



**Muriuki v Kimani & another (Environment & Land Petition 17 of 2020)
[2023] KEELC 20212 (KLR) (25 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20212 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND PETITION 17 OF 2020**

JG KEMEI, J

SEPTEMBER 25, 2023

BETWEEN

MORRISON M MURIUKI PETITIONER

AND

LAWRENCE KARUGU KIMANI 1ST RESPONDENT

GITHUNGURI CONSTITUENCY RANCHING COMPANY . 2ND RESPONDENT

JUDGMENT

1. Morrison M Muriuki Petitioned this Court vide a Petition dated the 13/5/2020 against Lawrence Karugu Kimani and Githunguri Constituency Ranching Company Limited, the Respondents herein seeking the following orders;
 - a. A Declaration that the Petitioner, Morrison M. Muriuki acquired good title from the Paul Kariuki Chege which he subsequently passed to the 14 purchasers/occupants upon the subdivision into properties known as Ruiru/Kiu Block 2/8008, Ruiru/Kiu Block 2/8009, Ruiru/Kiu Block 2/8010, Ruiru/Kiu Block 2/8011, Ruiru/Kiu Block 2/8012, Ruiru/Kiu Block 2/8013, Ruiru/Kiu Block 2/8014, Ruiru/Kiu Block 2/8015, Ruiru/Kiu Block 2/8016, Ruiru/Kiu Block 2/8017, Ruiru/Kiu Block 2/8018, Ruiru/Kiu Block 2/8019, Ruiru/Kiu Block 2/8020, Ruiru/Kiu Block 2/8021.
 - b. A Declaration that the Respondents letter dated 7th May 2020 violated and/or threatens the rights to properties Under Article 31 of the Constitution as well as Article 40 on property ownership thus null and void.
 - c. A Conservatory Order permanently prohibiting/restraining the Respondents, their agents, employees, servants, accomplices and/or any other person from evicting and/or interfering with the possession and quiet enjoyment of the properties known as Ruiru/Kiu Block 2/8008, Ruiru/Kiu Block 2/8009, Ruiru/Kiu Block 2/8010, Ruiru/Kiu Block 2/8011, Ruiru/Kiu



Block 2/8012, Ruiru/Kiu Block 2/8013, Ruiru/Kiu Block 2/8014, Ruiru/Kiu Block 2/8015, Ruiru/Kiu Block 2/8016, Ruiru/Kiu Block 2/8017, Ruiru/Kiu Block 2/8018, Ruiru/Kiu Block 2/8019, Ruiru/Kiu Block 2/8020, Ruiru/Kiu Block 2/8021.

- d. This Honorable Court be and is hereby pleased to issue an order of mandamus compelling the 1st and 2nd Respondents jointly and/or severally to compensate the Petitioner for violation of his rights.
 - e. That costs be provided for.
 - f. Any other order or relief that this Honorable Court is pleased to issue in the circumstances.
2. The Petitioner has premised the Petition on several articles of the Constitution of Kenya being Articles 2, 3, 10, 19(2), 20, 22, 27, 28, 31, 40, 64, 162 and Sections 24, 25, 29, 30, 34, 37 & 42 of the Land Registration Act. Similarly, Sections 43, 44 of the Land Act and Sections 13 of the Environment and Land Court Act have been invoked.
 3. The Petitioner avers that he is a resident of Kiambu County and brought the Petition on behalf of 14 persons whom he sold land being parcels Nos Ruiru/Kiu/RuiruBlock2/8008 – 8021 (14 plots).
 4. He averred that he purchased parcel Ruiru/Kiu/RuiruBlock2/3666 in 2002 from one Paul Kariuki Chege who acquired the land in 1993. That he carried out due diligence before the purchase and that in 2011 he subdivided the land into 14 parcels aforesaid and sold to 14 different purchasers who have been issued with titles and equally taken possession and developed the properties.
 5. That the said purchasers are in receipt of a notice to vacate dated the 7/5/2020 from the 2nd Respondent who purports to be the registered owner of the mother title namely Ruiru/Kiu/Block 2/3666. It is his apprehension that the imminent threat of eviction if actualized by the Respondents will threaten the owner's right to privacy and the right to own property. That the allegations of ownership by the 2nd Respondent are baseless.
 6. The 1st Respondent denied the Petitioner's claim vide his Replying Affidavit filed on the 17/6/22. He contended that the suit land parcel 3666 belongs to him by virtue of having been a shareholder of the 2nd Respondent. That he was allocated the suit land measuring 1.25 acres through Share Certificate No 5566 and ballot No 1601 in 1995 and duly paid and was issued with a receipt dated the 14/6/1985. That during one of his frequent visits to the land he found that some unknown occupants had occupied the land on the basis of purchase from the Petitioner after which he reported the matter to the Directorate of Criminal Investigations, Kiambu for investigations. That the 2nd Respondent clarified to the Directorate of Criminal Investigations that the land belonged to the 1st Respondent. Upon being summoned by the 2nd Respondent to present his ownership documents, the said Paul Kariuki declined to attend the meeting. That he has not sold his land to either the said Kariuki or the Petitioner and avers that any titles in the hands of these two are questionable. That the title in the name of Kariuki was procured through fraud and forgery. That Kariuki held no title in the land and consequently the Petitioner cannot be said to have acquired a good title from Kariuki. That equally the Petitioner having acquired nothing passed no good title to the 14 alleged purchasers. That the titles in the names of the said 14 purchasers should be cancelled on account of fraud and illegality.
 7. That consequently, the Petitioner's claim of infringement of rights is unmerited, frivolous and an abuse of the Court process. That the jurisdiction of the Court as set out under Section 13 of the Environment and Land Court Act does not extend to the determination of constitutional questions as the same is the preserve of the High Court.
 8. In the end the 1st Respondent sought the following orders;



- a. A declaration that the 1st Respondent herein is the lawfully beneficial owner of all the parcel of land known as Ruiru/Kiu Block 2/3666
 - b. An order of revocation and/or cancellation of all that parcel of land known as Ruiru/Kiu Block 2/8008, Ruiru/Kiu Block 2/8009, Ruiru/Kiu Block 2/8010, Ruiru/Kiu Block 2/8011, Ruiru/Kiu Block 2/8012, Ruiru/Kiu Block 2/8013, Ruiru/Kiu Block 2/8014, Ruiru/Kiu Block 2/8015, Ruiru/Kiu Block 2/8016, Ruiru/Kiu Block 2/8017, Ruiru/Kiu Block 2/8018, Ruiru/Kiu Block 2/8019, Ruiru/Kiu Block 2/8020, Ruiru/Kiu Block 2/8021.
 - c. An order that the Petitioner pays to the 1st Respondent mesne profits of Kshs.100,000/- per month from the date of filing of this Petition until payment in full.
 - d. The cost of defending this suit.
 - e. Interest on (c) and (d) above at the Court rates until payment in full.
 - f. Any other relief this Honorable Court may deem just and fit to grant.
9. The 2nd Respondent filed a response through the Affidavit of John Maina Mburu, its Director and Chairman. He averred that according to the Company records parcel Ruiru/Kiu/Ruiru Block 2/3666 was allocated vide ballot No 1601 held by Kariuki. That the 1st Respondent lodged a complaint that Kariuki had grabbed his land whereupon the said Kariuki was summoned to appear before the Company to clear the allegations and present documents in his custody but he declined forcing them to invite the Directorate of Criminal Investigations to investigate the matter. That later they were informed that Kariuki passed away. That they are unable to find any documents of transfer between the said Kariuki and the Petitioner in the records. That the Environment and Land Court has no jurisdiction to determine a constitutional claim under Article 165(3)(b) of the *Constitution* of Kenya. He urged the Court to cancel the 14 plots purported to have emanated from parcel 3666 and dismiss the Petition.

The submissions

10. The Petitioner submitted that the Affidavit evidence placed before the Court does not support the claim that the 1st Respondent is the registered owner of the suit land. That in the absence of any evidence he was of the view that his Petition should be allowed to guarantee his right to property.
11. Further he averred that the actions of the Respondents amount to intrusion of private property threat to security and unwarranted attack on the Applicants as well as innocent parties who are bonafide purchasers of the land from the Petitioner. That the Petitioner acquired a good title from Kariuki and sold to the 14 purchasers whose rights to own property ought to be protected under Article 40 of the *Constitution* of Kenya.
12. As to whether the Petitioner has acquired a good title, the 1st Respondent states that according to his documents of ownership, he acquired the land from the 2nd Respondent in 1985 while the Petitioner claims that Kariuki Acquired the land in 1993, way after the same had been alienated to him. That he was therefore the first in time to acquire the land. See the case of *Gitwany Investment Limited v Tajmal Limited & 3 others* (2006) eKLR where the Court held as follows;

“Like equity keeps teaching us, the first in time prevails so that in the event such as this one where, by a mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel for land, then if both are apparently and in the fact to them, issued regularly and procedurally without fraud save for the mistake, then the first in time



must prevail. It must prevail because without cancellation of the original title, it retains its sanctity.”

13. The 1st Respondent contended that in a case where there are two titles, the Court must as of necessity look at the root of title the processes of acquisition to find out which of the titles should stand. See the case of *Hubert L Martin & 2 others v Margaret J Kamar & 5 others* (2016) eKLR where the Court stated as follows;

“A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand.”

14. That it is the Petitioner who bore the onus to proof the root of title given that he is the one alleging that he acquired a good title from the previous owner and that the title was procured procedurally and without any fraud. The Court was urged to find that the 1st Respondent has good title over the suit land.
15. The 2nd Respondent submitted that the Petitioner failed to adduce any evidence of allotment of shares in the name of Kariuki nor that the shares of Kariuki were transferred to him and that the documents allegedly held by Kariuki were acquired illegally unprocedurally and incapable of passing a good title. That its records show that the land is owned by the 2nd Respondent. That had the Petitioner adhered to the procedures of the 2nd Respondent in acquiring the land such as issuance of a new Share Certificate, clearance certificate and duly executed transfer by the 2nd Respondent, he would have come to the sad realization that he acquired no title in the process because Kariuki the alleged seller had no good title in the land. The Court was urged to dismiss the Petition.

Analysis and determination

16. These are the issues for determination;
- a. Whether the jurisdiction of the Court has been properly invoked.
 - b. If yes whether the Petition is merited
 - c. Who meets the cost of the Petition
17. It is not in dispute that the Petitioner and the 1st Respondent are claiming ownership of the suit land being parcel 3666. The Petitioner claims that he purchased the suit land from Kariuki in 2002. That later he subdivided it into 14 plots and sold to 14 purchasers who have since taken possession and developed the same. They also have titles to the suit land. According to the Petitioner Kariuki acquired the lands in 1993 from the 2nd Respondent.
18. The 1st Respondent claims that he is the owner of the land having acquired it from the 2nd Respondent in 1985 when he acquired shares and was allotted ballot No 1601 by the Company. That he has never sold the land to Kariuki or the Petitioner todate. It is his contention that he was allocated the land first in time and therefore Kariuki having acquired the land in 1993, there was no land available for acquisition in 1993 the same having been alienated to him in 1985.
19. The 2nd Respondent on the other hand states that the owner of the suit land is the 1st Respondent. That the Petitioner has failed to present any documents held by Kariuki to proof ownership of the land.



20. The Court have reflected on the nature of the claim and the reliefs being sought and it is clear to the Court that the issue revolves around title to land. Undoubtedly the Petitioner and the 1st Respondent have laid claim to the land. I have perused the documents presented by the Petitioner to wit the Share Certificate and the ballot and this averment when taken against the contentions of the Petitioner shows that the 1st Respondent balloted for the land in 1985 and the question as to who is the rightful owner, the manner of acquisition of the land are pertinent issues that are within the preserve of a Civil Court that is to say the Environment and Land Court. For the issues to be determined in finality the parties are bound to proof their claims in an ordinary civil suit. For that reason the Court finds that no constitutional questions have been raised and secondly the constitutional jurisdiction of the Court has been improperly invoked.
21. More importantly the 1st Respondent's counterclaim is far reaching so much so that the Court would be remiss if the suit is heard without the participation of the 14 alleged purchasers who hold title to the parcels of land. The likelihood of them being affected by the decision of the Court without being afforded the opportunity to be heard is highly probable. In addition the Court notes that though the Petitioner averred that it brought the Petition on behalf of 14 other parties, no evidence of representation nor were the 14 persons/parties disclosed.
22. For the above reasons the Court finds that the Court's constitutional powers have been improperly invoked and the Petition is struck out to allow parties approach the right forum for the adjudication of the dispute on the suit land.
23. The costs shall be met by the Petitioner in favour of the Respondents.
24. Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 25TH DAY OF SEPTEMBER, 2023 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

