



REPUBLIC OF KENYA



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**Muraguri v Mwangi & 4 others (Environment & Land Case 34 of 2020)
[2022] KEELC 13559 (KLR) (13 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13559 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE 34 OF 2020
LN GACHERU, J
OCTOBER 13, 2022**

BETWEEN

DANSON MUREITHI MURAGURI PLAINTIFF

AND

STEPHEN GITAU MWANGI 1ST DEFENDANT

ELIUD NJUGUNA MWANGI 2ND DEFENDANT

NYAMBURA MWANGI 3RD DEFENDANT

KINUTHIA MWANGI 4TH DEFENDANT

MUNGAI MWANGI 5TH DEFENDANT

JUDGMENT

1. Vide a plaint dated November 10, 2020, the plaintiff herein sought for judgement against the defendants jointly and severally for: -
 - a. A transfer of 1.5 acres of land parcel Makuyu/Kimorori/ Block IV/47, out of their beneficial interests in Nyeri High Court Succession Cause No 1088 of 2009, into the names of the plaintiff.
 - b. In the alternative a refund of Kshs 34, 200,000/=.
 - c. Costs of the suit.
 - d. Interests on 2 & 3 above.
2. The plaintiff averred that the 3rd defendant is a mother to the 1st, 2nd 4th and 5th defendants. That on January 25, 2022, the defendants offered to sell to him part of land parcel No Makuyu/Kimorori/ Block IV/47, measuring one (1) acre at an agreed price of Kshs 1,150.000/= and a sale agreement to



that effect was executed. That on or about September 23, 2010, the sale agreement dated January 25, 2010, was amended by consent of the plaintiff and the 1st and 2nd defendants on behalf of the other defendants so that the acreage was increased to 1.5 acres, at a new price of Kshs 1,710,000/=. That it was an agreed term of the sale agreement that the purchase price paid to them would be for the benefit of all the defendants. That on various dates between January 25, 2010 and November 14, 2014, the plaintiff paid the total purchase price to the various defendants. That part of the purchase price was to facilitate the Succession proceedings so that the suit land would be transferred to the defendants, who would then transfer 1.5 acres to the plaintiff.

3. Further that the defendants allegedly purported to file a succession case and sometime between June and July 2014, the 1st and 2nd defendants informed the plaintiff that the succession matter was complete and they could acquire Land Control Board Consent to facilitate the transfer. That the plaintiff eventually filed the necessary documents, applied for consent, paid the requisite fees and the suit land measuring 1.5 acres was transferred to his name. That he was issued with a title No Makuyu/Kimorori/Block IV/1382, measuring 0.605 ha and an official search conducted on July 4, 2014, confirmed that same.
4. That he has now come to learn that there is a family dispute among the defendants concerning the suit land in Nyeri High Court Succession 1088 of 2009. That the defendants fraudulently obtained money from him by claiming that they were in a position to transfer a proper title to him. That the plaintiff claim is that he purchased 1.5 acres of land known as Makuyu/Kimorori/Block IV/47, for Kshs 1,710,000/= and he duly paid the purchase price and was registered as the owner of Makuyu/Kimorori/Block IV/1382, on July 4, 2014. That the defendants should be ordered to surrender their beneficial shares in Makuyu/Kimorori/Block IV/47, in favour of the plaintiff.
5. The plaintiff's claim is undefended and on March 21, 2022, the court directed the same to proceed for formal proof hearing on May 16, 2022. The plaintiff gave evidence for himself on May 16, 2022, and called no witness.

plaintiff's Case

6. PW 1 Danson Mureithi Muraguri testified that he is a lawyer by profession residing in both Nairobi & Muranga County. He adopted his witness statement dated November 10, 2020, as his evidence in chief. He also produced the documents contained in his list of documents dated November 10, 2020 as PEXB 1- PEXB 17.
7. It was his further testimony that he bought the said land from the defendants and he fully paid for the same. That he was issued with a title deed that was not genuine, though the same has not been nullified by the court. That he conducted a search and discovered that the land was not registered in his name, but in the name of another person. He urged the court to enter judgment in his favour as prayed.
8. The plaintiff did not to file any written submissions and this court proceeded to issue a judgment date.
9. The court has carefully read and considered the pleadings by the plaintiff, the evidence adduced, the relevant provisions of law and finds that the issues for determination are;
 - I. Whether the plaintiff is entitled to the prayers sought.
 - II. Who should bear the costs of the suit?



i. Whether the plaintiff is entitled to the prayers sought.

10. This court takes judicial notice of the fact that the instant suit was not contested and that the defendants jointly and severally neither entered appearance nor filed a defence. However, the law requires of the court to look at the weight of the evidence adduced by the plaintiff even where the same is uncontroverted. See the case of [Gichinga Kibutha v Caroline Nduku \[2018\] eKLR](#), where the court held as follows;

“The hearing referred to above is the one commonly known as “formal proof”. The [Civil Procedure Rules](#) do not define “formal proof”. Black’s Law Dictionary defines “Formal” as including “rules established by an institution according to certain processes”. This particular hearing is for the claimant to prove his claim. It is not automatic that in instances where the evidence is not controverted, the claimant’s claim shall have his way in court. He must discharge the burden of proof. He must prove his case however much the opponent has not made a presence in the contest.”

11. It is trite that the burden of proof, according to sections 107, 108 and 109 of the [Evidence Act](#), is placed on the person alleging the occurrence of an event, and where there is no evidence to challenge the allegations, the standard of proof automatically is higher.

12. It is the plaintiff’s case that he purchased 1.5 acres out of Makuyu/Kimorori/Block IV/47, from the defendants. That after paying the purchase price in entirety, land parcel Makuyu/Kimorori/Block IV/1382, measuring 0.605 ha was transferred to him by the defendants. The court has perused the transfer documents and a copy of the title deed issued to the plaintiff on July 4, 2014, which documents corroborate his testimony that he purchased land from the defendants.

13. Be that as it may, the court notes that the plaintiff as per the sale agreements dated January 25, 2010, and September 23, 2010, purchased 1.5 acres to be excised out of Makuyu/Kimorori/Block IV/47, while the land he received is Makuyu/Kimorori/Block IV/1382. However, it is not clear whether Makuyu/Kimorori/Block IV/1382, resulted from a subdivision of Makuyu/Kimorori/Block IV/47, or not, and the plaintiff has not led evidence to that effect.

14. It is not in doubt that the plaintiff at the time of purchasing the suit land being Makuyu/Kimorori/Block IV/47, was aware that the same was pending succession process as by the terms of the sale agreement. The plaintiff now alleges that he has come to learn of an existing family dispute in the family of the defendants and that one Esther Njeri Mwangi is seeking a share of the suit land in Nyeri High Court Succession Cause No 1088 of 2009. The plaintiff has also alleged that he has come to realise that the defendants fraudulently transferred the suit land to him claiming that they were in a position to transfer a good title. The burden of leading the court to ascertaining this fact rested with the plaintiff.

15. It is trite law that fraud must be particularly and specifically pleaded and proven. In the case of [Vijay Morjaria v Nansingh Madhusingh Darbar & Another \[2000\] eKLR](#), Tunoi, JA (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must, of course, be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”



16. In addition, the Court of Appeal in the case of *Kinyanjui Kamau v George Kamau [2015] eKLR* expressed itself as follows; -

“...It is trite law that any allegations of fraud must be pleaded and strictly proved. See *Ndolo vs Ndolo (2008) 1 KLR* (G & F) 742 wherein the court stated that: “...We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; In cases where fraud is alleged, it is not enough to simply infer fraud from the facts.”

17. In the instant case, while the plaintiff has pleaded fraud, he has not particularised or proven the said fraud perpetrated by the defendants. This court cannot issue orders based on allegations and or anticipation of a wrong. The court notes that the plaintiff has neither led any evidence as to the outcome of Nyeri High Court Succession Cause No 1088 of 2009, nor the current status of the said succession cause. In any case, it appears that he is not even a party to that succession cause that is pending at Nyeri High Court.

18. It would be difficult for this court to grant the orders sought by the plaintiff, without any evidence to latch on. Firstly, there is no evidence as to the total acreage of Makuyu/Kimorori/Block IV/47, and whether Makuyu/Kimorori/Block IV/1382, was excised from the said parcel of land.

19. Secondly, the defendants’ entitlement over Makuyu/ Kimorori /Block IV/47, can only be determined by the succession court, which this court is not privy to.

20. Having analysed the evidence as above and having carefully considered the available evidence, the court finds that the plaintiff has failed to prove his case on the required standard of balance of probabilities against the defendants herein jointly and severally.

21. For the above reasons, the court finds that the plaintiff’s claim is not merited and the said claim be and is hereby dismissed entirely for lack of sufficient evidence with no orders as to costs since the suit is not defended.

22. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG’A THIS 13TH DAY OF OCTOBER, 2022.

L GACHERU

JUDGE

In the presence of; -

Joel Njonjo – Court Assistant

Mr Oonge for the plaintiff

N/A for the 1st defendant

N/A for the 2nd defendant

N/A for the 3rd defendant

N/A for the 4th defendant

N/A for the 5th defendant



L GACHERU

JUDGE

October 13, 2022

