



**Ocean Sparkles Limited v Wokabi (Environment & Land Case  
10 of 2022) [2023] KEELC 17874 (KLR) (25 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17874 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE 10 OF 2022**

**AK BOR, J**

**MAY 25, 2023**

**BETWEEN**

**OCEAN SPARKLES LIMITED ..... PLAINTIFF**

**AND**

**JULIUS WAHOME WOKABI ..... DEFENDANT**

**JUDGMENT**

1. This dispute is over ownership of the parcel of land known as Nanyuki Municipality Block 12/124. The Plaintiff claims that it is the owner of the property known as amalgamated multi-dwelling residential plot no 12/124 and 12/181 located in Muthaiga area, Nanyuki in Laikipia County. It averred that before the amalgamation of the plot, it purchased Nanyuki Municipality Block 12/124 from John Mugo Njeru. That John Njeru had bought the land from Stephen Ngungi, who held a lease issued on September 18, 2018. A certificate of lease was issued to the Plaintiff on May 6, 2019. It averred that it duly paid the requisite dues and applied for amendment of the registry index map (RIM). Further, that it submitted development plans for approval by the County Government of Laikipia for the proposed development on its amalgamated property and had mobilised building materials in readiness to commence construction and had even constructed a perimeter wall around its amalgamated property.
2. On May 5, 2020 its director was summoned to appear before the Laikipia East Sub County Criminal Investigation Office (DCIO) regarding a complaint lodged by the Defendant claiming that the Plaintiff was developing his plot. The Plaintiff averred that its director was called a fraudster and was treated unfairly and denied fair administrative action at the police station. Further, that the DCIO took away the green cards from the lands registry and unlawfully registered a restriction against its land during the Covid 19 period when the lands registry at Nanyuki was closed. The Plaintiff averred that the dispute was of a civil nature and that the Defendant had unlawfully fixed a gate on its property with a view to developing it.



3. The Plaintiff sought a declaration that it was the owner of the property known as amalgamated multi-dwelling residential plot numbers 12/124 and 12/181 located in Muthaiga. It also sought a permanent injunction to restrain the Defendant or his agents from dealing with the suit property as well as general damages for trespass and unlawful encroachment on its property.
4. The Defendant filed a defence denying the Plaintiff's claim while counterclaiming for the revocation of the Plaintiff's registration as proprietor of Nanyuki Municipality Block 12/124; and rectification of the register by having his name entered on the register as proprietor of that parcel of land. He averred that he entered into a sale agreement with Josphat Ratemo Nyarama on June 10, 2011 on terms which were fulfilled and that he effected the transfer to his own name following which a certificate of lease was issued to him on September 23, 2011. He stated that he took possession and has remained on the land to date.
5. The Defendant gave particulars of fraud, collusion and illegality between the Plaintiff and the Land Registrar, Laikipia in issuing a certificate of lease to the Plaintiff whilst he had a lease since 2011. He accused the Defendants in the counterclaim of tampering with or interfering with the records relating to the suit property at the Laikipia District Land Registry. He further sought a declaration that the purported amalgamation of Nanyuki municipality Block 12/124 and 12/181 was illegal and void. He sought to have a permanent injunction to restrain the Plaintiff from dealing with the suit property.
6. The suit was transferred from the Environment and Land Court (ELC) at Nyeri to Nanyuki ELC for hearing and disposal in May 2022.
7. John Mugo Njeru gave evidence on October 11, 2022. He stated that a certificate of lease over Nanyuki Municipality Block 12/124 was issued to the Plaintiff on May 6, 2019. He claimed that Michael Njenga Waweru sold and transferred to him Nanyuki Municipality Block 12/181. He added that certificates of official search issued on December 11, 2019 confirmed that the Plaintiff was registered as the owner of Nanyuki Municipality Block 12/124 and 181 and that due process was followed in its registration as the owner of the land.
8. He maintained that the amalgamation of the two parcels of land was above board and that the Plaintiff paid the requisite land rates and that the notification of the amalgamation was published in the Kenya Gazette and the Daily Nation of August 2, 2019 without eliciting any objection. The Plaintiff applied for amendment of the RIM and the Director of Surveys duly approved the amalgamation of the properties. The Plaintiff constructed a wall along the amalgamated property.
9. He was summoned to appear before the DCIO on May 5, 2020 and asked to supply documents to prove the Plaintiff's ownership of the amalgamated property. He averred that the DCIO did not accord the Plaintiff a right to be heard and went further to claim that before the DCIO summoned him, the DCIO had escorted the Defendant to the suit property and allowed him to fix a permanent gate and fence parts of the amalgamated property. He claimed that the DCIO took away the green cards for the two plots from the land registry and registered a restriction against the suit land. He stated that the Defendant had unlawfully fixed a gate on the Plaintiff's property which was illegal, and amounted to trespass on private property. He was emphatic that the Plaintiff had not sold the suit property to the Defendant nor had it permitted any development on suit property.
10. When the witness attempted to produce documents, the court pointed out that they were not legible which prompted the Plaintiff to apply for adjournment. The case was adjourned to November 9, 2022. On that date Mr Njeru produced the Plaintiff's certificate of incorporation confirming that it was incorporated on November 12, 2018. He produced a copy of the letter from the Ministry of Lands



and Physical Planning Nairobi dated December 27, 2019 forwarding the lease document in triplicate and surrender of lease for Nanyuki Municipality Block 12/195.

11. He also produced a copy of the letter of allotment dated August 7, 2002 allocating Nanyuki Municipality Block 12/124 to Stephen Ngungi on specified conditions including the payment of stand premium and other costs amounting to Kshs 20,090/=. It was stipulated in the special conditions that the land would be used for shops, offices and flats excluding the sale of petrol and motor oils.
12. The receipt which Mr Njeru produced as evidence of payment of the sum of Kshs 20,090/= demanded in the letter of allotment is dated July 2, 2018. The letter of allotment gave a condition that acceptance of the offer and payment of the specified sum was to be done within 30 days of the date of offer.
13. He also produced a copy of the lease dated September 13, 2018, which was executed by the Chief Land Registrar and indicates that the National Government was leasing the land to Stephen Ngungi in consideration of stand premium of Kshs 12,000/=. The lease was executed by John Mugo Njeru as lessee and is indicated to have been drawn by the Land Registrar in Nairobi. The certificate of lease dated March 7, 2019 for Nanyuki Municipality Block 12/124 which the Plaintiff produced was issued to Stephen Ngungi.
14. Mr Njeru produced a copy of the agreement for sale of land and transfer of property dated April 2, 2019 entered into between Stephen Ngungi and the Plaintiff. The agreement indicated that the vendor was the registered proprietor of Nanyuki Municipality Block 12/124 and the consideration was given as Kshs 5,000,000/= which was to be paid on execution of the agreement. According to the terms of the agreement, the transfer was to be completed before May 30, 2019. He produced copies of the certificate of lease issued in the Plaintiff's name on May 6, 2019 and the transfer of lease dated April 26, 2019 transferring parcel no 124 from Stephen Ngungi to the Plaintiff. John Njeru executed that transfer as the director of the Plaintiff. He also produced copies of the rent and rates clearance certificates.
15. Mr Njeru produced a copy of the letter dated September 6, 2019 written by the Land Administration Officer, Laikipia County to the Physical Planning Officer seeking approval for the proposed amalgamation and change of user from a single dwelling house to multi-dwelling of plot numbers 124 and 181. The letter from the National Land Commission dated September 9, 2019 intimated that the Commission had no objection to the amalgamation subject to conditions set out in the letter. Both the Land Administration Officer and the County Surveyor also gave their approval on certain specified conditions.
16. The Ministry of Lands and Physical Planning wrote to the Plaintiff on October 23, 2019 confirming that the Government had approved the proposed amalgamation and change of user subject to specified conditions including payment and surrender of the original titles in exchange for the new ones. The letter mentioned the submission of a new deed plan duly endorsed and sealed by the Director of Surveyors. The letter of July 25, 2018 from the Director of Surveys confirmed that the RIM had been amended to reflect parcel no 124 through folio register (F/R) no 131/83. He also produced the applications for development approval and photographs of the land as well as the transfer of lease in respect of Nanyuki Municipality Block 12/181.
17. On cross-examination, he stated that they exchanged plots with Stephen Ngungi and that that was the consideration. He confirmed that the details of the land which was exchanged did not appear in the sale agreement. He claimed that he paid stamp duty but the receipts were not in court. On being referred to F/R No 386/186, he stated that he did not know what it related to but confirmed that it was authenticated on February 21, 2002. He was also referred to the computation file number CT 64/XVII3/173 dated February 25, 2002. He confirmed that the survey was done by a licensed surveyor known as JD Obel and that he took possession of the land in 2019. On re-examination, he stated that



- the Defendant's documents read Nyeri Municipality Block 12/137. He claimed that the police went to his property, harassed his works and threw them out claiming that they had illegally occupied the Defendant's land.
18. Julius Wahome Wakobi, the Defendant in this case gave evidence and stated that on June 10, 2011, he entered into an agreement with Josephat Ratemo Nyarama for the purchase of Nanyuki Municipality Block 12/124 at the consideration of Kshs 2,900,900/=. He stated that the vendor supplied the completion documents including copies of the letter of allotment dated May 6, 1999 for unsurveyed plot no 16 Nanyuki Municipality, letter of acceptance dated September 6, 2001, letter dated December 4, 2002 from the Commissioner of Lands forwarding the lease for Nanyuki Municipality Block 12/124 to the District Land Registrar, Laikipia, the original certificate of lease issued to Josephat Ratemo Nyarama on December 13, 2009 and receipts issued on account of land rent and rates. He produced copies of those documents including a certificate of official search dated June 6, 2011 confirming that Josephat Ratemo Nyarama was registered as proprietor of Nanyuki Municipality Block 12/124 and a title deed issued to him on November 13, 2009. He also produced a copy of the sale agreement dated June 10, 2011.
  19. Mr Wokabi explained that upon receipt of the completion documents he transferred the land and a certificate of lease was issued to him on September 23, 2011 where upon he took possession and had remained on the land to date. He maintained that the Plaintiff's purported ownership of parcel no 124 was based on fraud, collusion, illegality and irregularity because he had the original certificate of lease and there was no possibility of another certificate of lease being issued to the Plaintiff. Further, that there was no legal possibility of the letter of allotment being issued for Block 12/124 on August 17, 2002 when one had already been issued in 1999. He urged that the suit property was not available for allotment in 2002. He was emphatic that that Nanyuki Municipality/ Block 12/124 was not amalgamated with Nanyuki Municipality/ Block 12/181.
  20. He stated that the construction of the wall was an act of trespass upon his property. He denied constructing a permanent gate and stated that he merely reinstated the demarcation which the Plaintiff had removed. He attempted to produce maps relating to the suit property which the Plaintiff's advocate objected to on the basis that they were not certified by the survey of Kenya. At that point Miss Ithondeka appearing for the Defendant applied for adjournment and the matter was put off to April 18, 2023.
  21. The Land Registrar, Charles Nyangicha testified on April 18, 2023 and produced a copy of the lease in respect of Nanyuki Municipality Block 12/124 which was registered on June 22, 2003 showing Agatha Namalwa as the lessee. He also produced another copy of a lease for the same land registered on October 31, 2018 showing Stephen Ngungi as the lessee of the suit property. He produced copies of the green and white cards confirming that the National Government was registered as the owner of parcel no 124 on October 31, 2018 and on the same date Stephen Ngungi was registered at entry no 1 with entry no 2 showing a certificate of lease was issued on March 7, 2019. Entries no 3 and 4 dated May 2, 2019 and May 6, 2019 show that a certificate of lease was issued to the Plaintiff.
  22. On cross-examination, he confirmed that a note was made on the green card to the effect that the land was under investigations pursuant to Ref: CID/SEC/LKP 14/4/E/Vol.1A72 dated March 24, 2021. He had a copy of the letter from CID but did not produce it. He did not know if the investigations by the police had been concluded.
  23. He stated that the current owner of the land was Oceans Sparkle Limited. He confirmed that the letter dated December 4, 2002 forwarding the stamped lease from the Commissioner of Lands to the District Land Registrar, Laikipia for Nanyuki Municipality Block 12/124 was copied to Agatha Namalwa.



There is a handwritten note on the letter indicating that it was collected on January 17, 2003 by Josphat Ratemo Nyarama for attestation purposes. He did not know how Agatha's name came to be on the lease and stated that apart from green and white cards copies of which he had produced they did not have any other cards or records for parcel number 124.

24. Parties filed submissions which the court considered. The Plaintiff submitted that the issues for determination were who was the owner of the suit property and whether it is entitled to the reliefs it seeks or the court should grant the reliefs sought in the counterclaim. The Plaintiff submitted that it had proved that the suit property belonged to it pursuant to Sections 107 and 109 of the *Evidence Act* having bought the land from Stephen Ngungi vide the sale agreement dated April 2, 2019. The land was surveyed, a survey plan drawn and then the RIM was prepared before it was issued a certificate of lease on May 6, 2019.
25. It also relied on the Land Registrar's evidence confirming that according to the records held at the Lands Office at Nanyuki the Plaintiff was registered as proprietor of the suit land. The Plaintiff also relied on Sections 24, 25 and 26 of the *Land Registration Act* and contended that the Defendant failed to prove the existence of the exceptions to Section 26. Further, that he failed to prove that the Plaintiff was guilty of the offences under Section 157.
26. The Plaintiff relied on Section 112 of the *Evidence Act*, and emphasised that the Defendant failed to produce a valid RIM and survey plan to prove that the land belonged to him. It went further to claim that Agatha Nyarama and Joseph Ratemo Nyarama who the Defendant claims sold and transferred the land to him were not called as witnesses to confirm the allegations made by the Defendant.
27. Further, that the Defendant failed to prove fraud, collusion, illegality and irregularity to the required standards. It cited Section 116 of the *Evidence Act* on the burden of proof placed on a person claiming ownership of anything. It urged that the Defendant had failed to prove his counterclaim and that it should be dismissed and judgment entered in favour of the Plaintiff.
28. The Defendant relied on Section 26 of the *Land Registration Act* and *Benjamin Macfoy v United Africa Company Limited [1961] AII ER 1169* as well as *Esther Ndegi Njiru & Another v Leonard Gatei [2014] eKLR*. Regarding the letters of allotment, the Defendant pointed out the salient differences on what the user of the land was as he also drew the court's attention to the fact that the Plaintiff's letter of allotment bore the land reference number. He added that both parties confirmed that the land was in Muthaiga which is a residential area. He urged that the documents he produced demonstrated that due process was followed in the issuance of the certificate of lease on November 13, 2009 which was subsequently transferred to him.
29. The Defendant relied on *Chemey Investment Limited v Attorney General and 2 others [2018] eKLR* where the Court of Appeal held that title to property that was obtained fraudulently or irregularly was not sacrosanct and did not enjoy the protection of the law. The Defendant argued that the Plaintiff failed to discharge the burden of proving that the certificate of lease transferred to it was legally acquired while urging the court to conclude that the certificate of lease dated March 7, 2019 was acquired illegally and fraudulently.
30. The Defendant relied on Section 3(1) of the *Trespass Act* and concluded that he was entitled to damages from the Plaintiff for the trespass the Plaintiff committed by entering his land.
31. The issue for determination is who between the Plaintiff and the Defendant has a superior claim to the suit land.
32. It is clear from the evidence adduced in this case that by the time Stephen Ngungi purported to pay the stand premium and other dues amounting to Kshs 20,090/= demanded in the letter of allotment



- dated August 7, 2002, the land had already been allocated to another person and was not available for alienation to him. He made payment on July 2, 2018 pursuant to the offer made by the Commissioner of Lands vide the letter of allotment dated August 7, 2002 which in any event, was valid for 30 days. The office of Commissioner of Lands ceased to exist after the promulgation of the 2010 Constitution when the National Land Commission (NLC) was established to manage public land on behalf of the national and county governments. If the land were still available for allocation in 2018, then NLC would have played a role in its allocation based on the changed legal regime governing the allocation of public land.
33. In *Gitwany Investment Limited v Tajmal Limited & 3 Others [2006] eKLR* which dealt with double allocation of land, Lenaola J (as he then was) held that the first title in time was the one to prevail because it would have had to be cancelled first before a second title could be issued to the plaintiff in that suit. That scenario is replicated here in the sense that the title issued to Joseph Ratemo Nyarama on November 13, 2009 was first in time and would have had to be cancelled first before a second title over the same parcel of land could be issued to Stephen Ngungi on March 7, 2019.
  34. The Plaintiff made heavy weather of the fact that the Defendant did not produce survey plans and an amended RIM to buttress his claim to the suit land. The court notes that the Defendant produced the letter dated May 2, 2002 by the surveyor requesting the Director of Surveys to amend the RIM to reflect parcel numbers 124 to 132 and release the amended RIM to the Commissioner of Lands upon his indent for purposes of issuance of new grant. The indent to the RIM confirms that it was amended on May 14, 2002 to reflect parcel numbers 124 to 126 vide F/R number 311/84. That being so, it is clear that the subsequent amendment communicated vide the Director of Surveys' letter dated July 25, 2018 could not have happened since the RIM was already amended in 2002 to reflect parcel number 124.
  35. The Plaintiff's claim was that it caused the amalgamation of parcel numbers 124 and 181 to produce parcel number 195. However, it did not tender evidence to confirm that the process of amalgamation was concluded.
  36. The problem the Plaintiff and its predecessor finds itself in regarding the title it holds over Nanyuki Municipality/ Block 12/124 was created by officials at the lands office who did not check their records to verify that that parcel number 124 was already alienated and a title processed by officials at the lands registry in favour of Josephat Nyarama who subsequently transferred it to the Defendant. The certificate of official search dated June 6, 2011 which the Defendant produced in evidence confirms that Josephat Ratemo Nyarama was registered as proprietor of Nanyuki Municipality Block 12/124 and a title deed issued to him on November 13, 2009. That search was issued by the lands office in Laikipia.
  37. The documents which the Land Registrar tendered in evidence also confirm that on December 4, 2002 the Commissioner of Lands forwarded the signed and stamped lease over Nanyuki Municipality/ Block 12/124 to the Laikipia Land Registrar for registration and copied the letter to Agatha Namalwa, the original allottee of the land. The Land Registrar also produced the lease registered on July 22, 2003 in favour of Agatha Namalwa. He could not explain how another lease over the same parcel of land was issued by the same office to Stephen Ngungi on October 31, 2018.
  38. Weighing the evidence adduced by the Plaintiff against that of the Defendant, the court is satisfied that the Defendant whose title was first in time has a more superior claim to the suit land than that of the Plaintiff. The Defendant's root of title can be traced to May 6, 1999 when it was first allocated to Agatha Namalwa as unsurveyed residential plot number 16 Nanyuki Municipality, to the survey and registration of the land until 2011 when it was transferred to the Defendant.



39. The Plaintiff admitted that it had constructed a perimeter wall around the suit property, which confirms that it trespassed on the Defendant's land. The Defendant is awarded general damages of Kshs 500,000/= for trespass.
40. The Plaintiff's claim fails and is dismissed with costs. The court allows prayers (b), (c), (d), (e) and (g) of the counterclaim dated June 30, 2020. The Defendant is awarded the costs of the counterclaim.
41. The office or authority responsible for survey of land is directed to rectify the boundary of the suit land for purposes of excising what was originally Nanyuki Municipality/Block 12/124, cancel parcel number 195 and give what was formerly parcel number 124 a new number in accordance with Sections 15, 16, 17 and 18 of the *Land Registration Act*.

**DELIVERED VIRTUALLY AT NANYUKI THIS 25<sup>TH</sup> DAY OF MAY 2023.**

**K. BOR**

**JUDGE**

**In the presence of: -**

**Mr. John Abwuor the Plaintiff**

**Ms. Wanjiku Ithondeka for the Defendant**

**Stella Gakii- Court Assistant**

