



REPUBLIC OF KENYA



**Muriuki v Muriuki & 8 others (Environment & Land Case  
42 of 2018) [2023] KEELC 18686 (KLR) (14 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18686 (KLR)

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

**JO OLOLA, J  
JULY 14, 2023**

**BETWEEN**

**CHARLES KAHARIRI MURIUKI ..... PLAINTIFF**

**AND**

**PHIIP NJUKI MURIUKI ..... 1<sup>ST</sup> DEFENDANT**

**BONIFACE MUTHENGIA KIANGONYO ..... 2<sup>ND</sup> DEFENDANT**

**ANNE DORIS WANGUI KARUGA ..... 3<sup>RD</sup> DEFENDANT**

**CHARLES WAHOME WACHIRA ..... 4<sup>TH</sup> DEFENDANT**

**JOHN B. MACHARIA KIHARA ..... 5<sup>TH</sup> DEFENDANT**

**CHARLES MUNYIRI GACHIGUA ..... 6<sup>TH</sup> DEFENDANT**

**PETER MUTHIMA MURIITHI ..... 7<sup>TH</sup> DEFENDANT**

**JOHN MWANGI MURAGE ..... 8<sup>TH</sup> DEFENDANT**

**ROSEMARY WANGARI MAGU ..... 9<sup>TH</sup> DEFENDANT**

**RULING**

1. By the Notice of Motion dated September 20, 2022 Philip Njuki Muriuki (the 1<sup>st</sup> defendant) prays for an order that he be allowed to refund to the 2<sup>nd</sup> defendant – Boniface Kiangonyo; the 4<sup>th</sup> Defendant – Charles Wahome Wachira and the 7<sup>th</sup> Defendant Peter Muthima Muriithi the dues he owes them.
2. The application is supported by a short affidavit wherein the 1<sup>st</sup> defendant avers in the relevant Paragraphs 2 to 6 thereof as follows:

“2. That the plaintiff herein is my brother;



3. That the said plaintiff has sometimes back in the year 2018 filed this case at Nyeri vide ELC No. 42 of 2018 against us where the Plaintiff prays for Judgment (against us) jointly and severally for cancellation of L.R Nos. Nyeri Municipality/Block 5/Thegu/229, 230, 231, 232, 233, 234, 235, 236, 237, 238 and Kabaru/Block 2/296 respectively and the same to be reverted back to the original number Nyeri Municipality/Block 5/Thegu/102 and Kabaru/Block/2/296 which is in the name of Stanley Muriuki Njuki also known as Muriuki s/o Njuki now a deceased person;
  4. That prior to that I was arrested and charged before Nyeri Chief Magistrates Court in Criminal Case vide CMCR Case No. 1071 of 2014 and after that case being heard, I was sentenced and jailed in imprisonment (sic) for all counts and I served (in) prison for that period of time and completed my sentence;
  5. That due to the foregoing my other co-defendants filed an application in the same court which matter is now coming up for hearing on October 4, 2022; and
  6. That since I aver in my application herein that I am ready and willing to refund all the dues which I owe them I pray to this court that the defendants (do) withdraw the application and the matter be marked as settled before the hearing date on October 4, 2022.”
3. The application is opposed by the 7<sup>th</sup> defendant. By his grounds of Opposition dated September 24, 2022 as filed in court on September 27, 2022, the 7<sup>th</sup> defendant asserts that:
1. The application is misconceived and incompetent;
  2. The application is bad in law, a gross abuse of the process of the court and untenable;
  3. The application is fatally and incurably defective;
  4. The application is frivolous and vexatious; and
  5. The application is otherwise without merit and should be dismissed with costs.
4. I have carefully perused and considered the 1<sup>st</sup> defendant’s application as well as the Grounds of Opposition thereto by the 7<sup>th</sup> respondent. By the application before me, the 1<sup>st</sup> defendant urges the court to allow him to refund to the 2<sup>nd</sup>, 4<sup>th</sup> and 7<sup>th</sup> defendants what he refers to as their dues and that thereafter, the court may proceed to mark the matter as settled.
5. By the Plaint dated September 12, 2018, Charles Kahariri Muriuki suing as the Administrator of the Estate of Stanley Muriuki Njuki (the Plaintiff) prays for Judgment against the original nine (9) Defendants jointly and severally and urges the Court to cancel their registration as the proprietors of the suit properties which are apparently sub-divisions of two original parcels of land known as Nyeri Municipality Block 5/Thegu/102 and Kabaru/Block 2/296. The Plaintiff further urges the Court to direct that the original parcels do revert back to the Estate of the said Stanley Muriuki Njuki for distribution.
6. The Plaintiff’s case is premised on the grounds that at all times material, the suit properties were registered in the name of his deceased father. It is his case that in the year 2013, the 1<sup>st</sup> defendant



who is his brother fraudulently and without his knowledge did transfer the said properties to his co-Defendants who are named as the 2<sup>nd</sup> to 9<sup>th</sup> defendants herein.

7. It is also apparent that following the accusations of fraud, the 1<sup>st</sup> Defendant/Applicant was charged and convicted of a criminal offence in Nyeri CMCR No. 1071 of 2014. By this present application the 1<sup>st</sup> Defendant appears to have arrived at his road to Damascus moment and urges the Court to allow him to refund what he terms as the co-Defendants dues so as to bring this matter to an end.
8. While the gesture by the 1<sup>st</sup> Defendant is commendable and may be a good step towards bringing this suit to an end, it was clear to me that the suit herein has not been initiated by the applicant's co-defendants as he implies in the supporting affidavit. The suit was initiated by his brother the plaintiff and I have not seen anything either in the application or in the affidavit in support suggesting that the 1<sup>st</sup> defendant is ready to have the titles revert back to the name of their now deceased father as sought in the prayers made in the Plaint.
9. Indeed far from it, in his submissions in support of the application, the 1<sup>st</sup> defendant disagrees with his conviction in the criminal case and urges this court to find that while he owes the money he took from his co-defendants and wishes to refund them, the transaction of disposing the land to them should be upheld by this court as the parcels of land had been rightfully transferred to him by his father during his lifetime. Having taken that position, I was unable to see how the matter could be marked as settled before those issues are heard and determined.
10. It was also apparent that the 2<sup>nd</sup> defendant whose dues he wishes to refund long passed away in 2016, some two years before the suit was filed and that the suit against him has already been declared a nullity. In the same vein, this court lacks the authority to compel the 7<sup>th</sup> defendant to accept the unspecified dues where it is clear as can be seen from his Grounds of Opposition that he is not interested in such a settlement.
11. It follows that the Motion dated September 20, 2022 is misconceived and untenable. It is dismissed but with no order as to costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI  
THIS 14<sup>TH</sup> DAY OF JULY, 2023.**

In the presence of:

Mr. Philip Njuki – 1<sup>st</sup> Defendant present in person

No appearance for the other Parties

Court assistant – Kendi

**J. O. Olola**

**JUDGE**

