



**Muguongo (Suing for himself and on behalf of the Estate of Ephraim Muguongo Wanjau - Deceased) v Wanjau (Environment & Land Case 166 of 2014) [2023] KEELC 18002 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18002 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 166 OF 2014**

**JO OLOLA, J**

**JUNE 16, 2023**

**BETWEEN**

**TIMOTHY KAROKI MUGUONGO (SUING FOR HIMSELF AND ON BEHALF OF THE ESTATE OF EPHRAIM MUGUONGO WANJAU - DECEASED) ..... PLAINTIFF**

**AND**

**SAMUEL MAINA WANJAU ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By the Originating Summons dated 19<sup>th</sup> July 2014, Timothy Karoki Muguongo suing on his behalf and on behalf of the Estate of Ephraim Muguongo Wanjau (hereinafter “the Plaintiff”) claims to be entitled to be registered as proprietor of 8.45 acres out of land parcel No. Iria-ini/Kairia/306 and prays for a determination:
  1. That the Defendant holds 8.45 acres in land parcel No. Iria-ini/Kairia/2089 in trust for the Estate of Ephraim Muguongo Wanjau;
  2. That the trust in relation to the 8.45 acres out of land parcel No. Iria-ini/Kairia/2089 be determined.
  3. That the Defendant be ordered to transfer 8.45 acres out of Iria-ini/Kairia/2089 to the Plaintiff as the legal representative of the Estate of Ephraim Muguongo Wanjau;
  4. That in the alternative the Court find that the Plaintiff is entitled to 8.45 acres on land parcel No. Iria-ini/Kairia/2089 by adverse possession; and
  5. That the Defendant do pay the costs of this suit.



2. The Originating Summons is supported by an Affidavit sworn by the Plaintiff wherein he deposes that he is a son to the late Ephraim Muguongo Wanjau who was a brother to the Defendant. The Plaintiff avers that before his father's demise, the father and his entire family were residing on LR No. Iria-ini/Kairia/306.
3. The Plaintiff further avers that the said LR No. Iria-ini/Kairia/306 measuring some 33.8 acres was their family land and that the same was registered in the name of the Defendant as a trustee for himself and his three brothers who included the Plaintiff's father. The Plaintiff asserts that sometime in the year 2009 one of his uncles by the name Benard Gachuri Wanjau caused the land to be sub-divided to enable him get his portion of the land and as a result, the remaining sub-division was given a new number being Iria-ini/Kairia/2089.
4. The Plaintiff contends that to-date, he still occupies and utilizes a portion of the new parcel of land known as Iria-ini/Kairia/2089 measuring 8.45 acres and that it was time the trust was determined and the 8.45 acres transferred to his name as the legal representative of his father's estate.
5. In the alternative, the Plaintiff avers that he has been in occupation of the said portion of land for a period exceeding 12 years and that as a result, he had acquired the same by way of adverse possession.
6. Samuel Maina Wanjau (the Defendant) is however opposed to the Plaintiff's claim. By his Replying Affidavit sworn on 7<sup>th</sup> August 2014, the Defendant states that he is the sole registered owner of LR No. Iria-ini/Kairia/306 which was registered on 13<sup>th</sup> November, 1997 as well as LR No. Iria-ini/Kairia/2089 which was registered on 15<sup>th</sup> April, 2009.
7. The Defendant denies that he was registered as the proprietor of LR No. Iria-ini/Kairia/306 as a trustee for the Plaintiff or anyone else. He further denies that the Plaintiff has occupied 8.45 acres of the said parcel of land since his childhood and invites him to strict proof.

### **The Plaintiff's Case**

8. The original Plaintiff Timothy Karoki Muguongo passed away on 22<sup>nd</sup> March, 2017 before the trial commenced. Following an application made by his legal representative Rose Ngina Muguongo, she was substituted in his place as the new Plaintiff.
9. The substituted Plaintiff testified as the sole witness in support of her case at the trial. She told the Court the original Plaintiff was her brother and that the dispute herein relates to her father's parcel of land.
10. Relying on her Statement dated 29<sup>th</sup> March, 2019 but filed herein on 16<sup>th</sup> April 2019, the Plaintiff testified that LR No. Iria-ini/Kairia/306 measuring 33.8 acres was registered in the name of the Defendant who had three brothers. The Plaintiff told the Court that going by that acreage, each of the four brothers including her father were entitled to 8.45 acres of land.
11. The Plaintiff further told the Court that upon a claim by one of her uncles by the name Benard Gachuri Wanjau, LR No. Iria-ini/Kairia/306 was sub-divided with one portion being transferred to Benard while the Defendant retained in his name what now became LR No. Iria-ini/Kairia/2089. She urged the Court to find that the Defendant holds 8.45 acres of the new parcel of land in trust for her father's estate and that it was time the trust was determined to enable the Estate get its share of the land.
12. On cross-examination, the Plaintiff conceded that her mother is alive. She denied that her mother was supposed to be at the Land Control Board where the initial consent to sub-divide the land was given.



The Plaintiff further told the Court none of the Defendant's brothers or sisters were at the Board as they do not speak to each other.

13. The Plaintiff testified that the suit property was initially registered in the names of the four (4) brothers. Of the four, all were using their portions except Benard Gachuiro who had sold his portion.

### **The Defence Case**

14. The Defendant equally testified as the sole witness in support of his case. He told the Court the Plaintiff and her brother Timothy had gotten into his land and that they had been assisted by the Area Sub-chief to sue him.
15. The Defendant further told the Court that after the original Plaintiff passed on, his sister took over the suit and started selling the land in which the Defendant resides. He told the Court the substituted Plaintiff had sold the land belonging to the father twice. The Defendant told the Court the land had been given to him by his father in 1957.
16. On cross-examination, the Defendant conceded he got the land from his parents. He told the Court he was then around 11 years and that he had other older siblings like Lucy Wangui and Robert Kaloki who were older than him. Benard Gachuiro and Ephraim Muguongo were younger than him.
17. The Defendant told the Court at the time he was given the land, they were residing on a different part of the same land which now has new numbers after transfer by other Parties. He told the Court he could not recall the parcel number of the land they had lived in with his parents but he could recall they sub-divided it in 1978.
18. The Defendant conceded that a portion of the LR No. Iria-ini/Kairia/306 was now registered in the name of his younger brother Benard Gachuiro Wanjau. He however told the Court he did not know how that came to happen. The Defendant denied that the suit property was divided amongst the four of them as brothers. He got the title for the same in 1979 when both parents were alive.
19. The Defendant conceded that today there are people who have leased portions of LR No. Iria-ini/Kairia/2089. It is the Plaintiff Rose who had leased the land to them.

### **Analysis And Determination**

20. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Learned Advocate acting for the Plaintiff. I was unable to find any submissions filed by the Defendant who was acting in person
21. By the Originating Summons filed herein, the Plaintiff prays for a determination that the Defendant holds 8.45 acres comprised in the parcel of land known as Iria-ini/Kairia/2089 in trust for the Estate of one Ephraim Muguongo Wanjau. She further urges the Court to have the trust determined and for the Defendant to be ordered to transfer the said 8.45 acres to herself as the legal representative of the Estate of Ephraim Muguongo Wanjau.
22. In the alternative, the Plaintiff has asked the court to find that she is entitled to the 8.45 acres comprised in the said LR No. Iria-ini/Kairia/2089 by virtue of adverse possession.
23. As it were, this suit was initially instituted against the Defendant by the Plaintiff's brother Timothy Karoki Muguongo. Following Timothy's death on 22<sup>nd</sup> March, 2017, he was substituted by his sister who is the current plaintiff herein.



24. In support of their claim, the Plaintiff told the Court that she is the daughter of the late Ephraim Muguongo Wanjau who was a younger brother to the Defendant herein. She told the Court that before their grandfather's demise, the grandfather and his entire family resided on the parcel of land then known as LR No. Iria-ini/Kairia/306
25. According to the Plaintiff, the said LR No. Iria-ini/Kairia/306 measuring some 33.8 acres was their ancestral land and the same was registered in the name of the Defendant as a trustee for himself and his three brothers. In this respect, the Plaintiff told the Court that one of the Defendant's brothers by the name Benard Gachuri Wanjau had caused the original parcel of land to be sub-divided to enable him take his portion of the land. It is that sub-division which the Plaintiff told the Court resulted in the new number being LR No. Iria-ini/Kairia/2089 which remains registered in the Defendant's sole name.
26. It was the Plaintiff's case that to-date, they have remained in occupation and possession of their portion of land measuring 8.45 acres and that it was time the trust was determined and their portion of land transferred to their father's family.
27. On his part, the Defendant rejected the Plaintiff's claim and accused her and her family of invading his land and proceeding to sell and lease portions thereof to third parties. He told the Court he was the sole registered proprietor of both LR No. Iria-ini/Kairia/306 as well as LR No. Iria-ini/Kairia/2089.
28. The Defendant categorically denied that he was registered as proprietor of the two parcels of land as a trustee for the Plaintiff's father or anyone else. He further denied that the Plaintiff and or their family had occupied some 8.45 acres of the parcel of land known as Iria-ini/Kairia/306 or any sub-division thereof for a long period of time as claimed by the Plaintiff.
29. From the material placed before me, it was apparent that both the Plaintiff's father the late Ephraim Muguongo Wanjau and the Defendant herein Samuel Maina Wanjau were brothers, the two being the sons of one Wanjau Nduiga who is said to have passed away in the mid 1960s.
30. It was not in dispute that prior to his death, the said Wanjau Nduiga lived together with his wives and children on the same parcel of land. While the Plaintiff told the Court that they resided on LR No. Iria-ini/Kairia/306, the Defendant told the Court that they were residing on another piece of land. As it turned out, the Defendant was unable to identify this alternative piece of land that he states they resided on with his parents.
31. While it was his testimony that LR No. Iria-ini/Kairia/306 was given to him in 1957 by his parents as a gift he was unable to explain when or how the Plaintiff's father and his other siblings came to reside in the said parcel of land. There being no evidence of the existence of any other parcel of land belonging to the family, I was left in no doubt that the entire Wanjau Nduiga's family were residing on the said LR No. Iria-ini/Kairia/306 as at the time of his death.
32. From the Verification Certificate issued by the then Kenya Tea Development Agency Limited on 18<sup>th</sup> September 2006 produced by the Plaintiff (Pexh 5), it was apparent that in the year 1979, the Plaintiff's deceased brother Timothy Karoki Muguongo had planted various tea bushes on a portion of the said LR No. Iria-ini/Kairia/306.
33. In circumstances that were not very clear to me, it was in the same year 1979 that the said LR No. Iria-ini/Kairia/306 measuring some 33.8 acres came to be registered in the name of the Defendant. He was issued with a Certificate of Title thereto on 13<sup>th</sup> November, 1979.
34. It was also apparent from the material placed before me that the said LR No. Iria-ini/Kairia/306 ceased to exist on 15<sup>th</sup> April, 2010 following its sub-division. That sub-division was done pursuant to a Court



decree issued in Karatina SRMCC No. 9 of 2009. That suit was the result of Mathira Land Dispute Tribunal Case No. 3 of 2009.

35. A perusal of the proceedings before the Tribunal produced by the Plaintiff in evidence (Pexh. 1) reveal that the same were instituted against the Defendant herein by his other younger brother Benard Gachuiru Wanjau who was claiming one quarter of the parcel of land known as LR No. Iria-ini/Kairia/306 on the basis that the Defendant held the same in trust for himself.
36. From those proceedings, it did emerge that sometime in the year 1994, the Wanjau Nduiga family had somehow agreed to have the said parcel of land sub-divided into four (4) equal pieces. On that basis, the family did submit an application to the Mathira Land Control Board. In the same year 1994, the Board consented to the sub-division of Iria-ini/Kairia/306 and created four new parcels being Iria-ini/Kairia/2087; 2088; 2089 and 2090. From the Tribunal proceedings, those parcels were to be divided between Robert Karoki Wanjau; Samuel Maina Wanjau (Defendant), Ephraim Muguongo Wanjau (the Plaintiff's father) and the said Bernard Gachuiru Wanjau.
37. From the record, the Tribunal agreed with the complainant that LR No. Iria-ini/Kairia/306 was family land and directed that the Defendant does surrender one quarter (1/4) thereof to the complainant. That award was adopted in the said Karatina SRM Land Dispute Tribunal Case No. 9 of 2009 as an order of the Court on 12<sup>th</sup> June, 2009. That title was accordingly closed as aforesaid on 15<sup>th</sup> April 2010 with the creation of the new numbers.
38. Interestingly and for some inexplicable reason, some two months before the award was read in Court, the Defendant was on 15<sup>th</sup> April, 2009 issued with a new title for the sub-division now known as Iria-ini/Kairia/2089. The new title issued to the Defendant reveals its size as being 6.839 Ha (which in my estimation is approximately 16.9 acres).
39. Testifying before me in Court, the Defendant stated that parcel No. 306 was sub-divided by people he did not know. It was his case that he did not know about Karatina SRM's Land Dispute Case No. 9 of 2009 as he was not there. It was however clear to me that it is the adoption of the award in that case that created the parcel of land known as LR No. Iria-ini/Kairia/2089 which the Defendant claims to be wholly his own. Indeed while he states that he was unaware of the case, the Record reveals that the Defendant was present in court when the Award was read on 12<sup>th</sup> June, 2009.
40. As it were, there was no dispute that LR No. Iria-ini/Kairia/2089 was a sub-division of the family's ancestral land previously known as Iria-ini/Kairia/306. There was no explanation as to why despite his siblings living on and utilizing the land, he was the only one who was given the whole parcel of land by his parents to the exclusion of others.
41. The creation of LR No. Iria-ini/Kairia/2089 which the Defendant now clings to was the result of the determination arrived at that he held the land in trust for his 4 brothers and that each of the brothers was entitled to an equal portion of the land. There was no basis then other than fraud upon which Parcel No. Iria-ini/Kairia/2089 could be registered to be measuring 16.9 acres. That indeed lends credence to the Plaintiff's entitlement to the 8.45 acres sought in the Originating Summons being exactly half the size of the current parcel No. 2089.
42. It follows that I am persuaded that there is merit in the Plaintiff's case and that she has proved her claim on a balance of probabilities.
43. Accordingly I hereby order and determine as follows:
  - (i) That the Defendant holds 8.45 acres in land parcel No. Iria-ini/Kairia/2089 in trust for the Estate of Ephraim Muguongo Wanjau;



- (ii) The trust in relation to the said 8.45 acres out of land parcel No. Iria-ini/Kairia/2089 is hereby determined;
- (iii) The Defendant is hereby directed and ordered to transfer the said portion measuring 8.45 acres out of land parcel No. Iria-ini/Kairia/2089 to the Plaintiff as the legal representative of the Estate of Ephraim Muguongo Wanjau within 45 days from today;
- (iv) The costs of this suit shall be met by the Defendant.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 16<sup>TH</sup> DAY OF JUNE, 2023.**

In the presence of:

Mr. Kamwenji for the Plaintiff

Mr. Samuel Maina Wanjau – the Defendant present in person

Court Assistant - Kendi

**J. O. OLOLA**

**JUDGE**

