



REPUBLIC OF KENYA



**Njuguna v Ngetich (Environment & Land Case 43 of 2020)
[2023] KEELC 17109 (KLR) (27 April 2023) (Judgment)**

Neutral citation: [2023] KEELC 17109 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 43 OF 2020**

A OMBWAYO, J

APRIL 27, 2023

BETWEEN

JULIA WANGARI NJUGUNA PLAINTIFF

AND

MATHEW NGETICH DEFENDANT

JUDGMENT

1. The plaintiff Julia Wangari Njuguna has come to this court claiming to be the registered owner of Nakuru/Temoyatta Scheme/623: -situate at Kuresoi subcounty, has and is at all material times in actual and quiet possession of the suit property since 1971 and subsequent allotment by land adjudication and settlement department in the year 1984 to her deceased father without competing claims (hereinafter "the suit property"). The original owner was her father Thagia Kamau and when he passed on, she applied for letters of administration which were issued on 18th January 2006 and grant confirmed on 27th October 2020.
2. After obtaining the confirmed grant, she submitted the original letter of allotment and requisite payments to enable her to be issued with an allotment in her name as the sole beneficiary of the estate.
3. The allotment letter was issued after complying with all the requisite applications and payments of relevant rates and rent, including approvals duly issued by the department of land adjudication and settlement.
4. Sometime in 2019, the national government embarked on a program to issue titles and the President issued titles in Nakuru including the one for Tumoyeta Settlement scheme. She was issued with the title for the suit property. On or around 15th June 2020, her representatives on the farm informed her that some individuals had invaded the property and managed to repulse them away. That afterwards DCI from Kuresoi summoned her representatives (Bernard Ruto and Wesley Mutai) to appear before one of the officers over an offence of forceful entry



5. That when Bernard Ruto in company of Wesley Mutai and two neighbors visited the said police offices, the DCI harassed him and did not want to listen to the version that the defendant is a fraudster since he has never owned that property or occupied it before. That the defendant continues to issue threats of imminent forceful and illegal eviction through phone calls to her representatives on the farm.
6. The defendant has attempted to fraudulently take possession of the land. The plaintiff prays for a permanent injunction restraining the defendant by himself, his agents, servants or employees from entering upon, remaining thereon, removing from, wasting, sub-dividing, digging on, excavating, fencing, erecting or building any structure whatsoever or otherwise dealing with all that property known as Nakuru/Temoyetta Scheme /623(the suit property) situate at Kuresoi subcounty.
7. A declaration that the defendants purported interest or claim on the land register and entries arising there were obtained fraudulently unlawful, illegally and through corrupt means hence null and void.
8. That this Honorable Court do issue a declaration that the plaintiff is the legal registered owner all that property known as Nakuru/Temoyetta Scheme/623 situate at Kuresoi subcounty.
9. An order directing the registrar of lands, Nakuru Lands registry to expunge any competing or parallel records in the lands registry, if any in respect of property known as Nakuru/Temoyetta623
10. That the officer in charge of Kuresoi Police station to ensure maintenance of law and order in enforcement of the above court orders.
11. The defendant filed defence and counter claim denying the plaintiff claim and stated that he was the lawful owner of the land and the registered owner of the land having purchased it from One Kosetiony Kipruto Tinderet.
12. When the matter came up for hearing the plaintiff attended but the defendant failed to attend. The plaintiff testified that she was the registered owner of the land and produced the title deed that proved that land was registered in her name. the plaintiff evidence was not controverted.

Section 24 of the [Land Registration Act](#) provides :

24. Interest conferred by registration.

Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
- (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
 - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

Section 25 provides:-



25. Rights of a proprietor.

- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.
 - (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

Section 26 provides

26. Certificate of title to be held as conclusive evidence of proprietorship.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute



and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
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 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
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- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
- (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
13. I do find that the plaintiff being the registered owner of the suit land is entitled to the orders sought. I do grant a permanent injunction restraining the defendant by himself, his agents, servants or employees from entering upon, remaining thereon, removing from, wasting, sub-dividing, digging on, excavating, fencing, erecting or building any structure whatsoever or otherwise dealing with all that property known as Nakuru/Temoyetta Scheme /623(the suit property) situate at Kuresoi subcounty.
14. I Do Further Granta declaration that the defendants purported interest or claim on the land register and entries arising there were obtained fraudulently unlawful, illegally and trough corrupt means hence null and void ■
15. This Court does issue a declaration that the plaintiff is the legal registered owner all that property known as Nakuru/Temoyetta Scheme/623 situate at Kuresoi subcounty and orders the registrar of lands, Nakuru Lands registry to expunge any competing or parallel records in the lands registry, if any in respect of property know as Nakuru/Temoyetta 623.The officer in charge of Kuresoi Police station



to ensure maintenance of law and order in enforcement of the above court orders. Costs to the plaintiff.
Orders accordingly:

**JUDGMENT DATED, SIGNED AND DELIVERED VIA EMAIL THIS 27TH DAY OF APRIL
2023.**

A O OMBWAYO

JUDGE

