd and 3rd Defendants

No appearance for the 4th Defendants

Court assistant – Kendi

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J. O. Olola

JUDGE

