



**Karuru v Wambui (Environment & Land Case 47 of 2017)
[2022] KEELC 12739 (KLR) (28 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12739 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 47 OF 2017
JO OLOLA, J
SEPTEMBER 28, 2022**

BETWEEN

MARY WAMUYU KARURU PLAINTIFF

AND

MARGARET WAMBUI DEFENDANT

JUDGMENT

Background

1. By the plaint dated and filed herein on March 22, 2017, Mary Wammuyu Karuru (the plaintiff) prays for judgment against Margaret Wambui (the defendant) for:
 - (a) A declaration to issue that the plaintiff is the rightful and legal owner of all that parcel of land known as Gikondi/Kiirungi/288;
 - (b) An order of eviction directed against the defendant, her legal representative/assigns or persons acting under her authority;
 - (c) *Mesne profits* to the plaintiff for loss of user since 2010 until date of judgment;
 - (d) Costs of the suit;
 - (e) Interest in (c) and (d); and
 - (f) Any other relief this honourable court may deem fit and just to grant.
2. Those prayers arise from the plaintiff contention that at all times material, she was the registered owner of the parcel of land known as Gikondi/Kiirungi/388 having been issued with a title deed therefore on August 2, 2016. The plaintiff accused the defendant of continuously trespassing over the said parcel of land without any colour of right and thereby interfering with the plaintiff's quiet possession and occupation thereof.



3. But in her written statement of defence dated and filed herein on April 11, 2017, the defendant avers that although the plaintiff is registered as the proprietor of the land, the registration is in trust for the plaintiff and the defendant as well as the entire family of Joseph Karuru Kago who was previously the registered owner of the land.
4. The defendant further avers that she got married to the plaintiff's brother John Kago Karuru in 1982 and that they have cohabited since as husband and wife until the year 2003 when her husband died and left her residing on the land. The defendant thus asserts that she is a beneficiary of the land and not a trespasser thereto as contended by the plaintiff.
3. The defendant accuses the plaintiff of fraudulently causing herself to be registered as the proprietor of the land after concealing vital information to the succession court to the effect that she was the sole beneficiary of the estate of the late Joseph Karuru Kago.

The Plaintiff's Case

6. At the trial herein the plaintiff called three witnesses who testified in support of her case.
7. PW1 – Mary Wamuyu Karuru is the plaintiff herself and a farmer in Gikondi. PW1 told the court the suit property was initially owned by her father Joseph Karuru Kago who passed away on September 24, 2001. Upon his death, PW1 and her siblings commenced succession proceedings with respect to the estate. The said siblings consented to PW1 inheriting the land and that is how she got registered as the owner and was issued with a title deed on August 2, 2016.
8. PW1 told the court that the defendant had trespassed into the land since 2010. When the defendant got into the land there was a house which belonged to the plaintiff's brother John Kago Karuru who had by then passed away. The defendant broke into the said house and took all things that belonged to the plaintiff's brother. When the plaintiff's mother tried to evict the defendant from the land, the defendant assaulted her and the matter was reported at Mukurweini police station.
9. PW1 told the court the defendant has persistently refused to move out of her parcel of land despite several requests and her continuous trespass has made it impossible for PW1 to utilize the land.
10. On cross-examination, PW1 told the court that before the defendant came back to the suit land in the year 2010, she had left PW1's brother and gone somewhere. PW1 told the court that in the meantime, her brother remarried and it was the newly married woman and not the defendant who had buried her brother. PW1 testified that the land had not been given to her brother by the time he died.
11. PW1 denied that the defendant had been using the land since the year 1982. She further denied that she had sued the defendant because of a disagreement they had at home. PW1 told the court she knew that the defendant was married elsewhere as the place the defendant got remarried was just nearby their home.
12. PW2 – Joseph Karuru Kimani is a farmer in Gikondi and a son to the plaintiff's sister. He told the court he is not related to the defendant but knew about the land dispute herein. PW2 testified that he knows the suit land belongs to the plaintiff as it was given to her by his grandmother before she passed away.
13. PW2 told the court it was true the defendant used to live with his uncle John Kago. They however stopped living together in 1996. PW2 told the court he was born in 1989 and that this grandmother died in September, 2016. He told the court his uncle sent away the defendant in 1996 but the defendant came back in 2010.



14. On cross-examination, PW2 told the court the land belongs to the plaintiff because his grandmother left it for the plaintiff. The defendant could not have been on the land because she did not get along with PW2's grandmother. PW2 denied that his grandmother lost her memory and that they were the ones who were telling her what to say.
15. PW2 – Joseph Kihara Mwaniki is a farmer and a resident of Gikondi in Mukurweini. He told the court that the plaintiff is his cousin. PW3 told the court the land in dispute was given to the plaintiff by her mother. The defendant had come to live on the land sometime back and demolished the house that was there. The defendant was previously living with John Kago on the land. She thereafter left John and went to live far away.
16. On cross-examination, PW3 told the court he knows about the dispute as the home belongs to his aunt. He told the court he was there when the plaintiff was given the land. He further told the court the defendant was not there at the time and that it was the plaintiff who was residing there with the mother.

The Defence Case

17. Just like the plaintiff, the defendant equally called three witnesses who testified in support of her case.
18. DW1 – Margaret Wambui Kago is the defendant herself and a resident of Gikondi location in Mukurweini. DW1 told the court she was born in 1964 in Kiirungi village in Mukurweini. Sometime in the year 1982, she met John Kago Karuru who was then a bachelor and they became friends and got married under Kikuyu customary law.
19. DW1 testified that after getting married they cohabited together as husband and wife at their matrimonial home situated on the suit property. As at that time, the suit property was registered in the name of DW1's father-in-law Kago s/o Karuru *alias* Joseph Karuru Kago. During their cohabitation, DW1 and her husband were blessed with six (6) children namely, Jane Wanjiru Kago, Lucy Njoki Kago, Peter Mugathi Kago, Samuel Muritu Kago, Boniface Gakeri Kago and Stephen Karuru Kago.
20. DW1 testified that they lived on the land cultivating the same as they brought up their children. When her father-in-law passed away on September 24, 2001, he left DW1 and her entire family on the land wherein they had built a dwelling house. In 2003, DW1's husband also passed away and left DW1 and her children on the land.
21. DW1 told the court the plaintiff herein proceeded to file a succession cause without her knowledge or consent. It was not until April, 2017 that DW1 came to learn that the suit land had been transferred to the plaintiff's name when DW1 was served with summons to enter appearance in this case.
22. On cross-examination, DW1 told the court they went to the chief together to get a letter in regard to the administration of the estate. She told the court the plaintiff later came back claiming the chief wrote the wrong letter. The plaintiff then asked DW1 to sign and DW1 signed a document without knowing what it was.
23. DW1 testified that the plaintiff later pretended to be taking her mother-in-law to hospital. The plaintiff then went to Karatina and stayed overnight before moving to Nyeri to change the registration of the parcel of land.
24. DW1 conceded that she had nothing to show that she was either married and/or that she had attended the burial of her husband. He told the court the plaintiff had hired people to harass her and stop her from attending the burial. She denied that she had left the home in 1996 and only went back in 2010. She told the court she was only away because she was working for different people to fend for her children. She also denied that she once gave her mother-in-law tea laced with poison.



25. DW2 – Kanyi Ngige is a farmer in Mukurweini and a cousin of the defendant. He told the court the defendant was married to John Kago in 1982 and that dowry was paid for her in 1984. He further told the court the defendant resides in Kairungi although he does not know the owner of the land on which she lives.
26. DW3 – Bonface Gakeri is a farmer in Muthuthini and a brother to the defendant. He told the court his sister was married to the plaintiff's brother since 1980 and that the sister has all along been living in Keirungi. His sister owns the land in dispute as she and her children had buried her husband on the land. DW3 further told the court he attended the burial of the sister's husband and that the sister was in attendance.
27. On cross-examination, DW3 told the court he had never heard that his sister had separated with her husband. He further denied that his sister had trespassed onto the suit land insisting the land belonged to the defendant.

Analysis and Determination

28. I have carefully perused and considered the pleadings filed herein by both the plaintiff and the defendant. I have equally considered the testimonies of the various witnesses who testified herein as well as the evidence adduced at the trial.
29. The plaintiff has urged the court to make a declaration that she is the rightful proprietor of the parcel of land known as Gikondi/Kiirungi/388 measuring approximately 0.56 Ha. (the suit property). She also wants an order to issue for the eviction of the defendant from the suit property and for the defendant to be compelled to pay mesne profits from the year 2010 to-date.
30. The basis of those prayers is the plaintiff's contention that she is the registered proprietor of the said parcel of land. The plaintiff accused the defendant of trespassing onto the said parcel of land sometime in the year 2010 and taking forceful possession and occupation thereof without any colour of right. It is the plaintiff's case that despite repeated demands made for the defendant to leave the land, she has neglected and/or refused to vacate the same thereby necessitating this suit.
31. On her part, the defendant concedes that the plaintiff became the registered proprietor of the suit land on August 2, 2016. It is however her case that she has beneficial interests in the land and that the plaintiff's said registration was procured fraudulently by concealment of material facts in a succession cause filed by the plaintiff without the defendant's knowledge and/or consent. The defendant insists that even if the plaintiff is so registered as the proprietor of the land, she holds the said title in trust for herself as the defendant and the other members of the family of Joseph Karuru Kago.
32. From the material placed before me, it was not in dispute that the defendant once lived on the suit land as the wife of the plaintiff's brother one John Kago Kururu. That much is acknowledged by the plaintiff and her witnesses who told the court that the defendant left her brother in the year 1996 and went and got re-married elsewhere until the year 2010 when she returned to the suit land.
33. It was the plaintiff's case that during the defendant's long absence, her brother had married another woman and it is that woman whose whereabouts the court was not told about, who buried the plaintiff's brother when he passed away sometime in the year 2003.
34. The defendant however denies ever separating from her husband. It was her case that she was only forced to be away from home as she was working for different people in order to fend for the six (6) children she sired with the plaintiff's brother. The defendant however concedes that she was unable to



properly attend her husband's burial on account that the plaintiff had placed some people at the home to intimidate and harass her during the funeral.

35. Be that as it may, it was clear to me that as at the time the plaintiff acquired the title deed issued in her name on August 2, 2016, she was not only aware of the defendant's claim to the land but also the fact that the defendant was residing on the piece of land in dispute. From the material placed before me, it was evident that from the time the defendant's husband passed away in 2003, she had had a difficult relationship with the plaintiff's family, more particularly her mother-in-law, who is said to have passed away in September 2016.
36. That much was clear from the plaintiff's own cross-examination of the defendant wherein she accused the defendant of once lacing her mother's tea with poison. Indeed the plaintiff's nephew Joseph Karuru Kimani (PW2) told the court that the suit property could not have been left for the defendant as they did not get along with PW2's grandmother.
37. As it were, prior to its transfer to the plaintiff's name on August 2, 2016 as aforesaid, the suit property was in the name of Joseph Karuru Kago who was not only the plaintiff's father but also was the father to the defendant's husband. There being no sufficient evidence of any divorce between the defendant and her husband, it was clear to me that she lived on the land not as a trespasser but as one with a beneficial interest thereon.
38. That interest was known to the plaintiff and her family and hence the request they made together with the defendant to the area chief when they sought to commence the succession proceedings. It was also apparent from the plaintiff's cross-examination of the defendant that she had sought the signature of the defendant when filing the succession cause even though the defendant claims she signed the document without knowing what it was.
39. By causing the transfer of the suit property to her sole name, the plaintiff was taking her beef with the defendant too far. By so doing, she was clearly intent on disinheriting her brother John who was equally entitled to a share of the estate of the late Joseph Karuru Kago. She does not deny that her brother left behind six (6) children with the defendant who has been residing on the suit property. Such registration can only be construed to have been in trust for the other beneficiaries.
40. Arising from the foregoing, it was evident to me that to grant the orders sought herein would amount to disinheriting other beneficiaries of the estate of the late Joseph Karuru Kago, would lead to a miscarriage of justice and amount to abetting an illegality.
41. It follows that the suit herein is misconceived and lacking in merit. The same is dismissed with costs to the defendant.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 28TH DAY OF SEPTEMBER, 2022.

In the presence of:

Ms Mary Wamuyu Karuru – Plaintiff present in person

Ms Margaret Wambui – Defendant present in person

Court assistant - Kendi

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J. O. OLOLA

JUDGE

