



REPUBLIC OF KENYA



**Gichogoh v Muita & 2 others (Environment & Land Case 311 of 2013)
[2023] KEELC 20031 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20031 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 311 OF 2013
LN MBUGUA, J
SEPTEMBER 21, 2023**

BETWEEN

WINFRED WANJIRU GICHOGOHO PLAINTIFF

AND

PETER NGUNJIRI MUITA 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. This suit was filed by way of a plaint dated 23.1.2013 amended on 6.11.2015. The plaintiff claims to be the registered owner of all that parcel of land known as Ruiru/West/block 1/933 measuring 0.0511 hectares. She contends that the 1st defendant without any colour of right or justification illegally entered the suit land. She therefore prays for judgment in her favour in the following terms:
 - a. A permanent injunction restraining the 1st defendant either by herself, or through his servants and or all claiming under him and agents from trespassing, constructing on or attempting to develop on Ruiru/West Block 1/933 or in any other manner dealing whatsoever with the said land.
 - b. A declaration that the plaintiff is the bonafide proprietor of parcel of land known as Ruiru West Block 1/933.
 - c. A declaration do issue that the Certificate of Lease issued to the 1st defendant by the 2nd Defendant is illegal therefore null and void.
 - d. An order of eviction from Ruiru/West Block 1/933.
 - e. General damages for trespass.



- f. Costs of this suit and interest.
2. The 1st defendant opposed the suit vide his Statement of Defence and Counter Claim dated 11.4.2013. He contends that he is the registered owner of the suit property Ruiru/West Block 1/933 having purchased the same from one Stephen Muturi Wang'ondu, and that he is the one in possession and control of the said land. He prays for the following orders in his Counter Claim:
 - a. A declaration do issue that the parcel known as Ruiru/West Block 1/933 is the lawfully acquired property of Peter Ngunjiri Muita and the same could not have been available for alienation to the Respondent Winfred Wanjiru Gichogoh anytime after the counterclaimant's lawful acquisition thereof.
 - b. A permanent injunction do issue restraining the Respondent Winfred Wanjiru Gichogoh from interfering with the Counterclaimant's possession, ownership, and proprietary rights over his parcel known as Ruiru/West Block 1/933.
 - c. Costs of the suit and Counterclaim be awarded to the Counterclaimant.
 3. The 2nd and 3rd defendants did not file any pleadings but officers from the land registry did give evidence herein after they were summoned by the court.

The Evidence

4. The plaintiff Wilfred Wanjiru Gichogoh testified as PW1 where she adopted her witness statement filed on 28.2.2013 as her evidence. She also produced the documents in her 1st bundle filed on 28.2.2013 as P Exhibit 1-5, as well as a supplementary bundle of documents filed on 3.5.2013 (7 items) as P Exhibits 6-13.
5. In her witness statement, the plaintiff stated that she is a lessee from the Government of the Republic of Kenya for the suit land of which the lease commenced on 1.1.1992. She contends that the defendant invaded the suit property on 1.1.2013, fenced off the land, and has since been carrying on business thereon.
6. During cross examination by counsel for the 1st defendant, PW1 stated that she filed this suit because she had a title. However, it is the Registrar who can tell which title is valid.
7. She avers that the 1st defendant is the one in possession of the suit property, where he carries on a car wash business, adding that she has not had possession of the said property, she has never carried out any activity on the said land.
8. She further stated that she bought the suit property from one John Kinuthia Ngugi on 14.12.2007 but the seller had no certificate of title at that time. He only had a share certificate from Githunguri Constituency Ranching Company. She did not produce a copy of the said share certificate in the name of John Kinuthia Ngugi. She added that the sale agreement which is to be found in her supplementary bundle alludes to a plot measuring 100 x 50 feet but doesn't make reference to the location or block of the land.
9. She stated that she had not produced a map of the suit property of the larger parcel where the plot was curved out from.
10. She contended that the transfer she has availed does not contain the particulars of the vendor's name, signature, ID card and Pin, there is no attestation, no date of registration, no signature and stamp and seal of the Registrar, no proof of presentation in the land registry on evidence of payment of stamp duty and no date.



11. She avers that she has a lease dated 29.11.2010 which was issued on the basis of an allotment, but she has no evidence of payments of stand premium. She reiterated that she bought the plot from Mr. Ngugi who had no title save a share certificate.
12. Upon cross examination by counsel for the 2nd and 3rd defendants, PW1 reiterated that John Kinuthia Ngugi only had a share certificate issued in 1972. The documents she got from Githunguri Ranching to effect the transfer were a share certificate and a transfer. There was no allotment letter.
13. In re examination PW1 stated that after signing the agreement with the seller known as Kinuthia, they went to Githunguri Constituency Ranching Company to effect the transfer in her favour. She was given the share certificate and the transfer which she took to Ardhi House.
14. She contends that she knew the location of the plot she was buying as she had visited the land. She did a search from Thika before she bought the suit property.
15. DW1 is Bernard Kipkemoi Leitich a Land Registrar in Thika. He took to the stand on 6.2.2018, but the basis of his appearance in court is not clear. He was stood down while giving evidence in chief due to want of time. He never came back. In the circumstances, his evidence is hereby disregarded.
16. On 28.5.2018, the court issued summons to Thika Land Registrar, to the person in charge of land administration Ardhi House as well as to the Chief Executive Officer National Land Commission to testify on the issue of the double leases/titles. The only person who turned up pursuant to the said summons is one Robert Simiyu, an Assistant Director Land Administration at the ministry of lands who testified as DW2 on 1.11.2022. He adopted his witness statement dated 19.5.2021 as his evidence. He also produced the documents in his list dated 21.5.2021 as exhibits 1-40.
17. The evidence of DW2 is that as per their records, the suit property was allocated to one Gichuki Ndumo vide a subdivision approval reference no. 1098/V1 dated 31.5.1991, the same being a resultant subdivision of parcel LR No. 10900/1 owned by Githunguri Constituency Ranching Company. Gichuki Ndumo paid the requisite payment of ksh 717.50 and was issued with an official receipt dated 27.6.1991 by the commissioner of lands.
18. Gichuki Ndumo then transferred the land to one Nelson Waruingi Gitogo through an informal transfer which was approved by the commissioner of lands, and he was subsequently issued with a lease executed on 6.11.1991.
19. That in year 2009, the Commissioner of Lands inadvertently issued another subdivision letter to Wilfred Wanjiru Gichogo (plaintiff) based on the recommendation of Githunguri Constituency Ranching Company. Thus the said lease to Wilfred Wanjiru was irregularly issued as by then, the suit property was already registered in the name of Nelson Waruingi Gitogo.
20. DW2 contends that the land buying company were the owners of the land, and they are the ones who propagated the issuance of the double allotment. He added that the Commissioner of Lands could not have known if another allotment had been issued earlier to Nelson Waruingi since at that time, the operations were being done manually.
21. Upon cross examination by counsel for the plaintiff, DW2 stated that they must get list of beneficiaries from the land buying company as well as an RIM before approving subdivisions. He however did not have the list of beneficiaries in respect of the suit property. He did not have the letter of acceptance of the allotment by Mr. Gichuki. He added that the approvals for the subdivision were done as per the recommendation given by Githunguri Ranching.



22. He confirms that the letters of allotment from both Gichuki and the plaintiff emanated from their office. He also confirmed that the plaintiff was issued with a certificate of lease.
23. On cross examination by counsel for the 1st defendant, DW2 stated that his statement does not refer to a green card. It refers to allocation and issuance of 1st leases. He reiterated that the 1st allotment was issued to Gichuki Ndumo. He averred that upon issuance of the lease to Nelson the land was not available for allotment to another person, adding that the lease to Nelson was never revoked.
24. The 1st defendant Peter Ngunjiri Muita testified as DW3. He adopted his witness statement dated 11.4.2013 as his evidence. He also produced the documents in his bundle as defence Exhibit 1-16. He contends that the original owner of the suit property was one Gichuki who had bought shares from Githunguri Ranching Company on 29.11.1982. That on 22.7.1991, Gichuki sold the said land to Nelson Waruingi who was issued with a lease on 6.11.1991. Nelson then sold the land to one George Ngure Kariuki, who in turn sold the land to Stephen Muturi Wang'ondu. Stephen eventually sold the land to the 1st defendant who was issued with a certificate of lease on 22.12.2010.
25. DW3 contends that he has been in continuous and un-interrupted possession of the suit property from the time he purchased it, adding that he has never seen the plaintiff on that land.
26. He contends that all the documents of the plaintiff including the certificate of search emanates from one C.M Gichuki, thus the said documents are suspicious.
27. Upon cross examination by counsel for the plaintiff, DW3 stated that he acquired the suit property in year 2010 from Stephen Muturi Wang'ondu, but the lease therein had been effected from 1991. He doesn't know where the documents of the plaintiff emanated from. He however confirmed that the plaintiff has a certificate of lease.
28. Upon cross examination by counsel for the 2nd and 3rd defendants, DW3 stated that before he purchased the land, he went to Thika Lands Registry, did a search and it showed that the land belonged to one Stephen Wang'ondu. He further went to the offices of ministry of lands and established that the initial allotment was one Gichuki Ndumo who later transferred the land to Nelson Waruingi. He stated that the seller of land, Wang'ondu gave him an account of how he had purchased the land from Kariuki who in turn had bought the land from Nelson. He contends that the search at the land registry never revealed that the plaintiff held a title issued in year 2012.

Submissions

29. The plaintiff's submissions are dated 28.2.2023. She avers that her evidence indicates that she is the lawful owner of the suit property. That her claim is anchored on the recommendation of the original owners of that land who were Githunguri Constituency Ranching Company. To this end, the case of Demutilla Nanyama pururmu v Salim Mohamed Salim [2021] eKLR was cited.
30. It was submitted that the plaintiff has not been able to utilise her property despite being the registered owner of the said land, thus she is entitled to mesne profits and general damages. On this point, reference was made to the case of Pamela Imbuka Njaro & Another v Joseph Vutila Njaro & 3 others [2020] eKLR.
31. It was further submitted that the documents produced by the 2nd and 3rd defendants extensively mentioned the plaintiff which clearly shows that her name had been in their records since year 2009.
32. The submissions of the 1st defendant are dated 11.5.2023. It was argued that R. J. Simiyu gave the registration history of the suit property to the effect that the said land was registered in the name of Nelson Waruingi Gitogo by the time another title was issued to the plaintiff. It was further submitted



that the root of the title of the plaintiff was illegal. To this end, reference was made to the case of *Munyu Maina vs Hiram Gathiha Maina* [2013] eKLR and the case of *Elijah Makeri Nyangwara vs Stephen Mungai Njuguna & Another* [2013] eKLR.

33. The case of *Republic vs City Council of Nairobi and 3 others* [2014] eKLR was also cited to buttress the point that once an allotment letter is issued and the allottee meets the conditions set therein, the land is no longer available for allocation. Reference was also made to the case of *Alice Chemtai Too vs Nickson Kipkurui Korir and 2 Others* [2015] eKLR to state that a title can be impeached if it was procured through fraud or misrepresentation.
34. The 2nd and 3rd defendants did not file any submissions.

Determination

35. I have considered the pleadings, the evidence and the rival submissions proffered herein. This is a case where both the plaintiff and the 1st defendant are registered as the owners of the suit property Ruiru/ West Block1/933. The plaintiff has a lease bearing the date of 29.11.2010, as well as a Certificate of Lease issued on 28.9.2012 and an official search dated 4.1.2013 indicating that she is the registered owner of that land.
36. Similarly, the 1st defendant has a copy of lease dated 6.11.1991 issued in the name of Nelson Waruingi Gitogo and he has a certificate of title in his own name dated 22.12.2010 for the same parcel of land. He too has an official search dated 16.1.2013 indicating that he is the registered owner of the suit property.
37. It is not fathomable that a parcel of land can have two parallel registration!. Nonetheless, Dw2, the Land Administration officer confirms that the two certificate of titles emanated from their offices. The issue falling for determination is which of the two titles is valid.
38. In the case of *Hubert L. Martin & 2 Others v Margaret J. Kamar & 5 Others* [2016] eKLR, Munyao J had this to say on a similar matter:

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. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder.”

39. The Court of Appeal in the case of *Munyu Maina vs. Hiram Gathiha Maina* [2013] eKLR, stated as follows;

We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and



free from any encumbrances including any and all interests which need not be noted on the register.’

40. It follows that each of the protagonists title is under scrutiny, and the one found to be invalid must exit the scene.
41. The plaintiff’s claim is anchored on the sale agreement dated 14.12.2007 from one Joh Kinuthia Ngugi. The alleged transfer however does not have elements of a transfer including particulars of the seller that is vendor’s name, ID and PIN. The document is not attested and has no signatures or stamps. To this end, the plaintiff has not demonstrated as to how he acquired rights and interests in the suit land from the vendor or from the original owner who was the Githunguri Ranching Company.
42. It is quite telling that in her recorded statement, the plaintiff gave rather scanty information regarding the root of her title. She simply emphasized that she is the registered owner of the suit land.
43. On the other hand, the 1st defendant has given a consistent and plausible account of the root of his title. That a letter of allotment was issued on the strength of the letter of 22.1.1991 issued by the initial owners of the land, the Githunguri Ranching Company indicating that the suit land was owned by Gichuki Ndumo.
44. Pursuant to a request dated 26.2.1991, Gichuki transferred the land to Nelson Waruingi Gitogo through informal transfer captured at page 17-18 of 1st defendant’s documents. Nelson was subsequently issued with a lease dated 6.11.1991. Dw3 stated that Nelson sold the land to George Ngure Kariuki whose certificate of lease was issued on 1.11.2005. He in turn sold the land to Stephen Muturi Wangonde who acquired a certificate of lease dated 31.8.2010 who in turn sold the land to the 1st defendant who was then issued with a certificate of lease dated 22.12.2010.
45. What resonates from the above analysis is that the 1st defendant has been able to give a chronology of the events leading to the birth of his title of the suit land, all the way to the time 1st defendant acquired his rights and interests in the said land.
46. What more, the claim of the 1st defendant has been supported by the keepers of the records through Dw2. Further, Dw2 gave a logical explanation that it is the Githunguri Ranching company which recommended the issuance of the title to the plaintiff, yet the said company had already made such a recommendation in 1991 in respect of one Gichuki. Nevertheless, DW2 never gave any logical explanation as to why as the keepers of records, they maintained two parallel records in respect of the same parcel of land.
47. It is worthy to note that the alleged recommendation made by the Githunguri Ranching Company to Commissioner of Lands for issuance of a lease to Gichuki Ndumo was made on 22.1.1991, while the one made by the same company to the Land Registrar clearing the plaintiff for the issuance of the title came about on 14.12.2007. The lease issued to Nelson Waruingi Gitogo from whom, the 1st defendant traces the title document was issued on 6.11.1991, whereas that of the plaintiff bears the date of 29.11.2010. Thus the first rights and interests in time relate to the claim of the 1st defendant.
48. “when two equities are equal, the first in time prevails”, so goes a maxim of equity which was buttressed in the case of Gitwany Investment Ltd vs. Tajmal Ltd & 3 Others (2006) eKLR, where the Court held that:-

....the first in time prevails, so that in the event such as this one whereby a mistake that is admitted, the Commissioner of Lands issues two titles in respect of the same parcel of



land, then if both are apparently and on the face of them issued regularly and procedurally, without fraud save for the mistake then the first in time must prevail”

49. From the foregoing analysis, I find that the lawful owner of the suit property is the 1st defendant. The provisions of Section 80 (1) of the *Land Registration Act* provides that:-

“Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

50. Guided by the aforementioned provisions of law, and noting that a parcel of land ought not to have double registration, then this court proceeds to cancel the certificate of lease held by the plaintiff.

Final Orders

1. Plaintiffs suit is hereby dismissed.
2. The Counter Claim of the 1st defendant is hereby allowed, such that the 1st defendant, Peter Ngunjiri Muita is hereby declared to be the lawful owner of parcel Ruiru / West Block 1/933.
3. The Certificate of lease held by the plaintiff Winfred Wanjiru Gichogoh is hereby cancelled; The 2nd defendant is directed to rectify their registration records accordingly.
4. As to costs, it appears that the author of the double claims was the entity known as Githunguri Ranching Company who are not parties in this suit. As such, I direct that each party bears their own costs of the suit.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 21st DAY OF SEPTEMBER, 2023
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

