



**Muthoni v Ngugi ((Sued as the Administrator of the Estate of Prof Elizabeth Njeri Ngugi - Deceased)) (Civil Suit 89 of 2018) [2023] KEELC 17634 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17634 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
CIVIL SUIT 89 OF 2018**

**BM EBOSO, J**

**MAY 25, 2023**

**BETWEEN**

**ANNAH MUTHONI AKA HANNAH MUTHONI ..... PLAINTIFF**

**AND**

**JAMES NGOCHI NGUGI ..... DEFENDANT**

**(SUED AS THE ADMINISTRATOR OF THE ESTATE OF PROF ELIZABETH NJERI NGUGI - DECEASED)**

**JUDGMENT**

**Background**

1. The plaintiff instituted the primary claim in this cause through a plaint dated 14/3/2018. Among other reliefs, she sought a declaration that Professor Elizabeth Njeri Ngugi (herein referred to as “the deceased”) obtained Title Number Ruiru East/Juja East Block 2/3537 irregularly, fraudulently, unlawfully and by abuse of office, hence the occupation of the land by the defendant constitutes trespass. In addition, she sought an order cancelling the title and rectification of the land register relating to the said parcel.
2. The plaintiff averred in the plaint that she was at all material times a member (shareholder) of Juja Farm (1976) Limited in which the deceased was a director. She contended that she was allotted the suit land by the said company and that she took possession of the land upon allotment. It was her case that, subsequently, Juja Farm (1976) Limited was wound up in February 1991. She contended that the deceased took advantage of her illiteracy and ignorance and misused her office/authority as a director of the said company to secretly, fraudulently, unlawfully and irregularly process the title to the land in her name.
3. The defendant entered appearance and filed a defence and counterclaim dated 5/4/2018. He denied the allegations pleaded by the plaintiff and put the plaintiff to strict proof. By way of counterclaim, he



contended that the deceased was the lawful owner of the suit property and had enjoyed quiet possession until her demise on 29/3/2015.

4. The defendant added that on 16/4/2015, the plaintiff's agents entered the suit property alleging that the plaintiff was the new owner of the suit property. He added that on 21/6/2015, agents of the plaintiff once more entered the suit property, cultivated a portion of it and left. Consequently, the defendant sought against the plaintiff, among other reliefs, a declaration that the suit land belonged to the defendant and a permanent injunction restraining the plaintiff against entering or using the suit property.
5. On 6/7/2022, the plaintiff's advocates prosecuted an application dated 20/5/2022, through which they sought leave to cease acting for the plaintiff. The application was granted on the same day.

### **Hearing and Evidence**

6. When the suit eventually came up for substantive hearing on 2/3/2023, the plaintiff was not present to prosecute the primary claim. Consequently, the plaintiff's primary claim was dismissed for non-attendance and the defendant's counterclaim was heard. What therefore falls for determination in this Judgment is the defendant's counterclaim. It is noted from the court record that, prior to commencement of the hearing, the defendant withdrew prayers (d) and (e) of the counterclaim.
7. James Ngochi Ngugi [the defendant] testified as DW1. He was the only defence witness. His evidence was that he was an advocate of the High Court of Kenya practicing as such in Nairobi. He was the administrator of the estate of the deceased. The deceased was his mother. The deceased died on 29/3/2015. DW1 added that the deceased bought the suit property through acquisition of shares in Juja Farm (1976) Limited and she owned the suit property for decades prior to her demise in 2015. It was his evidence that on 16/4/2015, their long time caretaker of the suit property, Mr Peter Kamangu, called him and informed him that a trespasser had entered the suit property claiming to be the new owner and that the said trespasser had visited their neighbour Ms Lucy Karungari. He subsequently visited Ms Karungari who confirmed the incident. DW1 further testified that on or about 21/6/2015 the caretaker informed that the same person had entered the suit property again, cultivated it using a hired tractor, and left. He urged the court to grant him the reliefs sought in the plaint.
8. DW1 produced the following documents:
  - i. Title deed for the title parcel number Ruiru East/Juja East Block 2/3537; and
  - ii. Grant of Letters of Administration intestate issued to him on October 5, 2015.

### **Submissions**

9. In his brief oral submissions, Mr Muturi, counsel for the defendant, stated that the defendant was relying entirely on the pleadings and on the evidence. Counsel observed that the defendant had withdrawn prayers (d) and (e) of the counterclaim. Counsel urged the court to grant the remaining prayers in the counterclaim.

### **Analysis and Determination**

10. The primary suit by the plaintiff was dismissed on 2/3/2023 for non-attendance. What was prosecuted in this cause was the defendant's counterclaim. Consequently, the two questions that fall for determination are: (i) Whether the defendant has proved his counterclaim to the required standard; and (ii) Whether the reliefs sought by the defendant in his counterclaim are available in the circumstances of this case.



11. The defendant led evidence demonstrating that he is the administrator of the estate of the late Prof Elizabeth Njeri Ngugi [the deceased]. He also led evidence showing that the deceased was and is still the registered proprietor of the suit property, Ruiru East/Juja East Block 2/3537. The exhibited title shows that the deceased was registered as proprietor of the suit property in 1989.
12. Whereas the plaintiff impugned the deceased's title, contending that the title was obtained illegally and fraudulently, she did not tender or lead any evidence to support the allegation of fraud and illegality. In the absence of any evidence proving fraud, illegality or irregularity, the title held in the name of the deceased remains protected under Sections 24, 25 and 26 of the *Land Registration Act*.
13. On the defendant's allegations of trespass, DW1 tendered evidence demonstrating that on two occasions in 2016, there were acts of trespass on the land by a person claiming to be the new owner of the land. In her defence to the counterclaim, the plaintiff contended that he authorized cultivation of the land. Given the uncontroverted evidence of the defendant, the court is satisfied that in the above circumstances, the reliefs sought in the counterclaim are merited.
14. The result is that Judgment is entered in favour of the defendant against the plaintiff in the following terms:
  - a. The claim by the plaintiff, Annah Muthoni, is marked as dismissed on 2/3/2023.
  - b. A declaration is hereby made that land parcel number Ruiru East/Juja East Block 2/3537 belongs to the late Elizabeth Njeri Ngugi.
  - c. A permanent injunction is hereby issued restraining the plaintiff together with her agents, employees and servants against entering or using the said parcel of land.
  - d. The plaintiff shall bear costs of the primary suit and the counterclaim.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 25TH DAY OF MAY 2023**

**B M EBOSO**

**JUDGE**

**In the Presence of: -**

Mr Muturi for the Defendant

Court Assistant: Hinga/Osodo

