



**Githaiga v Ndirangu & another (Environment & Land Case
E018 of 2021) [2023] KEELC 17996 (KLR) (16 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 17996 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE E018 OF 2021**

**JO OLOLA, J
JUNE 16, 2023**

BETWEEN

STEPHEN MAINA GITHAIGA APPLICANT

AND

JOB MUIGA NDIRANGU 1ST DEFENDANT

THE LAND REGISTRAR, NYERI 2ND DEFENDANT

JUDGMENT

Background

1. By his Complaint dated 12th July 2021, Stephen Maina Githaiga (the Plaintiff) prays for Judgment against the two Defendants for:
 - (a) A declaration that title No. Othaya/Itemeni/142 belongs to the deceased and the Plaintiff who is the administrator of the Estate of Manoa Githaiga (the deceased) be registered as the absolute proprietor;
 - (b) An order directed to the 2nd Defendant, the Land Registrar Nyeri, compelling him to revoke and cancel the sub-divisions (title deed Nos. Othaya/Itemeni/1107 and Othaya/Itemeni/1108) thereof and restored the status quo ante;
 - (c) A permanent injunction restraining the 1st Defendant by himself, agents and/or his servants from interfering with the ownership, use and possession by the Plaintiff of Parcel Tile No. Othaya/Itemeni/142 and/or encroaching or trespassing on the suit property;
 - (d) An order for the 1st Defendant to immediately execute the pertinent documents or transfer instruments in respect of land title No. Othaya/



Itemeini/142 in favour of the estate of the deceased, or in default the said order for execution of transfer of documents bind the Deputy Registrar, Environment and Land Court in place of the 1st Defendant; and

(e) Costs of this suit.

2. Those prayers arise from the Plaintiff's contention that at all times material to this suit the late Manoah Githaiga (the deceased) was the proprietor of the parcel of land Known as Othaya/Itemeini/142. In the year 1983, the 1st Defendant instituted Nyeri High Court Miscellaneous Civil Case No. 50 of 1983 claiming a portion of the said parcel of land measuring 2.25 acres.
3. The Plaintiff avers that pursuant to the said case and an award issued by the elders after the matter was referred to them for arbitration, the said parcel of land was sub-divided into two portions being Othaya/Itemeini/1108 registered in the deceased's name and Othaya/Itemeini/1107 registered in the name of the 1st Defendant.
4. It is the Plaintiff's case that the deceased appealed the award to the High Court and the same was set aside and vacated on 1st April, 1993. The Plaintiff asserts that the award having been set aside, the resultant sub-division was null and void and that the same should be cancelled to enable the land revert to its original status.
5. In his Statement of Defence filed herein in person on 22nd September 2021, Job Muiga Ndirangu (the 1st Defendant) denies the Plaintiff's contentions. The 1st Defendant asserts that the Plaintiff is his step son and a stranger to the suit property and that he knows nothing about the history of the land.
6. The 1st Defendant accuses the Plaintiff of lacking discipline and avers that the award by the elders was faultless. He asserts that the award was never vacated in Court in 1993 as stated by the Plaintiff and invites the Plaintiff to provide documentary evidence to that effect.

The Plaintiff's Case

7. Stephen Maina Githaiga – the Plaintiff (PW1) testified as the sole witness in his case. He told the Court he had instituted this suit on his behalf and on behalf of the estate of the late Manoah Ndirangu Githaiga who was his father. PW1 further told the Court that LR No. Othaya/Itemeini/142 belonged to his father who had bought the same as seven (7) fragments from different people. The deceased passed away on 10th April, 1993.
8. Relying on his Statement dated 12th July 2021, PW1 told the Court the 1st Defendant had sued his father in 1983 as a result of which a Panel of Elders to whom the dispute was referred to determined that the land be sub-divided into two. He further told the Court that pursuant to the award by the elders, the 2nd Defendant proceeded to sub-divide the land into Othaya/Itemeini/1107 which was registered in the name of the 1st Defendant while Othaya/Itemeini/1108 was registered in the deceased's name.
9. PW1 testified that his deceased father was dissatisfied by the award and that he had mental health issues. His father therefore applied for a review of the award and the same was set aside and/or vacated by the High Court. As a result, the sub-division was rendered a nullity and hence the prayers in this suit.
10. On cross-examination, PW1 told the Court his elder brother Joseph Ndirangu was not the administrator of their father's estate and that he took out letters of administration for the estate in 2021. PW1 told the Court the title held by the 1st Defendant was obtained illegally when his father was mentally unwell.



11. PW1 further told the Court he was aware his brother Joseph Ndirangu Githaiga was made the Administrator of the Estate of their father in 1995. PW1 however came to Court because his brother was unwilling to pursue this matter.

The Defence Case

12. On his part, the 1st Defendant called two witnesses who testified in support of his case.
13. DW1 – Joh Muiga Ndirangu is the 1st Defendant and a resident of Itemeini Sub-location in Nyeri South. Relying on his Statement filed on 22nd September 2021, DW1 told the Court the Plaintiff is a son to his brother the late Manoah Githaiga.
14. DW1 testified that this matter had been referred to a Panel of Elders and that he was awarded the land he occupies. He further told the Court that when Manoah died, he left a death declaration over the land and that they paid Kshs.700/- so that they could hold a tea party to celebrate the declaration.
15. DW1 accused the Plaintiff of lacking discipline by filing this suit without the permission of his four (4) step mothers. He further told the Court that before his death, their father Joseph Ndirangu had called him together with the Plaintiff's father and had urged them to share the land equally. He urged the Court to dismiss the suit stating it was closed many years back and that it ought not to be re-opened.
16. On cross-examination, DW1 conceded that there was a case filed between himself and his brother in 1983. He however told the Court he was unaware that the High Court did set aside the sub-division of the land into two. He told the Court the setting aside was probably done ex-parte as he only saw the documents relating thereto when he was sued herein. He denied that his title for Parcel No. Othaya/Itemeini/1107 had been nullified.
17. DW2 – Hellinah Njoki is a farmer in Othaya and the wife to the 1st Defendant (DW1). She reiterated the testimony of her husband in regard to the ownership of the property.
18. On cross-examination, DW2 conceded that the title for their parcel of land No. 1107 originated from the Original parcel No. 142 after the District Officer and the Elders awarded them the same.

Analysis And Determination

19. 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 also seen the submissions filed herein by the parties. The Land Registrar Nyeri sued as the 2nd Defendant neither entered appearance nor filed a defence.
20. By the suit filed herein, the Plaintiff wants a declaration that title No. Othaya/Itemeini/142 belongs to his father the late Manoah Githaiga and that as the Administrator of the father's estate, the land should be registered in his name as the absolute proprietor thereof. In addition, the Plaintiff wants an order directed to the Land Registrar Nyeri compelling him to revoke and cancel the sub-divisions of the said parcel of land and to restore the title to its original state. The Plaintiff further urges the Court to grant an order of permanent injunction restraining the 1st Defendant from interfering with his ownership and use of the land and or any trespass thereto.
21. The basis of the Plaintiff's case is simple and straightforward. He asserts that the parcel of land known as Othaya/Itemeini/142 belonged to his father. That sometime in 1983, the 1st Defendant sued his father the late Manoah Githaiga claiming entitlement to a portion of that land measuring 2.25 acres. It is further his case that the said dispute was referred to a Panel of Elders for arbitration.



22. The Plaintiff asserts that while the Panel of Elders awarded the 2.25 acres portion of land to the 1st Defendant, his deceased father was aggrieved and appealed for a review of the same to the High Court. It is the Plaintiff's case that by an order issued by that Court on 1st April 1993, the order was set aside and vacated. The Plaintiff asserts that upon the setting aside of the award, the sub-division of LR No. Othaya/Itemeini/142 should be cancelled as the award then became null and void.
23. From the material placed before me, it was apparent that the Plaintiff's father and the 1st Defendant herein were brothers – the two being the sons of the late Joseph Ndirangu. The two brothers were apparently occupying different portions of the parcel of land known as Othaya/Itemeini/142. The parcel of land had earlier on, on 24th July 1976 been registered in the name of the Plaintiff's father the late Manoah Githaiga. While the Plaintiff told the Court his father had bought the land as seven (7) different fragments from different individuals, his uncle the 1st Defendant told the Court that the parcel of land measuring 5 acres initially belonged to their father Joseph Ndirangu.
24. It was the 1st Defendant's case that before his death, their father had called the two brothers together and had directed them to share the land equally. It is on that account that sometime in the year 1983, the 1st Defendant instituted Nyeri High Court Civil Case No. 50 of 1983 against the Plaintiff's father seeking to have the land sub-divided and for him to be issued with 2.25 acres thereof.
25. It is apparent that the dispute took quite sometime in court and that while it was pending, the said LR No. Othaya/Itemeini/142 was divided into two portions. On 14th January 1985, the resultant sub-division Nos. Othaya/Itemeini/1107 and 1108 were registered and titles issued therefor in the names of the 1st Defendant (Parcel No. 1107) and the Plaintiff's father (Parcel No. 1108).
26. The matter in Court was in the meantime referred to a Panel of Elders for arbitration. From the Plaintiffs documents, it was apparent that on 30th November 1992, the Award by the Elders which was in favour of the 1st Defendant was read to the Parties in Court. The Plaintiff's father was however dissatisfied with the award on account that some of his witnesses had not been heard.
27. Subsequently and by a Chamber Summons application dated 18th December 1992, the Plaintiff's father sought to have the Award set aside. While the Plaintiff contends that the Award was set aside by P.K. Tunoi J (as he then was) in a Ruling delivered on 1st April 1993, I was unable to find any such Ruling among the documents submitted by the Plaintiff. Again while the Ruling of 1st April, 1993 is said to have been what resulted into the sub- division of the original parcel of land, it was evident that the said Ruling if indeed it exists came some eight (8) years after the 1st Defendant obtained his title to the land.
28. While the Plaintiff submitted that the setting aside of the award had canceled the titles, there was no evidence that his father who was then alive took any steps to nullify the 1st Defendant's title. It was also clear that following his father's death on 10th April 1993, the Plaintiff's elder brother Joseph Ndirangu was in 1995 issued with Letters of Administration for the estate.
29. There was no evidence that the Administrator of the Estate of the late Manoah Githaiga ever took any steps to reclaim LR No. Othaya/Itemeini/1107 from the 1st Defendant for all that period of time and I did not think it was open for the Plaintiff to wait for another 28 years after the death of their father to claim the land from the 1st Defendant.
30. In the premises herein I was not persuaded that there was any basis to grant any of the orders sought herein. The Plaintiff's suit is accordingly dismissed with costs to the 1st Defendant.



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

J. O. OLOLA

JUDGE

In the presence of:

Mr. Makura for the Plaintiff

No appearance for the Defendants

Court assistant – Kendi

