



**Adan & another v Gachari & 2 others (Environment & Land Case 148 of 2018) [2022] KEELC 3284 (KLR) (30 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3284 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 148 OF 2018**

**MN GICHERU, J**

**MAY 30, 2022**

**BETWEEN**

**HASSAN SHABA ADAN ..... 1<sup>ST</sup> PLAINTIFF**

**DANIEL KIPKORIR KOECH ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**LUCY WANJIKU GACHARI ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Hassan Shaba Adan (first plaintiff) and Daniel Kipkorir Koech (second defendant) pray for the following reliefs from Lucy Wanjiku Gachari (first defendant), the Land Registrar, Kajiado (second defendant) and the honourable the Attorney General (third defendant);
  - (a) A permanent injunction restraining the defendants from encroaching on the plaintiffs' land No Kajiado/Kitengela/3707 and demolishing the plaintiffs' houses.
  - (b) The Land Registrar to reconstruct green card for LR Kajiado/Kitengela/3707.
  - (c) Any other reliefs.
2. The plaintiffs case is as follows. Both of them are the registered owners of the suit land which they bought from one Margaret Kipkoech Talam on July 16, 2010 for Kshs 17,000,000/-. The land measures 2.0 hectares. The green card for the suit land has been removed by the second defendant but the plaintiffs have a copy of the same.
3. The defendants are claiming ownership of the land and intend to demolish the houses thereon hence this suit.



4. In support of their case, the plaintiffs filed the following evidence;
  - (a) Copy of title deed to the suit land in the names of the plaintiffs and dated August 25, 2010.
  - (b) Copy of green card with 11 entries and running into two (2) pages.
  - (c) Copy of agreement for sale of the suit land between the plaintiffs and Margaret Kipkoech Talam dated July 16, 2010.
  - (d) Witness statements by the two plaintiffs dated September 27, 2018.
5. The first defendant in a written statement of defence and counterclaim dated May 28, 2019 denies all the averments of ownership by the plaintiffs of the suit land. She avers that the plaintiffs never bought the suit land and their identity cards were only used to perpetrate a fraud. The fraud was reported to the Criminal Investigating Department but the plaintiffs have been elusive and have refused to report to the police as required.
6. After discovery of the plaintiffs' fraud, the Criminal Investigating Department advised the second and third defendant to reconstruct the green card in the name of the first defendant.
7. The first defendant adds that there has been two previous suits which include Kajiado CMCC ELC No 114/2018 which was thrown out for lack of jurisdiction and Kajiado ELC HC Misc Application No 106/2017 which was decided in favor of the first defendant. She called for the dismissal of the plaintiffs suit.
8. In the counterclaim, the first defendant prays for the following reliefs against the plaintiffs;
  - (a) A permanent injunction restraining the plaintiffs by themselves, their servants, agents, employees, contractors or workmen and/or anyone who purchases from them or otherwise howsoever from subdividing, marketing, selling, transferring, charging, excavating, constructing and or in any way interfering with LR Kajiado/Kitengela/3707.
  - (b) The court bailiff do evict the plaintiffs, their agents, servants and any person who purchased from them and any other occupant with the permission of the plaintiffs who reside on the suit land.
  - (c) The eviction of the plaintiffs be supervised by the OCS, Kitengela Police Station at the expense of the plaintiffs.
  - (d) The plaintiffs jointly and severally do pay mesne profits for the use of the suit land.
  - (e) Damages for unlawful use of the suit land.
  - (f) Costs of the suit.
  - (g) Interest on (c) and (d)
  - (h) Any other relief that the Court deems just to grant.
9. In the counter claim, Lucy Gachari's case is as follows. On November 3, 2014, she went to Kajiado Land Registry to check on the status of the suit land and found the green card was missing. The suit land had been sold to her husband by one Ebby Muhonja Agini on June 17, 1999. She made a report to the Criminal Investigation Department. An investigation was carried out. It established that the records showing Lucy's husband as the owner had been fraudulently removed.



10. The Land Registrar took the necessary steps to reconstruct the records in favour of Lucy Gachari including advertising in the local newspapers and Kenya Gazette.
11. In spite of all these efforts by the first defendant and the Land Registrar, the plaintiffs had the audacity to put up structures on the suit land. They have defied summons by the police and the National Environment Management Authority.
12. Finally, the plaintiffs have no evidence at all to show that they obtained the necessary consent from the Land Control Board, evidence of payment of stamps duty and transfer documents duly executed by the late Margaret Tallain or even of transfer from the plaintiff's husband to Margaret Tallam.
13. In support of her case, the first defendant filed a total of 25 documents which are all on record but I will only highlight the key evidence as follows;
  - i. Her own witness statement dated January 23, 2019.
  - ii. Copy of certificate of official search for suit land dated November 3, 2014 in the name of Nandi Ken Maende.
  - iii. Copy of grant of letters of administration dated January 12, 2016 issued to the plaintiff and Jane Mwelu Nzioki to represent the estate of the deceased Kenneth Mnamdi Maende.
  - iv. Copy of title deed for the suit land dated August 21, 2017 in the name of the plaintiff and Lewis Maende Mnamdi (minor).
  - v. Valuation report dated May 29, 2018.
  - vi. Other relevant documents
14. The second and third defendants filed a written statement of defence dated March 21, 2019 denying the plaintiffs claim and calling for the dismissal of the case.
15. In support of their case the second and third defendants filed a witness statement by Paul Tonui District Land Registrar, Kajiado dated January 14, 2021.
16. In the statement, the said witness identified the first defendant as the lawfully registered owner of the suit land. Originally, it was registered in the name of Pargalua Mutunkei Lamoo who transferred it to Nnamdi Ken Maende. It was later transferred to the first defendant vide succession cause No 711 of 2015 by the High Court at Nairobi.
17. At the trial, the second plaintiff, the first defendant and the Land Registrar testified. Their evidence was in line with what was in their witness statements and documents.
18. Counsel for the parties filed written submissions on November 16, 2021 and January 20, 2022 respectively.

The plaintiffs' counsel raised the following issues in his submissions;

- (i) The first defendant did not have a title deed to the suit land.
- (ii) The plaintiffs bought the suit land from a third party and they had not only the title deed but the green card as well.
- (iii) The first defendant did not allege fraud on the part of the plaintiffs.



The issue raised by the first defendant are as follows;

- (i) Whether the plaintiffs have a valid claim over the suit land as against the first defendant.
- (ii) Whether the title held by the plaintiffs is marred by irregularities.
- (iii) Who is the true owner of the suit land.
- (iv) Whether the plaintiff should pay mesne profits.
- (v) Who should pay costs.

Finally, the second and third defendants identified the following issues for determination;

- (i) Whether the plaintiffs have established a claim for the grant of a temporary injunction.
- (ii) Whether the land registrar can reconstruct the green cards.

19. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents, the submissions by the counsel for the parties and the case law relied upon.
20. I find that all the above issues identified by counsel for the parties can be summarized into one issue namely, who between the plaintiffs and the first defendant, has according to the available evidence, a better claim to the suit land than the other?
21. I find that the first defendant has a better title than the plaintiffs for the following reasons;  

Firstly, the burden was always on the plaintiffs to establish their claim against the defendants on a balance of probabilities. They did not discharge this burden because they were not able to prove that they obtained title to the suit land lawfully. They did not produce evidence of payment of stamp duty, land control board consent, evidence of transfer from Margaret Tallam to them or from the first defendant's husband to Margaret Tallam. Without this vital evidence, the plaintiffs' documents do not go to root of the title.
22. In contradistinction, the first defendant has proved how the land was first registered in the name of Pargalua Mutunkei Lamoo and then to her husband Nnamdi Ken Maende and then to her through Succession Cause No 711 of 2015. Her claim goes to the root of the title.  

Secondly, the plaintiffs have not proved that they acted in a transparent manner. The evidence by the first defendant that they have acted with impunity in refusing to heed to summons by the police and National Environmental Management Authority (NEMA) has not been controverted.
23. Under section 26 of the [Land Registration Act](#) (Act No 3 of 2012) a title obtained without following the right procedure can be invalidated.
24. For the above reasons, I dismiss the plaintiffs suit with costs to the first defendant. I allow the first defendant's counter claim against the plaintiffs in terms of prayers (a), (b), (c), (f) and (g).
25. I find that the prayers for mesne profits and damages for unlawful use of the suit land are not proved because no evidence has been on the above aspects.
26. Order accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 30<sup>TH</sup> DAY OF MAY, 2022.**



**MN GICHERU**  
**JUDGE**

