



**Ndichu (The Legal Representative of the Estate of John Ndichu  
Ngeru - Deceased) v Mbugua & 9 others (Environment & Land Case  
637 of 2014) [2023] KEELC 18135 (KLR) (15 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18135 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 637 OF 2014**

**LN MBUGUA, J  
JUNE 15, 2023**

**BETWEEN**

**GEORGE NJUNG'E NDICHU (THE LEGAL REPRESENTATIVE OF THE  
ESTATE OF JOHN NDICHU NGERU - DECEASED) ..... PLAINTIFF**

**AND**

**DOMINIC GATHEA MBUGUA ..... 1<sup>ST</sup> DEFENDANT  
NAYLOR SHIVACHI MUKOFU ..... 2<sup>ND</sup> DEFENDANT  
DAVID CHEGE MBUGUA ..... 3<sup>RD</sup> DEFENDANT  
ABAD RASHID ..... 4<sup>TH</sup> DEFENDANT  
DILAWAR RASHID ..... 5<sup>TH</sup> DEFENDANT  
TEREEK MOHAMOOD ..... 6<sup>TH</sup> DEFENDANT  
FAROOQ ANWAR ..... 7<sup>TH</sup> DEFENDANT  
SEENAT ANWAR ..... 8<sup>TH</sup> DEFENDANT  
ZARINA BEGUM ..... 9<sup>TH</sup> DEFENDANT  
NASEEM ANWAR ..... 10<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The initial Plaintiff, one JOHN NDICHU NGERU commenced this suit vide originating summons dated 21.5.2014. He died on 4.8.2014, and vide a grant issued on 11.5.2015, his legal representative, one GEORGE NJUNG'E NDICHU took over the prosecution of the suit.



2. The Originating Summons was thereafter amended on 22.11.2017. It is his case that on 29.7.2013, the 1st-3rd Defendants were registered as proprietors of the suit property L.R. No. 209/223/6; that the said registration was obtained fraudulently as the 4th -10th Defendants had lost any right to transfer the suit property, their rights having been extinguished by way of adverse possession in favour of plaintiff's father John Ndichu Ngeru (deceased). It is further pleaded that the latter had been in possession of the suit property for a period of over 40 years without authority of the Defendants in an open manner.
3. The Plaintiff seeks the following orders;
  1. A declaration that the registration of the 1<sup>st</sup>-3<sup>rd</sup> Defendants as the owners of LR No. 209/223/6 was done fraudulently and an order for cancellation of the said registration.
  2. Once prayer 1 above is granted, a further order that the Plaintiff be registered as the proprietor of LR No. 209/223/6 in place of the 5<sup>th</sup> -10<sup>th</sup> Defendants.
  3. In the alternative to prayers 1 and 2;
    - a. A declaration that the registration of the 1<sup>st</sup>-3<sup>rd</sup> Defendants as the owners of LR No. 209/223/6 was subject to the overriding interests of the deceased under Section 30(f) and (g) of the Registered Land Act (Repealed) and Section 28(h) & (j) of the Land Registration Act and/or that the registration has been extinguished by adverse possession.
    - b. An order that the Plaintiff be registered as the proprietor of LR No.209/223/6 in place of the 1<sup>st</sup>-3<sup>rd</sup> Defendants.
  4. A permanent injunction to restrain the Defendants by themselves, their servants, agents, employees and or anyone claiming under or through them from entering, remaining thereon, encroaching on, trespassing on, or transferring, charging, selling, alienating or in any other way whatsoever from interfering with the Plaintiff's quiet enjoyment of Land Reference Number 209/223/6 or any portion thereof.
4. The plaintiff has filed a further affidavit sworn on 22.11.2017 in support of his case. He avers that he is the legal representative of the Estate of John Ndichu Ngeru who purchased the suit property from one Anwar Rashid(now deceased) who was also the father to the 4<sup>th</sup>-10<sup>th</sup> Defendants.
5. The 1<sup>st</sup> - 3<sup>rd</sup> Defendants opposed the suit vide the Replying Affidavit sworn by the 3<sup>rd</sup> Defendant on 16.3.2017. He avers that by an agreement dated 17.3.1999, the 4<sup>th</sup> -10<sup>th</sup> Defendants agreed to sell the suit property to them for ksh.1 million. The entire purchase price was then deposited with the firm of Muira & co. Advocates (now deceased) who was acting for the parties and the property was transferred to them by a transfer dated 22.7.2013. On 29.7.2017, the certificate of title to the suit property was updated to reflect that they are the registered proprietors of the property.
6. He also avers that the records at the Ministry of lands for the payment of land rent and at the Nairobi City County for the payment of land rates were amended to reflect the new ownership. He argues that it is evident that the deceased was a tenant on the suit property paying monthly rent thus adverse possession cannot be presumed.



7. The 4<sup>th</sup> -10<sup>th</sup> Defendants case was compromised by a consent recorded in court on 15.11.2018 to the effect that the 4<sup>th</sup> -10<sup>th</sup> Defendants do not contest the ownership of the suit property by the Plaintiff.
8. During the trial, the 1<sup>st</sup> defendant passed on (on 26.10.2020) and vide a consent dated 15.11.2021, he was duly substituted with Christopher Ndungu Mbugua.
9. The Plaintiff's case was advanced by two witnesses. PW1, JOHN KINYUMU introduced himself as a deputy director at the National Registration Bureau in the ministry of Interior and National Government. He produced a report by the National Registration Bureau as P. Exhibit 35. It contains records of registered ID Numbers as they appeared in a document marked as DCM3 which is the 3<sup>rd</sup> Defendant's replying affidavit sworn on 16.3.2017. The analysis thereon related to the transfer of the suit properties from the 4<sup>th</sup>-10<sup>th</sup> defendants to the 1<sup>st</sup> -3<sup>rd</sup> defendants.
10. The analysis revealed as follows;
  1. That ID card No.4759543 was issued as a 2<sup>nd</sup> generation Identity card on 23.11.2017 and is held by one George Kipgetich Langat who was born in 1961 and hails from Buret District.
  2. That ID card No.9433112, is held by one Fredrick Kinyamu M'mbijiwe who was born in 1964 and hails from Meru Central District. It was a 2<sup>nd</sup> generation Identity Card issued to him on 9.4.1997.
  3. That ID Card No. 15659543 is none existent.
  4. That ID Card No.9957881 was issued to one Solomon Soita Otwane who hails from Teso District born in 1969.
  5. That No.15237745 doesn't exist in their records.
  6. That ID Card No,5318347 is held by one Alex Owino Agalo who hails from Kakamega District but he did not apply for a 2<sup>nd</sup> generation ID card therefore his computerized records were not on the record.
  7. That ID No.15992217 doesn't exist.
11. Upon cross-examination, PW1 stated that he is not aware of any criminal proceedings against the 1<sup>st</sup> -3<sup>rd</sup> Defendants.
12. The plaintiff, GEORGE NJUNGE NDICHU, a son and administrator of the estate of John Ndichu Njeru (deceased) testified as PW2. He adopted as his evidence, the deceased's affidavit sworn on 21.5.2014 and his own Further Affidavit sworn on 22.11.2017 as his evidence. He produced documents in his list of documents dated 19.5.2014 as P. Exhibit 1-9 and 25 documents in his 2<sup>nd</sup> list dated 22.11.2017 as P. Exhibit 10-34.
13. In the affidavit sworn on 21.5.2014 by John Ndichu Njeru (deceased), he claimed that the 4<sup>th</sup> -10<sup>th</sup> Defendants were registered as proprietors of the suit property on 2.11.1971 and by that time, he was in possession of the suit land and despite the said Defendants becoming registered proprietors of the suit land, they did not ask him to vacate nor give him permission to continue in possession. He contended that he run a spare parts business on the suit property under the name Capital Auto spares & Garage since 1971 and would let parts of the suit property to 3<sup>rd</sup> parties. He paid ground rents and rates and has been sued and defended claims for rates as the owner.



14. He claimed that sometime in April 2014, he learnt that the suit property was transferred to the 1<sup>st</sup> - 3<sup>rd</sup> Defendants fraudulently. He pointed out that Paul Muira, an advocate who is purported to have witnessed the transfer document dated 22.7.2013 used to transfer the suit property on had passed on in year 2012 and that the Identity card numbers and pin numbers used on the said transfer document are not genuine.
15. PW2 told the court that he wants the transfer to the 1<sup>st</sup>-3<sup>rd</sup> Defendants cancelled and the suit property transferred to him as the legal representative of his late father.
16. Upon cross-examination, PW1 stated that his late father purchased the suit property from Anwar Rashid (deceased) who was the father to the 4<sup>th</sup>-10<sup>th</sup> Defendants, but there was no sale agreement exhibited in his documents. He further stated that the current registered proprietors of the suit property are the 1<sup>st</sup>-3<sup>rd</sup> Defendants and that while he has reported the matter surrounding transfer of the suit property to them to the DCI, he is not aware of any criminal cases pending against the 1<sup>st</sup> -3<sup>rd</sup> Defendants.
17. PW2 also stated that his late father was not registered proprietor of the suit property though he had acquired it, but he had applied for registration of the lease.
18. Upon re-examination, PW2 stated that Anwar Rashid (deceased) is the one who gave his late father possession of the suit land and he had it from 1964. He added that his late father had authority to apply for extension of the lease and that the 4<sup>th</sup> - 10<sup>th</sup> Defendants who relocated to Canada have no complaint against his late father.
19. On the date set for hearing of the Defendant's case, the Defendants failed to appear. The court having been satisfied that the Defendants were aware of the hearing date proceeded to close their case.
20. Subsequently, the Plaintiff filed written submissions dated 27.4.2023. They raise a sole issue for determination being whether the registration of LR 209/223/6 in the names of 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants was done by fraud.
21. It is the Plaintiff's submission that that the evidence of PW1 to the effect that Id numbers of persons who allegedly signed the transfer dated 22.7.2013 belonged to persons other than those appearing on the transfer or the identity numbers did not exist at all demonstrates that the said transfer was fraudulent. He argues that the 4<sup>th</sup> - 10<sup>th</sup> Defendants by conceding to the Plaintiff's claim affirm that they never transferred the suit property to the 1<sup>st</sup> - 3<sup>rd</sup> Defendants and since they failed to call any witnesses to counter the said evidence, registration of the suit parcel in the name of the 1<sup>st</sup> - 3<sup>rd</sup> Defendants was fraudulent.

## **Determination**

22. The issues falling for determination are;
  - a. Is the transfer of LR 209/223/6 to the 1<sup>st</sup>-3<sup>rd</sup> Defendants fraudulent?
  - b. Whether the Plaintiff is entitled to the suit land by way of adverse possession as an alternative prayer.
23. The Plaintiff claims that his father John Ndichu Ngeru (deceased) purchased the suit land from one Anwar Rashid(deceased) who was father to the 4<sup>th</sup>-10<sup>th</sup> Defendants. The letter dated 14.2.1996 which is at page 15 of the Plaintiff's supplementary documents dated 22.11.2017 addressed to John Ndichu Ngeru (deceased) by Anwar Rashid (Deceased) points to a sale transaction of the suit land between the



- two persons. The letter states in part, “... It is only the transfer remaining as you have not cleared the payment as you pay by installments.”
24. It is not clear whether the purchase price was paid in full. Nevertheless, the claim of the plaintiff was admitted by the 4<sup>th</sup> - 10<sup>th</sup> defendants in the consent dated 15.11.2018.
  25. At the time the lease to the 4<sup>th</sup>-10<sup>th</sup> Defendants was coming to an end around the year 2002, there are numerous correspondences indicating that the lease would be renewed to John Ndichu Njeru (deceased). The Ministry of Lands wrote to Ndichu vide the letter dated 25.8 .2003 approving extension of the lease of the suit land to him.
  26. The 1<sup>st</sup> - 3<sup>rd</sup> Defendants claim that they purchased the suit property from the 4<sup>th</sup> -10<sup>th</sup> Defendants vide a sale agreement dated 17.3.1999 and the transfer dated 22.7.2013. However, the 1<sup>st</sup> - 3<sup>rd</sup> Defendants’ pleadings were not subjected to prove in evidence during the trial. What more, Pw1 analysed the Identity cards allegedly used to transfer the suit property which ID numbers ostensibly belonged to the 4<sup>th</sup> - 10<sup>th</sup> Defendants and found that some of the identity cards did not exist while others belonged to other persons and not the 4<sup>th</sup>-10<sup>th</sup> defendants!
  27. Further, the transfer is said to have been witnessed by Paul Muira Advocate who according to the Law society of Kenya’s letter dated 9.5.2014 passed away on 5.12.2012.
  28. Under Section 26(1) of the *Land registration Act*, a certificate of title can be revoked on the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
  29. In the case of *Elijah Makeri Nyangw’ra v Stephen Mungai Njuguna & Another* [2013] eKLR it was held that:

“...title to the 1<sup>st</sup> Defendant was obtained illegally, unprocedurally or through a corrupt scheme... I am satisfied that the provisions of Section 26(1)(b) have been met... I therefore proceed to cancel the title of the 1<sup>st</sup> defendant and his registration as proprietor of the suit land...”.
  30. Similarly in the case of *Esther Ndegi Njiru & another v Leonard Gatei* [2014] eKLR the court stated that

“... “Under Section 26(1)... such title however may be challenged on the ground of fraud or misrepresentation to which the proprietor is proved to be a party...”
  31. I find that the transfer of the suit land dated 22.7.2013 to 1<sup>st</sup> - 3<sup>rd</sup> defendants is fraudulent and a sham. I therefore conclude that the 1<sup>st</sup> - 3<sup>rd</sup> Defendants obtained registration of the suit land fraudulently and the said titles ought to be cancelled.
  32. Since the persons who owned the suit property before the fraudulent registration were the 4<sup>th</sup> -10<sup>th</sup> defendants who have admitted to the claim of the plaintiff, then the suit property ought to be transferred to the estate of the initial plaintiff noting that the Grant issued to the current plaintiff on 11.5.2015 was limited to the prosecution of this suit.
  33. I also find that the analysis of the alternative claim of adverse possession is unwarranted in view of the findings that the 1<sup>st</sup> - 3<sup>rd</sup> defendants had acquired the suit land fraudulently.



**Final orders.**

1. A declaration is hereby issued to the effect that the registration of the 1<sup>st</sup>-3<sup>rd</sup> Defendants as the owners of LR No.209/223/6 was done fraudulently.
2. An order is hereby issued for cancellation of the registration of 1<sup>st</sup>-3<sup>rd</sup> Defendants as the owners of parcel LR No.209/223/6.
3. An order is hereby issued for the registration of the suit property LR No. 209/223/6 in the name of the Estate Of John Ndichu Ngeru.
4. The 1<sup>st</sup> -3<sup>rd</sup> defendants are hereby condemned to pay costs of the suit to both the plaintiff and the 4<sup>th</sup> -10<sup>th</sup> defendants.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15<sup>TH</sup> DAY OF JUNE, 2023 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:-

M/s Muya holding brief for Mr. Kingati for plaintiff

Court Assistant: Philis

