



**Kanyora & 2 others (Suing for and on behalf of themselves and members of Maki Plot Owners Self Help Group) v Gachagua (Sued as the administrator of the Estate of Mary Mweru Gachagua, the administrator of John Gachagua Kibiru) (Environment & Land Case 703 of 2014) [2023] KEELC 19936 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19936 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 703 OF 2014**

**JO OLOLA, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**PETER MAHINDA KANYORA ..... 1<sup>ST</sup> PLAINTIFF  
DANIEL MUKUHA WAHOME ..... 2<sup>ND</sup> PLAINTIFF  
JOHN MIRING’U KIMANI ..... 3<sup>RD</sup> PLAINTIFF  
SUING FOR AND ON BEHALF OF THEMSELVES AND MEMBERS OF MAKI  
PLOT OWNERS SELF HELP GROUP**

**AND**

**JULIUS MUGO GACHAGUA ..... DEFENDANT  
SUED AS THE ADMINISTRATOR OF THE ESTATE OF MARY MWERU  
GACHAGUA, THE ADMINISTRATOR OF JOHN GACHAGUA KIBIRU**

**JUDGMENT**

**Background**

1. This suit was initially instituted in the year 2010 as Nyeri HCCC No. 161 of 2010.
2. By their Originating Summons dated and filed on 18<sup>th</sup> November 2010, Peter Mahinda Kanyora, Daniel Mukuha Wahome and John Miring’u Kimani suing for and on behalf of themselves and the members of Maki Plot Owners Self Help Group (the Plaintiffs) pray for:
  1. A declaration that the parcel of land LR No. 10422/9 situated within Nanyuki Municipality is not part of the net estate of John Gachagua Kibiru;



2. A declaration that the Defendant being the administrator/legal representative of the estate of Mary Mweru Gachagua who at the time of her death was the Administratrix of the Estate of John Gachagua Kibiru should transfer the various plots within the suit land to the respective purchasers;
  3. A declaration that the list of members of Maki Plot Owners Self Help Group attached herein should be used to transfer various plots to their owners;
  4. A declaration that if the administrator/legal representative does not transfer these plots to their respective owners, the Deputy Registrar of the High Court be authorized to do so on his behalf; and
  5. An order that the Defendant do pay the costs of this suit.
3. The Originating Summons is premised on the grounds that:
- (a) John Gachagua Kibiru (deceased) and John Maina (also deceased) were the joint proprietors of LR No. 10422/9 which measured 46.84 Ha. Before their deaths, they had sub-divided the land into many plots with the intention to sell them;
  - (b) They sold the said plots to a number of people who formed Maki Plot Owners Self Help Group;
  - (c) Being joint proprietors and following the death of John Maina on 15<sup>th</sup> November 1996, the ownership was left to the surviving proprietor – John Gachagua Kibiru;
  - (d) The said John Gachagua Kibiru also passed away on 20<sup>th</sup> April, 1997 and his wife Mary Mweru Gachagua took out a grant of letters of administration for his estate;
  - (e) The Administratrix proceeded to include the suit property as part of the estate of the deceased but she also later died without transferring the land and her son Julius Mugo Gachagua (the Defendant) was appointed the Administrator of her Estate;
  - (f) The suit property was not part of the net estate of the deceased and the Defendant should be compelled to transfer it to the Plaintiffs;
  - (g) The Defendant is aware of the fact that his father had sold the land because members of the Plaintiffs Self-help Group have settled on and developed their respective plots; and
  - (h) Instead of ensuring that the plots are transferred to the genuine owners, the Defendant is now selling the said plots to new people thus complicating the problem.
4. In his Replying Affidavit sworn on 11<sup>th</sup> February, 2011 and filed herein on 1<sup>st</sup> March 2011, Julius Mugo Gachagua (the Defendant) is opposed to the grant of the orders sought terming them as so amorphous and imprecise as to be incapable of being granted.
  5. The Defendant while admitting that the suit property was earmarked for subdivision and sale denies that his predecessor in title or himself had dealt with the entity describing itself as Maki Plot Owners Self Help Group or any of the persons it claims to represent. It is the Defendant's case that if any of the Plaintiffs dealt with him or his predecessors, they did so as individuals and not as members of the Group.
  6. The Defendant further avers that he had not dealt with the land in any manner adverse to the interest of any legitimate purchasers as he is still awaiting confirmation of the grant to enable him transfer the



land to the legitimate purchasers. It is accordingly his case that the subject property is not vested in himself and he is therefore not in a position to comply with the Plaintiffs' demands.

### **The Plaintiffs' Case**

7. At the trial herein the Plaintiffs called one witness who testified in support of their case.
8. PW1 – Peter Mahinda Kanyora is a businessman in Nanyuki and the 1<sup>st</sup> Plaintiff herein. Relying on his statement dated 6<sup>th</sup> June 2011, PW1 told the Court that in the general meeting held on 23<sup>rd</sup> October 2010, members of Maki Self Help Group held elections and authorized the elected office bearers including himself as Chairman to file the instant suit.
9. PW1 testified that the parcel of land known as LR No. 10422/9 belonged to John Kibiru and Joseph Maina trading as Maki Commercial Agencies. The Plaintiffs purchased the land not as a group but as individuals. The sizes of the plots depended on how much money each purchaser was able to raise.
10. PW1 further testified that they had balloted for the plots in 1993 and that members took possession of their respective parcels. At that time both sellers were still alive. PW1 told the Court that because the land was registered in the joint names, when Joseph Maina died, John Kibiru took over the land. Upon John's death, his wife took over the land and she had no problems with the Plaintiffs.
11. PW1 testified that John's wife – Mary Gachagua also passed away and her son, the Defendant herein took over the land. PW1 told the Court that in the Succession proceedings for John Kibiru, his wife's Advocate had to make an application to introduce the suit property as part of the estate when they realized that the land was then still registered in the name of the deceased even though they knew it had been sold to other people.
12. PW1 told the Court that before the Defendant's mother could transfer the land to the purchasers, she passed away and that their problems began when the Defendant took over the administration of the estate. The Defendant started selling off parts of the suit property that they had purchased and he only stopped after the Court issued an order of injunction restraining him from disposing off the suit property on 10<sup>th</sup> December, 2012.
13. PW1 told the Court that the Defendant was issued with letters of administration to administer his mother's estate in 2014. He urged the Court to declare that they are entitled to the suit property and to order the Defendant to issue them with title deeds.
14. On cross-examination, PW1 conceded that what he had attached to their list of documents as the certificate of registration for Maki Plot Owners was different from the Original copy he had produced in Court. He explained that that was because along time back the certificates would expire and one had to renew them. He further told the Court they were registered on 12<sup>th</sup> January, 1993 for purposes of development and not to file a case as there was no dispute at the time.
15. PW1 conceded that the suit property was initially agricultural land. He had never come across Land Control Board consent to transfer but he believed it must have been in the possession of the sellers. He further conceded that he had not produced anything to show that the Defendant had sold any plots belonging to their members.
16. PW1 told the Court the suit property originally measured 46.84 Ha. It was sub-divided into over 500 plots. PW1 did not know the exact acreage purchased by their members.

### **The Defence Case**

17. On his part, the Defendant opted not to call any oral or other testimony in support of his case.



## Analysis and Determination

18. I have carefully perused and considered the pleadings filed herein, the testimony of the sole witness who testified on behalf of the Plaintiffs as well as the evidence adduced at the trial. I have similarly perused and considered the written submissions and authorities to which I was referred by the Learned Advocates representing the Parties.
19. By their Originating Summons, the three Plaintiffs who express themselves to be suing for and on behalf of themselves as well as the members of Maki Plot owners Self Help Group pray for a declaration that the parcel of land known as LR No. 10422/9 situated within Nanyuki Municipality is not part of the estate of John Gachagua Kibiru. In addition, they crave a declaration that the Defendant herein being the administrator/legal representative of the estate of Mary Mweru Gachagua should transfer the various plots within the suit land to the respective purchasers.
20. The Plaintiffs also urge the Court to declare that the list of Maki Plot owners Self Help Group attached to the Originating Summons should be used to transfer the plots of land to the owners. It is their quest further that if the Defendant does not transfer the plots as per their prayer, then the Deputy Registrar of this Court should be authorised to do so on their behalf.
21. In support of their case the Plaintiffs told the Court that the suit property was initially registered in the joint names of one John Gachagua Kibiru and John Maina. The two proprietors who were then trading as Maki Commercial Agencies proceeded to sub-divide the land measuring some 46.84 Ha. into various plots with the intention of selling the same. The Plaintiffs further told the Court that the two proprietors actually proceeded and sold a number of those plots to many people who later teamed up and formed the group known as Maki Plot Owners Self Help Group.
22. The Plaintiffs told the Court that on 15<sup>th</sup> November 1996, one of the joint proprietors – John Maina passed away and the ownership of the suit property reverted to the surviving proprietor John Gachagua Kibiru. As fate would have it, the surviving proprietor also passed away a few months later on 20<sup>th</sup> April, 1997 and his widow Mary Mweru Gachagua took out a grant of letters of administration for his estate.
23. It was the Plaintiffs' case that the widow was aware that the land had been sold to them and she had planned to transfer the same to the various purchasers. Before she could do so however, she also passed away leaving the estate to her son Julius Mugo Gachagua who is the Defendant herein. It is their case that rather than proceed to ensure the plots were transferred to the genuine owners, the Defendant was instead busy selling the plots to third parties and hence their prayers to this Court.
24. In reply to the Originating Summons, the Defendant while admitting that the suit property was earmarked for sub-division and sale denies that his predecessors in title or himself had dealt with the entity known as Maki Plot Owners Self Help Group or any of the persons it claims to represent. He asserted that if any of the Plaintiffs dealt with him or his predecessors in titles, they had done so as individuals and not as members of the Group.
25. The Defendant further asserted that he had not dealt with the land in any manner adverse to the interest of the legitimate purchasers as he was still awaiting confirmation of the grant to enable him transfer the land to the legitimate purchasers. It was accordingly his case that the suit property was not yet vested in himself and that he was therefore not in a position to comply with the Plaintiffs' demands.
26. It is to be noted that although the Defendant filed the Replying Affidavit which was treated as his Statement of Defence to the Originating Summons neither himself nor any other witness was called to give evidence on his behalf.



27. In support of their case the Plaintiff produced a Certificate of Registration indicating that their Group was registered on 12<sup>th</sup> January 1993 which is the same year most of their members were said to have purchased their plots from the said Maki Commercial Agencies. PW1 who told the Court he was the Group's Chairman also produced minutes of a General Meeting held on 23<sup>rd</sup> October, 2010 wherein the members present gave their authority and consent for the suit herein to be filed. He also produced a list of the Members of the Group which is registered as a Self Help Group under the Ministry of Gender, Children and Social Development.
28. PW1 told the Court the three named Plaintiffs were the officials of their Group. He told the Court that their members did individually purchase their respective plots from the said Maki Commercial Agencies and that they were each issued with a share certificate upon completion of payment. In support of that position, the Plaintiffs produced a bundle of clearance certificates issued to them by the said Maki Commercial Agencies. The Certificates contain the identity Card Numbers and the names of those issued with the Certificates. They also indicate the Register number, the Plot Number allocated as well as the number of shares issued to the individual.
29. As it were, the Defendant did not deny that the said Maki Commercial Agencies was an enterprise previously run by the two individuals named in the Certificate of Title produced by the Plaintiffs in evidence. He did not also deny that following the death of the two proprietors – John Kibiru and John Maina, the land had been included as part of the estate of John Kibiru Gachagua on account that the land had not been transferred to the purchasers.
30. In further support of their case, the Plaintiffs have produced proceedings emanating from Nanyuki SPMCC Succession Cause No. 3 of 1998; *In the Matter of the Estate of John Gachagua Kibiru*. They have also annexed proceedings emanating from Nanyuki SPMCC Succession Cause No. 7 of 2010; *In the Matter of the Estate of Mary Mweru Gachagua*. I have gone through the proceedings and it was clear that following an objection raised therein by some of the purchasers of the suit property, the Defendant through his Counsel on record conceded that the said Maki Plot Owners had indeed purchased the suit property.
31. Arising from those proceedings it was apparent that the Defendant had only required the said plot owners to provide a list indicating the plots purchased plus the evidence of the purchase and the matter would come to an end as the estate of his mother and father had no claim over the property.
32. It would appear that when the list was provided, the Defendant reneged on that position and hence the institution of this suit. As it were, the Plaintiffs have now provided a list of their members showing the plots they purchased plus the clearance certificates issued to them by the vendors. There was no basis then for the Defendant to continue dealing with the suit property.
33. In any event given the Defendant's failure to adduce any evidence herein, the Plaintiff's case stands unchallenged. Having considered the testimony and the evidence adduced by the Plaintiffs, I was left with no doubt that they had proved their case on a balance of probabilities. It follows that I am persuaded that there was merit in the Plaintiffs case.
34. Accordingly I hereby enter Judgment in favour of the Plaintiffs as against the Defendant and hereby make orders as follows:
  1. A declaration is hereby made that the parcel of land known as LR No. 10422/9 situated within Nanyuki Municipality is not part of the net estate of John Gachagua Kibiru and/or Mary Mweru Gachagua.



2. A declaration is hereby made that the Defendant being the Administrator and legal representative of the estate of Mary Mweru Gachagua shall within 45 days of the date hereof transfer the various Plots within the suit land to the respective purchasers as per the two lists produced by the Plaintiffs in Court.
3. In the event the Defendant fails to transfer the Plots to their respective owners within the said 45 days, the Deputy Registrar of this Court shall henceforth execute any necessary documents and instruments to effect the transfer of the Plots to their rightful owners.
4. In the circumstances of this case, each party shall bear their own costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023.**

**J. O. OLOLA**

**JUDGE**

In the presence of:

Ms Wamuyu Mathenge holding brief for Muthee for the Plaintiffs

Mr. Mwangi Kariuki for the Defendant

Court assistant - Kendi

