



**Muriithi v Muriithi & 3 others; Margaret Wakiuru Murathi & 3 others (Interested Parties); Duncan Maina Murathi (Intended Interested Party) (Environment & Land Case 521 of 2013) [2022] KEELC 3037 (KLR) (13 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3037 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 521 OF 2013**

**EC CHERONO, J**

**MAY 13, 2022**

**BETWEEN**

**JOSEPH NJIRAINI MURIITHI ..... PLAINTIFF**

**AND**

**BETH WANJIRA MURIITHI ..... 1<sup>ST</sup> DEFENDANT**

**AGNES WAGUTHII WACHIRA ..... 2<sup>ND</sup> DEFENDANT**

**ANTHONY MBITHI KABUI ..... 3<sup>RD</sup> DEFENDANT**

**SUSAN NJERI MUNENE ..... 4<sup>TH</sup> DEFENDANT**

**AND**

**MARGARET WAKIURU MURATHI ..... INTERESTED PARTY**

**JANE KIRUNDA NJIRAINI ..... INTERESTED PARTY**

**BENARD MUNENE NJIRAINI (SUED ON BEHALF OF THE MOTHER AS  
NEXT FRIEND- ..... INTERESTED PARTY**

**SWN (MINOR) SUED ON BEHALF OF THE MOTHER AS NEXT OF  
FRIEND ..... INTERESTED PARTY**

**AND**

**DUNCAN MAINA MURATHI ..... INTENDED INTERESTED PARTY**

**JUDGMENT**

1. The plaintiff commenced this suit vide a plaint dated October 21, 2011 seeking the following orders:-



- (A) The declaration that the Tribunal award and the adoption of the same by the Kerugoya Court was unlawful and cancellation of Titles of land parcels No. Mutira/Kirunda/1476 and 1481 from the names of 3<sup>rd</sup> defendant respectively and registration of the same in the names of the plaintiff.
  - (B) A permanent injunction order against the defendants restraining them through themselves, their servants, agents and/or employees from interfering with the plaintiff quiet possession, occupation, cultivation and enjoyment of land parcel No. Mutira/Kirunda/1476 and 1481 pending the hearing and determination of application and the suit herein
  - (C) Costs and interest at court rates.
2. The plaintiff later Amended his plaint pursuant to the leave of the court granted on 25/04/2012.
  3. On 29/11/2011, the 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a joint statement of defence and counter-claim dated 28/11/2011. The 3<sup>rd</sup> and 4<sup>th</sup> defendants also filed their joint statement of defence denying the plaintiff's claim on 17/07/2012 while the 5<sup>th</sup> defendant filed his defence and counter-claim on 07/04/2015. After the close of pleading and taking of pre-trial directions, the matter was fixed for hearing.

### **Plaintiff's Summary of Facts**

4. The plaintiff testified on 4/5/2021 as PW1 and stated that the 1<sup>st</sup> and 2<sup>nd</sup> defendants are his sisters and that the suit land parcels number Mutira/Kirunda/1471 and Mutira/Kirunda/1476 belonged to their father. The plaintiff said that his father gave him the two parcels of land after which he was issued with title deeds. Later, his two sisters lodged claims at the District Land Tribunal, Gichugu and were awarded the two parcels of land. He stated that the Tribunal also ordered the Executive officer of the court to sign all relevant documents of transfer and the Land Registrar to dispense with production of old Title Deeds during transfer.
5. The plaintiff stated that the Tribunal also ordered the removal of any restriction /caution on the land and the O.C.P.D to provide security, if need arise. He stated that all these were under his back as he was not served with any court documents and by the time he came to know, Titles of portions of land had already been issued in favour of his two sisters who sold to the 3<sup>rd</sup> Defendant. He then filed this case on 21/10/2011. He also sought from the court inhibitory/prohibitory as well as injunction orders against any dealings in the subject parcels of land. However, the court declined to grant him interim orders but directed him to first serve. He served the defendants but the 3<sup>rd</sup> defendant transferred the parcels of land to the 4<sup>th</sup> defendant who is his wife. He was forced to amend the plaint to bring the 4<sup>th</sup> defendant into this suit. On May 4, 2012, he moved this court for prohibitory/ inhibition and injunction orders against any dealing on the suit properties which was granted. Again, through a letter by his lawyer dated 14/03/2012, he also placed a restriction on the suit properties. He further stated that the two parcels of land he is claiming are subdivisions of land parcel Number Mutira/Kirunda/85 which was originally registered in the name of his father Muriithi Mugera Kairanga who had subdivided and transferred to him 10 portions/parcels. He said that the 1<sup>st</sup> and 2<sup>nd</sup> defendants were given land parcel number Mutira/Kirunda/1490 & 1491. The other parcels were given to other siblings. He stated that the 5<sup>th</sup> defendant has since passed on and Duncan Maina Murathi is her son.

### **1<sup>st</sup> and 2<sup>nd</sup> Defendants' Summary of Facts**

6. Beth Wanjira Muriithi testified as DW1on and stated that the plaintiff is her younger brother. She was referred to her witness statement recorded on 24/11/2014 which she adopted in her evidence. She confirmed that she filed a claim in the district land Tribunal Gichugu in respect of land parcel



No. Mutira/Kirunda/1476 and the Tribunal awarded her the land. Subsequently, she sold the same to Anthony Mbithi Kabui. She said that she was given that land by their late Father during a family meeting where their father agreed to subdivide his land parcel NO. Mutira/Kirunda/85 into 16 portions and each of the sibling was given two portions. After she failed to get her share, she moved to the Tribunal. She said that two portions of the sub-divisions were registered in the name of her brother Joseph Njiraini Muriithi while the rest were in the name of their Father. She said that her brother was served with Summons and all pleadings in the Tribunal.

7. The second witness was Agnes Waguttii Wachira who was referred her statement dated 24/11/2014 which she adopted in her evidence. She associated herself with the evidence given by DW1 and stated that their Father had sold one portion out of the sixteen (16) portions in order to pay the survey fees. She said that she got two portions and she sold them all. She also filed a claim in the tribunal and was given land parcel No. Mutira/Kirunda/1481 which she sold to Anthony Mbithi Kabui

### **3<sup>rd</sup> and 4<sup>th</sup> Defendants' Case**

8. Anthony Mbithi Kabui, the 3<sup>rd</sup> defendant herein testified on his behalf and that of the 4<sup>th</sup> Defendant who is his wife. He was referred his statement recorded on 21/11/2014 which He adopted in his testimony. He stated that he bought the two parcels of land from the 1<sup>st</sup> and 2<sup>nd</sup> Defendants on 23/9/2011 and immediately took possession and occupation of the same. Later on 29/9/2011, she transferred the same to his wife, the 4<sup>th</sup> defendant herein. He stated that he comes from the same area with the plaintiff and that he knows the 1<sup>st</sup> and the 2<sup>nd</sup> defendants and the plaintiff as siblings.

### **5<sup>th</sup> Defendants Case**

9. The 5<sup>th</sup> defendant was sworn and adopted his statement recorded on 18/9/2020

### **Legal Analysis and Decision**

10. I have considered the testimony of the parties and their witnesses. I have also considered the list of documents which were produced as exhibits as well as their respective submissions and the applicable law. The plaintiff in this case is seeking a declaration that the award and subsequent adoption of the same by the Magistrate Court at Kerugoya was unlawful and for cancellation of titles of land parcel Number Mutira/Kirunda/1476 & Mutira/Kirunda/1481. The plaintiff is also seeking an equitable relief of a permanent injunction. Flowing from the pleading and the evidence adduced, the following are the probable issues for determination-;

1. Whether the Tribunal award and the adoption of the same by the Kerugoya Magistrate Court was unlawful?
2. If the answer to Paragraph 1 above is in the affirmative, whether the Titles of land parcels No. Mutira/Kirunda/1476 & 1481 are liable to be cancelled and registered in the name of the plaintiff?
3. Whether the plaintiff has established the threshold for the grant of injunction orders?
4. Whether the 3<sup>rd</sup> and 4<sup>th</sup> defendants are innocent purchasers for value without notice?
5. Whether the counterclaim by the 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendant has merit?
6. Who should bear the costs?



**Whether the Tribunal Award and the adoption of the same by the Kerugoya Magistrate Court was unlawful?**

11. From the evidence on record, the plaintiff was registered as owner of the suit parcels of land No. Mutira/Kirunda/1476 and Mutira/Kirunda/1481 on 30/8/2004. The 1<sup>st</sup> and 2<sup>nd</sup> defendants in their testimony admitted having moved to the Central Division Land Disputes Tribunal claiming the two parcels of land. The Tribunal heard the claim and awarded the same as prayed. The mandate of the Land Disputes Tribunal was established under the Repealed [Land Disputes Tribunal Act](#), cap 303. Section 3(1) of the said Act provides as follows-;

“Subject to this Act, all cases of civil nature involving a dispute as to-

- a. The division of, or the determination of boundaries to Land, including Land held in common;
- b. A claim to occupy or work land; or
- c. Trespass to Land”.

12. It is clear from the provisions of the [Land Disputes Tribunal Act](#) (Repealed) that the Tribunal had been given jurisdiction to handle specific Disputes regarding Land Disputes. One of those powers did not include handling disputes on ownership of land. When it purported to determine a claim by the 1<sup>st</sup> and 2<sup>nd</sup> defendants in respect of the suit properties which were registered in the name of the plaintiff under the [Registered Land Act](#), cap 300 (Repealed), the Tribunal acted ultra vires and its award and subsequent adoption by the Magistrate’s Court at Kerugoya was therefore unlawful. It follows that, if the Tribunal had no jurisdiction to entertain the matter, whatever proceedings flowed from its decision would be null and void since a decision made without jurisdiction must of necessity be null and void. In the case of [Dominica Wamuyu Kibu v Johana Ndura Wakaritu](#) (2012) e KLR, the Court of Appeal at Nyeri held-;

“On jurisdiction, section 3(1) of the Land Disputes Tribunal Act is quite clear as to the matters the Tribunals under the Act were authorized to adjudicate upon----- This provision clearly puts disputes relating to ownership or Title to land beyond the Tribunals’ jurisdiction. In this case the dispute is on ownership of Title No. Magutu/Gathehu/53. That was a dispute outside the jurisdiction of the Tribunal”.

13. In a similar case of [Joseph Malakwen Lelei & another v Rift Valley Land Disputes Appeals Committee & 2 others](#) (2014) e KLR, the Court of Appeal sitting in Eldoret held-;

“On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the land Disputes Tribunal to handle claims ---

Evidently, the above provision does not include jurisdiction to deal with issues of determination of Title to or ownership of registered Land, or the determination of a trust in favour of a party, which in essence was the basis of the 3<sup>rd</sup> respondent’s claim. Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its



proceedings and decisions are null and void. It then follows that every other proceeding, decision, or award that results from such a process must be construed as a nullity.”

14. I totally agree with the above decisions by the Court of Appeal which is also binding on me.

**2. If the answer to paragraph 1 above is in the affirmative, whether the Titles of land parcels Mutira/ Kirunda/1476 and 1481 are liable to be cancelled and registered in the name of the Plaintiff?**

15. Having found that that the Tribunal did not have jurisdiction to determine issues relating to title and ownership of the suit properties which were registered in the names of the plaintiff, it follows therefore that any proceedings, decision, adoption or transfer that results from such flawed process must be construed as a nullity. It is my finding that the Titles issued to the 1<sup>st</sup> and 2<sup>nd</sup> defendants are a nullity and the subsequent transfer to the 3<sup>rd</sup> and 4<sup>th</sup> defendants are of no legal effect.

**3. Whether the Plaintiff has established the threshold for the grant of injunction orders?**

16. An injunction is an equitable relief granted to an applicant on well-established principles in the *locus classicus* case of *Giella v Cassman Brown*(1973) EA 358. The three grounds which an Applicant must prove is that he/she has a prima facie case, that he will suffer irreparable injury which cannot be atoned by an award of damages and where the court is in doubt, it may decide the case on a balance of convenience. From my findings on the two issues above, it is clear in my mind that by cancelling the Titles issued to the 1<sup>st</sup>, 2<sup>nd</sup> defendants and also cancelling the subsequent Titles issued to the 3<sup>rd</sup> and 4<sup>th</sup> defendants and reverting them back to the plaintiff as the registered owner, this Court is satisfied that the rights of the plaintiff as the absolute and indefeasible owner of the two properties must be safeguarded under Order 40 of the Constitution.

**4. Whether the 3<sup>rd</sup> and 4<sup>th</sup> Defendants are innocent purchasers for value without notice?**

17. Section 26 of the Land Registration Act is very protective of title deeds and binds the courts to take the same as prima facie evidence of ownership of land. The said Section only provides the following two instances where a Certificate of Title as an instrument of ownership can be cancelled as follows;

“26(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 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.”

18. This honourable court has already determined elsewhere in part of this Judgment that the manner and process in which the 1<sup>st</sup> and 2<sup>nd</sup> defendants moved to the central land disputes Tribunal seeking ownership of Land which after the hearing was awarded and a certificate of title issued without jurisdiction is liable for cancellation on grounds of being acquired illegally, unprocedurally and through a corrupt scheme. It therefore follows that the subsequent purchase, transfer and issuance of



title to the 3<sup>rd</sup> and 4<sup>th</sup> defendants was a nullity. I therefore find that the 3<sup>rd</sup> and 4<sup>th</sup> defendants are not innocent purchasers for value capable of protection by law.

#### **5. Whether the counterclaim by the 1<sup>st</sup>, 2<sup>nd</sup> and the 5<sup>th</sup> Defendants have merits**

19. The 1<sup>st</sup> and 2<sup>nd</sup> defendants have been found to have acquired title documents to the suit properties illegally, unprocedurally and through a corrupt scheme and that the same are liable for cancellation. Their counterclaim must therefore fail. As regards the 5<sup>th</sup> defendant, his claim is based on what his grandfather told him has no evidentiary value for being based on conjecture and the same also fails.

Before I conclude this judgment, the defendants have argued that the plaintiff cannot file a declaratory suit. On this issue, Justice L. Gacheru in the case of *Stephen Kangethe Kariuki v Samuel Kangere Gatoto* cited the case of *Emily Jepkemoi Ngeyoni & anor v Nicholas Kipchumba Kogo & anor*, HCCC No 270 of 2005 (Eldoret) where Justice Dulu held thus-;

“My own opinion of the matter is that there is no bar to filing a suit to declare the decision of a Land Dispute Tribunal null and void. True, the avenues of appeal and judicial review are available but I am of the view that these are not the sole avenues for relief-----I am of the stand that the plaintiff is perfectly to file the suit seeking inter-alia a declaration that the decision of the Tribunal was made without jurisdiction.....”

20. I agree with the above decision by the learned judge which I find applicable in this case.

#### **6. Who should bear the costs?**

21. It is trite law that costs usually follow the event unless reasons are given. Costs is a discretionary power which must be exercised judicially. In this case, the plaintiff and the defendants except the 3<sup>rd</sup> and 4<sup>th</sup> defendants who were “purchasers” are close family members. In the interest of justice and promoting family ties, I order each party to bear their own costs.

#### **Final Order**

22. Having carefully considered all the issues for determination in this matter, I find the plaintiff has proved his claim against the defendants to the required standard. Consequently, I enter final judgment as follows:-
1. A declaration that the Tribunal Award and the adoption of the same by the Kerugoya Magistrate’s Court without jurisdiction was ultra vires, unlawful, null and void.
  2. The cancellation of the plaintiff’s title deeds in respect of the suit land parcel No. Mutira/Kirunda/1476 & Mutira/Kirunda/1481 and the transfer of the same to the 1<sup>st</sup> & 2<sup>nd</sup> Defendants and the subsequent transfer to the 3<sup>rd</sup> & 4<sup>th</sup> Defendants was done illegally, unprocedurally and through a corrupt scheme.
  3. The Land Registrar, Kirinyaga County is hereby ordered to rectify the Register by cancelling the names of the 3<sup>rd</sup> and 4<sup>th</sup> defendants and substituting with that of the Plaintiff.
  4. A permanent injunction is hereby issued restraining the defendants either by themselves, their agents, servants, employees and/or personal representatives from interfering with the Plaintiff’s quiet possession, occupation, cultivation and enjoyment of the suit land parcel No. Mutira/Kirunda/1476 and Mutira/Kirunda/1481.
  5. The 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> defendants’ counter claim is hereby dismissed.



6. Each party to bear their own costs.

**JUDGMENT READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS  
13<sup>TH</sup> DAY OF MAY, 2022.**

.....

**HON. E.C. CHERONO**

**ELC JUDGE**

In the presence of:-

1. Ms Ndungu holding brief for Muriuki Muriithi for the Plaintiff
2. 1<sup>st</sup> Defendant—present
3. 2<sup>nd</sup> Defendant—present
4. Ms Wambui for the 3<sup>rd</sup> & 4<sup>th</sup> Defendants ---present
5. 5<sup>th</sup> Defendant----absent
6. Kabuta-----present.

