



Munyua (Suing Through Gladwell Suzanne Wathoni Otieno and Elizabeth Sophie Wairimu Otieno) v Registrar, Ngong Lands Registry & another (Environmental and Land Originating Summons E011 of 2024) [2025] KEELC 3399 (KLR) (25 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3399 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E011 OF 2024

MD MWANGI, J

APRIL 25, 2025

IN THE MATTER OF: SECTIONS 57(5) AND 64 OF THE REGISTRATION OF TITLES ACT, CAP 281 LAWS OF KENYA (NOW REPEALED)

AND

IN THE MATTER OF: ARTICLE 40 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ORDER 37 RULE 5 OF THE CIVIL PROCEDURE RULES 2010

BETWEEN

FREDERICK LAWRENCE MUNYUA (SUING THROUGH GLADWELL SUZANNE WATHONI OTIENO AND ELIZABETH SOPHIE WAIRIMU OTIENO) APPLICANT

AND

REGISTRAR, NGONG LANDS REGISTRY 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

JUDGMENT

1. The Applicant herein approached this court by way of an Originating Summons (OS) dated 14th October 2024. The Applicant named the Registrar, Ngong Lands Registry and the Chief Land Registrar as the Respondents.
2. The OS was filed under certificate of urgency. The certificate of urgency was signed by Hesbon Owino Opiyo, an advocate of the High Court of Kenya. He listed 4 grounds to justify the urgency as follows;



- i. That the Honourable Lady Justice Christine Ochieng in Kajiado ELC case No. 622 of 2017 delivered a judgment on 24th April 2019 ordering that the parcel of land known as title number L.R. No. KJD/Ochoro-Onyoro/2142, belongs to the Applicant.
 - ii. That prior to the suit being filed, the Respondents had placed a caveat against Title Number L.R. No. KJD/Ochoro-Onyoro/2142 but after judgment was delivered in favour of the Applicant, the Applicant has moved the Respondents to remove and or lift the caveat but this has fallen on deaf ears.
 - iii. That failure to remove and or lift the caveat has caused great injustice to the Applicant as he cannot exercise his rights of ownership of the property as he wishes to after the court already declared him the legal and bona fide registered owner.
 - iv. That the Applicant therefore stands to suffer irreparable harm and damage if the instant application is not heard.
3. A casual perusal of the certificate of urgency would make one to conclude that the OS is merely about the removal of the caveat and or restriction on the suit property which indeed is the first prayer therein. The main prayer however is prayer number 2 seeking the cancellation of the title held by or in the names of Gaciku Kangari Margaret Wariara Kaara and Francis Njomo Murathe and the rectification of the register to have the Applicant registered as the lawful owner of the suit property. The title holders however have not been sued as Respondents in this case.
 4. The Applicant's cause of action of fraudulent transfer and registration of the tile is against the tittle holders not against the Land Registrar or the Chief Land Registrar. The title sought to be cancelled is the title held by or in the names of Gaciku Kangari Margaret Wariara Kaara and Francis Njomo Murathe. All that the Land Registrar or the Chief Land Registrar is expected to do is implement the order of the court if the Applicant is successful in his case against the titleholders by cancelling the title and rectify the register; that is why they are usually joined in a suit. The failure by the Applicant to join the titleholders as Respondents in this matter raises a serious question on the competence on the Applicant's suit.
 5. Cancellation of a title is a momentous issue. The titleholders have a right to be heard however hopeless their case or explanation may be before the drastic action of cancellation of their title is arrived at.
 6. The right of a party to be heard before a decision affecting him or his property is entered is sacrosanct. The Court of Appeal in the case of James Kanyiita Nderitu and another –vs- Marious Philotas Ghikas & another (2016) eKLR, emphasized this principle adopting the pronouncement by the Supreme Court of India in Sangram Singh –vs- Election Tribunal AIV 1955 SC 664 at 711, to the effect that,

“...there must be ever present to the mind that our laws of procedure are grounded on a principle of natural justice which requires that men should not be condemned unheard, that decision should not be reached behind their backs that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them.”
 7. It is well settled that a decision in breach of the rules of natural justice is not cured by holding that the decision would otherwise have been right anyway whether the affected party was notified or not. Where the principles of natural justice are violated, it matters not that the same decision would have been arrived at as held in the case of Onyango Oloo-vs- Attorney General (1986 -1989 EA 456).



8. Lenaola J (as he then was) in the case of Mandeep Chanhan –vs- Kenyatta National Hospital and 2 others (2013) eKLR, hit the nail on the head when he held that;

“It is a cardinal rule of natural justice that no one should be condemned unheard. Natural justice is not a creature of humankind. It was ordained by the divine hand of the Lord God hence the rules enjoy superiority over all laws made by humankind and that any law that contravenes or offends against any of the rules of natural justice is null and void and of no effect. The rule is captured in the Latin phrase ‘audi alteram partem’ (which) literally translates into ‘hear the parties in turn’ and has been appropriately paraphrased as ‘do not condemn anyone unheard’. This means a person against whom there is a complaint must be given a just and fair hearing.”

9. The conclusion from the foregoing therefore is that the Applicant’s suit as framed is incompetent. I have no choice but to strike it out; but with no orders as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 25TH DAY OF APRIL 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Ms. Wambua h/b for Mr. Opiyo for the Applicant

N/A for the Respondents

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

