



**Mwaniki & 3 others v Mwaniki (Environment & Land Case
60 of 2017) [2022] KEELC 4920 (KLR) (16 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 4920 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 60 OF 2017**

**L WAITHAKA, J
JUNE 16, 2022**

BETWEEN

**LUDIA WANGARI MWANIKI 1ST PLAINTIFF
FREDRICK NDIANGU'UI MWANIKI 2ND PLAINTIFF
JASON NDUMIA MWANIKI 3RD PLAINTIFF
GODFREY NDIRITU MWANI 4TH PLAINTIFF**

AND

ALICE WANJIKU MWANIKI DEFENDANT

JUDGMENT

Introduction

1. By a plaint dated March 27, 2017 and filed on April 6, 2017, the 1st to 4th plaintiffs herein instituted this suit seeking an order to compel the defendant to vacate all premises on the parcel of land known as Thegenge/Gathuthi/223 hereinafter referred to as the (suit land), failing which she be forcibly evicted therefrom. The plaintiffs also seek an order of injunction to restrain the defendant from entering upon, remaining or using the premises built by them in the suit land.
2. The suit is premised on the grounds that the defendant was authorized by the plaintiffs to live in one of the premises constructed by them in the suit land; that owing to the defendant's bad behavior, the plaintiffs withdrew the licence they granted the defendant to live in the premises and that despite having been required by the plaintiffs to vacate the premise, the defendant has refused to vacate rendering this suit inevitable.
3. The actions of the defendant complained of by the plaintiffs are listed in paragraph 8 of the plaint thus:-



- i. Being rude and quarelsome to the plaintiffs and in particular to the 1st plaintiff who is the defendant's mother;
 - ii. Sexual immorality (bringing many men to the suit premises);
 - iii. Partaking in incessant fights with the men she brings to the premises;
 - iv. Attacking the 1st plaintiff's workers/servants; and
 - v. Attempting to kill the 1st plaintiff.
4. The alleged bad behaviour and character of the defendant is said to have caused the 1st plaintiff, who has terminal medical conditions, a lot of stress.
 5. Through her statement of defence filed on May 11, 2017, the defendant denied the allegations levelled against her and denied that the premise she occupies was built by the plaintiffs.
 6. According to the defendant, the premise she occupies was built by her late father, Mwaniki Waikunu.
 7. The defendant denies the plaintiff's contention that her entry into the suit premise was with the permission of the plaintiffs and contends that the plaintiffs are not the owners of the suit land as it belongs to the estate of their grandfather, Waikunu Gichuki, which estate has not been administered.
 8. Based on her assertion that the premise she occupies was built by her father, Mwaniki Waikunu (deceased), the defendant contends that the 2nd to 4th plaintiffs, who are her siblings, have no right to require her to vacate the suit premise.
 9. Concerning the alleged bad character and conduct attributed to her, besides denying the allegations levelled against her, the defendant states that the 2nd to 4th plaintiffs have ganged up against her and influenced the 1st plaintiff, to eject her out of the suit premise.
 10. Terming the suit herein a scheme by the 2nd to 4th plaintiff to eject her from the suit premise and from the suit land for their own selfish interest, the defendant, who claims she has no other place to call home, urges the court to dismiss the plaintiff's suit with costs.

Evidence

The plaintiff's case.

11. When the suit came up for hearing, the 1st plaintiff, informed the court that the defendant is her daughter and she was married but left her husband.
12. The 1st plaintiff told the court that she allowed the defendant to live in her home but the defendant does not respect her.
13. The 1st plaintiff lamented that the defendant brings different men to her home and has caused wastage by cutting down her trees.
14. In cross examination, the 1st plaintiff acknowledged that the suit land is registered in the name of her husband's father but terms the assertion by the defendant that the suit premises were built by her father false.
15. The 1st plaintiff told the court that the suit premises were built by her. She however, admitted that her husband financed part of the project.



16. Maintaining that the defendant brings men to the suit premises, the 1st plaintiff denied the defendant's contention that she, the 1st plaintiff, has an obligation to give her (1st defendant) a place to built on because the suit land belongs to her grandfather.
17. Terming the defendant an adult who can move out and go feed herself, the 1st plaintiff urged the court to grant her the reliefs sought in the plaint.

The Defendants' case.

18. The defendant relied on her statement filed on May 10, 2017 after the same was adopted as her evidence in chief.
19. In cross examination, the defendant maintained that she lives in a house built by her father.
20. The defendant informed the court that there are two houses in the compound, both of which were built by her father.
21. The defendant told the court that the main house, the kitchen and the small house where she lives were all built by her father.
22. Concerning the allegation that she brings men in the suit premises, the defendant stated that she has four children and grandchildren and can therefore, not do such a thing.
23. The defendant admitted that they have had a long standing dispute and that at one time the dispute was reported to the police station. She acknowledged that the dispute was over a fight and that her brother came and asked her to live their home.
24. The court heard that the defendant left her matrimonial home a long time ago and that she lived peacefully with her mother (1st plaintiff), until her children started getting children of their own, when her brothers started asking her to leave.
25. DW 2 Felista Wanjiku Gitonga, relied on her statement recorded and signed on November 24, 2017 after it was adopted as her evidence in chief.
26. In cross examination, she stated that she is a cousin to the defendant and that she is aware of the dispute between the defendant and her family. She informed the court that the dispute between the plaintiffs and the defendant is that the plaintiffs want the defendant to leave their home.
27. At close of hearing, the parties filed submissions.

Submissions.

The plaintiffs submissions.

28. In the submissions filed on behalf of the plaintiffs, a brief background of the case is given and stated that the plaintiffs have no issue with the defendant occupying the suit land but their problem is her occupation of the premises built by the plaintiffs in the suit land.
29. It is further stated that the plaintiffs have no problem with the defendant building her own house in the suit land, away from the 1st plaintiff to ensure she has peace.
30. Terming their evidence uncontroverted, the plaintiffs urged the court to allow the suit as prayed.
31. In her submissions, the defendant states that the plaintiffs should not have sued her because she is one of them, a family member; that the 1st plaintiff who is her mother, has not given good grounds for



sidelining her and chasing her from their home. Further, that the suit land belongs to the estate of her grandfather, Waikunu Gichuki, which estate has never been administered.

32. Asserting that the plaintiffs have no genuine claim against her because the suit land does not belong to them, the defendant submits that she is entitled to a share of her grandfather's estate.
33. Explaining that she is unmarried and does not have any other place to go with her children, the defendant urges the court to allow her to continue occupying the premises she occupies without interference from the plaintiffs.

Analysis and Determination

34. This is one of those unfortunate cases where family disputes escalate to court. The 1st plaintiff in this matter is the blood mother to the defendant while the 2nd to 4th plaintiffs are blood brothers to the defendant.
35. The dispute herein relates to the parcel of land known as Thegenge/Gathuthi/223, which belongs to the estate of Waikunu Gichuki. From the evidence adduced in this case, the estate has not been succeeded to as by law required. It is however, admitted or not in dispute that the plaintiffs and the defendant are the beneficial owners of the estate.
36. From the pleadings filed in this case and the evidence adduced in respect thereof, I gather that the 1st plaintiff and the defendant live in premises (houses) erected in the suit land.
37. The evidence shows that the 1st plaintiff and the defendant occupy different premises/houses in the suit land.
38. On account of differences between the plaintiffs and the defendant, the plaintiffs want the defendant and her family to vacate the premise/house she occupies, failing which she would be forcibly evicted. Beside the differences, the plaintiffs want the defendant to leave the premise/house she occupies because it was built by them and that she occupied it with their permission, which permission they have since withdrawn.
39. The defendant has in her pleadings and evidence, denied that the premise she occupies was built by the plaintiffs. According to her, the premise she occupies was built by her father and not the plaintiffs.
40. In her testimony, the 1st plaintiff deviated from the averment contained in the plaint to the effect that the premises occupied by the defendant was built by the 2nd to the 4th plaintiffs by stating that the premises in the suit land were built by herself but part of the project money came from her husband.
41. In view of the foregoing, I am of the considered view that the plaintiffs did not proof to the required standard that the premise where the defendant lives was built by them and not the defendant's father as claimed by the defendant. However, I hasten to point out that the mere fact that the premises were built by the defendant's father does not mean that she was the intended beneficiary. No evidence was led capable of showing that the defendant was the intended beneficiary.
42. On account of the evidence adduced in this case to the effect that the defendant was married and only returned to her mother's home after she encountered problems in her marriage, I have no difficulty finding that her entry into the suit premises must have been with the permission of the 1st plaintiff and her family.
43. Having entered the premises, albeit with the permission of her family members and stayed there for a long period of time, I do find that the defendant and her family have a legitimate expectation that the plaintiffs would not eject them therefrom without sufficient reason.



44. The plaintiffs have given the reason for their decision to eject the defendant and her family as the defendant's bad behaviour and character. The behaviour is said to be affecting the 1st plaintiff's health and wellbeing. That reason/ground is contested by the defendant who calls it a scheme by her siblings to eject her and her family members from the premises she occupies and by extension the suit land.
45. I have carefully considered the allegations made against the defendant and the evidence adduced in respect thereof. The evidence, especially the admission by the defendant that there were disputes between herself and the 1st plaintiff, proves that indeed there have been disputes between the plaintiffs and the defendant. However, no evidence was presented before the court to show what the dispute was and whether the defendant was the one to blame for those disputes. On account of the foregoing, I am unable to find that the plaintiffs have proved the serious allegations levelled against the defendant and which allegations form the desire to eject the defendant from the suit premises.
46. I have taken into account the submissions of the plaintiffs to the effect that they have no problem with the defendant being allowed to live in the suit land but far away from the premises occupied by the 1st plaintiff; my view of this proposal is that it may cause difficulty to the defendant as the suit land is yet to be succeeded so as to determine who is entitled to it and what their entitlements, if any, are.
47. In the peculiar circumstances of this case, I am of the considered view that justice will be met by maintenance of status quo pending filing and prosecution of succession proceedings in respect of the estate of Waikunu Gichuki, deceased.
48. Despite having found the evidence adduced insufficient to warrant issuance of the orders sought, I nevertheless find the allegations leveled against the defendant serious as they have the capacity of impacting negatively not only on the health of her aged mother but on the welfare of her own children and the society at large. Without condemning the defendant on the basis of those allegations as they have not been proved to the required standard of proof, this court warns the defendant that it would not hesitate to vary the order issued herein, if the plaintiffs move it for variation of the order of maintenance of *status quo*.
49. For avoidance of doubt the *status quo* to be maintained is that of quiet, peace and uninterrupted occupation of the premises currently occupied by the defendant and her mother. That state of affairs cannot be achieved when the defendant is doing the things she is accused to have been doing.
50. The parties to this suit are advised to immediately petition for a grant of representation in respect of the estate of Waikunu Gichuki (deceased), as their continued use of it when it has not been administered as by law required is unlawful.
51. For the foregoing reasons, I find the suit herein to be lacking in merits and dismiss it.
52. As the dispute herein is between close family members parties shall bear their own costs of the suit.
53. Orders accordingly.

DATED AND SIGNED AT ITEN THIS DAY OF 2022.

L. N. WAITHAKA

JUDGE

READ, SIGNED AND DELIVERED AT NYERI THIS 16TH DAY OF JUNE, 2022.

J. O OLOLA

JUDGE

