



REPUBLIC OF KENYA



**Muriuki v Gachua & 2 others (Environment & Land Case E030 of 2023)  
[2023] KEELC 21700 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21700 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE E030 OF 2023**

**JM MUTUNGI, J  
NOVEMBER 23, 2023**

**BETWEEN**

**JOSEPH KARIMI MURIUKI ..... PLAINTIFF**

**AND**

**MARTIN KANGI GACHUA ..... 1<sup>ST</sup> DEFENDANT**

**INSPECTOR GENERAL OF POLICE ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. The Plaintiff instituted this suit vide a Plaint dated 23<sup>rd</sup> May 2023. The plaint runs to 10 pages and raises various issues including fraud, malicious prosecution, special and general damages, aggregated damages etc. From the body of the plaint it is apparent there is a pending Civil Suit touching on land parcel no Mwerua/Mukure/2130 in Kerugoya CMC ELC no 39 of 2018 where the Plaintiff herein is also the Plaintiff and the 1<sup>st</sup> Defendant is the 2<sup>nd</sup> Defendant. In Chief Magistrate's Court the Plaintiff inter alia prays for orders that:-
  - a. A declaration that the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants are holding or registered in that land in trust for the Plaintiff the 1<sup>st</sup> Defendant having full knowledge that he had put the Plaintiff in possession of land parcel Mwerua/Mukure/2130 and the Plaintiff had duly transferred his three plots at Komarock Development Limited Company in exchange with this land no Mwerua/Mukure/2130.
  - b. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants be restrained from interfering with quiet possession of the Plaintiff in that land parcel no Mwerua/Mukure/2130 and the Bank be restrained from attaching or interfering with the suit land because it failed to investigate about the said land from the Local Administration and therefore the Court to order the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant to transfer the



whole or said land to the Plaintiff and in default the Deputy Registrar of this Court to sign the transfer documents in their place.

2. It is clear therefore in the Chief Magistrate's Court the ownership of land parcel Mwerua/Mukure/2130 is directly in issue and this Court cannot properly entertain any matter involving the ownership of the said parcel of land as there is another Court of competent jurisdiction that is seized of the matter. The matter is subjudice.
3. The Plaintiff has as part of his documents exhibited a copy of a charge sheet in regard to Kerugoya CM Cr. Case no 372 of 2018 where he was charged with the offence of trespass upon private land C/s 3(1) of the Trespass Act Cap 294 Laws of Kenya. The particulars of the offence were as follows:-

“On the 8<sup>th</sup> day of 2018 at about 1700 hrs at Muragara Village within Kirinyaga County, was found trespassing upon private land no Mwerua/Mukure/2130 the property of Martine Kangi Gachui.”

4. After a full trial the Plaintiff *vide* a Judgment delivered by Hon. A. K. Ithuku CM on 6/4/2022 was acquitted of the offence under Section 215 of the Criminal Procedure Code. In acquitting the Plaintiff the Hon. Magistrate stated at Paragraph 20 of his Judgment as follows:-

20. It is clear that ownership of and known as Mwerua/Mukure/2130 is highly disputed. The matter is pending determination in a Civil Court. Orders of injunction have already been issued. To maintain and prove a charge of trespass the ownership of the property has to be proved beyond reasonable doubt. The title to the property herein is disputed.

5. In the present suit, the Plaintiff has only raised issues concerning and relating to land parcel Mwerua/Mukure/2130 and as I have demonstrated this property is the subject matter in a prior filed suit in Kerugoya CMC ELC no 39 of 2018. In the Chief Magistrate's Court, the ownership of land parcel Mwerua/Mukure/2130 is the principal issue.
6. In the present suit though the issue of ownership of land parcel Mwerua/Mukure/2130 is not pleaded as the primary issue, the claims the Plaintiff makes arise out of his arrest and prosecution for trespass in CM Cr. Case no 372 of 2018. The Plaintiff under prayer (a) of the Plaintiff prays for:-

a. A declaration that the Plaintiff was maliciously arrested and subsequently maliciously prosecuted out of malicious allegation of trespass upon a land parcel no Mwerua/Mukure/2130 in order to defeat Justice in Civil Case no 39 of 2018 where the Plaintiff has been in occupation since the year 2010 when he was put thereon by the previous owner Stephen Aurelius Gachau(deceased).

Under prayer (f) of the Plaintiff the Plaintiff further prays as follows:-

(f) The 1<sup>st</sup> Defendant who was the complainant in the CM Criminal Case no 372 of 2018 Kerugoya and the 2<sup>nd</sup> Defendant jointly and severally be ordered to pay damages incurred by the Plaintiff.

7. Without a doubt the Plaintiff's principal claim in this matter is for damages occasioned by what he claims to have been malicious prosecution. This Court under Article 162(2) (b) of the Constitution and Section 13 of the Environment and Land Court Act has no jurisdiction to handle claims of a Civil nature where the claim does not relate to land. The Court's jurisdiction is limited to claims relating to title to land, occupation and use of land. A claim of malicious prosecution would fall outside the jurisdiction of the Court.



8. Any claim that would touch on and relate to ownership of land parcel Mwerua/Mukure/2130 as I have indicated is pending determination in the Kerugoya CM ELC no 39 of 2018 and this Court would by reason of Section 6 of the Civil Procedure Act not entertain the claim. Section 6 of the Civil Procedure Act provides as follows:-

“No Court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.”

9. In the circumstances this Court lacks the jurisdiction to deal with the Plaintiffs claim founded on malicious prosecution and further the issue of ownership of land parcel Mwerua/Mukure/2130 is pending before the Magistrate’s Court and hence is subjudice. The Plaintiff’s suit before this Court is misconceived and is incompetent. I strike the same out in its entirety.

10. Parties will bear their own costs of the suit.

**RULING READ, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2023.**

**J. M. MUTUNGI**

**ELC- JUDGE**

