



**Mwaura v Mande (Sued as the Legal Representative of the
Estate of Daniel Mande Munyua) (Environment and Land Case
285 of 2018) [2023] KEELC 18176 (KLR) (14 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18176 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE 285 OF 2018
FM NJOROGE, J
JUNE 14, 2023**

BETWEEN

JOSPHAT KARANJA MWAURA PLAINTIFF

AND

CATHRINE WAITHERA MANDE DEFENDANT

**SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF DANIEL
MANDE MUNYUA**

JUDGMENT

1. The plaintiff approached this court by way of a plaint filed on 19/9/2018 seeking the following orders:
 - a. A permanent injunction against the defendant restricting himself, his servants, agents or persons claiming through him from interfering, disposing off, or otherwise dealing with the property number Dundori/Muguathi Block 2/195.
 - b. A declaration that the plaintiff is the rightful owner of all that parcel of land known as Dundori/Muguathi Block 2/195.
 - c. An order directing the Nakuru Land Registrar to rectify/amend/qualify the register accordingly and the plaintiff be registered as the sole proprietor of that parcel of land known as Dundori/Muguathi Block 2/195 and a title deed do issue accordingly.
 - d. That the title deed to Dundori/Muguathi Block 2/195 which is in the custody of the defendant be dispensed with.
 - e. Any other orders/reliefs that the court may deem fit and just to grant.
 - f. Costs of this suit.



2. The plaintiff's claim is that Daniel Mande Munyua, the deceased was and remains the absolute registered owner of Dundori/Muguathi Block 2/195 (the suit land); that the defendant, after filing succession proceedings in respect of the deceased's Estate later sought to rectify the grant thus triggering an objection from the plaintiff, and also the present proceedings; that the plaintiff claims ownership of the suit property, having purchased it from the deceased for valuable consideration vide a series of agreements made on different dates; that the deceased tried to regularize the transfer before his demise but he died before accomplishing the task; that one of the terms of the agreement was the plaintiff's immediate use and possession and pursuant to that he has accomplished massive developments on the property; that the defendant is seeking to dispose of the parcel to a third party and requires the plaintiff to vacate the land and further offers to refund him the sum of Kshs 300,000/= which was the initial purchase price. The plaintiff maintains that he is in occupation of the suit land.
3. The defendant filed a defence on 4/7/2019 denying the claim. However, the defendant never turned up to give evidence at the hearing of the matter which took place on 25/4/2023 and therefore any analysis of the contents of the defence here would be quite futile.
4. At the hearing the plaintiff testified orally and adopted his witness statement filed with the plaint as part of his evidence-in-chief. His evidence is that the land belonged to the deceased; that a tenant of the deceased forged the title and claimed the land was his and was arrested and arraigned in court; that when the criminal case was terminated upon the deceased's demise; that his wife took out a grant to his estate; that when the succession was going on, the tenant, Ndegwa was removed from the land; that it was after that removal of the tenant that the defendant claimed that the land had not been sold to the plaintiff and added that she could refund the consideration. The plaintiff produced a copy of the sale agreement. He also produced proceedings before the High Court in Nakuru HCCC No 19 Of 2004 *Catherine Waitbira Mande v Gervas P. Mwangi Ndegwa* which showed that the defendant had conceded in that there was a transaction that the plaintiff had entered into with her late husband; he claimed to have constructed the structures appearing in the photographs he produced as evidence while the deceased was still alive. The defendant's letter offering a refund of the purchase price to the plaintiff for the land was produced in evidence. According to the plaintiff he had purchased one portion of the land in 1996 and another one in 1997. He produced the acknowledgments of receipt of the consideration in evidence.
5. I have considered the plaintiff's oral and documentary evidence wholistically in this case and in my view, it points to the fact that he purchased the suit land otherwise he would have no good reason to have possession of the same today and for so long a period. He has thus established his claim on a balance of probabilities and his claim therefore succeeds. Consequently, I allow his claim contained in the plaint dated 19/9/2018 in the following terms:
 - a. A permanent injunction is hereby issued against the defendant restraining her, her servants, agents or persons claiming through her from interfering, disposing of, or otherwise dealing with the property number Dundori/Muguathi Block 2/195;
 - b. A declaration is hereby issued declaring that the plaintiff is the rightful owner of all that parcel of land known as Dundori/Muguathi Block 2/195;
 - c. The Nakuru Land Registrar shall rectify the register accordingly and thereby register the plaintiff as the sole proprietor of all that parcel of land known as Dundori/Muguathi Block 2/195 and a title deed shall issue in his name;



- d. That the production of the title deed to Dundori/Muguathi Block 2/195 which is in the custody of the defendant shall be dispensed with during the registration of the land in the name of the plaintiff;
- e. Each party shall bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 14TH DAY OF JUNE 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

