



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muthoga & 11 others v Kenya Agriculture and Livestock Research Organisation (Environment & Land Case E5 of 2020) [2023] KEELC 21595 (KLR) (16 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21595 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE E5 OF 2020**

**JM MUTUNGI, J  
NOVEMBER 16, 2023**

**BETWEEN**

**GERRISON MUTHOGA ..... 1<sup>ST</sup> PLAINTIFF  
JOHN MWANGI NDAMBIRI ..... 2<sup>ND</sup> PLAINTIFF  
ROBINSON MUGO GATHIRU ..... 3<sup>RD</sup> PLAINTIFF  
ROSE MUTHONI KARIITHI ..... 4<sup>TH</sup> PLAINTIFF  
MBURU MACHARIA ..... 5<sup>TH</sup> PLAINTIFF  
KIMUNYE MBINGA ..... 6<sup>TH</sup> PLAINTIFF  
NDEGWE MBUGI ..... 7<sup>TH</sup> PLAINTIFF  
STANLEY KINYUA MUGO ..... 8<sup>TH</sup> PLAINTIFF  
ALICE WAKUTHII NJOMO ..... 9<sup>TH</sup> PLAINTIFF  
MARY KARUANA MURIUKI ..... 10<sup>TH</sup> PLAINTIFF  
FELISNAH WANGUI KARIUKI ..... 11<sup>TH</sup> PLAINTIFF  
PERDINADA KARUANA NDIGA (SUING AS THE ADMINISTRATOR OF THE  
ESTATE OF DUNCAN NDIGA MUBIATO) ..... 12<sup>TH</sup> PLAINTIFF**

**AND**

**KENYA AGRICULTURE AND LIVESTOCK RESEARCH  
ORGANISATION ..... DEFENDANT**



## JUDGMENT

### Background

1. The Plaintiffs instituted the present suit vide a Plaint dated 9<sup>th</sup> October 2020, for orders that:
  1. An order for a permanent injunction restraining the Defendant by themselves, their agents, servants, heirs, legal representatives, or any person claiming under them from interfering, encroaching, trespassing, obstructing or in any way whatsoever interfering with Land Parcel Nos. Mwea/Tembere/B/1032, 1047, 960,1407, 2797, 1181, 1026, 1870, 5303, 1148, 1027 and 1173 (suit land) Respectively.
  2. Costs of the suit and interest
  3. Any other relief the Honourable Court may deem fit and just to grant.
2. The Plaintiffs claimed that they are the registered proprietors of the suit land and that they had enjoyed peaceful and quiet occupation of the land until on or about 25<sup>th</sup> August, 2020 when the Defendant issued them with threats of eviction from the suit land.
3. The Defendant filed its' defence and counterclaim on 22 August, 2021 where it vehemently denied the content of the plaint in toto. It denied the claim by the Plaintiffs that they were the registered owners and further denied that it had trespassed, encroached and/or unlawfully interfered with the suit land. It was the Defendant's position that they were the lawful owners of ALL that piece of land situate in the SW of Embu Municipality in Kirinyaga District (suit property), title LR. NO. 31884 of IR.210877 measuring 84.24 Hectares and that the suit land that the Plaintiffs alleged ownership of was a part of the larger suit property, in which they had encroached.
4. The Defendant further claimed that the suit property is public land and that it was the registered owner and that the suit property had been reserved for and used for public Agricultural research purposes under the Ministry of Agriculture of the Government of Kenya. The Defendant also averred that it acquired the suit property from National Irrigation Board (NIB) which surrendered it to its' predecessor Kenya Agricultural Research Institute (KARI) in 1967 in exchange of some parcel of land to NIB, located at Wang'uru and Kimbimbi.

### Defendant's Counter-Claim.

5. The Defendant stated that it acquired the suit property from its successor KARI which owned, occupied, run and carried out agricultural and livestock research activities at the suit property. It averred that the Plaintiffs claim of ownership of various parcels of land in the suit property was a nullity and unlawful as any purported subdivision or transfer done on the suit property was done fraudulently and without the authority of the Defendant.
6. The Defendant further claimed that the registration and issuance of certificate of titles in respect to the suit land to the Plaintiffs is illegal, unlawful and ineffectual as the suit land formed part of the suit property which was public land owned and utilized by the Defendant. In addition, the Defendant further claimed that the Plaintiffs registration and ownership of the suit land was illegal as they purchased the suit land with the full knowledge that it was public land and that it belonged to the Defendant.



7. According to the Defendant, the Plaintiffs had forcefully entered and encroached on the suit property by undertaking farming activities, living therein and destroying the Defendant's fence and interfering with the Agricultural Research activities carried thereon thereby degrading and causing wastage on the suit land.
8. The defendant vide the Counterclaim prays for orders that:-
  - a. A declaration that the certificates of title of Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173 in respect of and over any part and or portions of the Defendant's land being L.R NO. 31884, I.R 2108877 measuring approximately 84.24 hectares or thereabouts are null and void ab initio.
  - b. An order for delivery up of vacant possession of the pieces of land being titles Nos. Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173 by the Plaintiffs to the Defendant.
  - c. A permanent injunction restraining the Plaintiff, whether by themselves, assigns, servants, agents or otherwise howsoever, from selling, alienating, transferring, sub-dividing, surveying, demarcating, erecting beacons, disposing of, entering, accessing, developing, farming, erecting structures thereon or dealing in any manner whatsoever with any portion and or part of the Defendant's parcel of land being L.R NO. 31884, I.R 2108877 measuring approximately 84.24 hectares or thereabouts
  - d. General damages for trespass
  - e. Costs of this suit
  - f. Any other relief the Honourable Court may deem just and expedient to grant in the circumstances of the suit and Counter-Claim
9. The Plaintiffs filed their reply to defence and defence to Counter-claim on 22<sup>nd</sup> September 2021. They reiterated that they were the registered owners of the suit land and denied ever trespassing into the Defendant's alleged suit property. The Plaintiffs' also denied knowing that the Defendant was the registered owner of the suit property and claimed that they had individual titles to their suit land.
10. According to the Plaintiffs, their certificates of title vested in them recognizable rights protected under the law and they denied any illegal, unlawful and/or ineffectual registration and issuance of certificates of title of the suit land. They also denied the particulars of illegality and unlawfulness enumerated in the Defendants' counter-claim. The Plaintiffs also asserted that the Defendant's certificate of title was acquired on 17<sup>th</sup> April 2019 while theirs' were acquired in the nineties.
11. The Plaintiffs denied the Defendant had suffered any loss and reiterated it was the Defendant who had interfered with their suit land thus making it hard for them to access their land. They prayed that the Court should dismiss the Defendant's Counterclaim with costs to them.

### **Evidence of the Parties**

12. The matter came up for hearing on 11.5.2023, Counsel for the Plaintiffs informed the Court that the Plaintiff wished to withdraw the suit as it had been frustrated for the reason that the Defendant had evicted the Plaintiffs from the suit land. On its part, Counsel for the Defendant informed the Court that the Defendant had no objection to the withdrawal of the suit by the Plaintiffs but he stated that the Defendant wished to prosecute its Counterclaim. The Court marked the Plaintiffs suit as withdrawn and granted the Defendant liberty to proceed with the hearing of the Counterclaim.



13. The Defendant called one witness, Patricia Ngutu, an employee of the Defendant working as the Corporation Secretary. She adopted her witness statement dated 20.08.2021 and also produced her bundle of documents of even date as Defendant Exhibit 1-17. She testified that the Defendant started utilizing the suit property in 1967, initially through the National Irrigation Board (NIB) which later surrendered the land to KARI in an exchange arrangement between the two organisations. She stated the suit property was never owned by private individuals and that the Defendant had never surrendered the suit property for private use as it did not have the mandate to do so. She further stated that she visited the suit property a day before the hearing, and she established that the Defendant had a water pump, house, irrigation facilities and some irrigation equipments on site. She observed that the encroachers had cultivated maize and were rearing livestock on the suit land. She however noted that they had not put-up permanent structures on the suit land.
14. The witness explained that the property is about 200 acres and that the Defendant occupies about 50 acres of it, which portion it had already fenced. She stated that the rest of the land had been encroached upon and also claimed that when the Defendant attempted to fence the remaining portion, the fence was pulled down by unknown people. She testified that the Plaintiffs were issued Notices to vacate the suit land through the letter dated 25.08.2020 but the Plaintiffs did not comply with the notice to vacate.
15. DWI referred to the Defendant Exhibit 1 which she said was a certificate of title belonging to the Defendant and explained that before the title was issued, the Defendant initially held a deed plan for the land. She also stated that there was no evidence that the suit property had been subdivided and also pointed out that the origin of the titles held by the Plaintiffs was unknown.
16. On cross examination, DW1 testified that the Defendant acquired the land in 1970s and reiterated that its' land was initially in Wang'uru but its' current land is at Kirogo. She reiterated that the title had not been issued and also stated that the encroachment by the Plaintiffs started sometime in the 1990s. On re-examination, she testified that the Plaintiffs instituted the present suit after they were issued with the notices to vacate the suit property.

### **Submissions, Analysis and Determination**

17. The Defendant filed its written submissions on 8.06.2023 and raised 3 issues for consideration.
  - a. Whether the Defendant is the registered owner of the suit property being L.R No. 31884, I.R 2108877 measuring approximately 84.24 hectares or thereabouts.
  - b. Whether the claimed titles Nos. Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173 by the Plaintiffs are over and or comprised in the Defendant's parcel of land being L.R No. 31884, I.R 2108877 measuring approximately 84.24 hectares or thereabouts.
  - c. Whether the defendant is entitled to the prayers sought in the counter-claim dated 20.08.2021.
18. The Defendant submitted that the suit property constitutes public land as provided under Article 62 (1)(b) of the *Constitution of Kenya*, and that the Defendant being a statutory public body is mandated to carry out research in Agriculture and Veterinary Science, and has been doing so in the suit property. The Defendant argued that it was the registered owner of the suit property as evidenced by the certificate of title it exhibited as evidence. The Defendant contended its title had not been impeached and further submitted that the Plaintiff had not produced any evidence claiming any right and or interest on the suit property. The Defendant relied on the Case of *Niaz Mohammed Jan Mohammed Vs Commissioner for Lands & 4 Others* (1996) eKLR to buttress its' assertion. The Defendant further



submitted that the law recognizes that the land used and occupied by State Corporations is for the public purposes as was held in the Case of [Kenya Industrial Estates Limited Vs Anne Chepsiror & 5 Others](#) (2015) eKLR.

19. In regard to the second issue, the Defendant argued that the Plaintiff did not provide any evidence proving that the title certificates they held were in respect of the suit property and as such, the Plaintiffs' title certificates did not exist. The Defendant further averred that the Plaintiffs' titles could not be valid since its' suit property was one single undivided unit as of 17.04.2019 when its' certificate of lease was issued. The Defendant also submitted that the Plaintiffs did not produce any evidence in regard to being *bona fide* purchasers of the suit land. It relied on the Supreme Court of Kenya Case of [Dina Management Ltd Vs County Government of Mombasa & Others](#) SC PET. No. 8 (E010) of 2021. It was its' position that its' title remained unchallenged and or uncontroverted.
20. The Defendant in conclusion argued that it had made out its case on a balance of probability as it had demonstrated that it was the absolute and indefeasible owner of the suit property. The Defendant asserted that the evidence on record proved that the claimed titles by the Plaintiffs over the Defendant's suit property are illegal and or were irregularly acquired and as a result they are a nullity. The Defendant argued that the evidence before Court proved that the Plaintiffs had encroached in the suit property and had remained thereon cultivating and using the suit property despite demands to vacate the suit property. It was the Defendant's submissions that it should be compensated with a sum of Kes. 1,500,000 as damages for trespass and prayed that the Court enters Judgment against the Plaintiffs jointly and severally.
21. The Plaintiffs on their part filed their written submissions dated 14<sup>th</sup> June 2023 and raised three issues for determination:
  - i. Whether the Plaintiffs acquired their respective titles to L.R No.s Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173 by fraudulent means
  - ii. Whether the Defendant is entitled to the prayers sought.
  - iii. Who is to bear the costs of the suit.
22. The Plaintiffs submitted that the Defendant had not proved the allegations of fraud it levelled against the Plaintiffs. The Plaintiffs argued that the Defendant had alleged that the Plaintiffs had acquired titles to the suit land illegally and/or fraudulently yet they had not joined the Land Registrar as a party who would have been in a position to explain how the titles issued and held by the Plaintiffs were created and/or how land that was public land was converted to private land. The Plaintiffs further submitted that the Defendant had not demonstrated what correlation there was between the titles they held and the land the Defendant claimed was theirs. It was the Plaintiffs contention that the Defendant had not proved that the Plaintiffs were in occupation of the land that belonged to the Defendant.

That although under Article 40 of the [Constitution](#) individual property rights are protected, the [Constitution](#) under Article 40(6) makes it clear that the protection of property does not extend to any property that is demonstrated to have been unlawfully acquired. Article 40(6) provide as follows:-

  40.
    - (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
23. In the instant matter the Court has on the basis of the evidence adduced by the Defendant made a finding that the Defendant lawfully and procedurally acquired ownership of the suit property in respect of which it was issued with a title. To the contrary the Plaintiffs adduced no evidence to show



how they acquired the titles they held. The Court has made a finding that the titles held by the Plaintiffs were issued over portions of land that comprise part of Defendant's land parcel LR No. 31884, I.R. 2108877. The Plaintiff titles could not have been lawfully and procedurally acquired and by dint of Article 40(6) of the *Constitution* cannot be protected. The Plaintiffs have claimed to have been innocent purchasers of their properties for value without notice. This assertion is not borne out by the evidence. The Defendant and National Irrigation Board (NIB) have since the 1970s been the owners of the disputed land. The Plaintiffs, if they had carried out due diligence would have easily discovered the land they lay claim to was indeed public land and that any allocation would have needed to be in compliance with the *Government Lands Act*, Cap 280 Laws of Kenya (repealed).

The Land Registrar who may have issued title to the Plaintiffs, if at all, had no authority to allocate public land and could only issue valid titles to the Plaintiffs if they had been lawfully and procedurally allocated the land, they were not and consequently the titles they were issued were null and void and are liable to be cancelled. Courts have routinely held that land reserved for public purposes cannot and is not available for alienation for private use. For such land to be allocated for Private use the appropriate due process as provided in the law must be followed.

24. The Court has considered the Parties' rival pleadings, affidavits and submissions and identifies the issues for determination are;
1. Whether L.R No.s Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173 constitutes part of L.R No. 31884, I.R 2108877 measuring approximately 84.24 hectares, owned and vested in the Kenya Agricultural and Livestock Research Organization (KALRO).
  2. Whether the Plaintiffs acted illegally and or unlawfully in the registration and transfer of subtitles over the Defendants land parcel L. R. No. 31884, I.R No. 2108877 situate S.W. of Embu Municipality, Kirinyaga
  3. Whether the Plaintiffs are bona fide purchasers for value without notice of any defect in title.
  4. Whether the Defendant is entitled to the reliefs sought in the Counter-Claim.
25. I have considered the material placed before the Court and evidence adduced by the parties and clearly what is in issue is the ownership of a portion of the land comprised in L.R No. 31884, I.R. 2108877 measuring approximately 84.24 hectares which is the suit property herein. On one hand, the Defendant claims that the suit property constitutes public land which belongs to it and claims that the Plaintiffs have encroached on a portion of it, whereas on the other hand, the Plaintiffs claim that they are the registered owners of L.R No.s Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173, which they claim to have occupied for over 20 years and which they contend does not form part of the Defendant's property.
26. DW1 Patricia Ngutu gave elaborate evidence supported by documents to prove that the suit parcel of land had been reserved for Kenya Agricultural and Livestock Research Organization (KALRO) as early as 1965 and that it had not been allocated to private individuals. In her testimony, DW1 stated that the Defendant had been utilizing the suit property since 1967, when the land was granted to KARI (as it was then) for research and that the suit property was given to KARI as part of an exchange of land arrangement with the National Irrigation Board. She stated that the NIB (now NIA) is a national body and the land has never been owned by private individuals. From the evidence tendered by DW1 on behalf of the Defendant, the history of the suit property reveals that it was initially held by NIB which later surrendered it to KARI as can be confirmed by the letter from NIB to KARI received by it on 24.04.2002 and the letter dated 7.05.2013. The Defendant was then issued with the certificate of



title of L.R No. 31884, I.R 2108877 measuring approximately 84.24 hectares, being lease for a term of 99 years from 1.07.2018 and deed plan dated 3.10.2018.

27. The Defendant submitted that the land was relinquished by the NIB to be utilized for a public purpose, it devolved to the then KARI, and has been reserved for public purposes. The Defendant relied on the Case of *Niaz Mohamed Jan Mohamed Vs Commissioner for Lands & 4 others* (1996) eKLR where the Court held that land acquired in public interest cannot be alienated and allocated to private individuals. The Defendant also relied on the case of *Kenya Industrial Estates Limited Vs Anne Chepsiror & 5 Others* E & L No. 71 of 2013, where Munyao, J dealing with a somewhat similar situation where land belonging to Kenya Industrial Estates Ltd, a public entity was subdivided and allotted to private companies observed that the Commissioner of Lands ought not to have offered such land to private individuals if the public purpose for which the land was reserved still existed.
28. On their part, the Plaintiffs alleged that they were the owners of the land the Defendant was laying claim to and held titles to L.R No.s Mwea/Tebere/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173. They denied that the Defendant was the proprietor of L.R No. 31884, I.R 2108877 measuring approximately 84.24 hectares though other than wielding their said titles they produced no evidence to rebut the Defendants claim. As a matter of fact, the Plaintiff withdrew their suit against the Defendant when the matter came up for hearing with the result that the Plaintiffs had no claim against the Defendant and adduced no evidence to contravert the Defendant's evidence in support of its counterclaim.
29. The *Land Registration Act* is clear on issues of ownership of land and Section 24(a) of the *Land Registration Act* provides as follows:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.

Section 26 (1) of the *Land Registration Act* provides as follows:

26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

The Court in the case of *Elijah Makeri Nyangw'ra -vs- Stephen Mungai Njuguna & Another* (2013) eKLR, held that:

“...the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person



must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

30. The Plaintiffs herein despite alleging that they owned the portion of land to which they held titles. They did not lead any evidence to show that they were the indefeasible owners. The Plaintiffs also were unable to prove that the certificate of title produced by the Defendant to back its ownership of the suit land was acquired fraudulently, and or illegally. The Defendant on its’ part led evidence that clearly demonstrated how they acquired the land and further showed they followed due process to acquire title to the land.

In my view, the Defendant was able to prove that the portions L.R No.s Mwea/Teber/b/1032, 960, 2797, 1026, 5303, 1027, 1047, 1407, 1181, 1870, 1148 and 1173, claimed by the Plaintiffs constituted part of the larger suit property L.R No. 31884, I.R 2108877 measuring approximately 84.24 hectares.

31. Having held that the Defendant had demonstrated the root of the title they hold in respect of LR No. 31884 I.R 2108877 and further that the subtiles the Plaintiffs were laying claim to constituted and were part of the land owned by the Defendant, it follows that the Plaintiffs could not have lawfully and procedurally acquired the titles that they hold. The land held by the Defendant was public land and could not have been allocated to private individuals unless due process relating to allocation of public land was duly adhered to.

32. Before the enactment of the new Land Laws following the Promulgation of the 2010 Constitution, alienation of any Government or public land could only be effected under the provisions of the *Government Lands Act*, Cap 280 Laws of Kenya (now repealed). The majority of the titles exhibited by the Plaintiffs were issued during the 1990s with a few of them having been issued after 2010. After 2010 the National Land Commission was given the mandate to administer public land including allotment of such land. In the instant matter, the land, the Plaintiffs claim was initially reserved for use by the National Irrigation Board (NIB) who following an exchange arrangement ceded the land to Kenya Agricultural Research Institute (KARI) before it changed to KALRO. There is no evidence at all that any part of this land was at any time set apart for settlement and/or allotment to private individuals. Under the *Government Lands Act* Cap 280 Laws of Kenya, land within Townships could only be allocated in compliance with Sections 9 to 18 of the *Act* while allotments relating to agricultural land could only be done in compliance with Sections 19 to 34 of the *Act*. It is evident there was no invocation of any of these provisions when the Plaintiffs were purportedly allocated the parcels of land they now lay claim to.

In the Case of Republic vs Minister For Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others [2006] 1 KLR (E&L) 563 Maraga, J (as he then was) expressed himself as follows:

“ Courts should nullify titles by land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead the principle of the indefeasibility of title deed...It is quite evident that should a constitutional challenge succeed either under the trust land provisions or the Constitution or under section 1 and 1A of the Constitution or under the doctrine of public trust a title would have to be nullified because the Constitution is supreme law and a party cannot plead the principle of indefeasibility which is a statutory concept. A democratic society holds public land and resources in trust for the needs of that society. Alienation of land that defeats the public interest goes against the letter and spirit of section 1 and 1A of the Constitution.”



In my view, the Plaintiffs were not bona fide purchasers for value without notice as the land registrar had no authority to alienate the land. The Plaintiffs titles are invalid and null and void.

**Whether the Defendant is entitled to the reliefs sought in the Counter-Claim.**

33. The Court is empowered under Section 80 (1) of the *Land Registration Act*, 2012 to 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. I find that the Plaintiffs were irregularly, unlawfully and unprocedurally registered and issued with titles on part of the suit land which titles are invalid. I am satisfied the Defendant has proved its Counterclaim against the Plaintiffs on a balance of probability and I enter Judgment against the Plaintiffs jointly and severally in terms of prayers (a), (b) and (c) of the Plaint. The Land Registrar, Kirinyaga is hereby ordered to cancel forthwith titles issued in respect of land parcels:-

Mwea/Tebere/B/1032,1047,960,1407,2797,1181,1026,1870,5303,1148,1027 and 1173.

34. No basis was laid for the claim of general damages for trespass and the Court makes no award for damages. The parties shall bear their own costs of the suit.

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

**J. M. MUTUNGI**

**ELC - JUDGE**

