



**Chelagatt v Nderi & 8 others (Environment & Land Case 187 of 2016)
[2023] KEELC 19917 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19917 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 187 OF 2016
FM NJOROGE, J
SEPTEMBER 22, 2023**

BETWEEN

LOYCE JEROP CHELAGATT PLAINTIFF

AND

HERMAN MARINE NDERI 1ST DEFENDANT

VIOLA NGERINGWONY KIPTOO 2ND DEFENDANT

JOEL KIBET KIPTUM 3RD DEFENDANT

BRIAN KIPRONO ROP 4TH DEFENDANT

AGNES CHEPCHUMBA CHESIRE 5TH DEFENDANT

KIPKOECH ERASTUS CHEPKURGAT 6TH DEFENDANT

TABITHA CHEPKEMOI KISOMBE 7TH DEFENDANT

GABRIEL KIPRUTO CHEROP 8TH DEFENDANT

CHIEF LAND REGISTRAR 9TH DEFENDANT

JUDGMENT

1. The plaintiff filed this suit seeking inter alia a declaration that she is the lawful owner of all that land parcel known as Lenginet Settlement Scheme/ 637 which had by the time of filing of this suit been subdivided into numerous portions ranging from Lenginet Settlement Scheme/1368 -1403. Her claim is that she purchased the land from one Rachel Njoki Ndungu who was allotted the land by the Settlement Fund Trustees in 1999. She states that at that time the land was known as plot no 674 and it only acquired the present number later. Having purchased the same, the plaintiff repaid the loan that the original allottee had with the SFT and embarked on the process of obtaining completion documents. She obtained a land control board consent to transfer, the SFT discharge of charge and



land transfer form and paid the requisite official fees to facilitate transfer to her name. However, the attempt to transfer the land was unsuccessful due to the existence of titles issued to the defendants. She claims that the defendants' titles were obtained fraudulently and sets out the alleged particulars of fraud in her plaint. She avers that the 2nd - 8th defendants failed to exercise due diligence while purchasing the subdivisions of the mother parcel, arguing that they never conducted due diligence by visiting the suit land. She further avers that they are therefore not purchasers for value without notice and their titles are invalid, hence the suit.

Defence of the 1st defendant

2. In his defence the 1st defendant denied the plaintiff's claim and averred that plots No. 637 and 674 have always been distinct and separate plots; that he charged his interest in the suit property in 1978; that he finalized payment of the loan in 1986 and obtained a discharge which he had registered in the year 2004 and that he obtained the title to the suit land procedurally and subdivided the same and sold portions thereof to the 2nd -8th defendants.

Defence of the 2nd -8th defendants

3. In their defence the 2nd -8th defendants admitted to having purchased the portions of the suit land, denied the allegations of fraud and further denied that the plaintiff has ever been the legal or beneficial owner of the suit land. They stated that they are members of Dodeka Investment Club which purchased the land from the 1st defendant and that the alienation of the portions to them was lawfully done. They further deny that the plaintiff purchased the same from Rachel on the date stated or that she was in possession of the suit land or that she had registered any restriction at the time of their purchase and allocation of their respective parcels, and that they are hence bona fide purchasers for value without notice. They further aver that in the government records plots Nos 637 and 634 have always been two distinct properties. They aver that any concession by the Land adjudication office that the plaintiff was the owner of the suit land was premised on misinformation and an intention to conceal facts and records. They accuse the plaintiff of conniving with government officers to interfere with land records by way of forgery.

Defence of the 9th defendant

4. The 9th defendant denied the plaintiff's claim in his defence and sought that the suit be dismissed with costs.

Evidence of the plaintiff

5. PW1 Samuel Kabiru, Assistant Director Land Adjudication and Settlement testified for the plaintiff and adopted his written witness statement filed in the case. His evidence is that plot No 1 comprising of 200 acres had been obtained by the Government from one Isabellah Wangui for a second phase of resettlement; that the plot named No 674 arose from that second phase of Lenginet Settlement Scheme; that plots Nos 674 and 675 (those being the old numbers) were allocated to one Charles Ndungu Ngugi in 1984 and he executed legal documents including a charge in 1988; that Charles paid the requisite 10% of the consideration at first and there are receipts showing that he later paid the balance. The last receipt was for Kshs 60,000/= dated 4/4/2013. Upon Ngugi's demise the lands were transmitted to his widow Rachel Njoki Ndungu.
6. Upon cross-examination by Ms. Omwenyo PW1 stated that in the official records, the plot numbers 637 and 674 in the scheme refer to one and the same plot and that the change in numbers was effected upon survey in 1988 after plot No 637 was allocated to Charles; that however, plot no 674 still appears



on the map but the explanation for such existence is that it is not an “initial allocation”. He admitted that both numbers 674 and 637 are present in the current map; that he does not have any file for the 1st defendant; that the plaintiff owns plot no 634 which borders plot no 637; that there is no indication in the official records that all the parties were informed of the change in numbers. He admitted that he does not have any documents with him explaining the change in numbers. He stated that upon completion of payment a document signed by the accounts department and the Director is issued to the person to whom the land is to be transferred but added that he did not have any such document in favour of the plaintiff. Upon re-examination by Ms Chepkirui PW1 stated that 674 is a subdivision of plot no 305 and is a mutation number involving different parties which is not in any way connected with the parties herein.

7. PW2, Loyce Jerop Chelagat testified orally and adopted her written witness statement filed in the record. She stated that she purchased plot No 674 for Kshs.425,000/= from Njoki Ndungu in August 1999 and paid the consideration in full; that was after the demise of Njoki’s husband. The portion emanated from plot No 501. The plaintiff was not given any acknowledgment of receipt by the said Njoki. It would also appear from her evidence that she took a long time to follow up on the land after purchase because she only acted in 2013 by going to the Nakuru Settlement Office where she paid the arrears of Kshs 60,000/- allegedly owed by the seller. The Nakuru Settlement Office advised her to seek clearance from the headquarters in Nairobi; at Nairobi she was given a letter to show the Nakuru office that she had cleared. She then paid for the title and the stamp duty. However, when she went to the land registry she learnt that the 1st defendant had already been issued with title to the land. She went to Nairobi where she was informed that the number of the suit land had changed from 674 to 637.
8. Upon cross-examination by Mr Gakinya she stated that her husband had acquired plot Nos 668 -673 whereas the Ndungus had acquired plots Nos 674 and 675; the plaintiff’s husband’s plots Nos 668 -673 were converted into plot No 634. She does not know the new number for plot No 675. She stated that she does not know the owner of the plot No 674 appearing on the current map.
9. Upon cross-examination by Ms Omwenyo, PW2 stated that she came to know of the change of number in 2015. She was not aware of when the initial letters of allotment were issued; she admitted that there is appearing a plot No 673 next to plot No 674 on the current map. She stated that some plots have no title deeds even as at today. She averred that she had followed the proper procedure in acquiring the suit land while the 1st defendant had corruptly obtained his title to the suit land.

Evidence of the 1st defendant

10. DW1, Herman Marine Nderi, the 1st defendant testified orally and adopted his witness statement filed in the record. He stated that he was issued with an allotment letter by the SFT and he paid them some money for the suit land. The title was charged to the SFT. He later cleared the loan and was issued with a discharge of charge dated 10/8/2004 and the suit land was transferred to him and a title bearing the same date was issued in his name. He tried to construct a house on the suit land but it was demolished. He asked for help from the area Chief and the area DC and the latter asked the Land Registrar to show him the beacons which he complied with. He stated that though the plaintiff had testified that she purchased the suit land in 1999 plot No 674 did not exist on the RIM by that time; rather, it was a subdivision of plot No 305 which took place in 2004. He pointed out the discrepancy from the letter dated 23/7/1999, that the first instalment was purportedly due on 30/6/1980 which he stated was an impossibility. He stated that on that ground alone, the said charge must be a forged document. He also pointed out another discrepancy between the contents of the letter from the Director dated 18/12/2015 and the plaintiff’s averment that she purchased the land in 1999; the letter alleged that she had purchased the land in 2013. DW1 further testified that he had a worker staying on the suit land



before he disposed of it but that worker was chased away and his house demolished. The plaintiff was merely his neighbour who trespassed into his plot and grabbed it. He sold the plot because he did not feel comfortable owing to his ethnic background and titles were processed and issued in the buyers' names. The buyers were the 2nd-8th defendants. According to him Plot No 674 still appears on the RIM for Lenginet Settlement scheme, as does plot No 637.

11. Upon cross-examination by Ms Omwenyo he stated that he has never been notified of any change in the number of his plot. He obtained a mutation and a land control board consent for the subdivision. Upon cross-examination by Mr Simiyu he stated that though he repaid the loan in 1978, it took long for him to obtain title in his name because he had been jailed for 5 years at some point.

Evidence of the 2nd -8th defendants

12. The evidence of the 2nd-8th defendants is that they formed an investment club and purchased the suit land from the 1st defendant for Kshs. 9,000,000/= after conducting due diligence on the land title which confirmed that the 1st defendant owned it and that it was unencumbered. The land was fallow but fenced at that time. The plaintiff lived on the adjacent land parcel. They made enquiries at the SFT and found it had been paid for. The 1st defendant handed them copies of the charge and discharge and showed them the title deed. There was a semi-permanent structure on the land. They later subdivided the land amongst themselves after securing approval of the land control board. While they were in the process of getting title deeds and before they had obtained all of them the plaintiff became violent and harassed them.

Submissions

13. The plaintiff and the 2nd-8th defendants filed their submissions. I have perused through the court file and I have found no submissions on behalf of the 1st defendant at the time of preparing the present judgment.

Determination

14. Based on the evidence adduced by the parties and the pleadings, it is not in dispute that the suit land borders the plaintiff's parcel and title to it was issued in the 1st defendant's name. It is also not in dispute that the 2nd-8th defendants purchased the land, subdivided it amongst themselves and some have titles to some of the subdivisions. The issues that arise for determination are therefore as follows:
 - a. Do the numbers 674 and 637 refer to one and the same plot?
 - b. Whether the plaintiff should be declared the lawful owner of the suit land;
 - c. Whether the defendant's titles are valid;
 - d. Who should bear the costs of the suit?

a. Do the numbers 674 and 637 refer to one and the same plot?

15. On the first issue the plaintiff avers that plot No 637 is what was formerly known as Plot No 674. The officer from the SFT who testified concurred. The defendants are of the contrary view. It is clear that all the numbers in the current map are registration numbers. Had a comprehensive narrative been given by the parties, the task of establishing if the two numbers refer to one and the same plot may have been easier for this court. Unfortunately, the evidence of the officers who testified for the plaintiff failed to give the proper genealogy of all plots that emanated from the second phase of Lenginet Settlement



Scheme so as to enable the court place the alleged change of number in respect of the suit plot in its proper context.

16. Evidence in this case shows that there was a subdivision of Plot No 501 which resulted in the plots in the second phase of the Lenginet Scheme. The plaintiff and her witnesses do not give the range, that is, the first to the last of the numbers created under that new subdivision. The plaintiff only avers that her husband acquired plots numbers 668 - 673 and they were merged and converted into plot No 634 while the Ndungus had acquired plots Nos 674 and 675. She failed to produce any SFT map used in plot allocation showing that plots Nos 668-673 lay next to plot No 674 or that the allocation number 674 indeed ever existed. She does not avail any documentary evidence of how the purported plot No 674 was converted into plot No 637. Also, the Plaintiff, who should know the proper state of affairs, does not state whether or not the two Ndungus plots were merged to form Plot 637 or only one of them was converted into plot No 637. In this regard, production of the map used for allocation would have been quite handy. This court is of the opinion that the plaintiff has failed to establish that Plot No 637 and Plot No 674 refer to one and the same plot. The 1st defendant avers that he was allocated plot number 637 under that very same number, unchanged, which later became the title number under the current RIM. The 1st defendant having presented documents showing that that was the case, it was upon the plaintiff to establish by evidence that no such plot existed on the SFT allocation map. The plaintiff and her witnesses address the issue of whether there was any plot identified as Plot No 637 in the SFT allocation map, or an explanation or history as to what happened to any plot that may have been issued with number 637 in such map. This is surprising given that the ministry officials who supported the position held by the plaintiff must be deemed to be having all the relevant records of the scheme in their office. The upshot of the foregoing is that this court has no material placed before it by any of the parties to enable it conclude that numbers Plot Nos 674 and 637 refer to one and the same land parcel on the ground.

b. Whether the plaintiff should be declared the lawful owner of the suit land;

17. Regarding the second issue, it was for the plaintiff to present evidence that she indeed purchased the suit land. The agreement she has was made before an advocate and is attested to and it is dated 12/8/1999 stating that she purchased plot no 674 from one Rachel Njoki Ndungu for Kshs 425,000/-. She avers that that plot number was subsequently converted into plot number 637 which all the parties now agree that it is the suit land. The agreement acknowledges receipt of Kshs.400,000/- also states that the purchaser shall be deemed to have taken possession on the date of the agreement. A covenant in the agreement is that all liability for loans or liabilities of any kind charged on the land shall attach to the vendor personally and the premises are sold free and discharged from all such liabilities. If the vendor breached that covenant the sale would be null and void and all payments made by the purchase would be refundable by the vendor with interest at current bank rates forthwith. An acknowledgment of receipt dated 17/9/1999 of Kshs.25,000/- by one Jackson Kahora on behalf of Rachel as the final instalment of consideration is part of the plaintiff's evidence. A charge in favour of SFT by Rachel in respect of plot No 674 was also produced. It would appear that the seller never met her part of the contract since the plaintiff agrees that she had to pay to SFT Kshs 60,000/= being the outstanding loan in respect of plot No 674 about 14 years later in 2013. A letter from the SFT dated 18/12/2015 in the plaintiff's bundle suggests that she purchased the land in 2013.
18. It is evident that there was therefore a transaction between the plaintiff and Rachel but as the court has concluded on the first issue listed for determination above that no evidence has demonstrated that number 674 refers to the suit land, there is no evidence that would enable this court to conclude that the transaction was in respect of the suit land. Besides the plaintiff's evidence having failed to address such a crucial issue, the defendants have demonstrated by way of evidence that the 1st defendant was



allocated plot No 637 and that is the number that was finally reflected on the title that he was issued at the land registry. This court therefore lacks any basis to make any declaration that the plaintiff is the lawful owner of the suit land.

c. Whether the defendant's titles are valid

19. Section 26 of the *Land Registration Act* provides that 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 on the ground of fraud or misrepresentation to which the person is proved to be a party or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The plaintiff has failed to connect the 1st defendant's title to any evidence of fraud. There is therefore no basis upon which the title formerly held by the 1st defendant in respect of Lenginet Settlement Scheme/637 or those now issued in respect to the parcels resulting from subdivision of that mother parcel could be declared invalid in the present suit.

d. Who should bear the costs of the suit?

20. Costs follow the event. The plaintiff, having failed to establish her claim against the defendants ought to bear the costs of the suit.

Conclusion

21. This court has arrived at the conclusion that the plaintiff has failed to establish her claim against the defendants to the required legal standard. I therefore issue the following final orders:
- a. The plaintiff's claim vide the plaint dated 31/5/2016 is hereby dismissed;
 - b. For avoidance of doubt, all interim orders issued in respect of the suit land are hereby vacated;
 - c. The plaintiff shall bear the costs of the defendants of this suit.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT ON THIS 22ND DAY OF SEPTEMBER 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU.

