



REPUBLIC OF KENYA



**Murichu v Muniu & 2 others (Environment and Land Case Civil Suit  
3253 of 1995) [2023] KEELC 18476 (KLR) (29 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18476 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE CIVIL SUIT 3253 OF 1995**

**LN MBUGUA, J  
JUNE 29, 2023**

**BETWEEN**

**KARERI MURICHU ..... PLAINTIFF**

**AND**

**WILSON MUNIU ..... 1<sup>ST</sup> DEFENDANT**

**WAMANDE KIMERIA ..... 2<sup>ND</sup> DEFENDANT**

**HANNAH WANJIRU MUNIU ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. This suit has been in the abyss of the litigation arena for the last 28 years!, as from November 3, 1995 when the plaint was filed. The plaintiff claims to be the registered proprietor of parcel LR No Kiambaa/Thimbigua/T312. That until October 20, 1995, the Defendants who are his bother and brother's wife respectively were occupying the suit land as licensees and by a letter dated October 5, 1995, he withdrew the said license and gave the Defendants 15 days within which to vacate his land and deliver vacant possession but they refused to vacate.
2. He seeks the following orders;
  - a. A declaration that the Plaintiff is an absolute registered proprietor of the said Land Reference Number Kiambaa/Muchatha/T312.
  - b. A declaration that the Defendants are trespassers.
  - c. Eviction order.
  - d. Permanent injunction restraining the Defendants and/or their agents from trespassing on the Plaintiff's said piece of land.



- e. Mesne profits at the rate of Ksh 500/= only per month up to the date of handing over vacant possession to the Plaintiff.
  - f. Costs of this suit.
  - g. Interest on (e) and (f) above at court rates.
  - h. Such further or other relief as this Honourable Court may deem fit to grant.
3. The Plaintiff's claim is opposed by the Defendants vide their statement of defence dated April 4, 1996. They contend that the Plaintiff was entrusted with all properties of their late mother, Njeri was Murichu, who died in 1960. They aver that the Plaintiff was registered as the trustee of the suit land as well as Kiambaa/Thimbigua/1435 on behalf of the children and beneficiaries of Njeri wa Murichu.
  4. During the subsistence of the suit, the 1<sup>st</sup> defendant passed on. Efforts to substitute him through an application dated January 19, 2018 were not fruitful, hence the case of the said 1<sup>st</sup> defendant abated.
  5. The lone witness in the entire proceedings is the plaintiff. The case of the defendants was closed on March 4, 2021 with no evidence having been tendered.
  6. PW1 adopted his witness statement dated July 11, 2012 as his evidence. He also produced the 3 documents in his bundle dated February 4, 2013 as P Exhibit 1-3. His case is that he is the registered owner of LR No Kiambaa/Muchatha/T312 and that the Defendants are neither owners nor beneficiaries of the said land, but were licensees on a portion of the suit land. That on October 5, 1995, he ordered them to vacate and deliver vacant possession thereof. The evidence of the plaintiff has not been controverted by the defence side.
  7. Upon cross-examination, PW1 stated he was born in 1939. That his brother, one Peter James Murichu had lodged a caution on the suit land way back in 1998, but has not sued him. He also stated that the 1<sup>st</sup> Defendant is also his brother but he passed away and the cause of action against him abated. He identified the 2<sup>nd</sup> Defendant as the widow of his late brother, Kimeria Murichu and that she has built a house on the suit land.
  8. He stated that the register shows that the suit property was sold to Kariri Murichu in 1959 by Samson Mbugua Goro, and that his father was called Murichu Kareri. He also stated that he caused a change of name to be entered in the land register on December 5, 1975. He added that he did not license the Defendants, he just allowed them to build on the suit land.
  9. Upon re-examination, PW1 stated that he bought the suit property, he did not inherit it and it was not owned by his late father Murichu Kariri. That he has not sued Peter James Murichu because he does not live on the suit property.
  10. The Plaintiff filed his written submissions dated May 3, 2023 contending that he has proved all the elements of trespass against the Defendants. He adds that since trespass is actionable parse, he is entitled to mesne profits. He points out that since the Defendants failed to give evidence, their defence does not serve to rebut the Plaintiff's case in any way.
  11. The submissions of the 2<sup>nd</sup> defendant are dated May 19, 2023 where it is averred that the plaintiff did not discharge the burden of proof against the defendant, averring that the plaintiff did not state with certainty the parcel of land which was trespassed upon.
  12. I have considered the pleadings, the evidence and the submissions proffered herein. The issues falling for determination are; Whether the plaintiff is the owner of the suit parcel LR No Kiambaa/



Thimbigua/T 312, whether the Plaintiff holds the suit land as a trustee to the defendants, whether the defendants are trespassers, and what relief is available to the parties.

13. The provisions of Section 109 of the *Evidence Act* stipulates that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence.
14. PW1 claims that he bought the suit property from one Samson Mbugua Goro. He produced the green card to the suit property which shows that the property was first registered to Samson Mbugua Goro on February 20, 1959. It was then transferred to Kariri Murichu on June 22, 2059 for a consideration of 600/= . A land certificate was issued on December 4, 1975, while the plaintiff (Kareri Murichu) was registered as the owner of that land on December 5, 1975.
15. PW1 elaborated during cross –examination that he caused a change of name to be registered in the title; that is from Kariri Murichu to Kareri Murichu.
16. I find that the evidence of the plaintiff is uncontroverted. Courts have held that pleadings are just mere statements unless evidence is called to back them up. In *Utar Singh Babra and Another v Raju Govindjl*, HCCC No 548 of 1998 (unreported) cited in *Motex Knitwear Limited v Gopitex Knitwear Mills Limited* [2009] eKLR, the court stated that:

“ Although the Defendant has denied liability in an amended defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the Defence rendered by the 1<sup>st</sup> Plaintiff in support of the Plaintiff’s case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.”
17. I find that the plaintiff has proved that indeed he was the registered owner of the suit property. The plaintiff was consistent in his pleadings and evidence that the suit land which was occupied by the defendants is parcel Kiambaa Thimbigua T 312. Thus the plaintiff has proved that he owns the suit land and that there was trespass by defendants.
18. On the claim of trust advanced by the defendants, the same must fail as there was no counterclaim, and they also did not tender any evidence in court.
19. What reliefs are available to the plaintiff? Notwithstanding that plaintiff has proved trespass, this court takes cognizance that the defendants are close family members of the plaintiff and they have occupied the suit land for many years even before 1995. Further, the letter which the plaintiff claims he issued to the defendants in year 1995 telling them to vacate the land is not one of the three exhibits he produced in his bundle of documents filed in court on February 4, 2013. It is also common ground that the parties are rather old, plaintiff having been born in 1939, while some family members have passed on I.e. the 1<sup>st</sup> defendant as well as the husband of 2<sup>nd</sup> defendant. The case itself has taken close to 3 decades in the corridors of justice. To this end, the court will not grant any mesne profits to the plaintiff.
20. Final orders;
  1. The suit against the 1st defendant is marked as abated.
  2. An order is hereby issued declaring the 2<sup>nd</sup> defendant as a trespasser upon parcel Kiambaa Thimbigua/t312.
  3. An order of eviction is hereby issued against the 2<sup>nd</sup> defendant from parcel Kiambaa Thimbigua/T312; The said order is to take effect from the 45<sup>th</sup> day from the date of delivery of this judgment.



4. On costs, I direct that each party bears their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 29<sup>TH</sup> DAY OF JUNE 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Mary Muigai for Plaintiff

H. Kinyanjui For 2<sup>nd</sup> Defendant

Court assistant: June

