



**Muriria v Syokimau Farm Limited & another; Mang'eli & another (Interested Parties)
(Environment & Land Case 423 of 2012) [2023] KEELC 17803 (KLR) (29 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17803 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 423 OF 2012
CA OCHIENG, J
MAY 29, 2023**

BETWEEN

BENSON NJERU MURIRIA PLAINTIFF

AND

SYOKIMAU FARM LIMITED 1ST DEFENDANT

GILBERT MAGERA NORU 2ND DEFENDANT

AND

JOHN KILOLO MANG'ELI INTERESTED PARTY

CHIEF LAND REGISTRAR INTERESTED PARTY

JUDGMENT

1. Through a Complaint dated the 19th October, 2012 which was amended on 9th September, 2019, the Plaintiff sought for the following orders against the Defendants:-
 - a. A declaration that the Plaintiff is the lawful owner of the land parcel LR no 12715/132 and 12715/133.
 - b. An order to the Registrar of Titles Nairobi that the names of the 2nd Defendant Gilbert Magera Moru be cancelled and the suit lands LR no 12715/132 and 12715/133 be transferred by the 1st Defendant to the Plaintiff and in default the court or its Executive Officer do execute a transfer and relevant documents to the effects the aforesaid transfer to the Plaintiff.
 - c. An order directing the 2nd Interested Party to reconstruct the records held in the correspondence and deed file held at the said office for LR no 12715/132 and 12715/133 bearing the Plaintiff's name Benson Njeru Muiriria.
 - d. An order for site visit of the *locus in quo* before closing submissions.



- e. Costs and interest of suit be borne by the Defendants.
2. The 1st Defendant in its Defence dated the 4th September, 2013 admits that the Plaintiff was allotted plots 68 and 69 within parcel of land LR no 7149/11/R and upon completion of subdivision he was issued with numbers LR 12715/132 and 12715/133 respectively (hereinafter referred to as the 'suit lands'). It denies having acted fraudulently in getting the 2nd Defendant registered as the owner of the suit lands and attributes the acts of fraud solely to the 2nd Defendant. It prayed for the following orders:-
- a. That the Plaintiff's suit be admitted as against the 2nd Defendant personally.
 - b. That 2nd Defendant be made to pay costs of this suit.
 - c. Any other relief the court deems fit to grant.
3. The 2nd Defendant filed a Defence including Counter-claim dated the 30th October, 2013 where he denied the averments in the Plaint. He contended that he was issued with Allotment Letters for plots 68 and 69 respectively within LR no 7149/11R. Further, that he processed his titles in 1985. He disputed the Plaintiff's Letters of Allotment. He averred that the Plaintiff is not in possession of the suit lands and maintained that he is the rightful owner of the said lands. He claimed the Plaintiff is a fraudulent claimant. He explained that there has been a previous suit being Machakos CMCC no 351 of 2011 *Benson Njeru Muriria v Syokimau Farm Limited & Gilbert Magera Noru* in respect to the dispute herein. He sought for the following orders in the Counter-claim:-
1. The Plaintiff's suit be dismissed with costs.
 2. An order of declaration be issued that the 2nd Defendant is the sole owner of the suit property.
 3. An award of damages for trespass against the Plaintiff.
 4. The cost of the suit be awarded accordingly.
4. The Plaintiff filed a Reply to Defence and Defence to Counter-claim reiterating his averments as per the Plaint and denying ever trespassing on his own property. He insisted that he has been in possession of the suit property. He sought for the Counter-claim to be dismissed with costs.
5. The matter proceeded for hearing but I note the Plaintiff's suit was dismissed for want of prosecution. Further, the 1st Defendant never tendered any evidence and its suit was closed. It is only the 2nd Defendant who tendered evidence.

Evidence of the 2nd Defendant

6. DW1 who is a son to the 2nd Defendant testified that he had a Power of Attorney to represent his father who was ailing. It was his testimony that on 29th June, 1983 the father entered into a Sale Agreement with one Christopher Muindi Nzimba for the purchase of 10 shares no 5621 to 5630 under Certificate no 563 together with the allocated Plot no 68. Further, that on 7th July, 1983, his father was issued with a Letter of Allotment no 673 for Plot no 68. It was his testimony that on 14th July, 1983 his father entered into a Sale Agreement with Joseph Maingi Muthiani for purchase of 10 Shares no 4881 to 4890 under Share Certificate no 489 together with allocated Plot no 69. He testified that on 3rd August, 1983 his father was issued with a Letter of Allotment for Plot no 69. He explained that on 1st September, 1983, his father received a formal letter from Syokimau Farm Limited confirming that he had been allocated Plot nos. 68 and 69 in Syokimau Farm. Further, on 4th October, 1985 his father received a Letter from G. K. Ndunda Advocates that his title for LR no 12715/133 was ready for collection. He testified that on 22nd August, 1989 his father received a letter from Syokimau Farm Ltd informing him that title for



Plot no 69 was ready. He further testified that his father paid land rent and rates for the suit lands. Further, that his father had been in possession of the suit lands. To buttress his averments, he produced the following documents as exhibits: Land Certificate for Title number 12715/132 IR Number 44446; Land Certificate for Title number 12715/133 IR Number 44451; Certificate of Official Search for Title no 12715/132 IR Number 44446 dated 1st October, 2012; Certificate of Official Search for Title no 12715/133 IR Number 444451 dated 24th August, 2012; Land Rent payment slip at National Bank for 8th August, 2012 for LR no 12715/132; Land Rent payment slip at National Bank for 15th August, 2012 for LR no 12715/133; Land Rent payment slip at National Bank for 15th August, 2012 for LR no 12715/132; Rent Clearance Certificate issued to the 2nd Defendant on 14th August, 2012 for LR no 12715/132; Rent Clearance Certificate issued to the 2nd Defendant on 14th August, 2012 for LR no 12715/133; Application for copy of Title number LR 12715/132; Letter of Allotment for Plot nos. 68 and 69 to 2nd Defendant dated 1st September, 1983; Letter from Collector of Stamp Duty, Ministry of Lands dated 27th January, 2012 declining to endorse a transfer for being executed by the Chief Magistrate Court; Copy of Transfer that was executed by the Chief Magistrate Court in Machakos for LR no 12715/132; Copy of Transfer that was executed by the Chief Magistrate Court in Machakos for LR no 12715/133; Letter by the 2nd Defendant to the Deputy Registrar High Court in Machakos dated 4th September, 2013 notifying the Deputy Registrar of none service of the suit; Letter from Kibera & Associates Advocate to the Post Master General, Postal Corporation of Kenya dated 3rd September, 2013 enquiring whether the Post office box and Code 342-00100 respectively, was in use in 1981 as indicated in the alleged; Letter from Post Master General dated 23rd September, 2013 to Kibera & Associates confirming that the Posting Corporation started using the code in the year 2000; A letter of allotment issued to the 2nd Defendant's wife Mrs. Serah Mary Magera by 1st Defendant on 1st September, 1983; A Share Certificate number 901 issued to the 2nd Defendant's wife Mrs. Serah Mary Magera by the 1st Defendant on 17th January, 1985; Share transfer to 2nd Defendant's wife Sarah Mary Magera from James Maingi Muthiani who previously held the shares; A Share Certificate number 563 issued to Mr. Christopher Muindi Nzimba by the 1st Defendant on 24th July, 1981; Share transfer to 2nd Defendant from Christopher Muindi Nzimba who previously held the shares; Share transfer to 2nd Defendant from James Maingi Muthiani who previously held the shares; An Index Map/RIM identifying LR Number 12715/132 and 12715/133; A Sale Agreement between Mr. Christopher Muindi Nzimba and the 2nd Defendant dated the 29th June, 1983; A Letter of Allotment issued to the 2nd Defendant Gilbert Magera Noru by the 1st Defendant on 7th July, 1983 for Plot Number 68; A Letter of Allotment issued to the 2nd Defendant Gilbert Magera Noru by the 1st Defendant on 3rd August, 1983 for Plot Number 69; A Share Certificate Number 907 issued to the 2nd Defendant, Mr. Gilbert Magera Noru by the 1st Defendant on 17th January, 1985; A Share Certificate Number 908 issued to the 2nd Defendant, Mr. Gilbert Magera Noru by the 1st Defendant on 17th January, 1985; A letter from the 1st Defendant's Chairman dated 22nd August, 1989 to the 2nd Defendant calling him to pay for Transfer of title; and Letter from G. K. Ndunda & Company Advocates dated 4th October, 1985 to the 2nd Defendant informing him that the Title Deed for Plot no 12715/133 was available.

Analysis and Determination

7. Upon consideration of the Amended Plaintiff, 1st Defendant's Statement of Defence, 2nd Defendant's Statement of Defence including Counter-claim, Witness testimony and submissions, the following are the issues for determination:-Who is the proprietor of Land Reference nos. 12715/132 and 12715/133?Whether the 2nd Defendant is entitled to the orders sought in the Counter-claim.Who shall bear the costs of this suit?

I will deal with the issues jointly.



8. The 2nd Defendant in his submissions reiterated his evidence and insisted that he is the proprietor of the suit lands. Further, that he has Title Deeds to the said lands. He argued that the Plaintiff did not produce Certificate of Title to prove ownership of the suit lands. He claimed the Plaintiff is guilty of fraud as the entire documents he presented were forgeries. To buttress his averments, he relied on the following decisions: *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* (2016) eKLR; *John Muchiri Mbutia v Rebecca Were Mutanda & another* (2015) eKLR; *Shancebal Limited v County Government Of Machakos* (2018) eKLR; *Mwangi S Kimenyi v Attorney General & another* Civil Misc. no 720 of 2009; *Arun Jain & 4 Others v Martin Lakituru & 2 Others* (2017) eKLR; *Benson Wandera Okuku v Were Wakho* (2020) eKLR; *Kinyanjui Kamau v George Kamau* (2015) eKLR; *Evans Kidero v Speaker of Nairobi City County Assembly & another* (2017) eKLR; *Philip Ayaya Aluchio v Chrispinus Ngayo* (2014) eKLR; *Nakuru Industries Limited v SS Mehta & Sons* (2016) eKLR and *Willesden Investments Limited v Kenya Hotel Properties Limited* NBI HCC no 367 of 2000.
9. As to who is the proprietor of Land Reference nos. 12715/132 and 12715/133.
10. The Plaintiff claimed he is the owner of the suit lands and but insisted that the 2nd Defendant had fraudulently acquired them. He sought for cancellation of the 2nd Defendant's titles. The 1st Defendant supported the Plaintiff's claim and insisted that the 2nd Defendant had been wrongly registered as owner of the suit lands. I note the Plaintiff and 1st Defendant despite filing their Amended Plaintiff and Defence failed to attend Court to tender evidence in support of their assertions and challenge the evidence of the 2nd Defendant. In the case of *Janet Kaphiphe Ouma & another v Marie Stopes International (Kenya)* Kisumu HCCC no 68 of 2007, Ali-Aroni, J. favourable cited with approval the decision in *Edward Muriga through Stanley Muriga v Nathaniel D. Schulter* Civil Appeal no 23 of 1997, where it was held that even if a party filed a Defence but failed to adduce evidence to support the assertions made therein, the evidence of the opposing party remained uncontroverted.
11. The 2nd Defendant presented evidence on how he acquired the suit lands. DW1 testified that on 29th June, 1983, the 2nd Defendant entered into a Sale Agreement with one Christopher Muindi Nzimba for the purchase of 10 shares no 5621 to 5630 under Certificate no 563 together with the allocated Plot no 68. Further, that on 7th July, 1983, the 2nd Defendant was issued with a Letter of Allotment no 673 for Plot no 68. DW1 further testified that on 14th July, 1983 the 2nd Defendant entered into another Sale Agreement with Joseph Maingi Muthiani for purchase of 10 Shares no 4881 to 4890 under Share Certificate no 489 together with allocated Plot no 69 after which on 3rd August, 1983 he was issued with a Letter of Allotment for Plot no 69. It was DW1's testimony that on 1st September, 1983, the 2nd Defendant received a formal letter from the 1st Defendant confirming that he had been allocated Plot nos. 68 and 69 in Syokimau Farm. Further, on 4th October, 1985 the 2nd Defendant received a letter from Messrs G. K. Ndunda Advocates that his title for LR no 12715/133 was ready for collection. While on 22nd August, 1989 the 2nd Defendant received a letter from the 1st Defendant that title for Plot no 69 was ready. It further emerged that the 2nd Defendant had been paying land rent and rates for the suit land and also took possession thereon. I note the Plaintiff presented an Allotment letter dated the 6th August, 1981 which he claimed was issued by the 1st Defendant. However, it is evident that the said Allotment Letter was issued even before subdivision as per the Survey Map. I further note that the Plaintiff presented a Share Certificate issued on 24th July, 1981 using P. O. Box 342-00100 Nairobi. However, from a letter dated the 23rd September, 2013 from Posta Kenya which was produced as an exhibit, I note they indicated that postal codes were introduced in Kenya in 2000. Further, the Plaintiff produced receipts whose sequencing seemed incorrect as no 5131 is dated 31st April, yet the month of



April ends on 30th. In the case of *Dr. Joseph Arap Ngok v Justice Moiwo Ole Keiwua & 5 Others*, Nai. Civil Appeal no 60 of 1997 the court categorically declared that:-

“Section 23(1) of the then *Registration of Titles Act* (now reproduced substantially as Section 25 and 26 of the *Land Registration Act*) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the titleholder under the Act. It is our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

12. Based on the evidence before me while associating myself with the quoted decision, I find that since the Plaintiff and 1st Defendant failed to tender evidence to confirm their assertions and challenge the 2nd Defendant’s evidence as well as testimony of his witness, the said evidence hence remain uncontroverted. Although the 2nd Defendant sought damages for trespass, I opine that since he has been in possession of the suit lands, the alleged acts of trespass from the Plaintiff could not arise.
13. In the foregoing, I find that the 2nd Defendant is indeed the absolute proprietor of Land Reference nos. 12715/132 and 12715/133 and will proceed to uphold his titles. I further find that he has proved his case on a balance of probability and is hence entitled to the orders sought in the Counter-claim.
14. Since I had already dismissed the Plaintiff’s suit, I will proceed to enter Judgment for the 2nd Defendant as per the Counter-claim and make the following final orders:-
 - i. The Plaintiff’s suit be and is hereby dismissed with costs.
 - ii. An order of declaration be and is hereby issued that the 2nd Defendant is the sole owner of LR nos. 12715/132 and 12715/133.
 - iii. The cost of the suit and the Counter-claim is awarded to the 2nd Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 29TH DAY OF MAY, 2023

CHRISTINE OCHIENG

JUDGE

