



**Kariuki v Taraya & 3 others (2nd & 3rd Defendants Sued as Trustees of Kenya Industrial Research Institute Headquarters Welfare Society) (Environment & Land Case 198 of 2018) [2023] KEELC 22233 (KLR) (14 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22233 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 198 OF 2018  
LC KOMINGOI, J  
DECEMBER 14, 2023**

**BETWEEN**

**GEORGE NGURE KARIUKI ..... PLAINTIFF**

**AND**

**WILSON NTETUKA TARAYA ..... 1<sup>ST</sup> DEFENDANT**

**JUDITH MIDEVA KINAZIRA ..... 2<sup>ND</sup> DEFENDANT**

**ANNIE MUTHONI NDIRANGU ..... 3<sup>RD</sup> DEFENDANT**

**DOUGLAS MAINA GATUMA ..... 4<sup>TH</sup> DEFENDANT**

**2ND & 3RD DEFENDANTS SUED AS TRUSTEES OF KENYA INDUSTRIAL  
RESEARCH INSTITUTE HEADQUARTERS WELFARE SOCIETY**

**JUDGMENT**

1. By a Plaint dated 6<sup>th</sup> December 2018, the Plaintiff claims that he was the registered owner of property LR No. Kajiado/Kitengela/6456 measuring approximately 8.094 hectares having purchased it in 1995. However, from 3<sup>rd</sup> September 2013 the 1<sup>st</sup> to 5<sup>th</sup> Defendants in collaboration with the 6<sup>th</sup> Defendant using the Plaintiff's forged signature on transfer forms and other related documents fraudulently caused the creation of a parallel green card, subdivided and transferred the property to themselves.
2. It is his case that on 3<sup>rd</sup> September 2013, the 1<sup>st</sup> Defendant in conjunction with the 6<sup>th</sup> defendant was fraudulently registered as the proprietor of LR No. Kajiado/Kitengela/6456 and subdivided it into parcels number Kajiado/Kitengela/61868 and 61869. On 1<sup>st</sup> October 2014, the 1<sup>st</sup> Defendant subdivided LR No. Kajiado/Kitengela/61869 into three parcels of land referred to as LR No. Kajiado/Kitengela/76887, 76888 and 76889 and transferred Kajiado/Kitengela/76888 to the 5<sup>th</sup> Defendant and Kajiado/Kitengela/76889 to the 4<sup>th</sup> Defendant. On 19<sup>th</sup> November 2014 the 1<sup>st</sup> Defendant transferred



parcel LR No. Kajiado/Kitengela/61868 to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who subdivided it into 68 portions being LR No. Kajiado/Kitengela/94297-94365.

3. The Plaintiff particularised the fraud and misrepresentation against the Defendants as: “The Defendants forged the Plaintiff’s signature on the land transfer forms and other documents; the 1<sup>st</sup> to the 5<sup>th</sup> Defendants fraudulently caused LR No. Kajiado/Kitengela/6456 to be transferred to them and subdivided; the 6<sup>th</sup> Defendant caused the removal of the original green card for the suit property from the parcel file and replaced it with the current green card which has no entry of the Plaintiff as the owner.”
4. The Plaintiff claimed that these transfers and subdivisions had caused him loss and damage and prayed for:
  - a. A declaratory order that the parcel of land known as Kajiado/Kitengela/6456, belong to the Plaintiff absolutely.
  - b. An order directed to the 6<sup>th</sup> Defendant to cancel entries numbers 4, 5 and 6 on the Green Card for parcel number Kajiado/Kitengela/6456 and all the green card of the subsequent subdivisions being parcels of land known as land reference number Kajiado/Kitengela/61868 (further subdivided into parcels of land known as Kajiado/Kitengela/76887-76889) and 61869 (further subdivided into land reference number Kajiado/Kitengela/94297-94365) and all the titles issued therefrom in the various names of the 1<sup>st</sup> to 5<sup>th</sup> Defendants.
  - c. An order directed to the 6<sup>th</sup> Defendant to reconstruct a Green Card consisting entries in the names of the Plaintiff as the bona fide registered and absolute owner in tandem with title issued on 24.1.1996.
  - d. An order to compensation for general, exemplary and punitive damages against the Defendants.
  - e. Costs of this suit.
  - f. Any other relief this Hon. Court may deem fit to grant.
5. The 6<sup>th</sup> Defendant in the Statement of Defence dated 11<sup>th</sup> November 2022 contested the Plaintiff’s claim and put him to strict proof and sought that the suit to be dismissed with costs. The 1<sup>st</sup> – 5<sup>th</sup> Defendants despite service neglected to enter appearance and or file defences within the stipulated period.
6. The 6<sup>th</sup> Defendant who was duly served with a hearing notice neglected to attend the hearing date and the court satisfied that he had been duly served directed that the matter proceeds exparte.

### **Evidence of the Plaintiff**

7. PW1, George Ngure Kariuki adopted his witness statement dated 6<sup>th</sup> December 2018 as part of his evidence in chief and produced his bundle of documents as exhibits in this case. The documents were therein marked as P. Exhibits 1 to 8 respectively.
8. This marked the close of the Plaintiff’s case.

### **Evidence of the Defendants**

9. Save for the Memorandum of Appearance and Statement of Defence filed by the 6<sup>th</sup> Defendant no other move was made to defend the claim against them.



10. At the close of the oral testimonies, the plaintiff tendered final written submissions.

### **The Plaintiff's Submissions**

11. The submissions dated 26<sup>th</sup> July 2023 highlighted the issue for determination as whether the Plaintiff was entitled to the prayers sought.
12. Counsel submitted that the Plaintiff's title was protected by Article 40 of the *Constitution* and Section 26(1) of the *Land Registration Act*. He also cited the case of *Vincent Samson Oduor v Dismas Otieno Ogoya* [2019] eKLR . While making reference to *Arthi Highway Developers Ltd v West End Butchery Ltd & 6 others* [2015] eKLR . Counsel submitted that the Defendants' titles had been obtained fraudulently because there is no evidence as to how the property passed from the Plaintiff to the 1<sup>st</sup> Defendant. Therefore any documents presented to the 6<sup>th</sup> Defendant were forged and the transfer was unlawful. As such, all transactions involving the property were null and void and should be revoked and cancelled. He put forward the case of *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR and Section 80 of the *Land Registration Act*.
13. On the issue of compensation for general, exemplary and punitive damages, counsel made reference to the Court Appeal case of *Gitobu Imanyara & 2 others vs Attorney General* [2016] eKLR where the court held:

“... when exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened... If the person wronged has suffered damage, the court may award him compensation...” Counsel thus prayed for grant of all orders sought.

### **Analysis and Determination**

14. I have considered the pleadings, the evidence on record, the submissions and the authorities cited. The issues for determination are:
- i. Whether the Plaintiff is the owner of property Kajiado/Kitengela/6456.
  - ii. Whether the Plaintiff is entitled to the reliefs sought.
  - iii. Who should bear costs of the suit?
15. The Plaintiff's case is that he is the owner of property LR No. Kajiado/Kitengela/6456 which was hived off from LR No. Kajiado/Kitengela/4622 having purchased it on or about 5<sup>th</sup> November 1995 from Alfred Ilesheko and Francis Moroko Ndelu for a consideration of Kshs. 400,000. A Title Deed was issued in his name on 24<sup>th</sup> January 1996. Desirous of selling a portion of the land to one Elaisa Toipar Mositet he signed consent application forms as well as transfer documents and handed them over to the intended purchaser. However, on 12<sup>th</sup> March 2018, Elaisa informed him that a search at Kajiado Land Registry showed that the green card for the land was missing having been closed on subdivision. On 14<sup>th</sup> March 2018, he received a call from the Directorate of Criminal Investigation in Kajiado regarding the parcels of land and recorded a statement in that regard. The Plaintiff adduced documents which showed how the property was transferred from him to the Defendants. He claimed that he was not aware of the said transactions because he never sold the property to the 1<sup>st</sup> Defendant nor signed any documents to transfer his property to the Defendants.
16. From the document on page one of the Plaintiff's bundle of documents, the court take note of the following entries regarding parcel number Kajiado/Kitengela/6456 measuring approximately 8.094



- hectares. The file was opened on 24<sup>th</sup> January 1996. The 1<sup>st</sup> entry is for one Francis Moroko Ndelu dated 24<sup>th</sup> January 1996; the second and third entries are in favour of the Plaintiff, George Ngure Kariuki dated 24<sup>th</sup> January 1996 for a consideration of Kshs. 400,000; the fourth and fifth entries are in favour of the 1<sup>st</sup> Defendant Wilson Ntetuka Taraya dated 6<sup>th</sup> October 1997 for a consideration of Kshs. 20,000,000; the sixth entry is dated 3<sup>rd</sup> September 2013 where the title was closed for subdivision and title numbers 661868 and 61869 issued.
17. The file for parcel number Kajiado/Kitengela/61868 measuring approximately 4.046 hectares was opened on 3<sup>rd</sup> September 2013 in favour of the 1<sup>st</sup> Defendant Wilson Ntetuka Taraya. Entries three and four dated 22<sup>nd</sup> April 2014 and 2<sup>nd</sup> May 2014 are in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, entries five and six dated 10<sup>th</sup> June 2014 and 18<sup>th</sup> September 2014 are restriction and removal of the restriction respectively; entries seven and eight dated 19<sup>th</sup> November 2014 are once again in favour of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and entry 9 dated 5<sup>th</sup> September 2017 shows closure of the title for subdivision to title numbers 94297 to 94365 all in the names of the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants.
  18. The file for parcel number Kajiado/Kitengela/61869 measuring approximately 4.046 hectares was opened on 3<sup>rd</sup> September 2013 in favour of the 1<sup>st</sup> Defendant Wilson Ntetuka Taraya. Entries three and four dated 10<sup>th</sup> June 2014 and 18<sup>th</sup> September 2014 are restriction and removal of the restriction respectively; entry five 1<sup>st</sup> October 2014 shows closure of the title for subdivision to title numbers 76887 to 76889.
  19. The file for parcel Kajiado/Kitengela/76887 in the name of the 1<sup>st</sup> Defendant was opened on 1<sup>st</sup> October 2014; File for parcel Kajiado/Kitengela/76888 in the name of the 1<sup>st</sup> Defendant was opened on 1<sup>st</sup> October 2014 but transferred to the 5<sup>th</sup> Defendant Hellen Kirathi Ndatho on 22<sup>nd</sup> October 2014 as per the second and third entries; File for parcel Kajiado/Kitengela/76889 in the name of the 1<sup>st</sup> Defendant was opened on 1<sup>st</sup> October 2014 but transferred to the 4<sup>th</sup> Defendant Annie Muthoni Ndirangu on 22<sup>nd</sup> October 2014 as per the second and third entries.
  20. The record indicates a letter dated 19<sup>th</sup> May 2017, authored by the Plaintiff and addressed to the Land Registrar Ngong, seeking the placement of a caveat on the suit property to prevent potential fraudulent disposals. Notably, this letter lacks confirmation of receipt by the Land Registrar.
  21. The laws of Kenya, specifically Section 26 of the *Land Registration Act*, safeguard the integrity of titles, instructing that titles should not be procured through illegal, irregular, fraudulent, or un-procedural means. Additionally, Article 40 of the *Constitution* guarantees the right to property ownership, emphasizing the protection of lawfully acquired property. The Plaintiff asserts ownership through a Title Deed. However, no sale agreement or evidence of payment for the property from the Plaintiff to Francis Muroko Ndelu was presented. Despite the absence of such documentation, entries in the Plaintiff's Title Deed corroborate his ownership claim, including indications of the purchase price. The 1<sup>st</sup> Defendant however, did not provide evidence of how the suit property moved from the Plaintiff to himself.
  22. If the Plaintiff claims that he never sold the land to anyone, how then was the land transferred from him to the 1<sup>st</sup> Defendant, subdivided and consequently sold off to the other Defendants? Secondly, who are these 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendants who never entered appearance to defend the suit against them? Unfortunately, the 6<sup>th</sup> Defendant did not aid the court to understand the conundrum of how documents in its possession which are supposed to be beyond reproach and a true reflection of the accurate status of land would have been altered without the knowledge of the owner of the land.



23. The Defendants therefore cannot seek refuge under Section 26 of the *Land Registration Act* in the absence of substantiated evidence validating the legality and validity of their titles. The said section provides:

“(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.”

24. The lack of evidence concerning the lawful transfer of the suit property from the Plaintiff to the 1st Defendant, as well as the subsequent subdivisions and transfers to the other Defendants, supports the conclusion that their titles merit cancellation.

25. While it is trite that fraud should not only be pleaded but also strictly proved, the duty of custodians responsible for maintaining the integrity of land documents cannot be understated. Munyao J. in *Elias Joseph Waburi Wamunyu v Joseph Mwangi Njoroge* [2017] eKLR noted:

“...I have heard of missing documents in land parcel files, two titles being issued to two different people supposedly on the same date; missing public records such as Presentation Books and Registers; lackadaisical staff who don’t seem to care about the heavy public trust imposed on them, and outright manipulation of land records. It is sad; nay, shocking, when you hear of these things, which should never happen. Land is sensitive, it is emotive, it is probably life itself, and it behoves upon those entrusted to administer this vital commodity, to undertake their work diligently and faithfully, and perform their tasks with utmost integrity and good faith...

...

... I need to emphasize that land officers hold a position of trust. Title abstracts and RIMs are sacred land documents. They are the pillars upon which our land administration system is founded. They are documents that should never, ever, be interfered with unless in accordance with the law. Supportive documents regarding dispositions also need to be well kept, maintained, and Protected. It is a shame that Registers and Presentation Books can be torn and become illegible and it is necessary that good storage systems need to be established for these vital documents. Records of dispositions, including transfers, mutations, charges, etc, must be properly kept in land parcel files, and they need to stay there. It is time we stopped hearing that these records are missing and indeed they cannot walk out of files on their own, if it is not for gullible land officers for hire. Land officers need to properly undertake their work. It is a duty that they owe Kenyans. Where there is doubt, or dispute, the same should be resolved in a court of law, not by Land Registrars unilaterally making insertions in the Land Registrars in favour of one party...



26. Munyao J. once again in *Mariera & another v Ongwancho & 2 others* [2023] KEELC 21423 (KLR) (Judgment) reprimanded dubious dealings at Lands offices stating:

“... We wouldn’t be here if it were not for the muck that has permeated our Land Registries. It is regretful that we are at an era where one can simply walk into a Lands Registry and walk out with a title after uprooting the genuine existing land records and planting his own that are non-authentic. It extremely disheartening as the public has entrusted the Land Registries to be their custodian when it comes to records related to land. A land registry should be a hallowed place. It ought to be a repository whose records are absolutely tamper proof and beyond reproach. It goes without saying that the Land Registries ought only to be placed in the hands of persons of absolute integrity. This is the office that the public has bestowed upon the responsibility of ensuring that the country’s land records are properly kept and that they reflect the correct position regarding ownership of land...”

27. The significance of maintaining comprehensive and accurate land records cannot be overstated.

28. The Plaintiff also prayed for general, exemplary and punitive damages against the Defendants. On the issue of exemplary and punitive damages, the Court of Appeal in *Godfrey Julius Ndumba Mbogori & another v Nairobi City County* [2018] eKLR expressed itself and outlined the following guidelines:

“... Exemplary damages are essentially different from ordinary damages. The object of damages in the usual sense of the term is to compensate. The object of exemplary damages is to punish and deter. We are guided by the case of *Rookes V Barnard* [1964] AC 1129 where Lord Devlin set out the categories of case in which exemplary damages may be awarded which are: i) in cases of oppressive, arbitrary or unconstitutional action by the servants of the government, ii) cases in which the defendant’s conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the plaintiff and iii) where exemplary damages are expressly authorized by statute.

Lord Devlin also gave expression to 3 considerations which must be borne in mind in any case in which an award of exemplary damages is being claimed. The first category is that the plaintiff himself must be the victim of the punishable behaviour; the second category is that the power to award exemplary damages must be used with restraint for it constitutes a weapon and can be used either in defence of liberty or against liberty and thirdly, the means of the defendant, irrelevant in the assessment of compensation, are material in the assessment of exemplary damages...”

29. In this regard and in the circumstances of this case, the court finds that the Plaintiff did not demonstrate how his claim fell within the above categories to warrant issuance of exemplary damages.
30. However I find that the Plaintiff is ought to be compensated for being dispossessed of his property. I award Kshs.300,000/= which I think is adequate.
31. In conclusion, I find that the plaintiff has proved his case as against the Defendants on a balance of probabilities and I enter Judgement in his favour.
32. Accordingly Judgement is entered in favour of the plaintiff as follows;
- a. That a declaration is hereby issued that, the Plaintiff, George Ngure Kariuki is the rightful owner of land Kajiado/Kitengela/6456 measuring approximately 8.094 hectares.



- b. That Land Registrar, Kajiado is hereby directed to cancel and expunge all records indicating that the land Kajiado/Kitengela/6456 was transferred by George Ngure Kariuki to Wilson Ntetuka Taraya, subdivided and further transferred to Judith Mideva Kinazira, Douglas Maina Gatuma, Annie Muthoni Ndiragu and Hellen Kirathi Ndatho and any consequent subdivisions and transfers.
- c. That Land Registrar, Kajiado, is hereby directed to reconstruct the records to show that the Plaintiff, George Ngure Kariuki is the rightful owner of the land Kajiado/Kitengela/6456 measuring approximately 8.094 hectares.
- d. That a permanent injunction is hereby issued retraining the defendants by themselves, their agents and/or servants from trespassing on, leasing, hiring, pledging, selling, constructing any structures on and/or interfering or dealing with the property known as Kajiado/Kitengela/6456 or interfering with the Plaintiff's quiet possession thereof.
- e. General damages Kshs. 300,000/=
- f. Costs of the suit and interest.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14TH DAY OF DECEMBER 2023.**

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

**Mr. Muriithi for Mr. Nzaku for the Plaintiff.**

**N/A for the Defendants.**

**Court Assistant – Mutisya.**

