



**Mathai v Wambua & 2 others (Environment & Land Case  
42 of 2018) [2023] KEELC 19178 (KLR) (27 July 2023) (Judgment)**

Neutral citation: [2023] KEELC 19178 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS  
ENVIRONMENT & LAND CASE 42 OF 2018**

**CA OCHIENG, J**

**JULY 27, 2023**

**BETWEEN**

**VERONICA NGINA MATHAI ..... PLAINTIFF**

**AND**

**JOSEPH MUINDI WAMBUA ..... 1<sup>ST</sup> DEFENDANT**

**NGELANI RANCHING SOCIETY LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, MACHAKOS COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated the February 26, 2018, the Plaintiff prays for Judgment against the Defendants for:
  - a. A declaration that the Certificate of Title issued on the December 31, 2014 in the joint names of the 1<sup>st</sup> Defendant and the Plaintiff was improperly procured and the same be cancelled.
  - b. A permanent order of injunction be issued restraining the 1<sup>st</sup> Defendant whether by himself or through his agents from selling, transferring and or dealing with the suit land in a manner inconsistent with the Plaintiff's interest therein.
  - c. That the register of land known as LR No 8914/149 and 8914/46 be rectified, so as to remove the illegal entries made jointly in favour of the 1<sup>st</sup> Defendant and the Plaintiff and that the title reverts back to the proprietorship of the Plaintiff.
  - d. A declaration that the transfer of the suit land was fraudulent and illegal.
  - e. The costs of this suit be borne by the Defendants jointly and severally.
  - f. Any further relief this Honourable Court may deem fit and just to grant.



2. The 1<sup>st</sup> Defendant filed his Statement of Defence dated the October 8, 2019 where he denied the averments in the Plaint except the descriptive and the jurisdiction of the court. He averred that the land in dispute was originally two (2) acres and the Plaintiff has unlawfully disposed of a portion of it. He denied the allegations of fraud. He explained that he had been jointly registered with the Plaintiff so that he holds the title in trust for himself and the other siblings of their household who are entitled to an equal share of the suit land.

The 3<sup>rd</sup> Defendant filed its Statement of Defence dated the April 21, 2022 where he denied the averments in the Plaint except the descriptive and jurisdiction of the court. He denied that the Plaintiff ever acquired land parcel numbers LR No 8914/49 and 8914/46 hereinafter referred to as the '*suit land*', or that the late Jeremiah Mbane Nzioki had intended to give the said suit land to the Plaintiff as alleged. He denied any knowledge of any dispute over allocation of the suit land among relatives of the late Jeremiah Mbane Nzioki. He further denied that the Plaintiff is the sole registered proprietor of the suit land and insists that no negligence can be attributed to the Defendants in due performance of their statutory duties. Further, he denied the particulars of fraud as pleaded. He contended that this suit discloses no reasonable cause of action against it, is incurably defective, incompetent, non-starter, untenable and grope in the dark. He explained that the 3<sup>rd</sup> Defendant in the course of his duty, received duly executed instruments of transfer for registration together with all the completion documents. Further, he has in his records that the suit land was a subdivision of LR No 8914 which was registered in the names of the 2<sup>nd</sup> Defendant on December 1, 1998 as per entry 12 of the RTA title. He reiterated that the registration and transfers of the suit land was only done after the 2<sup>nd</sup> Defendant availed the prerequisite documents duly signed and those who complied with the requirements were allocated their shares.

3. The Plaintiff filed a reply to Defence reiterating her averments as per the Plaint and maintained that the joint registration with the 1<sup>st</sup> Defendant as proprietors of the suit land was irregular. She denied executing any transfers with the 1<sup>st</sup> Defendant for joint registration of the suit land in their names.

The 2<sup>nd</sup> Defendant did not file any Defence to controvert the Plaintiff's claim.

The matter proceeded for hearing where the Plaintiff had one (1) witness while the 1<sup>st</sup> Defendant also called one (1) witness.

### **Evidence of the Plaintiff**

4. The Plaintiff as PW1 confirmed she was the widow of the late Jeremiah Mbane Nzioki who died on September 20, 1965. It was her testimony that her late husband was previously married to Mumbua Mbane who died in 1948. Further, that Mumbua Mbane had three children being Wambua Mbane (deceased), Kasivi Mbane and Katumbi Mbane while she has four children who are: Nicodemus Mbane, Agnes Mbane, Lucia Mbane and Reuben Mutua. She explained that together with her late husband, they started paying for acquisition of land at Ngelani Ranching Unity as the husband had been a member from 21<sup>st</sup> June, 1964. She clarified that she jointly contributed to the purchase of the suit land which is twenty two (22) acres. Further, that together with Mulako Nzuya, Musyoka Iliwi and her late husband, they paid a total sum of Kshs. 2460 wherein each person contributed Kshs. 820. She testified that upon the demise of her husband, she took his place as a member of Ngelani Ranching Society Ltd together with Mulako Nzuya including Musyoka Iliwi who were shadow members and continued to pay for the land with the total amount being Kshs. 5137 which translated to each one paying Kshs. 1,712.30. Further, that she paid for the suit land from 1968 upto 1976. It was her contention that it was absurd for the 1<sup>st</sup> Defendant to be registered on his behalf and other beneficiaries of Mumbua Mbane who died sixteen (16) years prior to purchase of the suit land and it was false for



the Assistant Chief to indicate in his letter dated the 19<sup>th</sup> July, 2021 that her husband died in 1968, left behind two widows, properties and fully paid for the suit land. It was her further testimony that when she sought for subdivision of the suit land and on 21<sup>st</sup> October, 2013, she obtained the services of a licensed surveyor but during the exercise the children of Joseph Wambua Mbane (*deceased*) boycotted the exercise. Further, she subdivided the said suit land, allocated the land as follows: Nicodemus Gideon Mbane - 4 acres; Reuben Mutua Mbane - 4 acres; Joseph Wambua Mbane (*deceased*) - 4 acres; Lucia Nduku Mbane - 2 acres and she retained 10 acres. She clarified that it was only after the allocation of the property that feuds with the family of the late Joseph Wambua Mbane begun. She confirmed selling one (1) acre to pay for her medical bills. It was her further testimony that in the beginning of 2015, she learnt that Joseph Muindi Wambua who is the son of the late Joseph Wambua Mbane and her grandson without her express consent, obtained Certificates of Title for land reference numbers 8914/149 and 8914/46 in their joint names. She stated that Joseph Wambua Mbane was only entitled to four (4) acres. The Plaintiff produced the following documents as exhibits: Copies of Certificates of title for LR No 8914/149 and 8914/46 respectively; Agreement dated 19th December, 2008; Letters from Assistant County Commissioner Mlolongo/ Katani Division dated January 13, 2014 and April 24, 2014 respectively; Letter from Chief Katani Location dated March 12, 2014 and Letter Showing contributions made by each member.

### **Evidence of the Defendant**

5. The 1<sup>st</sup> Defendant as DW1 confirmed being the son of Joseph Wambua Mbane (deceased), a son to the late Jeremiah Mbane Nzioka and late Mumbua Mbane (deceased). He explained that his grandfather who died in 1968 had two wives being Mumbua Mbane (deceased) and Veronica Ngina Mathai. He claimed in 1963 his grandfather being a member of Ngelani Ranching Society Ltd purchased land and on May 4, 2011 they nominated the Plaintiff to attend the general meeting on their behalf. It was his testimony that in 2014, the 2<sup>nd</sup> Defendant commenced issuance of Title Deeds to its respective members and since his father was deceased, his family nominated him to be registered as a proprietor so as to hold the land in trust for himself and other beneficiaries of the first wife. Further, that the beneficiaries of the first wife were Kasivi Mbane, Katumbi Mbane, Agnes Nduku Wambua, John Ndambo Wambua, Joshua Nzioki Wambua and Bernard Mbane Wambua. He further testified that the Plaintiff is holding land in trust for her beneficiaries who are Nicodemus Gideon Mbane, Reuben Mutua Mbane and Lucia Nduku Mbane. He insisted that his late grandfather purchased the suit land without any contribution from the Plaintiff who has attempted to severally evict them from the said land culminating in their lodging a complaint with the Assistant County Commissioner Mlolongo/ Katani Division who directed that the Plaintiff and the first wife's house share the land equally by getting eleven (11) acres each.
6. The 1<sup>st</sup> Defendant produced the following documents as exhibits: Copy of Certificate of Registration of Ngelani Ranching Unity; Certified copy of list of members of Ngelani Ranching Unit; Copies of Certificates of Title for LR No 8914/ 149 and 8914/46; Contributions by members of Ngelani Ranching Unit to purchase land from 1964; Contribution of members of Katiku Labu and partners who are among the 50 members of Ngelani Ranching Units; Certificate of Death for Wambua Mbane Nzioki; Chiefs Letters dated July 19, 2021 and March 12, 2014 respectively; Letter from Surveyor dated November 11, 2008; Resolution by the Assistant County Commissioner dated 13<sup>th</sup> January, 2014 and Letter from Assistant County Commissioner dated April 24, 2014.

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant never produced any witnesses to testify.

The Plaintiff, 1<sup>st</sup> and 3<sup>rd</sup> Defendants thereafter filed written submissions.



## Submissions

7. The Plaintiff in his submissions insisted that the land was irregularly registered in their joint names with the 1<sup>st</sup> Defendant. She reiterated her evidence and insisted that she paid for the purchase of the suit land from 1968 upto 1976. She challenged the letters from the Chief dated the July 19, 2021 which was produced by the 1<sup>st</sup> Defendant, and argued that the said letter contained half-truths especially where it indicated that the deceased Jeremiah Mbane died and left properties including two wives yet the first wife predeceased him. She insisted that the transfer documents she signed only had her picture and she did not know how the 1<sup>st</sup> Defendant ended up signing the said transfer documents and fixing his photographs thereon. She stated that there was no evidence tendered to demonstrate that the 1<sup>st</sup> Defendant or his father were members of the 2<sup>nd</sup> Defendant. Further, that even though the 1<sup>st</sup> Defendant claims he was holding land in trust for himself or beneficiaries of Mumbua Mbane who died in 1948 but this was before the suit land was purchased, hence she had no property or interest to be inherited.
8. The 1<sup>st</sup> Defendant in his submission reiterated the evidence he presented and insisted that the Plaintiff had not proved her case on a balance of probability as she never produced any Deed signed by herself and the late Jeremiah Mbane Nzioki. He insisted that the late Jeremiah Mbane Nzioki solely paid for the land without contribution from the Plaintiff. Further, that the Plaintiff failed to adduce evidence to prove she contributed towards acquisition of the said suit land. He contended that the Plaintiff's case cannot warrant cancellation of the title to land as she has not proved her allegations of fraud. Further, that there were no criminal proceedings instituted against him for purportedly fraudulently altering the registration of land. To support his averments, he relied on the following decisions: *Daudi Ledama Morintat V Mary Christine Kiarie & Others* (2017) eKLR; *Urmila w/o Mahendra Shab V Barclays Bank International Ltd & Another* (1979) eKLR; Moses Parantai & Peris Wanjiku Mukuru suing as the legal representatives of the estate of *Sospeter Mukuru Mbeere (deceased) Vs Stephen Njoroge Macharia* (2020) eKLR and *Central Bank of Kenya Limited V Trust Bank Limited & 4 Others* (1996) eKLR.
10. The 3<sup>rd</sup> Defendant in his submissions insisted that the Plaintiff did not prove her claim that she paid for the suit land since the receipts for payment of land were in the name of the Plaintiff's husband. He argued that the fact that since the Plaintiff admitted to the signing of the transfer forms, it negates her claim that the 1<sup>st</sup> Defendant was registered as joint proprietor of the suit land. He contended that the Plaintiff did not demonstrate that the registrations were irregularly done and contended that from the documentation, the dispute had been settled that the said land was to be shared equally. He reaffirmed that the Plaintiff has not proved the allegations of fraud. To support his arguments, he relied on the following decisions: *Suleiman Rabemtulla Omar & Another V Musa Hersi Fahiyeh & 5 Others* (2014) eKLR; *Vijay Morjaria Vs Nansingh Madbusingh Darbar & Anor* (2000) eKLR and *Ndolo V Ndolo* (2008) 1 KLR (G & F) 742.

## Analysis and Determination

11. Upon consideration of the Plaintiff's, Defences, Testimonies of witnesses, exhibits and rivaling submissions, the following are the issues for determination: ***Whether the Plaintiff contributed to the purchase of the suit land. Whether the Plaintiff and 1<sup>st</sup> Defendant were properly registered as joint proprietors of the suit land. Whether the Plaintiff is entitled to orders sought in the Plaintiff.***
12. I will tackle these issues jointly.



It is not in dispute that the Plaintiff was the second wife to the late Jeremiah Mbane Nzioki. It is further not in dispute that the late Jeremiah Mbane Nzioki had a first wife Mumbua Mbane who predeceased him. It is also not in dispute that the late Jeremiah Mbane Nzioki was a member of the 2<sup>nd</sup> Defendant. The Plaintiff as PW1 testified that the late Jeremiah Mbane Nzioki as a member of the 2<sup>nd</sup> Defendant commenced purchasing the suit land in 1964 but died before finalizing the payment of the purchase price. Further, that she continued making payments in the deceased name from 1968 until 1976. Both the Plaintiff and 1<sup>st</sup> Defendant produced a statement indicating the payments made for the suit land as an exhibit. She claimed that the 1<sup>st</sup> Defendant proceeded to get jointly registered as owner of the suit land together with her, without her consent. It was her further testimony that during subdivision of the suit land, she allocated the resultant parcels as follows: Nicodemus Gideon Mbane - 4 acres; Reuben Mutua Mbane - 4 acres; Joseph Wambua Mbane (*deceased*) - 4 acres; Lucia Nduku Mbane - 2 acres and she remained with 10 acres. The 1<sup>st</sup> Defendant as DW1 in his testimony insisted that his grandfather purchased the suit land without contribution from the Plaintiff and he got jointly registered with the Plaintiff as owners of the suit land so as to hold the same in trust for the deceased first wife's house. This is actually the fulcrum of the dispute. From the testimony of both witnesses, it emerged that the 2<sup>nd</sup> Defendant's officials aided the 1<sup>st</sup> Defendant to be jointly registered as proprietor of the suit land with the Plaintiff. The Plaintiff in cross examination admitted that she was coerced to sign certain documents which culminated in the joint registration which she seeks for cancellation. She was categorical that at the point of signing the transfer documents, it was only her photograph on the forms and she did not know how the 1<sup>st</sup> Defendant later became a joint proprietor of the suit land. I note the 2<sup>nd</sup> Defendant's never filed its Defence to controvert the Plaintiff's claim and I hence find that the said claim is admitted in its instance.

13. It emerged in evidence that the 1<sup>st</sup> Defendant who was a step grandson to the Plaintiff was actually born in 1985 after the suit land had long been paid for. From a perusal of the list of beneficiaries the 1<sup>st</sup> Defendant enumerated as the beneficiaries he is holding the land in trust for, I note most of them are his siblings who are children of Joseph Wambua Mbane, (*son to Jeremiah Mbane Nzioki*) who had already been allocated four (4) acres of land. Even if we were to revert to the provisions of Sections 38 upto 42 of the [Law of Succession Act](#) on the rightful dependants of a deceased person, I find that the 1<sup>st</sup> Defendant and his siblings are not direct beneficiaries of Jeremiah Mbane Nzioki's Estate but can only access the same through their late father's share. The 1<sup>st</sup> Defendant insisted that the local Deputy County Commissioner recommended that the suit land was to be shared equally between the two wives of Jeremiah Mbane but it emerged that Jeremiah Mbane's first wife died before the suit land was ever acquired, hence she could not be deemed to have any benefit to it whatsoever. Further, to my mind, I find that the Deputy County Commissioner did not have the legal capacity to decide on the share of each beneficiary of Jeremiah Mbane Nzioki's Estate. From the document produced by both the Plaintiff and Defendant as evidence of payment for the suit land, I note there are indeed payments made on behalf of Jeremiah Mbane Nzioki on July 21, 1968, June 3, 1970, June 6, 1970, August 7, 1970, July 24, 1970 and August 17, 1976, which means the court cannot doubt the Plaintiff's averments that she indeed continued making payments after her husband's demise. Based on this evidence alone, I hence hold that the 1<sup>st</sup> Defendant's categorical claim that the Plaintiff did not contribute to purchase of suit land is untrue yet he had not been born by the time the said land was paid for. In the foregoing, I find that the Plaintiff indeed contributed to the purchase of the suit land.



14. On whether the joint registration of the Plaintiff and Defendant as proprietors of the suit land was proper; it is trite that acquisition of a title to land is a process. Further, that there are instances when a Certificate of Title to land can be challenged. Section 26(1) of the [Land Registration Act](#) provides that:

26. Certificate of title to be held as conclusive evidence of proprietorship (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except— (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

15. In Civil Appeal No 246 of 2013 [Arthi Highway Developers Limited Vs West End Butchery Limited and Others](#), the Court of Appeal expressly stated thus:

Section 23(1) of the then Registration of Titles Act (now reproduced substantially as Sections 25 and 26 of the [Land Registration Act](#) set out below) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. emphasis mine

16. See also the decision of [Elizabeth Wambui Gitthinji & 29 others v Kenya Urban Roads Authority & 4 others](#) [2019] eKLR.

Based on the evidence before me while associating myself with the observations in the aforementioned decisions, I find that the 1<sup>st</sup> Defendant’s joint registration with the Plaintiff as proprietors of the suit was improper, irregular and obtained through misrepresentation. Further, since the 2<sup>nd</sup> Defendant did not controvert the Plaintiff’s averments, noting that the 1<sup>st</sup> Defendant never paid any consideration to acquire the suit land, but it is the Plaintiff who did so; insofar as the Plaintiff did not prove her allegations of fraud, on the part of the 3<sup>rd</sup> Defendant who registered the title based on the documents presented to it, I still find that the 2<sup>nd</sup> Defendant’s transfer of suit land to the Plaintiff and 1<sup>st</sup> Defendant as joint proprietors was unprocedural. I however exonerate the 3<sup>rd</sup> Defendant from any blame or fraud as the office registered the title based on the documents presented to it.

17. On whether the suit land should be registered in the Plaintiff’s name solely, I hold that since the shares over the said land were in the name of the deceased Jeremiah Mbane Nzioki, even at the point the 2<sup>nd</sup> Defendant was processing the titles, I opine that the said land still belonged to the deceased Estate and it would have been proper if registration was only undertaken after succession proceedings. It is my considered view that the determination of shares of each beneficiary in respect to the suit land while taking into account the contribution of the Plaintiff to acquire it, is best ventilated within a succession cause. At this juncture, I find that the Plaintiff is only entitled to some of the orders as sought in the Plaintiff.

18. On the issue of costs, since it is the 2<sup>nd</sup> Defendant who was responsible for the dispute herein, I will direct it to cater for the costs of this suit.

In the circumstances, I find that the Plaintiff has proved her case on a balance of probability and will proceed to enter Judgment in her favour and make the following final orders:



- a. A declaration be and is hereby issued that the Certificate of Title issued on the December 31, 2014 in the joint names of the 1<sup>st</sup> Defendant and the Plaintiff was improperly procured.
- b. That the Register of Land known as LR No 8914/149 and 8914/46 be and is hereby rectified, so as to remove the illegal entries made jointly in favour of the 1<sup>st</sup> Defendant and the Plaintiff and the title reverts back to the proprietorship of the Estate of Jeremiah Mbane Nzioki.
- c. The costs of this suit is awarded to the Plaintiff to be borne by the 2<sup>nd</sup> Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 27TH DAY OF JULY, 2023**

**CHRISTINE OCHIENG**

**\_\_JUDGE**

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