



REPUBLIC OF KENYA



**Muigua & another v Kuria & 18 others (Environment & Land Case  
E123 of 2022) [2023] KEELC 22085 (KLR) (5 December 2023) (Judgment)**

Neutral citation: [2023] KEELC 22085 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE E123 OF 2022**

**BM EBOSO, J  
DECEMBER 5, 2023**

**BETWEEN**

**JENNIFER KABUI MUIGUA ..... 1<sup>ST</sup> PLAINTIFF**

**JANET WAMBUI GICHARU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JANE WANJIKU KURIA ..... 1<sup>ST</sup> DEFENDANT**

**MURERA MUGUTHA SELF HELP GROUP THROUGH ITS TRUSTEES  
GABRIEL KAMAU KIBATHI ..... 2<sup>ND</sup> DEFENDANT**

**CHARLES KURIA MWANGI ..... 3<sup>RD</sup> DEFENDANT**

**JOHN KAMAU KANG'ETHE ..... 4<sup>TH</sup> DEFENDANT**

**JAMES MWANGI KIRAGU ..... 5<sup>TH</sup> DEFENDANT**

**MICHAEL FRANCIS MINYOTA ..... 6<sup>TH</sup> DEFENDANT**

**JOHN WAMBUGU GICHUHI ..... 7<sup>TH</sup> DEFENDANT**

**GEORGE MBUGUA NGUGI ..... 8<sup>TH</sup> DEFENDANT**

**JOHN MACHARIA KARANJA ..... 9<sup>TH</sup> DEFENDANT**

**JOHN MATHERI WACHIRA ..... 10<sup>TH</sup> DEFENDANT**

**EDWARD GATHII KIBE ..... 11<sup>TH</sup> DEFENDANT**

**SIMON KIMANI NJOROGE ..... 12<sup>TH</sup> DEFENDANT**

**FRANCIS KARANJA KIGIRIA ..... 13<sup>TH</sup> DEFENDANT**

**GEORGE KAMAU KARUKU ..... 14<sup>TH</sup> DEFENDANT**

**FRANCIS NJAGI GACHUKU ..... 15<sup>TH</sup> DEFENDANT**



**PAUL KURIA MUNGAI ..... 16<sup>TH</sup> DEFENDANT**  
**CATHERINE NYAKINYUA KURIA ..... 17<sup>TH</sup> DEFENDANT**  
**TITUS KIAMBI WACHIRA ..... 18<sup>TH</sup> DEFENDANT**  
**THE LAND REGISTRAR THIKA ..... 19<sup>TH</sup> DEFENDANT**

## **JUDGMENT**

1. The two plaintiffs initiated this suit through a plaint dated 14/10/2022, filed by M/s Mbichi Mboroki & Kinyua Advocates. They sought the following verbatim reliefs against the defendants:
  - a. A declaration that the 1st defendant’s transfer of Land Parcel Number Ruiru/ Ruiru East Block 2/1910 & 1909 to herself was fraudulent and illegal.
  - b. A declaration that the 1st defendant’s transfer of Ruiru/ Ruiru East Block 2/1910 & 1909 to the 2nd defendant was fraudulent and illegal.
  - c. A declaration that the subsequent amalgamation of Ruiru/ Ruiru East Block 2/1910 & 1909 to form Ruiru/ Ruiru East Block 2/7840 by the 2nd defendant was fraudulent and illegal.
  - d. A declaration that the subsequent subdivision of Ruiru/ Ruiru East Block 2/7840 to form Ruiru/Ruiru East Block 8274 to 8289 by the 2nd defendant was fraudulent and illegal.
  - e. A declaration that the transfer and registration of Ruiru/Ruiru East Block 2/8274 to 8289 to the 3rd to the 17th defendants was fraudulent and illegal.
  - f. An order for cancellation of the amalgamation of Ruiru/Ruiru East Block 2/1910 & 1909 by the 2nd defendant to Ruiru/ Ruiru East Block 2/7840.
  - g. An order for cancellation of the subdivision of Ruiru/ Ruiru East Block 2/7840 to Ruiru/ Ruiru East Block 2/8274 to 8289.
  - h. An order that the original parcels of land number Ruiru/ Ruiru East Block 2/1910 & 1909 be recreated in the green card and the same be registered back to the 1st and 2nd plaintiffs respectively.
  - i. An eviction order to issue against the 3rd and 17th defendants, their servants and/or agents from land parcels known as Ruiru/ Ruiru East Block 2/1910 & 1909 as newly created and the 1st and 2nd plaintiff be put into possession.
  - j. General damages for trespassing.
  - k. Any further relief that this honourable court may deem fit to grant.
2. In summary, the plaintiffs’ case is that they are the legitimate owners of land parcel numbers Ruiru/ Ruiru East Block 2/1910 and Ruiru/Ruiru East Block 2/1909 [hereinafter referred to as “the parcels”] having acquired them from their now deceased mother, Margaret Nduhu Gicharu who had acquired them from Nyakinyua Investments Limited. They contend that the 1st defendant fraudulently registered the parcels in her name and subsequently transferred them to the 2nd defendant who amalgamated the two parcels to form land parcel number Ruiru/Ruiru East Block 2/7840. The 2nd defendant thereafter subdivided land parcel number Ruiru Block 2/7840 sixteen (16) subdivisions, namely, parcel numbers Ruiru/Ruiru East Block 2/8274 to 8289 and registered them in the names



of the 3rd to 17th defendants. The plaintiffs contend that the 3rd to 17th defendants have illegally trespassed onto and occupied the parcels.

3. On 26/10/2022, this court granted the plaintiffs leave to serve summonses on the defendants through a notice in the Daily Nation Newspaper. Subsequently, the plaintiffs filed an affidavit of service sworn on 15/11/2022 by Gilbert Kinyua Advocate, indicating that the defendants had been served through a notice published in the Daily Nation Newspaper on 2/11/2022. None of the defendants entered appearance. None of them filed a defence. Consequently, the suit was heard as an undefended cause on 9/10/2023.

### **Plaintiffs' Evidence**

4. The 1st plaintiff testified as PW1. She adopted her witness statement dated 14/10/2022. She produced the thirty-one exhibits contained in their list and bundle of documents dated 14/10/2022. PW1's evidence was that she was a daughter of the late Margaret Nduhu Gicharu [the deceased] who was the initial proprietor of the suit properties, having acquired them through her shareholding in Nyakinyua Investments Limited. She added that as part of their inheritance from their deceased mother, she was allocated parcel number Ruiru/Ruiru East Block 2/1909 while her younger sister, the 2nd plaintiff was allocated parcel number Ruiru/Ruiru East Block 2/1910. Nyakinyua Investments Limited subsequently issued them with clearance certificates and transfers instruments to enable them process transfer of the titles into their respective names.
5. PW1 testified that when they presented their papers to the Land Registry, they discovered that the two titles did not exist. Searches revealed that the titles to the two parcels had been registered and issued to Jane Wanjiku Kuria, and subsequently transferred to the trustees of Murera Mugutha Self Help Group. The searches further revealed that the two titles had subsequently been amalgamated into title number Ruiru/Ruiru East Block 2/7840 measuring 2 acres. The said title, Ruiru/Ruiru East Block 2/7840 was then subdivided into 16 parcels, namely, Ruiru/Ruiru East Block 2/8274 to 8289. PW1 added that she lodged a complaint at the National Land Commission, and upon investigations, it was established by the Commission that Mugutha Murera Self Help Group acquired the suit properties fraudulently.
6. PW1 added that the National Land Commission confirmed that the plaintiffs were the rightful owners of the two parcels and directed the Thika Land Registrar to place caveats on subdivision title numbers Ruiru/Ruiru East Block 2/8274 to 8289 and requested them to initiate the process of reverting ownership of the parcels to the plaintiffs. The plaintiffs also reported the matter to the DCI Office at Juja under OB/45/4/10/2018. Upon investigations, the DCI traced Jane Wanjiku Kuria. The said Jane Wanjiku Kuria [the 1st defendant] wrote a statement at the DCI and denied transferring the suit properties to the Self-Help Group. The 1st defendant contended that the signatures purported to be hers on the transfer instruments were forgeries.
7. Janet Wambui Gicharu testified as PW2. She adopted her witness statement dated 14/10/2022 as part of her sworn evidence-in-chief. She reiterated PW1's testimony. She stated that she was allocated Plot No. Ruiru/Ruiru East Block 2/1909 while her younger sister, Jennifer Kabui Muigai (the 1st plaintiff) was allocated Plot No. Ruiru/Ruiru East Block 2/1910 as part of their inheritance.
8. George Muigai Wambugu testified as PW3. He adopted his witness statement dated 14/10/2022 as part of his sworn evidence-in-chief. He stated that the 1st plaintiff was his wife while the 2nd plaintiff was his sister-in-law. He reiterated the testimony of PW1. He further stated that there was a possibility that the Lands Department through the Land Registrar played a part in the fraud by facilitating issuance of title to Murera Mugutha Self Help Group. He added that the 1st defendant could only



have obtained the suit properties from Nyakinyua Investment Limited, adding that the 1st defendant's transactions were nullities ab initio because Nyakinyua Investments Limited did not convey the parcels to her. He added that Murera Mugutha Self Help Group did not receive a good title from the 1st defendant.

9. Nduto Ndirangu testified as PW4. She adopted her witness statement dated 14/10/2022 as part of her sworn evidence-in-chief. She produced the following documents:
  - (i) a letter dated 23/5/2014 relating to parcel no. Ruiru/Ruiru East Block 2/1910;
  - (ii) a letter dated 23/5/2014 relating to parcel no. Ruiru/Ruiru East Block 2/1909;
  - (iii) ballot number 1410 relating to the two parcels;
  - (iv) receipt dated 11/12/2013; and
  - (v) receipt dated 16/10/2013.
10. PW4 stated that the 1st and 2nd plaintiffs were the allottees of Plot numbers Ruiru/Ruiru East Block 2/1909 and Ruiru/Ruiru East Block 2/1910 having inherited them from their aunt and mother respectively. She further stated that Nyakinyua Investment Company Ltd's advocates issued the plaintiffs with transfers and duly signed clearances and consents to transfer the two parcels. She added that the two parcels have never been allotted to any other person.

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

11. The plaintiff filed written submissions dated 24/10/2023 through M/s Mbichi Mboroki & Kinyua Advocates. Counsel submitted that the plaintiffs had produced documentary evidence in support of their claim as the legal and bonafide proprietors of land parcel numbers Ruiru/Ruiru East Block 1910 and 1909. Counsel argued that when a registered proprietor's title is called into question, the proprietor has to show the root of the title. Counsel relied on the case of *Teresia Wangari Mbugua v Jane Njeri Nduati & another* [2020] eKLR.
12. Counsel further submitted that the defendants failed to produce evidence to show how they acquired the parcels while the plaintiffs presented both oral and documentary evidence to demonstrate their acquisition of the two parcels from the original proprietor. Counsel added that the plaintiffs having proved that the transfers of the two parcels to the defendants was fraudulent, the titles held by the 2nd to 17th defendants should be cancelled. Counsel relied on the decision in the case of *Dina Management Limited v County Government of Mombasa & 5 Others* [2023] eKLR and Section 80(1) of the *Land Registration Act*. Counsel urged the court to cancel the titles held by the 2nd to 17th defendants and register the parcels in the names of the plaintiffs.

#### **Analysis & Determination**

13. I have considered the pleadings, evidence and submissions tendered in this suit. I have also considered the relevant legal frameworks and jurisprudence. This suit is undefended. Two key questions fall for determination in the suit. The first question is whether the plaintiffs have discharged their burden of proof under the law. The second question is whether the reliefs sought by the plaintiffs are available. I will dispose the two questions sequentially in the above order.
14. Notwithstanding the fact that the suit was undefended, the legal framework in Sections 107, 108 and 109 of the *Evidence Act* obligated the plaintiffs to place before this court evidence that would constitute proof on the balance of probabilities.



15. From the uncontroverted evidence summarized above, it does emerge that the two parcels of land which are the subject matters of this suit, namely Ruiru/Ruiru East Block 2/1909 and Ruiru/Ruiru East Block 2/1910 were subdivisions in a scheme owned by M/s Nyakinyua Investments Ltd and were allocated to Margaret Nduhu Gicharu. It does also emerge that the two parcels were informally transferred to the 2nd and 1st plaintiffs respectively. The two plaintiffs led evidence showing that the parcels were fraudulently registered in the name of the 1st defendant. The two parcels were subsequently registered in the names of the trustees of the 2nd defendant. The 2nd defendant in turn subdivided the parcels into 16 subdivisions and transferred them to the 3rd to 17th defendants.
16. A perusal of the investigation report by the DCIO reveals that the 1st defendant denied ever owning or transferring the parcels to the trustees of the 2nd defendant. The trustees of the 2nd defendant did not step forward to explain how they procured the registrations. Similarly, all the other persons whose names appear in the subsequent subdivision registers did not step forward to explain how they procured the registrations.
17. Further, the chairlady of Nyakinyua Investments Ltd, Nduta Ndirangu, testified as PW 4. Her evidence was that the plaintiffs are the legitimate owners of the parcels of land. She stated that M/s Nyakinyua Investment Ltd did not convey the parcels to the 1st defendant, adding that the 1st defendant was not the allottee of the parcels.
18. In the absence of any controverting evidence, this court is satisfied that the plaintiffs have discharged their burden of proof.
19. Are the plaintiffs entitled to the reliefs sought in the plaint? Prayers (a) to (e) are declaratory in nature. The declaratory reliefs relate to the nullification of the impugned registrations. The plaintiffs having demonstrated that they are the legitimate owners of the parcels, the declaratory orders will issue.
20. Prayers (f) and (g) seek cancellation of the impugned amalgamation and subdivisions. Again, the plaintiffs having demonstrated that they are the proprietors of the land, the orders will issue. For the same reason, prayers (h) and (i) will be granted.
21. The plaintiffs made a plea for general damages but did not lead any evidence in this regard. Their submissions did not deal with this limb of the reliefs. I will, in the circumstance, not make any award in terms of general damages.
22. On costs, the principle in Section 27 of the *Civil Procedure Act* will apply.
23. In the end, Judgment is hereby entered in favour of the plaintiffs in terms of prayers (a), (b), (c), (d), (e), (f), (g) (h) and (i). The defendants will bear the plaintiffs' costs of the suit jointly and severally. The Officer Commanding the Area Police Station shall maintain law and order during enforcement of the decree arising from this Judgment.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 5<sup>TH</sup> DAY OF DECEMBER 2023**

**SIGNED**

**B M EBOSO**

**JUDGE**

**CORRECTED, DATED AND SIGNED AT THIKA THIS 22<sup>ND</sup> DAY OF JANUARY 2024**

**B M EBOSO**

**JUDGE**



**In the presence of: -**

Mr Kinyua for the Plaintiffs

No appearance for the Defendants

Court Assistant - Dominic

