



REPUBLIC OF KENYA



**M'taranchia v M'ibuthania & 3 others (Environment & Land Case
E002 of 2021) [2023] KEELC 20071 (KLR) (27 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20071 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E002 OF 2021
CK YANO, J
SEPTEMBER 27, 2023**

BETWEEN

STANLEY KALUNGE M'TARANCHIA PLAINTIFF

AND

PANCREAS MBURUGA M'IBUTHANIA 1ST DEFENDANT

LAND REGISTRAR TIGANIA EAST AND TIGANIA WEST . 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

GIDEON M'IBUTHANIA 4TH DEFENDANT

JUDGMENT

Plaintiff's Case

1. The plaintiff instituted this suit *vide* a plaint dated December 15, 2020 which was amended on May 26, 2021 and further amended on January 27, 2022 seeking the following reliefs;
 - i. Declaration that the plaintiff is entitled to 1acre land from the 4th defendant as agreed.
 - ii. An order by this honourable court to order the 2nd defendant to correct the acreage in title deed of LR Tigania East Kiguchwa/3702 formally known as P/No 3702 Kiguchwa Adjudication Section which erroneously indicates the plaintiff's acreage of 0.23 Ha instead of 1 acre to reflect the situation on the ground.
 - iii. That this honourable court do order the 2nd defendant to correct or amend the AR Records to read as the Land Register Records.
 - iv. That the honourable court do hereby issue a permanent injunction restraining the 1st and 4th defendant, their agents or servants from occupying, encroaching or interfering in any way



with the plaintiff's parcel known as LR Tigania East/Kiguchwa/3702 formally known as P/No 3702, Kiguchwa Adjudication Section.

- v. The 4th defendant be compelled by the court herein to correct and further sign the necessary documents to ensure the transfer of the exact portion of land sold to the plaintiff, or alternatively the honourable court to empower the Deputy Registrar or court administrator to sign all the necessary documents to rectify the error in the said title deed.
 - vi. Costs of this suit.
2. The plaintiff averred that at all material times relevant to this suit, he was and is the sole proprietor of LR No Tigania East Kiguchwa/3702 formerly P/No 3702, Kiguchwa Adjudication Section. That he purchased the said parcel of land measuring 1.00 acre from the 4th defendant in 1995 and took possession of the same. That at the time of purchase, the adjudication process was closed and no objection on the said parcel were pending.
 3. The plaintiff further averred that upon the said understanding, the 4th defendant covenanted to give up possession and ownership of the said land unto the plaintiff herein as per the terms of the agreement. The plaintiff stated that contrary to what he bought, the title deed that came out indicated that the land measured 0.23 Ha instead of 1 acre as contained in the said P/No 3702 and also indicated in the AR records. The plaintiff stated that he is in occupation of 1 acre on the ground and has been in occupation since the year 1995.
 4. The plaintiff stated that the old cadastral map indicated that his land measured 1.00 acre, but a new cadastral map that came up after the issuance of the new titles erroneously indicated the land of the plaintiff as having been split into two with the plaintiff getting LR No 3702 measuring 0.23 acres with the second parcel LR No 4554 belonging to the 1st defendant, but on the ground, the plaintiff's land measures 1.00 acre.
 5. The plaintiff's contention is that the 1st and 4th defendants fraudulently colluded with the 2nd defendant to cause the rectification of the AR so as to reduce the acreage of the plaintiff's land contrary to what is reflected in the new cadastral map and the transfer letter which specify the exact size of the land the plaintiff had bought and gave the particulars of fraud as follows-;
 - a. Failing to deliver the exact piece of land that had been indicated per the agreement.
 - b. The 1st and 4th defendant colluding with the 2nd defendant to reduce the size of the plaintiff's land by manipulating the records.
 - c. Notwithstanding the failure to transfer the exact acreage to the purchaser pursuant to the transfer letter (by the 4th defendant to the land registrar(sic))
 - d. Notwithstanding repeated requests to the 4th defendant by the plaintiff, but the defendants have refused to take any steps towards the realization of the exact land to the plaintiff per the agreement (sic)
 - e. Interfering with the AR records in favour of the 1st defendant contrary to Land Register's record.
 6. The plaintiff averred that he is properly entitled to the ownership of the land known as LR Tigania East/Kiguchwa/3702 formerly known as P/No 3702, Kiguchwa adjudication section measuring approximately 1.00 acre.



7. The plaintiff testified as PW 1 and called 3 witnesses. The plaintiff adopted his witness statement dated January 27, 2022 as his evidence in chief. He produced the cadastral maps, transfer agreement dated December 15, 1995, minutes dated January 13, 2020 and title deed for title No Tigania East/Kiguchwa/3702 as P exhibit 1 – 4 respectively.
8. It is the plaintiff's case that he bought the land at a consideration of Kshs 60,000/= and after making payment of the full purchase price, he took possession and the land was demarcated and a title deed issued in his name in the year 2017 which indicated the area as 0.23 Ha instead of one (1) acre. The plaintiff testified that he has developed and has been in occupation and use of one (1) acre since the year 1995 until recently when the 1st defendant encroached a portion of it due to error in the said title.
9. PW 2 was Francis Kaigera Mbogori who testified that the plaintiff told him that he purchased one (1) acre of land from the 4th defendant who also admitted the same but that his son objected to the sale. PW 2 adopted his statement dated December 26, 2022 which basically reiterated the above testimony.
10. PW 3 was Bruno Gutunga Lichoro who testified that he was a witness during the transfer of the land measuring one (1) acre by the 4th defendant to the plaintiff in 1995. He also confirmed that the plaintiff has been utilizing the said land. He adopted his statement dated January 27, 2022.
11. PW 4 was M'itaru Nabea who also adopted his witness statement dated January 27, 2022. He testified that he was sent to the 4th and 1st defendant who are father and son to clarify the size of land sold to the plaintiff. That the 4th defendant confirmed that he had transferred one (1) acre to the plaintiff.

1st Defendants' Case

12. The 1st defendant entered appearance and filed a defence dated February 12, 2021. The 1st defendant denied the plaintiff's claim and pointed out that there was a similar case in Tigania Magistrate's Court case No 94 of 2019 which was fully heard and determined against the plaintiff herein. That instead of appealing, the plaintiff filed a fresh suit. It is the 1st defendant's contention that the plaintiff has no cause of action against him and that the plaintiff's case is totally defective and an abuse of the court process.
13. At the hearing, the 1st defendant did not attend court although he was duly served and his case was closed.

2nd And 3rd Defendants' Case

14. The 2nd and 3rd defendants filed a statement of defence dated February 21, 2022 which was amended on September 15, 2022 wherein they denied each and every averment pleaded in the further amended plaint.
15. The 2nd and 3rd defendants contended that the suit offends section 3 (1) of the [Public Authorities Limitation Act](#) and section 26 of the [Land Consolidation /Adjudication Act](#), that no injunctive orders can issue against the 2nd defendant by dint of section 16 of the [Government proceedings Act](#) and that the suit is bad in law as the same raises no cause of action against the defendants.
16. The 2nd and 3rd defendants stated that they are not privy to the information and averments contained under paragraphs 5,6,7,8,9,10,11,12 and 13 of the amended plaint and can neither deny nor acknowledge the same and they put the plaintiff to strict proof.
17. The 2nd and 3rd defendant further denied that the 2nd defendant fraudulently caused the rectification of the objection register resulting to variance with the cadastral map and maintained that their dealing



with the suit property, if any, was lawful, procedural and in execution of their statutory functions. That the land registrar is expected by law to issue titles strictly in accordance with the final register and cannot alter the same in manner contrary to the final register. That the plaintiff's request, if any, could not be actuated in strict compliance with the [Land Registration Act](#) as it would be ultra vires the laws of Kenya and urged the court to dismiss the plaintiff's suit with costs.

18. Although the hearing date was taken by consent of the plaintiff's advocate and a representative of the Honourable Attorney General for the 2nd and 3rd defendants, the 2nd and 3rd defendants did not attend the hearing and their case was marked as closed.

Plaintiff's Submissions

19. The plaintiff filed submissions dated June 20, 2023 through the firm of Ojwang Sombe & Co advocates wherein he gave a background of the case and summary of the evidence adduced. The plaintiff submitted that he is the lawful owner of the suit property and that he has proved his case to the required standard. Counsel for the plaintiff cited section 107 of the [Evidence Act](#) and relied on the case of [Muriungi Kanoru Jeremiah v Stepehn Ungu M'Mwarambua](#) (2015) eKLR and the [Hasbury's Laws of England](#), 4th Edition, volume 17 at paras 13 & 14.
20. On whether the plaintiff is entitled to the reliefs sought, the plaintiff's counsel relied on [Kamau Muchuku v Ripples Ltd](#) (1993) eKLR, [Charles Mwangi Kamau v Mohamed Hassan Sbeikh Noor](#) (RIR) HCC No 2 of 2005 and [Kenya Power & Lighting co Ltd vs Sheriff Molana Habib](#) [2018] eKLR and submitted that the plaintiff is entitled to the reliefs sought. The plaintiff's counsel also cited article 40 of the [Constitution](#), sections 24 (a) and 80 of the [Land Registration Act](#) and relied on the case of [Karugi & another v Kabiya & 3 others](#) [1987] KLR 347 and submitted that the plaintiff is entitled to the one acre.
21. The plaintiff urged the court to find that he has proved his case and grant the orders sought and the costs of the suit. The plaintiff cited section 27 of the [Civil Procedure Act](#) and relied on the case of [Party of Independent Candidate of Kenya & another v Mutula Kilonzo & 2 others](#) [2013] eKLR.

2Nd And 3Rd Defendant's Submissions

22. In their submissions dated July 5, 2023, the Honourable Attorney General for the 2nd and 3rd defendants submitted that the plaintiff's suit as set out in the plaint is based on a sale agreement to which the 2nd and 3rd defendants were not party to. They highlighted the statutory duties of the 2nd defendant as provided for under the [Land Registration Act](#) and submitted that the 2nd defendant acted within his statutory duties when he issued the title deed to the suit land in the year 2017.
23. It is also submitted that the plaintiff has not demonstrated that he actually raised an objection to the adjudication register before the same was forwarded to the Director of Land Adjudication by the 2nd defendant for purposes of registration.
24. It is also the 2nd and 3rd defendant's submission that the plaintiff's suit in so far as it is based on fraud is statutory barred since the cause of action arose in 2017 when the plaintiff got title and the suit was filed in 2021, which is almost four (4) years after the cause of action arose. The 2nd and 3rd defendants cited the provisions of section 3(1) of the [Public Authorities Limitations Act](#) cap 39. They also submitted that no injunctive orders can issue against the 2nd defendant by dint of section 16 of the [Government Proceedings Act](#) and urged the court to dismiss the plaintiff's suit as against them.



Analysis And Determination

25. Taking into account the rival submissions and the pleadings, I find that the issue for determination are whether the suit is statutory barred by virtue of section 3(1) of the *Public Authorities Limitation Act* cap 39 and section 4(4) of the *Limitation of Actions Act* cap 22 Laws of Kenya, and depending on this court's finding on the above, whether the orders prayed for by the plaintiff should be granted as sought. Whereas the defendants never adduced any evidence, the burden is still upon the plaintiff to prove his case to the required standard and to convince the court that he is entitled to the orders sought.
26. It is the plaintiff's case that he purchased a parcel of land measuring one (1) acre from the 4th defendant in the year 1995. The plaintiff testified that he was issued with a title deed in the year 2017 which showed the acreage as 0.23 hectares instead of one (1) acre. The title deed which was produced by the plaintiff as P. exhibit 4 indicates that the plaintiff was registered as proprietor of the suit land on August 29, 2017. The plaintiff has raised issue of fraud against the defendants in regard to the acreage that is shown in the said title deed. In their statement of defence the 2nd and 3rd defendants have pleaded that the suit offends section 3 (1) of the *Public Authorities Limitations Act*.
27. As rightly submitted by the 2nd and 3rd defendants, fraud is a common law tort of deceit whose ingredients are also representation of a false fact with the intention that the other party should act on it and that party suffers damage.
28. Section 3(1) and (2) of the *Public Authorities Limitations Act* provides as follows-;
- “ 3
- (1) No proceedings founded on tort shall be brought against the government or a local authority after the end of twelve months from the date on which the cause of action accrued.
- (2) No proceedings founded on contract shall be brought against the Government or a local authority after the end of three years from the date on which the cause of action accrued.”
29. Section 4(2) of the *Limitation of Actions Act* cap 22 Laws of Kenya states as follows-;
- “ An action founded on tort may not be brought after the end of three years from the date on which the cause of action accrued: provided that an action for libel or slander may not be brought after the end of twelve months from such date.”
30. The above quoted sections provide for a time frame of twelve months and three years respectively within which an action for tort ought to be filed. The plaintiff pleaded that he purchased the suit land measuring one (1) acre from the 4th defendant in the year 1995. The plaintiff's complaint is that the defendants fraudulently issued him with a title deed for 0.23 hectares instead of one (1) acre. The title deed was issued to the plaintiff on August 29, 2017. Therefore, the cause of action accrued to the plaintiff on August 29, 2017 and the suit was filed on January 15, 2021 after a period of over three years. There is no evidence to show that leave was sought and obtained to file suit out of time. Therefore, it is clear that the plaintiff's suit is statute barred under both Acts. This is so because if the cause of action accrued to the plaintiff in August 2017 and the suit was filed in January, 2021, the suit would be out of twelve months under the former Act and out of three years under the latter Act.



31. It is therefore my findings that the suit was filed in violation of section 3(1) of the *Public Authorities Limitation Actions Act* and section 4(2) of the *Limitation of Actions Act* and the same is struck out. Considering that the defendant did not participate during the hearing, I order that parties bear their own costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF SEPTEMBER, 2023

C.K YANO

JUDGE

