



**Githere v Mwangi & 2 others (Environment & Land Case 25 of 2023)  
[2023] KEELC 21663 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21663 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 25 OF 2023  
A OMBWAYO, J  
NOVEMBER 16, 2023**

**BETWEEN**

**JAYNE WANJIKU GITHERE ..... PLAINTIFF**

**AND**

**MARY WANJIRU MWANGI ..... 1<sup>ST</sup> DEFENDANT**

**DAWAD PETROLEUM LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR, NAIVASHA ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Jayne Wanjiku Githere has come to court against Mary Wanjiru Mwangi and 2 others by way of plaint claiming that the defendant caused her land to be transferred fraudulently. She prays for a declaration that the Plaintiff is the legal proprietor of all that parcel of land known as Kijabe/Kijabe Block 1/1091. She seeks an order of rectification of the land register in respect of Kijabe/Kijabe Block 1/1091 to reflect the Plaintiff as the registered proprietor.
2. Moreover, an order for rectification of the land register cancelling the title and registration of parcel of land known Kijabe/Kijabe Block 1/1091 in the name of the 2<sup>nd</sup> Defendant.
3. Last but not least, she seeks a permanent injunction to restrain the Defendants from interfering with the Plaintiffs right of quiet possession to all that parcel of land known as Kijabe/Kijabe Block 1/1091. Plus Costs.
4. The plaintiff has also filed a Notice of motion dated 27<sup>th</sup> September 2023 seeking orders that t he hearing and determination of this suit, the Court be pleased to issue an injunction restraining the Defendants whether by themselves, their agents and servants from transferring, selling/ interfering, alienating, disposing, charging, entering into, remaining on or otherwise dealing with all that parcel of land known as Kijabe/Kijabe Block 1/1091.



5. Mandatory injunction compelling the 3<sup>rd</sup> Defendant to produce/avail to the Court all the documents including the parcel file green card, consents, receipts, valuations, register, court order, transfer and any other documents used by the 3<sup>rd</sup> Defendant to transfer and register Kijabe/Kijabe Block 1/1091 in the name of the 1<sup>st</sup> Defendant and subsequently in the name of the 2<sup>nd</sup> Defendant. Plus Costs.
6. The application is based on grounds that the Plaintiff is the legal proprietor of the property known as Kijabe/Kijabe Block 1/1091 and has been in possession of the said property since the year 2009.
7. The Defendants have fraudulently transferred the aforesaid Plaintiff's property without her knowledge or consent.
8. The purported transfer of Kijabe/Kijabe Block 1/1091 by the defendants is fraudulent because;
9. The Plaintiff has never signed any agreement to sell Kijabe/Kijabe Block 1/1091
10. The Plaintiff has never signed any transfer forms transferring Block 1/1091.
11. The Plaintiff has never applied for Land Control Board consent to sell or otherwise transfer Kijabe/Kijabe Block 1/1091.
12. The plaintiff contends that the Defendants do not have any lawful justification for issuing or procuring or making any document purporting that the 2<sup>nd</sup> Defendant is the registered proprietor of the suit property. Unless restrained by the Court, the Defendants are likely to sell, alienate, dispose or charge the property to unsuspecting innocent parties thereby making it very difficult if not impossible for the Court and the Plaintiff to reverse the fraudulent registration.
13. The defendants are likely to enter upon, construct, remain on or otherwise interfere with the Plaintiff's quiet possession of the suit property.
14. The 3<sup>rd</sup> Respondent has refused/declined to avail copies of the parcel file, green card, consents, receipts, valuations, register court order, transfer and any other documents used to transfer and register Kijabe/Kijabe Block 1/1091 in the name of the Defendant and subsequently in the name of the 2<sup>nd</sup> Defendant.
15. To enable the Plaintiff protect and enforce her rights over the suit Plaintiff requires the Defendant to produce to the Court all the documents including the parcel file, green card, consents, receipts, valuations, register, court order transfer and any other documents used by the 1<sup>st</sup> Defendant to transfer and register Kijabe/Kijabe Block 1/1091 in the name of the 1<sup>st</sup> Defendant and subsequently in the name of the 2<sup>nd</sup> Defendant. It is in the interests of justice that the prayers sought be granted. The 1<sup>st</sup> respondent did not file a response. The 2<sup>nd</sup> respondent filed a replying affidavit whose import is that he is a *bona fide* purchaser for value without notice having purchased the land from the 1<sup>st</sup> respondent. He did due diligence and paid all necessary fees as required by law.
16. I have considered the evidence on record and do find that the plaintiff has established a prima facie case with a likelihood of success as there is no evidence of the duly signed transfer instrument the consent of the Land Control Board and an agreement of sale between the plaintiff and the 1<sup>st</sup> defendant and the 1<sup>st</sup> defendant has not responded to the allegations by the plaintiff.
17. On the issue of irreparable harm, I do find that there is danger of the property being sold charged or leased and yet the plaintiff is in possession. The balance of convenience tilts towards granting the injunction sought as the plaintiff will be more inconvenienced if the orders are not granted and ultimately succeeds in the suit. I do grant an injunction restraining the Defendants whether by themselves, their agents and servants from transferring, selling/ interfering, alienating, disposing, charging, entering into, remaining on or otherwise dealing with all that parcel of land known as Kijabe/



Kijabe Block 1/1091. The plaintiff is also restrained from dealing with the property in any manner and that all parties are restrained from developing the suit property. Costs in the suit.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**A. O. OMBWAYO**

**JUDGE**

