



**Ireri v Samwel (Environment & Land Case E015 of 2021)
[2025] KEELC 3340 (KLR) (7 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT & LAND CASE E015 OF 2021**

AK BOR, J

APRIL 7, 2025

BETWEEN

JOSEPH NDWIGA IRERI PLAINTIFF

AND

SIMON NJERU SAMWEL DEFENDANT

JUDGMENT

1. The Plaintiff's claim is that he purchased 0.2 hectares (ha) which was to be excised from Gaturi/Nembure/3413 (the suit land) from Samuel Njeru Kanambiu, who was the Defendant's father who later died before the transaction was concluded. He stated that he entered into a sale agreement with the late Samuel Njeru Kanambiu for the purchase of the suit land at the consideration of Kshs. 300,000/=. He only paid the sum of Kshs. 280,000/= towards the purchase price and unfortunately, the Defendant's father died before transferring the suit land to him. He averred that the Defendant had refused to transfer the suit land to him.
2. The Plaintiff produced the sale agreement dated 13/9/2012 which he entered with the late Samuel Kanambiu Njeru for the purchase of the suit land at the agreed sum Kshs. 300,000/=. In the agreement, the vendor acknowledged receipt of payment of Kshs. 280,000/= leaving a balance of Kshs. 20,000/= which according to clause 3 of the agreement, was to be paid after transfer of the suit land. The agreement was signed by both parties and witnessed by Samuel Muchangi Nyaga and Paul Ndwiga Kigamba.
3. The Plaintiff produced a copy of the mutation form for the land prepared by Paul Ndwiga Kigamba a surveyor who was called to give evidence. It was his testimony that he witnessed the purchase of the suit land and the payment of the purchase price to the vendor and that he surveyed the land, subdivided it and marked its boundaries. He stated that the Defendant was present when the land was being surveyed and did not raise any issues at the time. He added that the vendor could not transfer the suit land to the Plaintiff because the Defendant had placed a caution against the suit land.



4. The Plaintiff produced a letter from the Assistant Chief for Itonguri Sub-location confirming that the vendor died in the process of selling the suit land him. The Plaintiff produced a copy of the sale agreement which the Defendant entered into with Paul Muchangi Njiru on 17/9/2013, purporting to sell him the suit land in consideration of Kshs. 1,100,000/=. Clause 1 (a) of that agreement indicated that Kshs. 280,000/= was to be paid to the Plaintiff to offset an outstanding debt.
5. The Plaintiff also produced the letter from the Assistant County Commissioner, Manyatta directing the land registrar to restrict dealings with the suit land until further directions from his office or a court of law.
6. The Defendant's case was that he was the administrator of the estate of the late Samuel Kanambiu Njeru and that he was not aware that the Plaintiff had bought the suit land from his father. He acknowledged the agreement dated 17/9/2013 and that he signed it but disputed the clause on settling the Plaintiff's debt claiming it was included by mistake by the author of the agreement. He claimed that they sold the suit land to a third party because their father left them the suit land without mentioning that the Plaintiff bought the land from him. He produced the letters of administration to the estate of Samuel Kanambiu Njeru together with the certificate of confirmation of grant.
7. The issue for determination is whether the Plaintiff is entitled to a declaration that the suit land measuring $\frac{1}{2}$ an acre (0.20 ha) should be excised from Gaturi/Nembure 3413 and for that land to be registered in the Plaintiff's name. It is not in dispute that Samuel Njeru Kanambiu is the registered proprietor of the suit land.
8. The Plaintiff proved that he entered into a sale agreement with the late Samuel Njeru Kanambiu and paid him Kshs. 280,000/= towards the purchase price. The agreement was executed and witnessed and its validity was not questioned. The mutation form and the testimony of the surveyor corroborates the claim that the Defendant's father began the process of transferring the suit land to the Plaintiff as the land was identified, subdivided and the boundaries marked.
9. The sale agreement of 17/9/2013 further corroborates the Plaintiff's claim. Clause 1 (a) of the agreement which the Defendant entered into with Paul Muchangi Njiru on 17/9/2013 which indicated that Kshs. 280,000/= was to be paid to the Plaintiff confirms that the Defendant was well aware of the earlier transaction for the sale of the suit land between the Plaintiff and his late father. The Plaintiff is entitled to the orders sought.
10. A declaration is hereby issued that the Plaintiff is entitled to $\frac{1}{2}$ an acre (0.20 ha) to be excised from Gaturi/Nembure/3413. As the administrator of the estate of Samuel Njeru Kanambiu, the Defendant is directed to transfer the said portion of land to the Plaintiff within 60 days.
11. The Plaintiff will pay the balance of the purchase price of Kshs. 20,000/= to the Defendant within 14 days upon the transfer of the $\frac{1}{2}$ acre to his name.
12. Each party will bear its costs.

DELIVERED VIRTUALLY AT EMBU THIS 7TH DAY OF APRIL 2025.

K. BOR

JUDGE

In the presence of: -

No appearance for the Plaintiff

Simon Njeru Samwel- the Defendant



