



Kawangware Green Harambee Group v Kuraru & 2 others (Environment & Land Case 894 of 2017) [2022] KEELC 2307 (KLR) (16 June 2022) (Judgment)

Neutral citation: [2022] KEELC 2307 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 894 OF 2017
MN GICHERU, J
JUNE 16, 2022**

BETWEEN

KAWANGWARE GREEN HARAMBEE GROUP PLAINTIFF

AND

ESTATE OF KIPAREN OLE KURARU 1ST DEFENDANT

WILLIAM SEIKURU 2ND DEFENDANT

JOSEPH KIPAREN 3RD DEFENDANT

JUDGMENT

1. Kawangware Green Harambee Group, the Plaintiff, seek the following reliefs against the Estate of Kiparen Ole Kuraru, first Defendant, William Seikuru, second Defendant and Joseph Kiparen, third defendant;
 - (a) A declaration that the Plaintiff is the absolute and legal proprietor of land reference number Kajiado/Ntashart/462 (suit land), situated within Kajiado County as surveyed and boundaries as identified by the Land Registrar and the District Surveyor, Kajiado North/Central District.
 - (b) A declaration that the Defendants by themselves, their servants, principals and or agents or any other person acting on their behalf or claiming under them are trespassers on the suit land.
 - (c) A permanent injunction to issue restraining the Defendants or anybody claiming through them from entering or in any manner dealing with the suit land.
 - (d) Damages for trespass.
 - (e) Special damages
 - (f) Any other relief that the Court may deem fit.



(g) Costs of this suit.

This is as per the plaint dated 6th November, 2014.

2. The Plaintiff's case is as follows. The Plaintiff is an organization registered with the department of social services. They are the registered owners of the suit land. They acquired the land through purchase from Kiparen Ole Kuraru in the year 1985 at a total consideration of Kshs. 200,000/-.

The necessary consent from the Land Control Board was obtained. All other procedures necessary for the acquisition of the title to the suit were followed. The Plaintiff occupied the land.

In May 2013, the Plaintiff sent their surveyor, Mr. Kimwere, to resurvey the land for the purpose of subdivision among its members. It is then that the second and third Defendants descended on the suit land and chased away the surveyor from the land.

Since then, the Plaintiff has tried to settle the dispute with the Defendants through the office of the local administration to no avail. This hostility has made the filing of the suit necessary.

3. In support of the case, the Plaintiff has filed the following;

- (i) Witness statement by Veronica Mukami.
- (ii) Copy of land certificate for the suit land dated 29/4/1985.
- (iii) Copy of application for consent of Land Control Board dated 4/2/1985.
- (iv) Copy of letter of consent dated 5/2/1985.
- (v) Copy of transfer of land instrument dated 9/4/1985.
- (vi) Copy of application for registration dated 9/4/1985.
- (vii) Copy of request for payment of transfer fees of Kshs. 125 dated 29/4/1985.
- (viii) Copy of application for consent for subdivision of L.R. KAJIADO/NTASHART/462.
- (ix) Copy of letter of consent dated 6/2/1992.
- (x) Copy of letter dated 5/5/2003 talking of boundary dispute between parcels numbers KAJIADO/NTASHART/462 by the secretary of the Plaintiff.
- (xi) Copy of letter by District Surveyor dated 23/4/2004 on boundary dispute between parcels numbers KAJIADO/NTASHART/50 and 281.
- (xii) Copy of letter by the chief Ntashart location dated 25/5/2004 over the same dispute in (xi) above.
- (xiii) More correspondence over the same dispute and copies of receipts to show that official fees was paid.
- (xiv) 5 copies of certificates of official search dated from 1985 to the year 2014 showing the Plaintiff as the registered proprietor of the suit land.
- (xv) Copy of certificate of registration of the Plaintiff as a self –help group dated 25/2/1985.
- (xvi) Copy of the mutation from that created the suit land together with parcels number 461 and 463.
- (xvii) Copy of letter dated 11/9/2013 requesting for security while visiting the suit property.



4. The Defendants through their counsel on record filed a written statement of defence and counterclaim dated 16/12/2014. In the defence, they deny having sold the suit land to the Plaintiff. They aver that Plaintiff's members approached them in the year 1984 wishing to buy 100 acres of land.

The consideration was Kshs. 400,000/=. The Plaintiff made a deposit of Kshs. 200,000/=. The Defendants gave them the title deed to go and show their members. They left for good and never came back to complete the transaction.

In addition to the above, the Defendants deny having executed any document like land control board consent and transfer of land instrument. They allege fraud on the part of the Plaintiffs in obtaining registration of the suit land.

In the counterclaim, the Defendants pray for the following orders;

- (a) A declaration that the suit land number Kajiado/Ntashart/462 within Kajiado County solely and legally belongs to the first Defendant.
- (b) An order that the register of the suit land be rectified by cancellation of entry registering the Plaintiff as proprietor of the said land and substituting them with the 1st defendant as the sole proprietor of the said property measuring 40.47 hectares.
- (c) Costs of the suit and counterclaim.
- (d) Any other relief the Honourable Court may deem fit to grant.

In support of their case the Defendants filed witness statement by the first Defendant which is undated but was filed on 17/12/2014.

5. At the trial on 15/10/2021, Salome Wanjui Mwangi testified on behalf of the Plaintiff while the third Defendant testified on behalf of the Defendants.
6. Counsel for the Defendants filed written submission on 22/2/2022 while that of the Plaintiff filed his on 21/3/2022.

The issues raised in the submissions are as follows;

- (i) Whether the Plaintiff was a bonafide purchaser.
- (ii) Whether the principles of unreasonable delay and legitimate expectation apply in the contract for the sale of land.
- (iii) Whether the Plaintiff is entitled to the reliefs sought.
- (iv) Whether the Plaintiffs suit should be struck out for insufficient cause.
- (v) Whether the Plaintiff fraudulently acquired title to the suit land.
- (vi) Damages for trespass.
- (vii) Costs.

7. I have carefully considered all the evidence adduced by the parties in this case including the witness statements, documents and the testimony at the trial.

I agree with the learned counsel that the issues as identified by them above will determine the dispute.

On the first issue, I find that the Plaintiff is a bona fide purchaser, if I may use that phrase the way it has been used.



The Plaintiff has proved by oral and documentary evidence that it bought the land from the late Kiparen Ole Kuraru and occupied it during his lifetime. There was no dispute to begin with. The only dispute related to the boundary.

The procedure of obtaining the consent of the land control board, transfer of the land and payment of requisite changes was followed.

The Defendants have alleged that there was fraud and that the consent was not obtained procedurally. They have not however proved this. The burden of proving fraud was on them. Section 108 of the Evidence Act provides;

“The burden of proof in a suit or proceedings lies on that person who would fail if no evidence at all were given on either side”.

In this case, it was the Defendants to fail if no evidence was given to prove fraud. No evidence was adduced in this regard. It is therefore the Defendants who fail in this regard. They ought to have called evidence of say, a documents examiner to prove that the thumbprint on the application for consent and on the instrument of transfer of land is not that of the first Defendant.

On the second issue of unreasonable delay and legitimate expectation, I find that this would have only been applicable if one were to believe the Defendants evidence that the transaction was incomplete.

I find, however, that the transaction was complete and that is why the Plaintiffs were issued with the title deed.

On the third issue, I find that the Plaintiff is entitled to the reliefs sought because there is sufficient evidence to prove that they purchased the suit land lawfully.

On the fourth issue, I find that the Plaintiffs suit discloses a good cause of action.

On the fifth issue, I find that the Plaintiff did not fraudulently acquire the title to the suit.

On the sixth issue, I find that the issue of damages for trespass has not been well proved either by oral or documentary evidence.

Finally on costs, I find that they should follow the event and they should be awarded to the Plaintiff.

The parties left out the issue of the counterclaim which I found not proved at all for the reasons stated in determining the first issue above.

In summary, I enter judgment for the Plaintiff as prayed for in the paragraphs 37(a), (b), (c) and (g) of the plaint dated 6th November, 2014.

I dismiss the counterclaim dated 16th December, 2014 with costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

