



REPUBLIC OF KENYA



KENYA LAW
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**Bunyi v Lepaso & 3 others (Environment & Land Case 575 of 2017)
[2022] KEELC 3099 (KLR) (23 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3099 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 575 OF 2017
MN GICHERU, J
JUNE 23, 2022**

BETWEEN

GRACE WANGARI BUNYI PLAINTIFF

AND

MOSES KIRUTI LEPASO 1ST DEFENDANT

GRACE WAITHERA GICHUHI 2ND DEFENDANT

NG'ANG'A GIKONYO 3RD DEFENDANT

STEPHEN NJUGUNA KIMANI 4TH DEFENDANT

(FORMERLY NAIROBI ELC 1088 OF 2015)

JUDGMENT

1. Grace Wangari Bunyi, the plaintiff seeks the following reliefs against the defendants Moses Kiruti Lepaso, Grace Waithera Gichuhi and Stephen Njuguna Kimani_
 - a) Eviction order against the defendants from Land Reference Kajiado/kitengela/33576 and 33573.
 - b) Permanent injunction against the defendants restraining them from interfering with the suit parcels and the plaintiff's peaceful enjoyment and ownership of the property.
 - c) General damages for trespass.
 - d) Mense profits.
 - e) Costs of the suit and interest thereon.



f) Any other relief as the court may deem fit and just to grant.

2. The plaintiff case is as follows. She is the wife of Obadiah Kuira Mbunyi who is the registered owner of the suit land. The plaintiff's husband who is now deceased bought the land from the first defendant. He and other employees of Pan African Hotel like Bernard Mungai Gathimba, Samuel Ngigi Gituere, John Mburu Karuga and the husband to Lucy Wairimu Njogu had been approached by the first defendant who wished to sell 100 acres of his entitlement at Olooloitikoshi Kitengela Group Ranch. The land was sold for Ksh 700,000/= which the buyers paid. The whole land was registered in the names of the plaintiff and the first defendant. It was originally thought that the land which was Kajiado/Kitengela/1957 was 135 acres but the surveyor found out that it was 105 acres.

The first defendant purported to sell the land without the knowledge of the joint owner Obadiah Kuira. Due to the first defendant's fraud, the acreage that was bought by the Pan Africa Hotel Group reduced to 55 acres which they accepted, though reluctantly. Following this reduction in acreage, the land 1951 was subdivided into two parcels 12922 and 12923. Parcel No Kajiado/kitengela/12922 was subdivided as follows

Kajiado/kitengela/33568 George Muriaini Muhoro

Kajiado/kitengela/33569, Lucy Wairimu Njogu

Kajiado/kitengela/33570 Samuel Ngigi Gituere

Kajiado/kitengela/33571 Andrew Daniel Mbogo

Kajiado/kitengeal/33572 Bernard Mungai Gathimba

Kajiado/kitengela/33573 Obadiah Kuira Bunyi

Kajiado/kitengela/33574 John Mburu Karugu

Kajiado/kitengela/33575 Paul Gitunyo Githimbi

Kajiado/kitengela/33576 Obadiah Kuira Bunyi

The title deeds to the registered owners were issued on October 26, 2010 and this registration is not under challenge by any person. The defendants invaded the suit land in the year 2011 and trespassed thereon. The trespass continues to date and that is why the filing of the suit became necessary because the defendants did not heed a notice that demanded that they vacate the land.

In support of the plaintiff's case, the following documents were filed,

- a) Letter by Olooloitikoshi Kitengela Group Ranch dated 3/11/1988
- b) Copy of the sale agreement dated 11/11/1998
- c) Copy of payment schedule
- d) Copy of agreement dated 20/3/1989
- e) Copy of transfer of LR 1957 from the group ranch to the first defendant and Obadiah Kuira Bunyi
- f) Copy of title deed for LR 1957 in the names of the first defendant and the plaintiff's husband
- g) Copy of affidavit by the owners of the suit land indicating the acreage each person owns
- h) Copy of letter of consent from Purko Land Control Board dated 18/9/1989 authorizing the portioning of LR 1957



- i) Copy of application for consent of the land control board by the first defendant to transfer LR 12922 to the plaintiff husband
- j) Letter of consent for number (i) above
- k) Copy of transfer instrument for LR 12922
- l) Copy of title deed for LR 12922 in the name of the plaintiff's husband and dated 22/12/2003
- m) Copy of letter of consent dated 14/7/2004 authorising the subdivision of LR 12922 into eight portions.
- n) Copy of mutation form that created parcel's numbers 33568 to 33576
- o) Copy of title deed for LR 33576 in the name of the plaintiffs husband

3. The four defendants in a joint written statement of defence dated 28/2/2019 denied that the plaintiffs' husband is the lawful owner of LR 33576 and 33573. They aver that LR Kajiado/Kitengela/12922 is intact as its subdivision was reversed by the Rift Valley Land Dispute Tribunal on 22/2/2011 and this decision by the provincial body was adopted in Kajiado SRM's Case No69 of 2009.

Further to the above, there is ELC Case No 579 of 2017 involving Moses Kiruti Lempaso and another vs Grace Wangari Bunyi and 4 other which is pending before court. The second and third defendants add that they have a proprietary interest in LR Kajiado/Kitengela/1957 having purchased it from the first defendant. They have built a house on the suit land.

In addition to the defence, the defendants have a counterclaim in which they pray for the following orders

- (a) That a declaration be made to the effect that this matter was conclusively determined by the Provincial Land Disputes Tribunal as per the Kajiado SRM's adoption in Case No 69 of 2009.
- (b) That a vesting order applied in ELC Case No 579 of 2017 to apply to this suit
- (c) That the plaintiff and anybody claiming through her be permanently restrained by way of an order of injunction from dealing with LR Kajiado/Kitengela/1957 or subdivision
- (d) Damages for detinue
- (e) Costs of this suit and interest thereon
- (f) Any other and further relief the court may deem fit and just to grant in the circumstances.

In support of their defence, the defendants filed four witness statements which are similar in content. They say that they live on LR 1957 measuring 42.0 hectares and the suit parcels are purported subdivisions of the suit land. The plaintiffs' husband took advantage of the low level of literacy by the first and second defendants and corruption in the land registries to unlawfully take their land. The defendants did not file any documents to support this case.

4. At the trial on 9/12/2021, only the plaintiff turned up. The defendants did not come to court. Their advocate came and cross-examined the plaintiff who testified on oath. The defendant counsel adopted the defence evidence as per the record. The court allowed this and deemed the defence case as closed.



Though the defendants' counsel was to file her written submission by January 31, 2022, she did not do so. On 15/3/2022, the defendants counsel was given a further 60 days to file submissions but failed to do so.

5. I have carefully considered all the evidence on record including the witness statements, documents, testimony and the pleadings. I find that the following issues arise.
 - (i) What is the impact of ELC No 579 of 2017 on this case?
 - (ii) Does LR 1957 exist?
 - (iii) What was the decree in Kajiado SRM's case No 69 of 2009?
 - (iv) Who owns LR 33573?
 - (v) Has the plaintiff proved her case against the defendants to the required standard?
 6. On the second issue, I find that LR Kajiado/Kitengela/1957 does not exist. This is because it was partitioned after the Purko Land Control Board gave its consent on 14/11/1987. This was implemented and on 23/12/03 and it gave rise to LR 12922 and 12923. The defendants cannot therefore be living on a nonexistent land parcel.
 7. On the first issue, I find that the defendants have not proved the impact of ELC No 579 of 2017 to this case. This is because they did not file the pleadings of that case in this case or plead on its impact to this case. order 4 rule 1(f) of the *Civil Procedure Rules* provides as follows-
 - 1(1) The plaint shall contain the following particulars-
 - (f) an averment that there is no other suit pending, and that there have no previous proceedings, in any court between the plaintiff and the defendant over the same subject matters and that the cause of action relates to the plaintiff named in the plaint'
- From the case number, it would seem that case number 579 of 2017 was filed after this case. If that is the case, why did the defendants not disclose that there was a parallel suit over the same subject matter and between the same parties? Why did they not seek to consolidate it with this suit? It was upon them to do this and they failed in their duty.
8. On the third issue, I find that the decree in Kajiado SRM's Case No 69 of 2009 is unknown. It was the duty of the defendants to plead it and to disclose. The burden was on them and they did not discharge it.
 9. On the fourth issue of who owns LR 33573, I find that it is not proved that the plaintiff owns it for two reasons. Firstly, no copy of title deed for that parcel was filed by the plaintiff. It is not one of the plaintiffs' documents. The only copy of title deed that was filed was for LR 33576. Secondly, the consent issued by Purko Land Control Board dated July 14, 2004 was for subdivision of LR 12922 into eight portions of 20 acres (one), 5 acres (five) and 2.5 acres (two). The emergence of nine instead of eight portions is not explained.
 10. On the fifth and final issue, I find that the plaintiff has proved her case against the defendants on a balance of probabilities. Firstly, the plaintiff has proved that there was a valid agreement for sale of the suit land between her husband and the first defendant. Secondly, this agreement was registered by the group ranch that issued a joint title deed to the plaintiff's husband and the first defendant.



Thirdly, the plaintiff has proved that her husband and other purchasers paid the required consideration. Fourthly, the plaintiff has proved that all the requisite procedures in acquiring the title deed to LR 33576 were complied with.

Fifthly, the plaintiff has proved that they took possession of the suit land by fencing and asserting the rights of a registered owner.

Sections 24 and 25 of the [Land Registration Act](#) confer on the registered owner rights and privileges belonging and appurtenant to such ownership. The defendants have not adduced any evidence to prove that they enjoy any interest that can defeat or override the plaintiff's rights envisaged under sections 24 and 25 of the [Land Registration Act](#).

11. For the above stated reasons, I enter judgement for the plaintiff against the defendants as prayed for in paragraph 7(a), (b) and (e) of the plaint dated October 22, 2015 in respect to only LR 33576 only. I dismiss the defendants' counterclaim with costs for reasons already given.

Further Order

12. This judgment will apply to civil case no 574 of 2017 between Samuel Ngigi Gituere and Boniface Karogo, *mutatis mutandis*, because the facts of the two cases are the same.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23RD DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

HON. JUSTICE M.N. GICHERU JUDGMENT ELC NO. 575/2017 4

