



Gatweku & 2 others (Suing as the administrators and legal representatives of the Estate of the Late Mwangi Wambugu) v Kinyanjui & 3 others (Environment & Land Case 555 of 2016 & 94 of 2018 (Consolidated)) [2023] KEELC 18192 (KLR) (12 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18192 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 555 OF 2016 & 94 OF 2018 (CONSOLIDATED)
FM NJOROGE, J
JUNE 12, 2023

BETWEEN

PETER WAMBUGU GATWEKU 1ST PLAINTIFF
PETER MUKORA NGARI 2ND PLAINTIFF
JANE NJERI 3RD PLAINTIFF
SUING AS THE ADMINISTRATORS AND LEGAL REPRESENTATIVES OF
THE ESTATE OF THE LATE MWANGI WAMBUGU

AND

JULIUS KINYANJUI DEFENDANT

AS CONSOLIDATED WITH
ENVIRONMENT & LAND CASE 94 OF 2018

BETWEEN

JULIUS KINYANJUI PLAINTIFF

AND

PETER WAMBUGU GATWEKU 1ST DEFENDANT
PETER MUKORA NGARI 2ND DEFENDANT
JANE NJERI 3RD DEFENDANT
SUING AS THE ADMINISTRATORS AND LEGAL REPRESENTATIVES OF
THE ESTATE OF THE LATE MWANGI WAMBUGU



RULING

1. This matter ELC 555/2016 (now consolidated with ELC 94/2018) was brought up before consolidation for hearing on January 26, 2018 but was adjourned to allow parties to prepare. At the following hearing date that is May 17, 2018. Mr Gatonye informed court of ELC No 94/2018 filed by the defendant. On October 23, 2018, at the instance of Ms Kinuthia for the defendant and in the absence of the plaintiffs' counsel ELC 555/2016 and ELC 94/2018 were consolidated. ELC 555/2016 is by way of plaint, and seeks the following prayers:
 - a) An order of injunction restraining the defendant by himself, his servants or agents from entering, trespassing or in any way interfering with Rare/Teret Block 1/1907.
 - b) An eviction order against the defendant from the suit premises.
 - c) Costs of the suit.
2. ELC 94/2018 is by way of Originating Summons and it seeks a determination of the following questions:
 - 1) Whether the plaintiff has been in continuous, open and adverse possession of that piece or parcel of land known as Rare/Teret Block 1/1907 measuring approximately 0.7760 Hectares for a period in excess of twelve years.
 - 2) Whether the defendants (title to the said parcel of land measuring approximately 0.7760 Hectares (in their capacities as administrators of the estate of Mwangi Wambugu) has now been extinguished as a result of such continuous, open and adverse possession by the plaintiff.
 - 3) Whether the plaintiff is entitled under Section 38 of the *Limitation of Acts Act* Cap 22 Laws of Kenya to be registered as the absolute proprietor of the parcel of land Rare/Teret Block 1/1907 measuring approximately 0.7760 Hectares in place of Mwangi Wambugu, who is now and presently registered.
 - 4) Whether the defendants should pay the costs of these proceedings.
3. On October 27, 2021 Ms Kibet for the defendant in 555/2016 drew the attention of this court to the existence of a case ELC 462/2016 (formerly HCCC 27/1998) in which the same parties as those in this case appear. This court asked that the file record for the consolidated case and of ELC 462/2016 be brought up in chambers for review.
4. Yet again, on October 19, 2022 after this matter had been confirmed for hearing at the morning call-over, Ms Njoroge for the plaintiff informed the court of more related cases as follows:
 - a) HCCC No 26/1988;
 - b) HCCC No 27/198.

The court at that point sought the view of the parties as to whether the present consolidated case could be deemed as dealing with all the issues arising in the previous cases and Mr Kibet for the defendant in this case answered in the negative, advancing the ground that a defence of adverse possession has been raised by the defendant.



5. It later somehow transpired in the proceedings of October 19, 2022 that HCCC No 28/1988 was also included in the batch of related cases. The hearing was adjourned. The court ordered that the original files for the latter set of High Court cases be brought up for review by all parties and the court.
6. HCCC 26/1988, HCCC 28 of 1988 and HCCC No 27 of 1988 were brought up. The parties are as follows in each case:
 - i. HCCC 26/1988 – Francis Chege Wa Githinji v Mwangi Wambugu Karimi.
 - ii. HCCC 27/1988 – Stephen Chege Wainaina v Mwangi Wambugu Karimi, Land Registrar Nakuru & Attorney General.
 - iii. HCCC 28/1988 – Julius Kinyanjui v Mwangi Wambugu Karimi.
7. In HCCC 26/1988 the plaint therein as amended on February 15, 1988 sought the following orders:
 - a) A declaration that the issue of the title deed No Rare/Teret Block 1/1903 was a nullity;
 - b) An order cancelling the said title deed;
 - c) Costs of this suit;
 - d) Any other or further relief that this Honourable Court may deem fit and just to grant.

HCCC 26/1988 was dismissed for want of prosecution on June 27, 2017 by Riechi J.
8. In HCCC 27/1988 the plaint dated December 22, 1987 sought the following orders:
 - a) A declaration that the issuance of the title deed No Rare/Teret Block 1/1904 was a nullity;
 - b) An order cancelling the said title deed;
 - c) Costs of this suit;
 - d) Any other or further relief that this Honourable Court may deem fit and just to grant.

HCCC 27/1988 was dismissed for want of prosecution by Mutungi J on February 25, 2020.
9. In HCCC 28/1988 the plaint as amended on February 15, 1988 sought the following prayers:
 - a) A declaration that the issue of the title deed No Rare/Teret Block 1/1907 was a nullity;
 - b) An order cancelling the said title deed;
 - c) Costs of this suit;
 - d) Any other or further relief that this Honourable Court may deem fit and just to grant.

HCCC 28/1988 was dismissed with costs for non-attendance on June 27, 2017 by Riechi J.
10. The records show that as at the time of the dismissal of those 3 cases they had not proceeded to hearing at all.
11. This court ordered on December 8, 2022 that both sides in the consolidated case be availed copies of the proceedings in HCCC 26/1988, 27/1988 and 28/1988 upon application. On January 18, 2023 Mr Kahiga submitted that some of those old cases had been partly heard eg 27/1988, but stated it would be good to have proceedings be taken de novo. He stated that he was in possession of the copies of the proceedings and this court ordered him to supply Ms Njoroge for the plaintiff with a copy. At the same time the court made an order which now seems should not have been made in view of the



conclusion of the said cases as stated herein above, that the files be transmitted to the High Court for official dispatch to this court and official receipt at the ELC Registry. That never took place.

12. Ms Njoroge on March 2, 2023 confirmed service of the proceedings by Mr Kahiga but expressed the opinion that the hearing should start all over again which view Mr Kahiga disagreed with entirely on the basis that it was not possible to know if the witnesses who had testified earlier were available.
13. Mr Kahiga was of the view, mistaken though, that the cases are still pending and the evidence taken therein can be adopted in the consolidated case. It has also emerged that ELC No 462/2016 is none other than HCCC 27 of 1988 which was so baptized upon receipt at the ELC Registry.
14. The above analysis leaves this court only with ELC 555/2015 and ELC 94 of 2018 as consolidated to deal with. The upshot of the foregoing is that I can not grant Mr Kahiga's application to have any proceedings purported to have been taken in the closed files mentioned above adopted in the present consolidated case. His application is therefore dismissed.
15. Consequently, I hereby order that the older High Court files shall be retained by the ELC Registry after consultation with the High Court registry and the In-charge of the ELC Registry shall ensure that they are attached to the consolidated file for 555/2016 every time it comes up for hearing until released by the court. The parties' counsel in the consolidated case shall appear before court on June 19, 2023 for directions as to the hearing of that case. These directions shall be availed to the parties by way of electronic mail before June 19, 2023.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 12TH DAY OF JUNE 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

