



**Muigei v Yego & another; District Land Registrar, Uasin Gishu (Interested Party) (Environment & Land Case 422 of 2015) [2023] KEELC 21545 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21545 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 422 OF 2015  
EO OBAGA, J  
NOVEMBER 16, 2023**

**BETWEEN**

**EVALYNE CHEPKEMEI MUIGEI ..... PLAINTIFF**

**AND**

**DANIEL YEGO ..... 1<sup>ST</sup> DEFENDANT**

**GRACE SAINA MUIGEI ..... 2<sup>ND</sup> DEFENDANT**

**AND**

**DISTRICT LAND REGISTRAR, UASIN GISHU ..... INTERESTED PARTY**

**JUDGMENT**

1. This suit was initially filed against Daniel Yego who is now deceased. The pleadings were amended and the 2<sup>nd</sup> Defendant was brought in. The statement of defence and counter-claim was further amended and the Attorney General was brought in as a 3<sup>rd</sup> Defendant.
2. The Plaintiff is a step mother of the 2<sup>nd</sup> Defendant. The Plaintiff was the second wife of Kimeto Arap Muigei who died on 13.10.2001 (Deceased). The Deceased was the beneficial owner of plot known as EATEC 488 measuring 5 acres. As at the time the Deceased died, plot No. EATEC 488 had not been registered in his name.
3. In 2022, the children of the Deceased's first wife commenced succession proceedings in respect of the Estate of the Deceased. A grant was issued to the 2<sup>nd</sup> Defendant and David Sitienei Metto. The Plaintiff and one Isaac Metto filed objection proceedings in the succession cause. In a consent accorded on 22.6.2004 the grant which had been granted to the 2<sup>nd</sup> Defendant and David Sitienei Metto on 8.1.2003 was amended by removing the name of David Sitienei Metto and replacing it with the Plaintiff's name.



4. The parties to the succession cause filed affidavits in which they proposed the mode of distribution of the assets of the Deceased. In the affidavits of the 2<sup>nd</sup> Defendant, one of the properties which she proposed was given to her was EATEC Plot 488. In a judgement delivered on 9.8.2012 Justice M. K Ibrahim (as he then was) directed that EATEC plot 488 was to go to the Plaintiff and her children.
5. It is apparent that even before succession, it is the 2<sup>nd</sup> Defendant who was in possession of plot EATEC 488 through Daniel Yego now deceased who was named as 1<sup>st</sup> Defendant. Documents filed herein show that title for plot EATEC 488 was processed in the name of the Deceased after his demise. The plot finally became Pioneer/Ngeria Block1 (EATEC) 1858 (Suit property). The suit property was later transmitted to the Plaintiff on 11.2.2015 and title issued to her on the same day.
6. It is after the suit property was registered in the Plaintiff's name that she brought a suit against the 1<sup>st</sup> Defendant in which she claimed the following reliefs:-
  - i. A declaration that the Defendant is a trespasser in Plaintiff's land namely Pioneer/Ngeria Block 1 (EATEC) 1858.
  - ii. An order of eviction be issued against the defendant so as to vacate the Plaintiff's parcel of land No. Pioneer/Ngeria Block 1 (EATEC) 1858
  - iii. A permanent order of injunction be issued against the Defendant, himself his agents and or assigns or anybody acting through him from trespassing, wasting. Alienating or otherwise dealing in that land in manner that will interfere and/or extinguish the plaintiff's interest of ownership and occupation.
  - iv. Damages for loss incurred by the Defendants actions and mesne profits.
  - v. Costs of this suit.
  - vi. Any other and further relief that the honorable court deems fit to grant.
7. The second defendant filed a further amended defence and counter-claim in which she sought the following reliefs:-
  - a. An order for declaration that the plaintiff's acquisition and consequent registration of land Pioneer/Ngeria Block 1 (EATEC) 1858 was fraudulent, unprocedural. Illegal and therefore null and void.
  - b. An order for the cancellation and revocation of title No. Pioneer/Ngeria Block 1 (EATEC) 1858.
  - c. A permanent injunction restraining the plaintiff by herself, her agents, employees, servants or otherwise from dealing or interfering with title Pioneer/Ngeria Block 1 (EATEC) 1858.
  - d. The plaintiff be condemned to pay the costs of this suit.
8. During the hearing, the Plaintiff was not present despite the hearing date having been taken in the presence of her Advocate. The Plaintiff's suit was dismissed for non attendance.
9. The 2<sup>nd</sup> Defendant testified that the Plaintiff is her stepmother who is a second wife of her father who died on 13.10.2001. Prior to the demise of her father, she was residing on the suit property through the 1<sup>st</sup> Defendant who is now deceased. She stated that Daniel Yego died and was buried on the suit property.



10. The 2<sup>nd</sup> Defendant further stated that the application for consent of the Land Control Board was made on 27.11.2001 and a transfer signed on the same date. The 2<sup>nd</sup> Defendant testified that it was not possible for the Deceased to make an application for consent after he had died or even sign a transfer as he had already died.
11. The 2<sup>nd</sup> Defendant further testified that the registration of the suit property in the name of the Plaintiff was fraudulent and that she was assisted by the 3<sup>rd</sup> Defendant in the fraud. It is the 2<sup>nd</sup> Defendants evidence that the suit property was not listed as one of the Deceased's properties in the succession cause. It's on this basis that she wants the title to the suit property to be cancelled so that the property reverts to the Estate of the deceased for distribution.
12. I have carefully considered the evidence of the 2<sup>nd</sup> Defendant and that of DW2 Sylvester Kipkosgei Morogo. I have also examined the documents produced in support of the 2<sup>nd</sup> Defendant's case. There is no doubt that the Deceased died on 13.10.2001. From the documents filed by the 3<sup>rd</sup> Defendant, the confirmed grant in respect of the Estate of the Deceased was amended on 24.7.2014 and the suit property which was described in the old grant as EATEC plot measuring 5 acres was changed to read Pioneer/Ngeria Block 1 (EATEC) 1858.
13. Though the evidence of the 2<sup>nd</sup> Defendant was not controverted, she was bound to prove her case on a balance of probabilities. The only issue for determination is whether she has proved the fraud attributed to the Plaintiff and the 3<sup>rd</sup> Defendant and if so whether she is entitled to the reliefs in the counter-claim.
14. I have gone through the judgement in the succession cause. Plot EATEC 488 is what became Pioneer/Ngeria Block 1 (EATEC) 1858. This property was bequeathed to the plaintiff. It was part of the properties which were listed as assets of the Deceased. It is therefore not true that it did not form part of the assets of the Deceased. The 2<sup>nd</sup> Defendant did not raise any issue when this property was given to the Plaintiff in the succession cause.
15. Even though prima facie, the documents which were used to have the land registered in the name of the Deceased were signed after the Deceased had died, the fact remains that the suit property rightfully belonged to her as per the distribution of the deceased's assets. There is therefore no basis upon which this court can order cancellation of the Plaintiff's title or even bar the Plaintiff by way of permanent injunction from what lawfully belongs to her. I find that the 2<sup>nd</sup> Defendant has not proved her counter claim which is hereby dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual presence of;

M/s Lelei for 2<sup>nd</sup> Defendant.

**E. O. OBAGA**

**JUDGE**

