



**Chiuri & another (Suing on behalf of himself and all Ragati Villagers) v  
Mahiuha & 13 others; Mwangi (Interested Party) (Environment & Land Case  
25 of 2016) [2023] KEELC 20081 (KLR) (28 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20081 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 25 OF 2016  
JO OLOLA, J  
SEPTEMBER 28, 2023**

**BETWEEN**

**DAVID WARUI CHIURI ..... 1<sup>ST</sup> PLAINTIFF  
GEORGE MURIITHI WAMAI ..... 2<sup>ND</sup> PLAINTIFF  
SUING ON BEHALF OF HIMSELF AND ALL RAGATI VILLAGERS**

**AND**

**JOHN GIKUHI MAHIUHA ..... 1<sup>ST</sup> DEFENDANT  
JACKSON WACHIRA KARUNGA ..... 2<sup>ND</sup> DEFENDANT  
THE COUNTY GOVERNMENT OF NYERI ..... 3<sup>RD</sup> DEFENDANT  
WILLIAM KINYUA ..... 4<sup>TH</sup> DEFENDANT  
DADSON MAINA NGETHA ..... 5<sup>TH</sup> DEFENDANT  
JOHN KAGOMBE KARUE ..... 6<sup>TH</sup> DEFENDANT  
NGATIA MURIITHI ..... 7<sup>TH</sup> DEFENDANT  
GEORGE NJUKI ..... 8<sup>TH</sup> DEFENDANT  
MUGWERU KAHUHA ..... 9<sup>TH</sup> DEFENDANT  
GITONGA GACURI ..... 10<sup>TH</sup> DEFENDANT  
KINYUA GACHIHI ..... 11<sup>TH</sup> DEFENDANT  
JAMES MWANGI GICHOHI ..... 12<sup>TH</sup> DEFENDANT  
KARIUKI KARANGI ..... 13<sup>TH</sup> DEFENDANT  
MUTUA WAMBUA ..... 14<sup>TH</sup> DEFENDANT**



AND

SIMON MWANGI ..... INTERESTED PARTY

## JUDGMENT

### Background

1. By a Plaint dated 15<sup>th</sup> February 2016, David Warui Chuiiri and George Muriithi Wamai suing on behalf of themselves and what they term as all Ragati Villagers (the Plaintiffs) pray for orders against the 14 Defendants for:
  - (a) Injunctions restraining the Defendants or their agents from dealing with the suit property until the determination of this suit;
  - (b) A declaration order (sic) nullifying the First Defendant's title on the ground of fraud and illegality;
  - (c) An order reviving the Decree of the Court in HCCC No. 3485 of 1981;
  - (d) A declaration order (sic) that the resultant mutation and/or sub-division from Magutu/Ragati/476 was illegal and cancellation of the said mutation;
  - (e) A declaration that the Plaintiffs are the legal owners of all that parcel of land being Magutu/Ragati/476;
  - (f) Costs of this suit; and
  - (g) Any further relief that this Honourable Court may deem fit and just to grant.
2. Those prayers arise from the Plaintiff's contention that they are all residents of Ragati Village and that in or about the year 1958, the 1<sup>st</sup> Defendant was registered as proprietor of the parcel of land known as Magutu/Ragati/476 to hold the same in trust for the benefit of the Plaintiffs.
3. The Plaintiffs aver that in breach of the said trust, the 1<sup>st</sup> Defendant allotted plots in the suit property to other persons without the consent of the Plaintiffs thereby depriving the Plaintiffs of their right to quiet enjoyment of the suit premises.
4. The Plaintiffs state that in or about the year 1981, they filed Nairobi HCCC No. 3485 of 1981 which matter was referred to arbitration. Subsequently the arbitral award was adopted as an order of the Court on 29<sup>th</sup> October, 1992 and a decree was issued in terms thereof. The Plaintiffs asset that since their representative died thereafter, the decree was never executed and the 1<sup>st</sup> Defendant has continued to illegally and fraudulently allot the suit property to the 2<sup>nd</sup> to 14<sup>th</sup> Defendants.
5. The County Government of Nyeri (the 1<sup>st</sup> Defendant) is opposed to the suit. In its Statement of Defence dated 18<sup>th</sup> May 2016, the 1<sup>st</sup> Defendant denies that it has allotted plots in the suit property to other persons without the consent of the Plaintiffs. It is the 1<sup>st</sup> Defendant's case that it holds the suit property in trust for all the members of Ragati village and the fiduciary relationship between itself and the villagers still exists.
6. In that respect, the 1<sup>st</sup> Defendant assets that it has always consulted the villagers when implementing development projects on the suit property through meetings in which representatives of Ragati Village have always participated. It is otherwise the 1<sup>st</sup> Defendant's case that no allotment, transfer or



subdivision has been made on the suit property in favour of third Parties without consultation and consent of the members of Ragati Village and neither have any encumbrances been created thereon in favour of third Parties without the knowledge of the Plaintiffs.

7. The 1<sup>st</sup> Defendant denies that it has ignored or failed to comply with the decree issued in Nairobi HCCC No. 3485 of 1981 and invites the Plaintiffs to strict proof thereof.
8. Save for the 1<sup>st</sup> Defendant, the other Defendants did not file any Statement of Defence although a number of them filed Witness Statement in opposition to the suit.

### **The Plaintiffs' Case**

9. At the trial herein, the two Plaintiffs testified as the sole witnesses in their case.
10. PW1 – David Warui Chiuri is the 1<sup>st</sup> Plaintiff and a resident of Ragati Village. Relying on his Statement dated 18<sup>th</sup> December, 2016 as filed herein on the 19<sup>th</sup> of December 2016, PW1 told the Court that the suit property – Magutu/Ragati/476 measuring 14.65 Ha. was granted to Ragati Village on absolute terms and that on 22<sup>nd</sup> January 1967, the County Council of Nyeri was registered as a trustee for the Village.
11. PW1 told the Court that the Plaintiffs had initially filed Nairobi HCCC No. 3485 of 1981 through one Stanley Nyamu who passed away on 16<sup>th</sup> January, 2001. On 23<sup>rd</sup> June, 1992 an arbitration award was filed in the Nairobi case which award was subsequently adopted as the final Judgment binding upon all Parties in the matter. A decree was thereafter issued requiring the 1<sup>st</sup> Defendant to comply with the orders of the Court.
12. PW1 further told the Court that the 1<sup>st</sup> Defendant has never challenged the orders made in that case. It has however declined and/or refused to comply with the said orders and continued to deal with the suit property in total disregard of the Plaintiffs interests.
13. PW1 testified that it has since come to their attention that the other Defendants are purporting to be the owners of a portion of the suit property on allegations that they have since purchased the same from the 1<sup>st</sup> Defendant. The said Defendants have also since started illegal constructions on the suit property in total disregard of the Court orders.
14. PW1 further testified that they cannot execute the decree issued in the said Nairobi HCCC 3485 of 1981 as the same is stale and time-barred. Other than the 1<sup>st</sup> Defendant who was the Defendant in the case which is now Nairobi ELC No. 126 of 2015, the other Defendants were not Parties to the previous suit.
15. On cross-examination, PW1 told the Court he was once the Treasurer of the Committee of Ragati Villagers. He could not however recall when he was elected. He told the Court they had brought the case as residents of Ragati and as one of those who participated in getting the land. He could not recall if the villagers met and resolved that he should file this case on their behalf.
16. PW1 further told the Court that the case filed in 1981 was resolved by an agreement executed by both sides to the dispute. PW1 conceded that he was unable to recall anything which the 1<sup>st</sup> Defendant was directed to do under the Agreement and which it had failed to do. He testified that sometime in 1992, the 1<sup>st</sup> Defendant's predecessor and those who had sued were told to go to the District Officer's office and show the names of those who were to be given the land. He denied that the decree had required the 1<sup>st</sup> Defendant to continue holding the land in trust.



17. PW2 – George Muriithi Wamai is also a resident of Ragati Village and the 2<sup>nd</sup> Plaintiff herein. Relying on his Statement dated 17<sup>th</sup> December 2016, PW2 reiterated the averments made by PW1 in his testimony in-chief.
18. On cross-examination, PW2 conceded they had not produced any documents to show that they had been elected to be the representatives of the Villagers. He further conceded that the list of the Villagers presented by themselves to Court were neither signed by the Villagers nor did they indicate the identity card numbers for the people listed.
19. PW2 told the Court that if the orders they seek are granted, the suit property would be registered in their names and the names of the other villagers. He testified that the people they had sued were the ones who were in charge of sub-dividing the land but not the ones who had been given the land.

### **The Defence Case**

20. On their part, the Defendants called a total of four (4) witnesses in support of the defence at the trial.
21. DW1 – James Mwangi Gichohi is the 10<sup>th</sup> Defendant and the Area Chief – Ragati Location. Relying on his Statement dated and filed herein on 2<sup>nd</sup> May 2017, DW1 told the Court that the Plaintiffs were part of a group of persons purporting to act on behalf of Ragati Villagers without the mandate of the Villagers
22. DW1 testified that there was a Court order issued in 1992 which declared that the then County Council of Nyeri could vary any rights and/or interests of the suit property but only with the knowledge and consent of the members of Ragati Village. He told the Court the Villagers ha publicly and unanimously appointed a Development Committee from amongst themselves for purposes of spearheading infrastructural development in the area. The Committee has since put in place a number of developments over the suit property.
23. DW1 further testified that he was aware that a section of the suit property was allocated to genuine squatters who were given plots. He told the Court the Plaintiffs have never publicly held any meeting in Ragati Village and that the Villagers had not appointed them to be their representatives.
24. On cross-examination, DW1 told the Court he was aware the title deed for the suit property was in the custody of the 1<sup>st</sup> Defendant. He told the Court part of the land was occupied by squatters whom he knew and were documented. He conceded that they had not presented a list of the said squatters to the Court.
25. DW2 – George Njuki Mwaura is a resident of Ragati Village and the 8<sup>th</sup> Defendant herein. Relying on his Statement dated and filed on 2<sup>nd</sup> May 2017, DW2 told the Court the dispute herein arose after the Plaintiffs formed a separate Committee purporting to represent the interest of Ragati Villagers. He told the Court the true leaders of the Ragati Development Committee were one Martin Mathenge Muraya as Chairman, Purity Watari Mumenya as Secretary and Christopher Kirumba as vice Chairman.
26. On cross-examination, DW2 conceded he was a member of a Committee that was dealing with sub-division of the suit property around the year 2015.
27. DW3 – Beatrice Koech is a Director of Planning at the County Government of Nyeri (the 1<sup>st</sup> Defendant). DW3 told the Court there exists a select Committee of the Villagers of Ragati that the 1<sup>st</sup> Defendant always consults with and that the Plaintiffs were not part of the Committee.
28. DW3 further told the Court that the 1<sup>st</sup> Defendant has always consulted the Villagers before implementing any projects in the village. She denied that any allotment, transfer or sub-division had



been made on the suit property in favour of third parties without consultation and/or consent of the villagers.

29. On cross-examination, DW3 told the Court she had not seen the title for the land and that she was unaware of its actual acreage. She further told the Court she was unaware of any sub-divisions that had been made on the suit property.
30. DW4 – Michael Ngatia Muriithi is a resident of Ragati and the 7<sup>th</sup> Defendant herein. Relying on his Statement dated and filed on 2<sup>nd</sup> May 2017, he told the Court the Plaintiffs do not represent the interest of Ragati Villagers and that there was in place a Development Committee that was legitimately appointed by the villagers to spearhead developments on the suit land.
31. DW4 further told the Court he was a beneficiary of the squatter settlement scheme set up over land and that there were about 40 squatters that had been allocated land.
32. On cross-examination, DW4 conceded he was the Chief of Muthua Location in Karatina. He told the Court he occupies an area measuring about 50 x 100 metres.

### **Analysis And Determination**

33. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
34. By their suit herein, the two Plaintiffs who state that they have brought the suit on behalf of themselves and all Ragati Villagers pray for an order nullifying the 1<sup>st</sup> Defendants' title on the ground of fraud and illegality. They further urge the Court to revive a decree that was issued in Nairobi HCCC No. 3485 of 1981 and to declare that the resultant mutation and/or sub-division from the parcel of land known as Magutu/Ragati/476 (the suit property) was illegal and should be cancelled. In addition the Plaintiffs urge the Court to declare that they are the legal owners of the suit property.
35. The basis for these prayers is the Plaintiffs' contention that sometime in the year 1958, the 1<sup>st</sup> Defendant's predecessor – the County Council of Nyeri was registered as proprietor of the suit property to hold the same in trust for the Plaintiffs. It is their case that in breach of the said trust, the 1<sup>st</sup> Defendant had proceeded and allotted various plots in the suit property to other persons without the consent of the Plaintiffs and thereby depriving the Plaintiffs of their right to quiet enjoyment of the suit property.
36. The Plaintiffs asserted that sometime in the year 1981, they instituted Nairobi HCCC No. 3485 of 1981 against the then County Council of Nyeri which matter was subsequently referred to arbitration. It is the Plaintiff's case that despite the arbitral award having been adopted as an order of the Court on 29<sup>th</sup> October 1992, the 1<sup>st</sup> Defendant has continued to illegally and fraudulently sub-divide the suit property and to allocate the same to other persons including the 2<sup>nd</sup> to 14<sup>th</sup> Defendants herein.
37. By asserting that they had brought this suit not just on their behalf but on behalf of all the inhabitants of Ragati Village, it follows that this was a representative suit governed by Order 1 Rule 8 of the Civil Procedure Rules. The said provision required that the Plaintiffs in such a case should give notice of the suit to all such persons that they purport to represent either by personal service or, where from the number of persons or for any other cause such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.



38. The essence of the above provision was captured by the Court in *Kipsiwo Community Self Help Group -vs- Attorney General & 6 Others* (2013) eKLR where it was held as follows:

“Kipsiwo Self Help Group had no capacity to institute an action in its own name. A person recognised in law had to sue on behalf of members of Kipsiwo Self Help Group and such members had to be named and identified with precision. The person bringing the action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent; if it is a representative suit. The importance of this, is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour of or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the Court does not know who the litigants are, then it becomes impossible for the Court to enforce its own orders, for it will never be clear, who the beneficiary of the order was, or who had an obligation to obey or enforce such order.”

39. In the matter herein, there was nothing to show that the Plaintiffs had given any notice to the inhabitants of Ragati Village of their intention to institute this suit. Other than some six (6) individuals whom they list as having authorized them to institute the claim, there was no evidence placed before the Court to demonstrate that all the inhabitants of the village were aware of and/or had sanctioned these proceedings to be brought on their behalf.

40. That notwithstanding, the Plaintiffs were aggrieved that the parcel of land being held in trust for themselves by the 1<sup>st</sup> Defendant was being illegally allocated to other persons. It was however not very clear from their pleadings and testimonies before the Court who these other persons were. At Paragraph 6 and 7 of their Plaint filed herein, the Plaintiffs assert as follows:

“6. On or about the year 1981 the Plaintiffs filed a suit being Nairobi HCCC No. 3485 of 1981 which matter was referred to arbitration and subsequently the arbitral award was adopted as an order of the Court on or about the year 29<sup>th</sup> October, 1992 and the decree was issued thereafter; and

7. However, the decree was never executed since the representative of the group had since died and we only sought to revive the suit thereafter and we were issued with a new case number being Environment Land Court case No. 126 of 2016 but our efforts to execute the said decree were futile as the said decree was stale and further, the First Defendant had continued to illegally allot the suit property to the Rest of the Defendant(s) and we could not site (sic) them for contempt for the reason that the proceedings had since closed.”

41. From a reading of Paragraph 7 of the Plaint hereinabove, the Plaintiffs are asserting that those illegally allocated the suit property were the 2<sup>nd</sup> to 14<sup>th</sup> Defendants. That was indeed the position taken by the 1<sup>st</sup> Plaintiff (PW1) who told the Court as follows in his testimony in chief:

“It has since come to our attention that the other Defendants are purporting to be the owners of a portion of the suit property on allegation that they have since purchased the same from the 1<sup>st</sup> Defendant. The said Defendants have also since started illegal constructions on the suit property in total disregard of the Court’s orders.”



42. That was however different from the position taken by the 2<sup>nd</sup> Plaintiff (PW2) who insisted under cross-examination that the people they had sued alongside the 1<sup>st</sup> Defendant were those who were in-charge of sub-dividing the land and not those who had been given the land.
43. In support of their contention that the suit land had been fraudulently sub-divided in disregard of the order issued by the High Court, the Plaintiffs produced a copy of the Green Card and a Certificate of Official Search of the suit property. Both of them show that the suit property was registered in the name of the 1<sup>st</sup> Defendant's predecessor in 1967. That was long before any of the two suits were filed. The two documents were however unhelpful as they do not reveal the date when the sub-divisions of the property were done. Given that the 1981 suit was equally based on the claim that the 1<sup>st</sup> Defendant's predecessor in title was illegally sub-dividing the land, there was every possibility that the sub-divisions were done before the decree in Nariobi HCCC No. 3485 of 1981 was extracted in the year 1992.
44. The Certificate of Official Search equally does not reveal the names of the third Parties or none members of Ragati Village to whom the land was given and the Court could not therefore come to the conclusion that the sub-divisions were done to frustrate the Judgment and decree of the Court.
45. From a perusal of the decree issued in 1992, it was apparent that the same was cognizant that the 1<sup>st</sup> Defendant could with consultations allocate some of the land and further, that there were some people already having plots on the land. That is the reason the extracted decree reads at Orders 4 and 5 thereof as follows:
- “ 4. That the County Council of Nyeri in future would only allocate plots after deliberations by the allocation committee under the chairmanship of the D.C; and
  5. That the fate of any person(s) residing in the village plots that might have been allocated by the County Council prior to this case will be looked into by the Chairman of the allocation committee, the DC once the Council produces the map and (list) of all allottees.”
46. Indeed, contrary to the Plaintiffs assertions that the 1<sup>st</sup> Defendant had been acting without consulting the Ragati Villagers, it was apparent that in compliance with the Court's order, there was in place a development Committee comprising of a number of elected stakeholders within the Ragati Community. The 1<sup>st</sup> Defendant has produced in evidence copies of minutes of meetings held between the 1<sup>st</sup> Defendant and Ragati Villagers on diverse dates where matters of education, housing and social services, among others, were discussed.
47. As it were, it was apparent that the suit property is an unregistered Community land that is lawfully held as Trust Land by the 1<sup>st</sup> Defendant County Government in accordance with Section 6 of the [Community Land Act](#), 2016. In that respect I was unable to find any basis to have the same transferred to the two Plaintiffs whether as themselves or representatives of the unregistered group that they call “Ragati Villagers.”
48. It follows that I did not find any merit in the suit. The same is misconceived and unwarranted. It is dismissed with an order that each Party shall bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 28<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

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**J. O. OLOLA**

**JUDGE**

In the presence of:

Mr. Kimani for the Plaintiffs

Ms Hellen Njuki for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, 10<sup>th</sup> and 12<sup>th</sup> Defendants

Court assistant - Kendi

