



**Kariuki & 3 others v Kariuki & another (Environment & Land Case 723 of 2017) [2022] KEELC 3364 (KLR) (19 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3364 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 723 OF 2017**

**MN GICHERU, J**

**MAY 19, 2022**

**BETWEEN**

**FRANCIS KURIA KARIUKI ..... 1<sup>ST</sup> PLAINTIFF  
JOHN KURIA KARIUKI ..... 2<sup>ND</sup> PLAINTIFF  
JAMES MAINA KARIUKI ..... 3<sup>RD</sup> PLAINTIFF  
SAMUEL MWANGI KARIUKI ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**DAVID NG'ANG'A KARIUKI ..... 1<sup>ST</sup> DEFENDANT  
JAMES NGARE KARIUKI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. Francis Kuria Kariuki, John Kuria Kariuki, James Maina Kariuki and Samuel Mwangi Kariuki (the Plaintiffs) seek the following reliefs against David Ng'ang'a Kariuki and James Ngari Kariuki (the Defendants);
  - (a) A permanent injunction restraining the Defendants, their agents, servants and/or employees from trespassing, collecting rent, managing, damaging and/or interfering whatsoever with the Plaintiffs' parcel of land known as Ongata Rongai/59 (suit land) and any building erected thereon.
  - (b) An order that the Defendants vacate and hand over vacant possession of the suit land.
  - (c) A declaration that the Plaintiffs are the rightful owners of the suit land as registered proprietors.
  - (d) Costs of the suit.
  - (e) Interest.



2. The Plaintiffs' case is as follows. They are the registered proprietors of the suit land which comprises of rental house units. The Defendants have trespassed at the said premises and collected rent illegally from 17 of the house units.

They have also chased away the Plaintiffs' employees who man the gate to the premises and offer security to the tenants. They have replaced them with their own goons.

Further to the above, the Defendants have threatened the Plaintiffs with dire consequences if they get near the suit premises. They have also threatened to evict all the tenants who do not pay rent to them.

3. In support of their case, the Plaintiffs have filed the following documents;

- (a) Certificate of lease for the suit land in their names and dated 27/3/2013.
- (b) A copy of certificate of confirmation of grant in Succession Cause No. 1380 of 2011 at the High Court at Nairobi showing that the Plaintiffs inherited the suit land while the Defendants and other inherited Title Numbers 2432 and 2433 Nyandarua/Lesirko.
- (c) Copy of ruling in the Succession Cause in (b) above dated 29/1/2016 and 1/2/2016 dismissing an application which sought to change the ownership of the suit land from the Plaintiffs.
- (d) Other documents.
- (e) Witness statement by Joyce Nyokabi Waweru dated 30/9/2019.

4. The Defendants filed a defence on 26/8/2019 in which they accuse the Plaintiffs of fraudulently transferring the suit land to themselves without the consent of the rightful owners. They also aver that they erected buildings on the suit land and they and their wives and children depend on the rent from the suit premises.

They also go on to deny all the averments in the plaint and claim ownership of the suit premises.

5. In support of their case, the Defendants filed the following evidence;

- (a) Witness statement by the two Defendants, Jacinta Wairimu Kariuki; Livingstone Kuria Kariuki and Joyce Nyokabi Waweru.

6. At the trial on December 16, 2021, the first Plaintiff and the first Defendant testified. Each of them adopted the evidence that they had filed.

The Plaintiffs' counsel filed written submissions on 28<sup>th</sup> January, 2022 in which she identified three issues namely;

- (i) Whether the Plaintiffs have proved that they acquired proprietary interest over the suit land?
- (ii) Whether the actions of the Defendants amount to trespass and interference with the ownership of the suit property?
- (iii) Whether the Plaintiffs are entitled to the prayers sought?

7. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, the documents and the oral testimony in Court on 16/12/2021.

I have also considered the submissions by the Plaintiffs' counsel and I agree that the issues as identified by her will resolve the dispute.

On the first issue, I find that the Plaintiffs are the registered owners of the suit land. They have exhibited before this Court a copy of Certificate of Lease dated 27/3/2013 in their names.



The Defendants on the other hand have nothing to prove that they own the suit land or that they are entitled to any interest over the same.

Section 26 of the *Land Registration Act* (Revised 2020) provides as follows;

- i. The Certificate of Title issued by the Registrar upon registration ... shall be taken by all Courts as prima evidence that the person names as proprietor of the land is the absolute and indefeasible owner...”

The Plaintiffs being the ones with the title document are the owners because the Defendants have not adduced any evidence to the contrary.

The Plaintiffs have also proved that they acquired ownership through a lawful process which even after being challenged in Court was confirmed by the High Court and there has been no reversal of the High Court decision by a higher Court.

On the second issue, I find that the Defendants action amounts to trespass. The Defendants have no right to enter the suit land without the permission of the Plaintiffs and any entry without permission is unlawful.

For the above stated reasons, I find that the Plaintiffs have proved their case against the Defendants on a balance of probabilities.

Consequently, I enter judgment for the Plaintiffs against the Defendants as prayed for in the plaint.

Order accordingly.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF MAY, 2022.**

**M.N. GICHERU**

**JUDGE**

.....

