



**Eldoret Express Co. Ltd v Muiruri (Environment & Land Case  
171 of 2013) [2023] KEELC 22316 (KLR) (20 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22316 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 171 OF 2013  
JO OLOLA, J  
DECEMBER 20, 2023**

**BETWEEN**

**ELDORET EXPRESS CO. LTD ..... PLAINTIFF**

**AND**

**DAVID KAMANDE MUIRURI ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 28<sup>th</sup> August 2013 as amended on 24<sup>th</sup> March 2014, Eldoret Express Limited (the Plaintiff) prays for Judgment to be entered against the Defendant for:-
  - a). A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property;
  - b). A declaration that the transfer to the Defendant is null and void and therefore stands to be cancelled;
  - c). A declaration that the Defendant whether by himself, servants or agents or otherwise howsoever, are wrongly in occupation of the suit property and are accordingly, trespassers on the same and are therefore not entitled to remain on the suit property;
  - d). A permanent injunction restraining the Defendant whether by himself, servants, or agents or otherwise howsoever, from remaining on or continuing in occupation of the suit property and /or interfering with the Plaintiff's peaceful occupation of the suit property;
  - e). Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable Court may deem fit to grant; and
  - f). Any such other or further relief as this Honourable Court may deem appropriate.



2. Those prayers arise from the Plaintiff's contention that it was at all times material the duly registered owner of the parcel of land known as No. Nanyuki/Marura Block 4/41 (Kimuri) (hereinafter the suit property). The Plaintiff accuses the Defendant of proceeding without its consent to fraudulently cause the suit property to be transferred to his name.
3. The Plaintiff avers that it has never at any time advertised or sold the suit premises to any person and asserts that by his unlawful transfer and wrongful occupation of the suit property, the Defendant had deprived it of the peaceful possession and occupation of the suit premises.
4. David Kamande Muiruri (the Defendant) is opposed to the grant of the prayers sought in the plaint. In his Statement of Defence dated 28<sup>th</sup> October 2013, the Defendant denies that the Plaintiff is the registered proprietor of the suit property and or that the same was transferred to himself without the knowledge or consent of the Plaintiff.
5. The Defendant avers that he is the registered proprietor of the suit property having acquired the same by way of sale from the Plaintiff at a consideration of Kshs. 17 million. The Defendant asserts that the Plaintiff facilitated the sale and transfer of the suit premises by supplying all the documents needed and necessary for the registration and transfer of the same in his name.
6. The Defendant denies the allegations of fraud pleaded by the Plaintiff and invites the Plaintiff to a strict proof thereof.

#### **The Plaintiff's Case.**

7. In support of their case, the Plaintiff called a total of 5 witnesses at the trial which commenced on 18<sup>th</sup> February 2014 before the Honourable Justice A. Ombwayo.
8. PW1- Evanas Mang'aa Oyori is a Finger Prints Officer based at the Department of Registration of Persons in Nairobi. PW 1 told the court that on 6<sup>th</sup> September 2013, he had received a letter dated 5<sup>th</sup> September 2013 from the Plaintiff's Advocates asking him to verify copies of some Identity Cards. PW 1 told the court he was given one identity card No. 6681180 bearing the name of James Muigai Thungu.
9. PW1 testified that he confirmed the identity card did not match with the records in their data base. The finger prints were also not identical with their records. PW 1 told the court the identity card was therefore not genuine. The second Identity Card No. 87xxx57 bearing the name Joseph Ng'ang'a Thungu was also taken through the same process and was found to be equally fake.
10. PW1 further told the court that Identity Card No. 6432482 in the name of Simon Mbugua was equally fake. However Identity Card No. 14xxx50 in the name of Simon Mbugua Thungu matched with their records and was therefore found to be genuine. So was the last Identity Card No. 87xxx51 in the name of Joseph Ng'ang'a Thungu which also matched with the records held at the Department.
11. PW1 told the court he then made a Report dated 9<sup>th</sup> September 2013. It was his case that the fake identity cards were the one that were attached to the transfer form for the suit property.
12. PW2- Chief Inspector Jacob Oduor is a Police Officer based at the CID Headquarters and Forensic Documents Examiner. PW 2 told the court that on 23<sup>rd</sup> July 2013, they had received certain exhibits under the escort of a Police Officer from C.I.D Laikipia East. They included specimen signatures from James Muigai Thungu and Simon Mbugua Thungu; a copy of the Sale Agreement between the Plaintiff and the Defendant dated 19<sup>th</sup> October 2012 and the transfer documents dated 29<sup>th</sup> November 2012.



13. PW2 told the court it was his finding after examination that the disputed signatures were made by different authors from those said to have made them. It was further his case that the signature on the Certificate of Incorporation was not the correct one for the Registrar of Companies.
14. PW3- PC Peter Muita is a Police Officer attached to Laikipia East Divisional C.I.D Headquarters. He told the court that on 27<sup>th</sup> June 2013, an allegation was brought to their office concerning the parcel of land known as Nanyuki/Marura/Block 4/41. The complaint was lodged by James Muigai Thungu to the effect that his land measuring 40.6 Ha had been transferred to the Defendant.
15. PW 3 told the court they did their investigations and upon completion of the same, they preferred charges against one Grison Oyugi, James Maina Weru and Joseph Arap Maina alias Simon Mbugua. The Criminal Case was yet to be concluded.
16. PW 4 – Joseph Ng’ang’a Thungu is a director of the Plaintiff Company. Relying on his statement dated and filed in court on 28<sup>th</sup> February 2014, PW 4 told the court that the Plaintiff was incorporated on 19<sup>th</sup> October 1994 and that its core business is public transport and farming. In this respect, PW 4 told the court he was aware the Company’s Chairman James Muigai Thungu did purchase the suit property measuring 100 acres from Maki Commercial Company using the Plaintiff’s funds for the benefit of the Plaintiff.
17. PW 4 testified that after the purchase he visited the land and was aware that the same was in the custody of their said Chairman. However, in June 2013, the Chairman called PW 4 and informed him that someone had fenced off the land and that he had already lodged a complainant with the C.I.D Offices in Nanyuki.
18. PW 4 testified that on 9<sup>th</sup> July 2013 as the Plaintiff’s directors, they visited the C.I.D Officers and were shown documents purporting that they had sold the suit property to the Defendant, he (PW 4) was shown to have executed the same before one Albert Kuloba Advocate. PW 4 denies having executed the agreement and or knowing such an Advocate.
19. PW 4 further told the court that the transfer documents bore his name but had the photograph of a stranger attached thereto. The Pin number and signature on the document were also not his own. PW 4 further testified that the Certificate of Incorporation for the Plaintiff Company was not the one they had been issued with on 19<sup>th</sup> October 1994.
20. PW 4 testified that they had not met one Simon Mbugua Thungu who was said to have given authority by the Plaintiff to represent them in the sale transaction nor had they met the Defendant herein or the people who had been charged in the Criminal Case at Nanyuki.
21. PW 5 – Simon Mbugua Thungu is a brother and a co-director of PW 4. He reiterated the statements made by PW 4 to the effect that the Plaintiff Company never sold the land to the Defendant herein.
22. PW 6- James Muigai Thungu is an elder brother to PW 4 and PW 5 and a co-director and Chairman of the Plaintiff Company. He told the court that he had bought the land in instalments and that they never sold the same to the Defendant as stated by his brothers.

### **The Defence Case.**

23. On his part, David Kamande Muiruri (DW 1) testified as the sole witness in his defence. Relying on his statement filed in court and dated 10<sup>th</sup> December 2013, DW1 told the court that sometimes in June 2012 when he visited Nanyuki, he was introduced to one Grison Oyugi who is an agent dealing in the sale of land in Nanyuki. Thereafter, DW1 and his wife were shown various parcels of land that were



said to be on offer by the said Grison Oyugi. The suit property was one of the parcels which they were shown.

24. DW 1 further testified that on expressing his interest on the suit property, Grison introduced DW 1 to one James Maina who was said to be the vendor's agent. The said James Maina turned up with a title deed showing the parcel of land measured 40.6 Ha (or 100 acres) and that it belonged to Eldoret Express Company Ltd. They visited the land and the said vendor's agent showed them the general boundaries of the land. DW1 was told the land was being sold at Kshs. 170,000/= per acre.
25. DW 1 told the court that on 5<sup>th</sup> October 2012, the two gentlemen introduced him to one Simon Mbugua who was said to be a director of Eldoret Express Company Ltd and a lady called Mercy who was said to be a daughter of one of Mbugua's co-directors. They met at The Stanley Hotel in Nairobi and finalized the deal which required DW 1 to deposit 40% of the purchase price agreed at Kshs. 17,000,000/=.
26. DW 1 testified that he then had the land surveyed after which they did an official search on the land. On 22<sup>nd</sup> October 2012, the parties executed the Sale Agreement after DW 1 transferred 40% of the purchase price (Kshs. 6.8 million) to the Vendors Advocates by RTGS. After completion of the transfer documents, DW 1 paid the balance of the purchase price (Kshs. 10.2 million) to the Vendors Advocates. He was thereafter issued with a title deed in his favour on 28<sup>th</sup> November 2012.
27. DW 1 told the court he thereafter took possession of the land and commenced extensive and highly visible developments on the land while also pursuing the removal of some squatters who were on the land. Over the next 7 months nobody questioned his possession of the land. However, DW 1 told the court that on 4<sup>th</sup> July 2013, his Advocate informed him that he had been contacted by the Police to provide some documents relating to the sale transaction.
28. DW 1 testified that it was only then that they made inquiries at the Lands Office and the C.I.D Offices in Nanyuki when they realized that the Plaintiff were claiming to be the owners of the land.

### **Analysis and Determination.**

29. I have carefully perused and considered the pleadings filed herein by the parties, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
30. The Plaintiffs herein have urged the court to make a number of declarations in regard to the parcel of land known as Nanyuki/Marura Block 4/41 (Kimuri). They urge the court to declare that they are entitled to exclusive and unimpeded right of possession and occupation thereto and that the transfer thereof to the Defendant herein is null and void.
31. The Plaintiffs further urge the court to declare that the Defendant is a trespasser who is wrongly occupying the suit property. Accordingly they have sought a permanent order of injunction restraining the Defendant from remaining on or continuing to occupy the suit property.
32. Those prayers arise from the Plaintiff's contention that it was at all times material the duly registered proprietor of the suit property. It accuses the Defendant of proceeding without its consent or knowledge to fraudulently cause the suit property to be transferred and registered in his name.
33. On the other hand, the Defendant denies that the Plaintiff is currently the registered proprietor of the suit property. It is his case that he lawfully and procedurally did acquire the said property from the Plaintiff by way of purchase at a consideration of Kshs. 17 million. The Defendant denies the allegations of fraud made by the Plaintiff and insists that it was indeed the Plaintiff that facilitated



- his acquisition of the land and supplied all the necessary documents required for the transfer and registration of the title to his name.
34. From the material placed before me, there was no dispute that the Defendant is presently registered as the proprietor of the suit property said to be measuring some 100 acres. There was also no dispute that prior to the registration of the Defendant as the proprietor thereof, the suit property was registered in the name of the Plaintiff Company. While the Defendant asserts that he purchased the land from the Plaintiff, the Plaintiff denies having sold the same to the Defendant.
  35. In support of his position that he had purchased the land from the Plaintiff, the Defendant testified that sometimes in June 2012 when he visited Nanyuki, he was introduced by a friend to one Grison Oyugi who was a known agent dealing in the sale of land within the region. Thereafter the said Oyugi showed the Defendant and his wife several parcels of land which were said to be on sale. The couple liked the suit property which according to the Defendant was in a vast undeveloped area with no access roads.
  36. Subsequently and having expressed his interest to purchase the land, Oyugi introduced the Defendant to one James Maina who was said to be the agent of the owner of the suit property. As it turned out, the said James Maina had a copy of a title deed for the suit property which revealed that the land belonged to Eldoret Express Company Ltd and that it was measuring some 40.6 Ha (approximately 100 acres).
  37. The Defendant told the court that on 5<sup>th</sup> October 2012 the said Grison Oyugi and James Maina introduced him to one Simon Mbugua who they told him was a director of Eldoret Express Company Ltd in the company of a lady by the name Mercy who was said to be a daughter of one of Mbugua's co-directors. They met at The Stanley Hotel in Nairobi and finalized the deal after agreeing that the land would be sold at Kshs. 170,000/= per acre and that he would be required to make a down payment of 40% of the total purchase price agreed at Kshs. 17 million.
  38. The parties eventually executed a Sale Agreement on 22<sup>nd</sup> October 2012 after which the process of transfer commenced. The Defendant was eventually issued with a title deed for the land on 28<sup>th</sup> November 2012 after he paid the balance of the purchase price. It was the Defendant's case that he thereafter took possession of the land, fenced it off and commenced developments thereon until some 7 months later when his lawyers in the sale transaction called him and told him that the Police had contacted him and asked him to provide certain documents relating to the sale transaction.
  39. As it turned out, the Plaintiff indeed had one of its directors going by the name Simon Mbugua Thungu (PW 5). However, from the evidence adduced by the Plaintiff herein, it was apparent that he was not the same Simon Mbugua that the Defendant had dealt with. In support of their case, the Plaintiff called a Finger Print Officer based at the Department of Registration of Persons (PW 1), a Forensic Document Examiner based at the D.C.I Headquarters (PW 2) as well as a Police Officer attached at the Laikipia East D.C.I Office (PW 3).
  40. From the totality of their evidence, it was apparent that neither the Plaintiff nor any of its directors took part in the transaction that saw the suit property transferred to the name of the Defendant. It was apparent from the testimony of PW 1 that the identification cards of the persons the Defendant transacted with were not from their data base and neither were the finger prints therein, identical to those held at the Department of the Registrar of Persons.
  41. On the other hand, PW 2 was able to compare and analyze the signatures on the sale agreement, the transfer form and the Certificate of Incorporation of the Plaintiff. It was his uncontroverted testimony that the signatures were not the same and that they belonged to persons other than the Plaintiff's Directors.



42. That position was corroborated by the evidence of PW 3 who was part of the investigation in the complaint made by PW 5 in regard to the suit property. He testified that they carried out investigations after which they apprehended some three (3) suspects who were thereafter charged with a number of offences including obtaining money from the Defendant by falsely pretending that they were in a position to sell to him the suit property.
43. From the material placed before the court, it was evident that those that were charged with the offences before the Nanyuki Chief Magistrates Court were Grison Oyugi, James Maina and one Joseph Arap Maina alias Simon Mbugua. Those are the same names the Defendant has given of the people he apparently dealt with in regard to the purchase of the property in his testimony before the court. It was also evident that the person charged in the said Criminal Case going by the name Joseph Arap Maina alias Simon Mbugua was not the same Simon Mbugua Thungu who testified herein as PW 5.
44. While it would appear to me that the Defendant may as well have been innocent in entering into the transaction with whoever he did, it was evident that those persons purporting to be the vendors of the suit property were not the registered proprietors thereof. As it were, one cannot convey that which he owns not. While the Defendant as stated earlier holds a title to the suit property, that title did not properly pass to him as it was not passed by the legitimate owner of the suit property.
45. As was stated by Munyao J. in *Alice Chemutai Too –vs- Nickson Kipkurui Korir & 2 Others* [2015] eKLR:  
“..... I do not see how a person with a perfectly good title should be deprived of his title by activities of fraudsters. It is in fact time to put down our feet and affirm that no fraudster, nor any beneficiary of fraudulent activities, stands to gain for his fraud, and no title holder will ever be deprived of his good title by the tricks of con artists.”
46. From the material placed before me, I was left in no doubt that the title held by the Defendant herein was obtained illegally, un-procedurally or through a corrupt scheme. The documents that conveyed title to him were forgeries and his title could not therefore have been obtained legally or procedurally. Those who purported to convey the title to him had no interest in the suit property that they could transfer to the Defendant. It follows that the Defendant did not therefore acquire any interest in the suit property.
47. In my mind, the mere possession of title by the Defendant does not mean that it cannot be challenged. As Onyancha J stated in *Alberta Mae Gacci – vs- The Attorney General & Others* [2006] eKLR:  
“Cursed should be the day when any crook in the streets of Nairobi or any town in this jurisdiction, using forgery, deceit, or any kind of fraud, would acquire a legal and valid title deceitfully snatched from a legally registered innocent proprietor. Indeed, cursed would be the day when such a crook would have the legal capability or competence to pass to a third party, innocent or otherwise, a land interest that he does not have even if it were for valuable consideration. For my part, I would want to think that such a time when this court would be called upon to defend such crooks, has not come and shall never come....”
48. In the circumstances herein, I am persuaded that the Plaintiff has proved its case to the required standard. Accordingly I hereby enter judgment for the Plaintiff as against the Defendant in the following terms:
- a). A declaration is hereby made that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of the suit property.



- b). A declaration is hereby made that the transfer of the suit property to the Defendant is null and void and that the title issued in the name of the Defendant is hereby revoked and cancelled.
- c). A declaration is hereby made that the Defendant whether by himself, his servants and /or agents are wrongly in occupation of the suit property and they are not entitled to remain therein.
- d). A permanent order of injunction is hereby issued restraining the Defendant whether by himself, servants or agents or otherwise howsoever from remaining on or continuing in occupation of the suit property and /or interfering with the Plaintiff's peaceful occupation of the suit property.
- e). The above orders of injunction (d) shall remain suspended for a period of 30 days to enable the Defendant to remove any structure or materials placed by himself on the suit property.
- f). The Defendant shall bear the costs of this suit.

**DATED, SIGNED AND DELIVERED AT NYERI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2023.**

.....

**J. O. OLOLA**

**JUDGE**

In the presence of:

Ms. Amani Ndungu for the Plaintiff.

No appearance for the Defendant

