



**Mati (Suing as the Legal Representative of the Estate of Thiaka
Kamau - Deceased) v Gichuki & 2 others (Environment & Land Case
740 of 2013) [2022] KEELC 15685 (KLR) (22 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 15685 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 740 OF 2013**

EC CHERONO, J

JULY 22, 2022

BETWEEN

**PENINA MUTHONI MATI (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THIAKA KAMAU - DECEASED) PLAINTIFF**

AND

MOSES MURIITHI GICHUKI 1ST DEFENDANT

JOHN P. KARANJA MWANGI 2ND DEFENDANT

JAMES JOE NYAMU MURIITHI 3RD DEFENDANT

JUDGMENT

1. The plaintiff commenced this suit vide a plaint dated October 5, 2006 and Amended and filed on December 20, 2012 seeking the following orders;
 - i. That the Registrar Kirinyaga District be ordered to cancel land subdivision, transfer and registration of Title deeds issued to land parcel Numbers Kabare/Mikarara/725, 726 and 727 registered in the names of the Defendants herein and the same be registered in the names of Penina Muthoni Mati, the plaintiff herein since the said registration was obtained fraudulently.
 - ii. That consequently the court be pleased to issue a permanent injunction restraining the Defendants, their agent, servant and or other person from selling, alienating and dealing in any way with land Kabare/Mikarara/725, 726 and 727 until the hearing and final determination of this suit.
 - iii. This Honourable Court be pleased to issue a declaration that the proceedings/orders arising from Kerugoya SPMCC NO. 168 of 1992 are irregular and not



valid for all purposes and consequently thereto the said file be forwarded to the High Court to be incorporated in this matter.

- iv. Cost of this suit.
 - v. Any other further relief for Honourable Court may deem fit to grant.
2. The 1st and 2nd defendants filed their Amended statement of defence dated 12/07/2012 on 17/07/2012 while the 3rd defendant filed his Amended defence on 18/07/2012. The parties thereafter filed their compliance documents pursuant to Order 3, 7, and 11 of the [Civil Procedure Rules](#).

Plaintiff's Summary of Facts

3. The plaintiff testified on oath on 11/11/2019 and stated that Thiaka Kamau (deceased) was her elder brother and the registered owner of land parcel No. Kabare/Mikarara/354 which was later subdivided into three resultant parcels being L.R NO. Kabare/Mikarara/725, 726 and 727 respectively. The plaintiff further testified that after the demise of her brother Thiaka Kamau, she had commenced succession proceedings to administer his estate in Kerugoya Succession Cause No. 112 of 2006 after checking and confirming that the suit land parcel NO. Kabare/Mikarara/354 was indeed registered in the name of Thiaka Kamau (deceased). She stated that while she was waiting for the Grant to be issued, she was told that the suit land had been sold to three people, one of them being John Karanja, the 2nd defendant herein whom she used to see at Kutus Township. She stated that her brother Thiaka Kamau died in 2004 and that the manner under which the suit property was transferred to the defendants was fraudulent. She was referred to her witness statement dated 30/10/2013 which she adopted in her evidence. She also referred to her list of documents containing 14 items dated the same day which she also produced as plaintiff Exhibits No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 respectively.

1st & 2nd Defendants Summary of Facts

4. Moses Muriithi Gichuki, the 1st defendant herein gave sworn testimony on 02/02/2021. He was referred his witness statement dated 21/12/2018 which he adopted in his testimony. He was also shown a list of documents containing six (6) items dated 11/11/2013, which he produced as D-Exhibit No. 1, 2, 3, 4, 5, and 6 respectively. According to the 1st defendant, they filed a case at Kerugoya SRMCC No. 168 of 1992 and on May 29, 2002, a consent order was recorded in the presence of the late Thiaka Kamau for transfer of the parcel of land to the them. He further stated that before they purchased the suit land, he used to see the registered owner Thiaka Kamau (deceased) in the suit land alone and that the plaintiff has never lived in the suit land. He stated that after they purchased the land, the said Thiaka Kamau took them in circles and they decided to sue him in court. They thereafter subdivided the land into three resultant parcels being L.R NO. Kabare/Mikarara/725, 726 and 727. He stated that land parcel NO. Kabare/mikarara/725 went to John P. Karanja Mwangi, L.R NO. Kabare/Mikarara/727 was taken by Joe Nyamu Muriithi while parcel No. Kabare/Mikarara/726 was taken by him. He said that after he got his portion, he sold it to Joseph Gachoki Gitari.

3rd Defendant's Summary of Facts

5. The 3rd defendant called one Beatrice Wamwiru Gutu who testified on oath and stated that James Joe Nyamu Muriithi was her brother and that he lives in the United States of America and gave her a Power of Attorney on 01/07/2015 to represent him in this case. She stated that she was aware that his brother bought land from one Thiaka Kamau on 16/10/1985. She produced as sale Agreement as D-Exhibit No. 1. The witness confirmed that his brother filed a suit being Kerugoya CMCC No. 168 of 1992. She also confirmed that Thiaka Kamau passed away in the year 2004.



Analysis and decision

6. I have considered the pleadings, sworn testimony by the parties and the witnesses. I have also considered the documents produced in evidence and the rival submissions. From the pleadings and the evidence adduced by the parties, the following are the issues that comment for determination;
 1. Whether the sub-division of land parcel NO. Kabare/Mikarara/354 into land parcel NO. Kabare/Mikarara/725, 726 and 727 and subsequent transfer and registration in favour of the Defendants was shrouded with any fraud, misrepresentation, unprocedural illegality or corrupt scheme?
 2. What are the appropriate orders to issue?
 3. Who is liable to pay the costs of this suit?

Whether the sub-division of land parcel No. Kabare/Mikarara/354 into land parcel No. Kabare/Mikarara/725, 726 and 727 and subsequent transfer and registration in favour of the defendants was shrouded with fraud, misrepresentation, unprocedural illegality or corrupt scheme?

7. The plaintiff in this case is challenging the acquisition of title deeds in respect of the suit land parcel No. Kabare/Mikarara/725, 726 and 727. In paragraph 9 of her Amended Plaintiff, the plaintiff has set out four (4) particulars of fraud and/or misrepresentation on the part of the defendants as follows;
 - a. Causing the subdivision, transfer and registration without the authority of the registered owner who had long died at the time of this transaction of transfer and or any dealings relevant thereto.
 - b. Irregularly and unlawfully dealing with the land in question and without the knowledge of the heirs entitled to the same being the estate of the deceased.
 - c. Causing and procuring and or conducting irregular proceedings vide Kerugoya SPMCC 168 of 1992 knowingly and notwithstanding having prior knowledge of the death of the plaintiff in that matter.
 - d. That conducting subsequent proceedings vide Kerugoya SPMCC No. 168 of 1992 knowingly without having fulfilled the conditions set for any claim against the deceased or his legal representative and upon which issue no judgment stands in favour of the 1st and 2nd defendants accordingly.
8. Fraud is not only actionable in law but is also a criminal offence punishable by imprisonment. The plaintiff is accusing the defendants for causing the subdivision, transfer and registration of the resultant parcels without authority from the owner who had long died. The plaintiff produced documents and marked as P-Exhibit No. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, & 14 respectively. P-Exhibit No. 5 is a death certificate of Thiaka Kamau who is the late brother to the plaintiff. The death certificate shows that the said Thiaka Kamau died on January 3, 2004. P-Exhibit No. 1 is a copy of mutation form dated 9/7/2002. Attached to the mutation form are copies of sketch or development plan prepared and signed by a District licensed Surveyor whose name is not legible. The mutation form is also signed by proprietor, Thiaka Kamau. The District Surveyor who witnessed the proprietor signing the mutation form was not called to either accept or deny that the proprietor, Thiaka Kamau did not sign the same. The plaintiff did not also present the known signature of the proprietor, Thiaka Kamau and



the disputed specimen signature to a document examiner for examination and analysis to determine whether the signatures were signed by the proprietor, Thiaka Kamau or not.

9. The other documents produced by the plaintiff in support of this suit are copies of proceedings in Kerugoya SPMCC NO. 168 of 1992 as well as correspondences exchanged among and between various persons of interest in the suit properties. Those correspondences were done during the lifetime of Thiaka Kamau.
10. The plaintiff also relied upon copies of court proceedings in Kerugoya SPMCC NO. 168 of 1992. From those proceedings, it is clear that the suit was lodged by one James Joel Muriithi against Thiaka Kamau in the year 1992. It also shows that on 13/01/2004, an application dated 28/11/2003 came up for hearing before Hon. Gitari, P.M. The application was stood over generally as the application was not served. On 11/02/2004, the same application was fixed for hearing on 19/03/2004. On 3/3/2004, the counsel for Thiaka Kamau took a hearing for an application dated 25/11/2003 on 29/4/2004. On the said 29/4/2004, counsel for Thiaka Kamau informed the trial court that their client, Thiaka Kamau had died and sought for more time to substitute. On 08/08/2005, some documents purported to be application for consent of land board forms plus transfer forms for land parcel NO. Kabare/Mikarara/727 signed the same date as per Court order allegedly dated 2/10/2003 was presented before the Court Executive Officer for signing. On 6/9/2005, similar documents were also presented before the court's Executive Officer for signing in respect of LR No. Kabare/Mikarara/725. On 20/4/2006, an application for consent of land parcel Kabare/mikarara/726 signed the same date on 20/4/2006 as per court order was also presented for signing before the court's Executive Officer. On 24/4/2006, transfer of land parcel Kabare/Mikarara was signed and the transfer of land parcel No. Kabare/Mikarara/726 was signed on 3/5/2006.
11. The counsel for the 1st and 2nd defendants has made a faint argument that though the proprietor Thiaka Kamau had died on 3/1/2004, there were already orders in place and which did not require anything to be done by the said Thiaka Kamau, or required his presence. The land Registrar and the court's Executive Officer had been authorized on what to do.
12. On 29/5/2002, the trial Magistrate in the said case PMCC NO. 168 of 1992, made the following orders;
 1. The respondent to transfer the land parcel to Moses Muriithi Gichuki and John P. Karanja Mwangi.
 2. The transfer to Mr. James Joe Nyamu Muriithi to be held subject to compliance to the land Sale Agreement dated 16th day of October, 1985
 3. MR. John P. Karanja Mwangi to pay KSHS. 5,100/= to respondent on or before 30th day of May, 2002.
13. On October 2, 2002, the trial court issued further orders as follows;
 1. That the District Land Registrar, Kirinyaga is authorized to dispense with production of old Title Deed in respect of L.R No. Kabare/Mikarara/354
 2. That the Executive Officer of this honourable court is authorized to sign all relevant documents to effect sub-division and transfer of L.R No. Kabare/Mikarara/354.
 3. That the O.C.S Kianyaga Police Station is Ordered to provide Security during sub-division exercise.



4. That the costs of the application are provided for.
14. Those orders issued subsequently on 2/10/2002 were not enforced until 8/8/2005, 6/9/2005, 20/4/2006, 24/4/2006 and 3/5/2006 respectively, after the death of the proprietor, Thiaka Kamau.
15. Where a party in a suit dies, the proceedings in the case are stayed pending the substitution of the party who has died or further orders of the court. When Mr. Magee advocate for Thiaka Kamau (deceased) informed the trial court on 29/4/2004 that his client had died, the court Learned Magistrate ordered the matter be stood over generally pending substitution. However, the trial Magistrate continued with proceedings on 20/8/2004, 26/8/2004, 8/8/2005, 6/9/2005, 20/4/2006, 24/4/2006, 3/5/2006, 18/9/2006, and 25/9/2006. Those orders issued against the Estate of Thiaka Kamau in respect of L.R. No. Kabare/Mikarara/354 are null and void to the extent that no substitution had been done. The arguments by Counsel for the 1st and 2nd defendants that there were already orders in place which did not require anything to be done by the said Thiaka Kamau (deceased) or his presence required is untenable otherwise they need not have gone back to court after his demise. In my view, proceedings and the orders issued by the trial court after the demise of Thiaka Kamau which are Adverse to his Estate particularly the suit land L.R NO. Kabare/Mikarara/354, now sub-divided into land L.R NO. Kabare/Mikarara/725, 726 and 727 are of no legal effect. I find that the subdivision of land L.R No. Kabare/Mikarara/354, now subdivided into land L.R Kabare/Mikarara/725, 726 and 727 was done illegally, unprocedurally and through a corrupt scheme and are out for rectification.

Final Orders

16. From the entirety of my analysis, I find that the plaintiff has proved her claim against the defendants to the required standard. I therefore enter judgment for the plaintiff against the defendants jointly and severally as follows;
 1. A Declaration that the subdivision of land parcel NO. Kabare/Mikarara/354 into resultant parcels NO. Kabare/Mikarara/725, 726 and 727 and the subsequent transfer and registration in favour of the Defendants was obtained illegally, unprocedurally and through a corrupt scheme and are liable for cancellation.
 2. The Land Registrar, Kirinyaga County is hereby ordered to rectify the Register by cancelling the names of the defendants and substituting with that of the plaintiff as proprietor.
 3. The defendant to surrender to the Land Registrar Kirinyaga County the Original Title deeds and execute all relevant statutory documents within 60 days for effective transfer and registration of the suit parcels of land in favour of the plaintiff failing which the Land Registrar is ordered to dispense with the same and proceed to register the plaintiff as proprietor notwithstanding.
 4. The defendants are ordered to vacate from the suit land parcel No. Kabare/Mikarara/354, now subdivided into land parcel No. Kabare/Mikarara/725, 726 and 727 within 30 days from today failing which they shall be evicted.
 5. A permanent injunction is hereby issued restraining the Defendants either by themselves, servants, agents or any persons acting on their behalf from selling, alienating, and dealing in any other way land parcel No. Kabare/Mikarara/354, now subdivided into L.R No. Kabare/mikarara/725, 726 and 727.



6. The costs of this suit shall be borne by the defendants jointly and severally.

**JUDGMENT READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS
22ND JULY, 2022.**

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HON. E.C. CHERONO

ELC JUDGE

