



Mereu (Suing for and on behalf of the Estate of Cecilia Nalagit Mereu (Deceased) v Njenga (Environment & Land Case 606 of 2010) [2023] KEELC 17014 (KLR) (20 April 2023) (Judgment)

Neutral citation: [2023] KEELC 17014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 606 OF 2010**

MN GICHERU, J

APRIL 20, 2023

BETWEEN

MICHAEL KOIKAI MEREU (SUING FOR AND ON BEHALF OF THE ESTATE OF CECILIA NALAGIT MEREU (DECEASED) PLAINTIFF

AND

JOYCE MAKUHI NJENGA DEFENDANT

JUDGMENT

1. The plaintiffs' claim against the defendant is as follows:-
 - a. A declaration that 1 acre from L.R. Ngong/ngong/32766 forms part of the estate of the estate of the deceased Cecilia Nalagit Mereu(deceased).
 - b. An order directing the defendant, her agents, employees and or servants to subdivide and transfer 1 acre from LR. Ngong/ngong/32766 to the deceased's' estate.
 - c. In the alternative and without prejudice to the foregoing, an order do issue directing the Land Registrar, Kajiado North District to sign all subdivision and transfer documents transferring 1 acre from LR. No. 32766 to the estate of Cecilia Nalagit Mereu (deceased)
 - d. Costs of the suit and interested thereon at court rates from the date of filing till payment in full.
 - e. Any other relief that the court may deem fit to grant.
2. The plaintiff's case is as follows. He is a son of the deceased Cecilia Nalagit Mereu. She was the registered owner of L.R Ngong/ngong/12183 (2¾ acres). In the year 1992, she sold 1 acre out of L. R 12183 to the defendant at Ksh.300,000/=. The deceased handed over the title deed of the suit land to the defendant.The remaining title changed to L.R Ngong/ngong/25183 (1½) acres. Instead of it being registered in the name of the deceased, the defendant caused it to be registered in her own name. This was unlawful because the deceased did not sign any transfer documents.



3. The defendant and the deceased entered into a second agreement for the purchase of an extra half an acre of the suit land at Ksh. 150,000/= which the defendant paid in full. In the year 2004, the defendant subdivided L.R.25183 into two portions namely Ngong/ngong/32766 Measuring 1¼ Acres And Ngong/ngong/32767 measuring ¼ acres but retained L.R No. 32766 (1¼ acres) in her name. The parcel comprises the deceased's balance of 1 acre. This is the land that the plaintiff now claims. He has been patient with the Defendant but she has refused to surrender the extra land hence the suit.
4. In support of his case, the plaintiff filed the following evidence.
 - i. Witness statements by the plaintiff and Rose Sisian Mereu.
 - ii. Copy of grant *ad litem* dated 27/9/2016.
 - iii. Copy of agreement for sale of land between the deceased and the Defendant dated 7/1/1992.
 - iv. Copy of letter to the Land Registrar dated 18/11/2015.
 - v. Copy of sketch map of the suit land dated 22/8/2000.
 - vi. Copy of the mutation form dated 2/8/2004
 - vii. Copy of mutation form for L.R. Ngong/Ngong/7483 dated 17/7/1990.
 - viii. Copy of acknowledgment by the defendant dated 27/7/1993.
 - ix. Copy of certificate of official search for L.R. 32766 dated 25/1/2017.
 - x. Copy of demand letter dated 14/1/2017.
 - xi. Copy of caution dated 18/11/2015 in respect to L.R 32766.
5. The defendant through counsel on record filed a written statement of defence dated 8/5/2019. In the defence, it is averred as follows. The defendant bought 1 acre from the deceased on 7/1/1992. The land measured 1¼ acres and not 2¼ acres as averred in the pleadings. Later on, the defendant brought an additional ½ acre from the deceased at Ksh.150,000' = which she paid in full.
6. Vide a memorandum of understanding dated 27/7/1993 between the deceased and the defendant, it was agreed that the defendant would buy the entire parcel no. 12183. By then, there was a dispute between the deceased and the late Hon. William Ntimama over ¼ acre of L.R 12183. The understanding between the deceased and the defendant was that after Hon. Ntimama relinquished the ¼ acre of land which he had fenced, the defendant would pay the purchase price for it.
7. Once the defendant became the registered owner of the suit land, she subdivided it into four quarters which she transferred to third parties. They include L. R Ngong/Ngong/25184, 25185, 25186 and 25187. The remaining portion after the subdivision of the suit land became L. R 25183. In the year 2004, this land was further subdivided by the defendant into L.R 32767 which was transferred to Bernard Kirimi Murerwa and Hellen Karimi Murerwa. L.R No.32766 remained in the name of the defendant.
8. It is the defendant's case that she does not owe the plaintiff any land or money and that the deceased did not disclose all the details of her transaction with the defendant to the plaintiff for fear that he would ask for money from her to buy alcohol instead of paying fees for the deceased's daughter. In conclusion, the defendant denies fleeing the country and calls for the dismissal of the suit and the removal of the



caveat lodged against the L.R 32766. The only evidence that the defendant filed in support of her case was a witness statement dated 8/5/2019.

In addition to the witness statement, there is a surveyor's report which is undated and which shows that the registered area for L.R 32766 is 0.52ha while the ground area is 0.49ha. This report was made after the consent dated 1/8/2019 where it was agreed that the private surveyor visits the *locus in quo*.

9. At the trial on 30/9/2021, only the plaintiff and his witness testified on oath. They were then cross-examined by the defendant's counsel. The defendant did not testify even though she was given ample opportunity of doing so even virtually as the record will show.
10. Only the plaintiff's counsel filed written submission on 20/2/2023. The defendant's counsel did not file any even after the deadline of 28/2/2023.
11. I have carefully considered the evidence adduced in this case by the plaintiff including the witness statements, documents and the testimony at the trial. I have also considered the burden on the plaintiff to preponderate his case on a balance of probabilities. The plaintiff's counsel has identified the following issues for determination.
 - i. Whether or not there exists one acre on the ground?
 - ii. Whether or not the defendant purchased the said one acre?
 - iii. Whether the defendant paid for the one acre?
 - iv. Whether or not the said acre forms part of the plaintiff's late mother's estate?I make the following findings on the four issues identified by the plaintiff's counsel.

12. On the first issue, I find that the plaintiff's mathematics do not add up for the following reasons.

Firstly, in the Plaintiff, the plaintiff claims for one acre. This is as per paragraph 17 (a) of the Plaintiff. In his testimony in court on 30/9/2021, the plaintiff was claiming 1¼ acres. This inconsistency is not explained anywhere. It would seem that the plaintiff is not sure of his case.

Secondly while converting hectares to acres, one multiplies by 2.471. If one multiplies 0.975 hectares which is the area of the land numbers Ngong/Ngong/12183 by 2.471, the acreage is 2.409225 acres and not 2.75 acres (2¾) that the plaintiff purports it to be. It is therefore not possible to know whether an acre exists on the ground.
13. On the second issue, the plaintiff has not proved whether the defendant purchased one acre or not. This is simply because the agreement was not between him and the defendant. It was between his mother and the defendant. He was not even a witness. His evidence on the agreements is not first hand. It is hearsay and not admissible.
14. On the third issue, like in the second issue, I find no first-hand evidence of payment of the purchase or absence of payment because the witness to the agreement did not testify. It is only the plaintiff who testified and he was not present when the payments were being made.
15. On the final issue, it is difficult to know whether the so called one acre which was not proved to exist in the first place would form part of the plaintiff's late mother's estate.
16. In the final analysis I find that the plaintiff has not proved his claim against the defendant on a balance of probabilities due to the absence of concrete direct evidence. I dismiss the plaintiff's case with costs to the defendant.



17 It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF APRIL, 2023.

M.N. GICHERU

JUDGE

