



**Ngatha v Ngugi & another (Environment & Land Case 722 of 2012)
[2022] KEELC 13605 (KLR) (13 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13605 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 722 OF 2012
LN MBUGUA, J
OCTOBER 13, 2022**

BETWEEN

TIRAS KARANJA NGATHA PLAINTIFF

AND

SILAS GACHUGU NGUGI 1ST DEFENDANT

THE LAND REGISTRAR KIAMBU 2ND DEFENDANT

RULING

1. The history of the dispute herein is well captured in the ruling of this court dated April 16, 2013. In summary, the plaintiff was registered as the owner of parcel No Kiambaa/Kihara/ 4xx, whereas one Ngugi Waweru Munga (deceased) represented by the 1st defendant owned parcel Kiambaa/Kihara/4xx, but on the ground, the plaintiff was occupying defendants land and vice versa. In the aforementioned ruling, the court gave orders that “the District Land Registrar, Kiambu do rectify the titles 4xx and 4xx to correspond with the parcels occupied by the registered owners”.
2. In effect, each party was to continue occupying the land on the ground and only the titles would be rectified to reflect the changes.
3. Thereafter, an issue arose to the effect that parcel no. 4xx was measuring 2.7 acres whereas parcel 4xx was measuring 2.2 acres. This meant that the plaintiff would have a bigger portion of 0.5. acres in the process of rectification of the titles. The issue of the differences in the acreages was litigated via an application dated May 3, 2013 which culminated in the ruling of June 27, 2014 where by the court gave the following orders;
 - i. That the plaintiff/ respondent after the rectification be and is hereby required to compensate the 1st defendant for the additional 0.5 acres he has gained upon being registered as owner of Title number Kiambaa/Kihara/4xx.



- ii. That the 0.5 acres (undeveloped) be agreed between the parties and paid to the 1st defendant within the next 90 days from the date of this ruling and if the value is not agreed the Kiambu County Government valuer to carry out the valuation for 0.5 acres (undeveloped) of Title number Kiambaa/Kihara/4xx which valuation shall be final. (emphasis mine).
 - iii. Alternatively the plaintiff shall subdivide the Title Kiambaa/Kihara/4xx and cause a portion of 0.5 acres to be transferred to the 1st defendant as administrator of Estate of Ngugi Waweru Munga (deceased).
 - iv. The costs of the application shall be in the cause.
4. The plaintiff was aggrieved by the ruling of June 27, 2014 triggering an appeal at the Court of Appeal case No 300 of 2014. A ruling thereof was delivered on March 24, 2017 in which the appeal was dismissed.

Application dated June 4, 2019

5. Coming up for determination before this court is the application by the plaintiff dated June 4, 2019 which seeks the following orders:
- i. That the Kiambu County Government valuation report dated May 2, 2017 in respect of parcel Kiambaa/Kihara/4xx be adopted by the court.
 - ii. That the costs of this application be provided for.
6. The applicant has also filed a supporting affidavit, where he avers that he engaged the defendant's advocates to agree on a joint valuer but having reached no consensus, the applicant sought services of the Kiambu County Government valuer as directed by the court. The said valuer thus prepared a valuation report dated May 2, 2017 which the applicant wishes to be adopted as an order of the court. The applicant went further to state that the defendant also sought services of a private valuer but the said report should not be considered since the court order was clear on who the valuer ought to be.
7. The 1st defendant in his replying affidavit dated June 25, 2019 opposed the application averring that he was not aware of the valuation undertaken until the same was forwarded to his advocates on May 10, 2019. He deponed that having not been involved in the process nor aware of the same, he sought services of a private valuer who prepared a valuation report annexed to his affidavit.
8. The 1st defendant avers that the court had directed that the valuation be undertaken by the Kiambu County Government valuer, but the report availed by the applicant was prepared by the district valuer at the Ministry of Lands and Physical Planning. He desires that parties be ordered to appoint independent valuers and a joint valuation report be filed or the Kiambu County Government valuer be ordered to proceed with the valuation with or without the applicant's participation.
9. The applicant was supposed to file his submissions by July 30, 2022 but there was no compliance with this order. The 1st defendant filed his submissions dated July 18, 2022 where he reiterated that he objected to the valuation report because it had been undertaken by the district valuer, Kiambu while the court order had stipulated that the valuation should be undertaken by the County Government valuer.
10. It was submitted that the 1st defendant had sought services of a private valuer who valued the land at KShs 20,000,000 in the report dated May 18, 2017 and due to the major disparity between the two valuation reports, this court on January 30, 2020 directed that a joint valuation be undertaken. It was further submitted that a lot of time had lapsed since the property was valued and this would affect



the market value. Therefore, it would be fit to get a current joint valuation in the interests of justice. Or alternatively the 0.5 acres of land be excised from parcel Kiambaa/Kihara/4xx and registered in the name of the 1st defendant.

11. This court having considered the application and submissions finds that the issue for determination relates to the implementation of the orders given on June 27, 2014 touching on the 0.5 acres land in parcel Kiambaa/Kihara/4xx; To this end, the court shall consider whether the valuation reports tabled by the protagonists should be adopted, or whether a joint valuation report should be undertaken, and whether in the alternative, the 0.5 acres should be hived off from parcel 4xx.
12. It is worthy to note that by February 28, 2019, the parties had not agreed on the value of the 0.5 acres in terms of the first part of order No 2 in the ruling of June 27, 2014. Thus on that day of February 28, 2019, the court gave orders as follows;

“ Parties are at liberty to file an application to place before the court a relevant valuation report and enforce the order of Judge Mutungi...”
13. It is crystal clear that the order No 2 in the ruling of June 27, 2014 did not place the responsibility of procuring the valuation report from Kiambu County Government on any specific litigant. Likewise, the orders of February 28, 2019 gave the parties a chance to comply with the aforementioned orders of June 27, 2014.
14. The valuation report by the applicant dated May 2, 2017 filed before this court is signed by R A Nabiswa, Senior Assistant Director (valuation), District Valuer Kiambu. The said valuation valued the 0.5 acres piece of land at Kshs 6,000,000. This far, it is clear that the plaintiff made deliberate steps to comply with the court order of June 27, 2014. The question in my mind is; What steps did the 1st defendant take to also comply with the said orders. What prevented him from procuring a report from the Kiambu County Government for the last 8 or so years?. I find that the valuation report availed by the plaintiff emanates from a government office in Kiambu and I find no reason to reject the same. In terms of order No 2 in the ruling of June 27, 2014, the said valuation report shall be final.
15. In any event, the 1st defendant did not move the court to invoke the alternative order No 3 (in the ruling of June 27, 2014) for the excision of the 0.5 acres in a period of 7 years. The issue was only raised in his supplementary affidavit of February 24, 2021, long after the filing of the application of June 4, 2019 and his response thereof of June 25, 2019. I therefore decline to effectuate the alternative prayer.
16. The upshot of the findings herein is that the application dated June 4, 2019 is found to have merits, the same is allowed but each party is to bear their own costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 13TH DAY OF OCTOBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Waweru holding brief for Juma for plaintiff

Kimani Ndumu for 1st Defendant

Allan Kamau for 2nd Defendant

Court assistant: Eddel/Joan

