



**Munene v Gichuru (Environment & Land Case 163 of 2019)  
[2022] KEELC 14465 (KLR) (27 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 14465 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 163 OF 2019  
LN MBUGUA, J  
OCTOBER 27, 2022**

**BETWEEN**

**PETER KAMAU MUNENE ..... PLAINTIFF**

**AND**

**WINFRED WAMBUI GICHURU ..... DEFENDANT**

**JUDGMENT**

1. Vide A plaint dated 17.5.2019, the Plaintiff filed this suit against the defendant claiming that he is the registered owner of land parcel Nairobi/Block110/430 (the suit property) and he has been in possession of the said land from year 2016. That on 24.4.2019 he was informed by his caretaker that the defendant wanted to take over the suit property. He therefore claims for the following:
  1. A declaration that the Plaintiff is entitled to exclusive and unimpeded right of possession and occupation of all that piece of land known as NAIROBI/BLOCK 110/430 (“the suit property”).
  2. A permanent injunction restraining the Defendant whether by themselves or their servants or agents or otherwise howsoever from entering, trespassing and or interfering with the Plaintiffs possession and enjoyment of all that property better known as NAIROIB/BLOCK 110/430.
  3. Costs of this suit together with interest thereon at such rate and for such period of time as this Honourable court may deem fit to grant.
2. The Defendant filed a defence and counterclaim dated 19.8.2019 where she denies the Plaintiff’s claim. She contends that the suit land was initially owned by one Samuel Njuguna Kamau and Veronica Wanjiku Gichuru who was her mother. By then, the land was identified as Plot No. 727/Nairobi Block 110/430. That Samuel Njuguna sold his interests in the suit property to Gabriel Gichuru Kuria (father



of the Defendant) and that when Veronica Wanjiku Gichuru passed on, her interest in the land also went to Gabriel Gichuru Kuria. The Defendant claims that the family of Veronica Wanjiku Gichuru and Gabriel Gichuru Kuria have all along been in occupation of the suit property but on diverse dates in the month of April 2019 some goons went into the property and demolished some structures while attempting to take possession of the property.

3. The Defendant claims that the plaintiff's title to the suit land must have been acquired fraudulently and she therefore seeks the following orders:
  - a. A declaration that the family of the late Veronica Wanjiku also known as Veronica Wanjiku Gichuru and Gabriel Gichuru Kuria (both deceased) are the bonafide owners of Plot No. 727 Thome Farmers No. 1 Limited/Nairobi/block/110/430.
  - b. An order directed to the Chief Land Registrar being the 2nd Defendant by Counter-Claim cancelling the Title issued to Peter Kamau Munene.
  - c. An order directing the Chief Land Registrar being the 2nd Defendant by Counter-Claim to issue a Title to the rightful beneficiaries of the Estate of Veronica Wanjiku and also known as Veronica Wanjiku Gichuru and Estate of Gabriel Gichuru Kuria upon payment of requisite fees (if any).
  - d. A permanent injunction restraining the Plaintiff in the Plaint/1st Defendant by Counterclaim either by himself, his agents, employees and/or any person acting under his instruction from trespassing, transferring, disposing and/or dealing with Plot No. 727 Thome Farmers No.1 Limited/Nairobi/Block 110/430 in any manner.
  - e. General damages for trespass and for demolition of structures on the suit property.
  - f. Costs of the suit.

#### **Plaintiff's Claim**

4. PW1, Peter Kamau Munene the Plaintiff testified and also adopted his witness statement dated 4.8.2020 as his evidence. He also produced the list of documents dated 17.5.2019 as exhibits 1-5.
5. The Plaintiff contends that he purchased the suit property from the previous owner one Paul Ndegwa Waigwa. He subsequently obtained the title and also took possession of the land in year 2016. On 24.4.2019, his caretaker informed him that the Defendant wanted to take possession of the property and he therefore reported the matter at Kasarani Police station and the matter was investigated by DCI who confirmed that the land belonged to him.
6. The Plaintiff averred that he purchased the suit property at a consideration of Kshs. 24,000,000 but has no documents to that effect. He further states that he did a search where he established that Paul Ndegwa was the registered owner. He however could not tell how Paul Ndegwa acquired the suit land.
7. He also stated that he had wanted to construct a residential house in the year 2019 and to that end, he got approvals from the City Council. He added that he has not been paying land rates as the land is freehold.



8. Finally, the Plaintiff claims that the Defendant has no evidence of being an administrator in a succession matter.

### **Defence Case**

9. DW1, Winfred Wambui Gichuru adopted her witness statement dated 15.7.2020 as her evidence. She also produced supporting documents as Defence exhibits 1-11. She has identified herself as a daughter of Veronica Gichuru and Gabriel Gichuru. That prior to the death of her mother Veronica Wanjiku, the said Veronica Wanjiku and one Samuel Njuguna Kamau had acquired a share certificate from Thome Farmers No. 1 Limited in the year 1979, which share amounted to the interest in the Plot No.727/Nairobi / Block 110/430. That in the year 2002, Samuel Njuguna Kamau sold his interest in the suit plot to Gabriel Gichuru Kuria. The latter proceeded to pay Kshs. 70,075 to the firm of D.A Najero & Co. Advocates, the same being sh. 38075 as title fees and ksh. 32 000 for the agreement. The said firm of advocates was later to write to Gabriel Gichuru through a letter dated 8.7.2009 indicating that there were a lot of forgeries.
10. DW1 further stated that when her mother Veronica Wanjiku passed on, her share in the suit property being Thome Farmers No.1 Limited certificate No. 489-1 passed on to Gabriel Gichuru Kuria, her husband. Her father also died and the Defendant's family applied for substitution in relation to administration of the estate of Veronica Wanjiku
11. DW1 contends that her family has all along been in quiet possession of the suit land and that the Plaintiff has never occupied this land. She further states that in the year 2012, her father Gabriel Gichuru was issued with a bill of Kshs.8000 by the then County Council of Nairobi for the provision of valuation over the suit land.
12. DW1 Contends that on 24.4.2019 and 28.4.2019, some goons came into the suit property threatening to evict them and in the process, they demolished some structures. DW1 reported the matter to Marurui Police station and she also went to court and obtained the grant of letters of administration of the Estate of her late father in a bid to protect the Estate. She further stated that the police have all along been investigating the fraud involved in the Thome Farmers N0.1 Limited.
13. DW2, Dorcas Ayoma Nanjero introduced herself as an Advocate of the High Court of Kenya and she adopted her Affidavit dated 7<sup>th</sup> August 2019 as her evidence. Her testimony is that in the year 1990, while practicing as D.A.Nanjero & Co. Advocates, she received a brief from the officials of Thome Farmers CO.1Limited to prepare transfers for its shareholders. To this end, she was supplied with the original register of the shareholders which contained the following particulars; plot numbers, corresponding title numbers, share certificate numbers, identification numbers and postal addresses.
14. She contends that in the register Plot No. 727 had its correspondence title as number 430 which was registered in the name of Veronica Wanjiku and Samuel Njuguna Kamau. That in the year 2009, one Gabriel Kuria, a widower and the administrator of the estate of Veronica Wanjiku showed up with Samuel Njuguna, the latter wanted to sell his shares to Gabriel Gichuru and she proceeded to prepare a transfer to that effect.
15. She confirmed that legal fees for the transfer was paid and registration documents were forwarded to the Land's office. However, the transfer was not registered because the correspondence file at the land's office disappeared and despite follow ups, there was never positive feedback regarding the said file.
16. Dw2 produced the documents forming annexures to her Affidavit as exhibits. They include; the instruction letter dated 22.5.1990, the register of the shareholders, letter to the Commissioner of lands containing particulars of payments for various titles including Nairobi/Block110/430, letter of



- 6.7.2011 from lawyer Kittony Maina to Gabriel Gichuru, informing the latter that the file at lands office was missing, another letter from the same lawyers to the permanent secretary ministry of lands where the issue of the missing file was raised. Other letters still capturing the issue of the missing files are dated March 2012 and 27.3.2019.
17. On cross examination Dw2 stated that her instructions emanated from Thome 1. She asserted that in acquisition of land at Thome Farmers Ltd, the register which she produced as evidence in court was the proof of ownership of the plots. The Shareholders would then visit the Advocate's office with supporting documents as per the register and a transfer of land form would then be executed. The transfer would contain details of the land and the transferee. The transferor was the Government of Kenya because the Ministry was tasked with issuance of Title Deeds. In cases involving private land like the one in question, Thome Farmers had to surrender the original Title to the Government in exchange of the Title Deeds issued to individual shareholders. For this particular case, Dw2 had embarked on preparation of transfers for Block 110 and carried out the tasks as from 1990 until when the file disappeared.
  18. DW2 also stated that there were informal transfers too, where plot owners/shareholders would sell their land to other persons. The Company gave her the original register and with that, she could effect such informal transfers. Once allocation was done, the plots were taken up by their owners. She stated that after she submitted the documents to the land's ministry, the mother file disappeared, and by that time she had already issued an indemnity due to the forgeries that were ongoing in relation to Thome's land. She stated that she had to indemnify herself because she had no control over the transactions that were going on at the Land's office.
  19. DW2 confirmed that they had filed a complaint with DCI and investigations commenced, but the DCI never reverted back to her. Thus the document on page 19 of the Plaintiff's bundle dated June 2020 from DCI confirming that the Plaintiff was the legitimate owner of the suit property was foreign to her.
  20. On re-examination DW2 stated that her role with Thome Farmers was limited to processing transfers and not representing parties in court. She affirmed that the process she had outlined was the process she had followed regarding plot no. 727 (110/430) where she prepared the informal transfer as well as the transfer in the name of Gabriel Gichuru following succession of the persons indicated on the register.
  21. In his submissions dated 29<sup>th</sup> June 2022, the plaintiff framed the issues for determination as: Whether the registration of the plaintiff as the owner of the suit property was absolute, indefeasible and not liable to be challenged; and Whether the defendant could impeach the Title held by the Plaintiff as per the *Land Registration Act*.
  22. It was submitted that the Plaintiff became the registered owner of the suit property after he purchased it from one Paul Ndegwa Waigwa as per the sale agreement adduced and was thus protected under Section 26 of the *Land Registration Act*. It was avered that no fraud had been proven against the Plaintiff. To this end, reference was made to the cases of; Kenya National Highway Authority v Shalien Masood Mughal & 5 others [2017] eKLR, Eunice Grace Njambi Kamau and another v. The Hon. Attorney General and 5 others ELC Civil suit No.976 of 2012; Central Bank of Kenya Limited v Trust Bank Limited & 4 Others [1996] eKLR and Emfil Limited vs Registrar of Titles Mombasa & 2 others [2014] eKLR.
  23. It was further submitted that the Plaintiff had adduced evidence of investigations by the Director of the Criminal Investigation which found that the Plaintiff was the registered owner of the suit property. As such, the Plaintiff was a bonafide purchaser for value as was outlined in the case of Lawrence Mukiri v. Attorney General & 4 Others [2013] eKLR.



24. On the Defendant's case, it was submitted that there were no resolutions of the Thome company giving Dw2 instructions to act for them and she equally had no authority to present the evidence, and that the list of Directors of the company known as Thome Framers No.1 Limited had not been produced.
25. The plaintiff has pointed out that when DW2 was being cross examined, she indicated that she did not prepare a transfer deed to effect changes from Samuel Njuguna Kamau to Gabriel Gichuru Kamau. It was also submitted that Defendant had not adduced evidence of any share certificate in the name of Veronica Wanjiru Gichuru and Gabriel Gichuru showing their entitlement to plot 727. Thus defendant did not meet conditions set out in Section 107 & 112 of the *Evidence Act*.
26. The submissions of the defendant are dated 25<sup>th</sup> July 2022 where the issues framed for determination are; Whether the Plaintiff has a valid Title to Nairobi/Block 110/430 and whether the defendant has a valid claim over the said land. It was submitted that Plaintiff's claims are unsubstantiated contrary to Section 107 and 109 of the *Evidence Act*. That there was no proof that the Plaintiff had purchased the suit property from one Paul Ndegwa Waigwa for Kshs. 24,600,000.
27. It was argued that there was no evidence of any due diligence having been undertaken beyond the apparent search conducted to ascertain the correctness of the property before purchase because had this been done, then the Plaintiff would have discovered that the Defendants were in occupation of the suit property. It was also stated that Plaintiff had not proved that stamp duty was ever paid, there was no existence of a transfer or any other requisite documents, hence the plaintiff was not a bonafide purchaser.
28. The defendant avers that it is was trite that where trespass was proved a party need not prove that they suffered any specific loss or damage for an award to be granted. Thus defendant prays for an award of Kshs. 2,000,000 as general damages for trespass.
29. In support of her case, the defendant relied on the cases of Munyu Maina vs Hiram Gathiha Maina [2013] eKLR, Falcon Global Logistics Co. Ltd v Management Committee of Eldama Ravine Boarding Primary School [2018] eKLR. John Kipler Kipchumba v Catherine Kabon & 3 Others [2019] eKLR, Daniel Kipruto Metto vs Chase Bank (Kenya) Ltd [2018] eKLR, Elijah Makeri Nyangwra vs Stephen Mungai Njuguna & Another [2013] eKLR, Simeon Nyachae & Another v County Government of Mombasa [2020] eKLR, and Sara Leitich v Joshua Rutto & 2 others [2021] eKLR.

### **Determination**

30. The issue for determination is; who is the rightful owner of the suit land and what relief is available to the parties. On the claim of ownership, the court has analysed three points namely:
  - (i) Possession (ii) Due diligence /bonafide purchaser and (iii) History in relation to the suit property.
31. On the issue of possession, I find that both parties have claimed to be in possession of the land and are blaming each other in the interference of the suit property in the year 2019. I find that the Defendant has availed photographs which shows how the properties were damaged on the suit land and this piece of evidence is consistent with her claim that goons came unto the land and demolished some structures. If indeed the Plaintiff had been on this land, why then did he need to result to acts of demolitions? I find that the evidence given by DW1 is firm and consistent and it is in tandem with her pleadings that her family is the one which has been on the suit land.
32. On the issue of due diligence and whether the plaintiff is a bonafide purchaser, Plaintiff has stated that he did a search which showed that the land belonged to Paul Ndegwa. It appears that this is the far



he went in conducting due diligence. Needless to say that the search availed by the plaintiff is the one depicting him as the owner of the land, but there is none showing Paul Ndegwa as the owner. Nowhere in his evidence and in his pleadings does he state that he conducted the due diligence of visiting the suit land to establish its existence and status on the ground. Neither did the seller Paul Ndegwa point out this land to him.

33. In the case of *Mangrove Investments Limited v Attorney General & Another* [2020] eKLR, the question of conduct of due diligence and authentication of title arose in a situation where a party had purchased land which was occupied. The Court of Appeal rendered itself thus;

“We are in agreement with the learned trial Judge, beyond waving the Grant, the appellant was duty bound to demonstrate that it had exercised due diligence prior to acquiring the property...”.

34. In the case of *Amos Kibata Githeko v Loise Gachiku Kinuthia* [2021] eKLR, I was dealing with a case where the plaintiff was advancing a claim of being an innocent purchaser in respect of land which was already occupied by another family. I dismissed the said argument while stating as follows;

“The signs were all there in black and white for the plaintiff to see that the land was not up for grabs. ....The physical land itself was not free for plaintiff to take possession during the sale or even after the acquisition of the title”.

35. This appears to be a similar scenario where the plaintiff simply acquired a title. In this error of illegalities in matters land, it behooves a prospective buyer of the land to undertake due diligence, by viewing the land and establishing the nature and extent of use and/or occupation of that land. I conclude that the plaintiff is not an innocent purchaser.

36. On the history of the land parcel, the Defendant has given an account of how this land was acquired way back in 1979 by one Samuel Njuguna and her (DW1'S) mother by way of having shares (Certificate No.489) in Thome Farmers No 1 Limited. This share was documented as plot No. 727 in the list of share holders containing personal particulars like identity cards and postal addresses of the shareholders. For the plot in question, No. 727, it was owned by Veronica Wanjiku and Samuel Njuguna. The said list of share holders was forwarded to D. A. Nanjero Advocates on 22.5.1990 by the officials of Thome No.1 Limited.

37. There is also a document of transfer for title No. Block 110/430 Plot No. 727 dated 5.6.2009 in which Samuel Njuguna Kamau was transferring the aforementioned land to Gabriel Gichuru Kuria.

38. I have also seen the receipt for payment of the sum of Kshs. 38,075 and Kshs. 32,000 made by Gabriel Gichuru Kuria to D. A. Nanjero & Co. Advocates of which the latter made acknowledgement note of 8.7.2009. Apparently D. A. Nanjero advocates (read DW2) were acting for Thome No.1 Limited in so far as transfers were concerned and they did alert Gabriel Gichuru Kuria vide a letter dated 8.7.2009 that documents of transfer had been forwarded to the lands office for processing of the title, but there were issues of forgeries. I have seen another letter from the City Council of Nairobi 16.5.2012 in which Gabriel Gichuru Kuria has paid a sum of Ksh.s 8,000 for plot No. Block 110/430 for valuation.

39. In the case of *Beatrice Wambui Maina v Embakasi Ranching Company Ltd & another* [2022] eKLR, the court stated that;

“The court is alive to the fact that there are circumstances where a property in dispute has no title. This does not however mean that no rights can accrue therefrom. In such



circumstances the court will set out to establish whether the documentary evidence establishes an unbroken chain leading to the root of the title ... emphasize added”.

40. And in this case, the defendant has given a plausible historical background relating to the root of their claim. The evidence of Dw1 as corroborated by Dw2 is that the interests of the plot owners of Thome Co could be alienated through informal transfers, and that is how Gabriel Gichuru came to own plot 727 due to the interest acquired from Samuel Njuguna and Veronica Gichuru.
41. On the other hand, the Plaintiff has just the title to the suit land. He does not know where Paul Ndegwa got the title or how he acquired the land. He has no certificate of official search to show that Paul Ndegwa owned the land. He has no proof of payment of purchase for a rather tidy sum of sh 24 million!. In essence, the plaintiff appears to have just a paper title with no historical background to the said title document.
42. In the case of *Munyu Maina v Hiram Gathiha Maina*, Civil Appeal number 239 of 2009, the Court of Appeal held as follows in relation to a root of a title:  

‘We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register’.
43. Is the title held by plaintiffs impeachable by virtue of Section 26(1) (B)” of The [Land Registration Act](#). This was the question posed by Judge Munyao in *Elijah Makeri vs. Stephen Mungai Njuguna and Another ELC 609/2012 Eldoret*, where it was held that;  

“First, it needs to be appreciated that for Section 26 (1) (b) to be operative, it is not necessary that the title holder be a party to the vitiating factors noted therein...”.
44. Guided by the above case law, it becomes apparent that the Plaintiff is holding a paper title which has successfully been challenged by the defendant. It is noted that the defendant has availed a copy of the grant in respect of the estate of Gabriel Gichuru (at page 47 of defendant’s bundle). I therefore find that the suit property belongs to the family of the defendant.
45. What relief is available to the parties?. I find that at paragraph 16 of her pleadings, the defendant has given an account of how the plaintiff invaded the suit property in April 2019 and this has been buttressed in her witness statement. Dw1 has even availed photographs of the destroyed properties. It is also on record that the plaintiff had filed an application dated 17.5.2019 seeking orders in-re-alia; a permanent injunction restraining the defendant from entering, trespassing and or interfering with plaintiff’s possession of the land, of which, a ruling thereof was delivered on 6.5.2020 directing that the family of the defendants was to continue remaining in possession of the suit land.
46. I am therefore inclined to believe that the plaintiff had indeed trespassed upon the suit land, hence the defendant is entitled to damages. In the case of *Fleetwood Enterprises Ltd v Kenya Power & Lighting Co. Ltd* [2015] eKLR Justice Angote while dealing with an issue of quantum of damages in trespass held that;  

“The award of damages for trespass is discretionary in nature. The discretion by the court should however be exercised judiciously and all relevant factors should be considered.”



47. Having considered the history of the dispute and litigation process, and considering that plaintiff appears to have acquired a title in total disregard of due diligence upon the suit property, I proceed to award general damages for trespass to the defendant in the sum of Ksh. 500 000.
48. In conclusion, I find that Plaintiff's case is not merited and the same is hereby dismissed, while the Counter-Claim of the Defendant is allowed in the following terms;
1. It is hereby declared that the suit property plot 727 Thome Farmers No1 Limited/ Nairobi Block 110/430 belongs to the estate of Gabriel Gichuru Kuria.
  2. An order is hereby issued cancelling the Title issued to Peter Kamau Munene regarding Nairobi/Block 110/430. The Chief Land Registrar is directed to register the said land in the name of Estate Of Gabriel Gichuru Kuria.
  - 3) A permanent injunction is hereby issued against the Plaintiff in the Plaintiff/1<sup>st</sup> Defendant in the Counter-Claim either by himself, his agents, employees and or any other person acting under his instructions from trespassing, transferring, disposing and / dealing with Plot No. 727 Thome Farmers No.1 Limited/ Nairobi/ Block 110/430 in any manner.
  4. The defendant is hereby awarded damages for trespass as against the plaintiff in the sum of Ksh. 500,000.
  5. The defendant is awarded costs of the suit as against the plaintiff plus interest at court's rates.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 27<sup>TH</sup> DAY OF OCTOBER 2022 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Mr. Kirwa for Plaintiff

M/s Wakarima for Defendant

Court Assistant: Eddel Barasa

***ELC. CASE NO. 163 OF 2019 (JUDG) Page 7 of 7***

