



REPUBLIC OF KENYA



**Muriithi & 5 others v Njogu & 12 others (Environment & Land Case  
315 of 2014) [2022] KEELC 13475 (KLR) (11 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13475 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 315 OF 2014  
FM NJOROGE, J  
OCTOBER 11, 2022**

**BETWEEN**

**NEWTON KIRAGU MURIITHI ..... 1<sup>ST</sup> PLAINTIFF  
LUCY WANJIKU MURIITHI ..... 2<sup>ND</sup> PLAINTIFF  
JAMS MUNENE MURIITHI ..... 3<sup>RD</sup> PLAINTIFF  
GEOFREY MIGWI MURIITHI ..... 4<sup>TH</sup> PLAINTIFF  
SAMUEL MAINA MURIITHI ..... 5<sup>TH</sup> PLAINTIFF  
REHEMA NJOKI MURIITHI ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**JOYCE WANJIRU NJOGU ..... 1<sup>ST</sup> DEFENDANT  
JACOB NDIRANGU KIMANI ..... 2<sup>ND</sup> DEFENDANT  
MOFFAT GATHIRU MWANIKI ..... 3<sup>RD</sup> DEFENDANT  
JACOB NDIRANGU KIMANI ..... 4<sup>TH</sup> DEFENDANT  
BENARD G. WANJOHI ..... 5<sup>TH</sup> DEFENDANT  
RACHEL WANGARI NJUGUNA ..... 6<sup>TH</sup> DEFENDANT  
STANLEY NYORO MBUGUA ..... 7<sup>TH</sup> DEFENDANT  
JOHN MWANGI NDUNGU ..... 8<sup>TH</sup> DEFENDANT  
AGNES WACHERA MWANGI ..... 9<sup>TH</sup> DEFENDANT  
RICHARD KINGONGO WACHIRA ..... 10<sup>TH</sup> DEFENDANT  
SIMON NGUGI RUGO ..... 11<sup>TH</sup> DEFENDANT  
RACHEAL WAIRIMU MWANGI ..... 12<sup>TH</sup> DEFENDANT**



## JUDGMENT

1. The plaintiffs claim has been brought by way of an amended plaint dated 16/02/2015 where they seek the following prayers:
  - a. An order of temporary and permanent injunction do issue against the defendant whether by herself, her servants and/or agents from distributing, selling, erecting structures, alienating, transferring and/or interfering with the parcel of land known as Nakuru/Munyeki /124.
  - b. An order cancelling the title deeds being Dundori/Lanet Block 5/1452 (Kiamunyekei "A"),Block5/1450(Kiamunyekei"A"),Block5/1451(Kiamunyekei"A") Block5/1453 (Kiamunyekei "A"),Block5/1449(Kiamunyekei"A"),Block5/1448(Kiamunyekei"A"),Block5/1447 (Kiamunyekei "A"),Block5/1446(Kiamunyekei"A"),Block5/1445(Kiamunyekei"A") Block5/1444 (Kiamunyekei "A"),Block5/1443(Kiamunyekei"A"),Block5/1442 (Kiamunyekei "A").
  - c. Costs and interest of the suit and damages.
  - d. Any other relief this honorable court deems fit to grant.
2. The plaintiffs claim is that they are the children of James Muriithi Ngacha (deceased) who was the registered owner of land parcel No. Nakuru/Munyeki/124; that the 1<sup>st</sup> defendant illegally and without the consent of the plaintiffs subdivided land parcel No. Nakuru/Munyeki/124 into land parcel No's Dundori/Lanet Block5/1452(Kiamunyekei"A"),Block5/1450(Kiamunyekei"A"),Block5/1451(Kiamunyekei"A")Block5/1453(Kiamunyekei "A") and sold them to the 2<sup>nd</sup> to 13<sup>th</sup> defendants; that the actions of the defendants were unlawful and caused the plaintiffs loss and damage.

### Defence

3. In their defence dated 18/07/2017, the 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> to 13<sup>th</sup> defendants denied the plaintiffs claim. The 1<sup>st</sup> defendant claimed that she was a stranger to land parcel No. LR No. Nakuru/ Munyeki/124; that land parcel No. Dundori /Lanet Block 5/124 was jointly registered in the 1<sup>st</sup> defendant's name and the deceased, James Muriithi Ngacha sometime around 14/08/1997. The 1<sup>st</sup> defendant further claimed that that LR No. Dundori/Lanet Block 5/124 (Kiamunyekei 'A') was transferred to the 1<sup>st</sup> defendant on or about 27/06/2007 during the lifetime of James Muriithi Ngacha (deceased).
4. The 1<sup>st</sup> defendant stated that she has been in occupation of land parcel No. Dundori/Lanet Block 5/124 (Kiamunyekei 'A') since the year 1997 and has developed it extensively. The 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> to 13<sup>th</sup> defendants also stated that they are in occupation of their parcels of land which they have developed without any interruption from the plaintiffs.
5. The 6<sup>th</sup> defendant did not enter appearance and neither did she file any statement of defence.

### Evidence of the parties

6. Rehema Njoki Muriithi the 6<sup>th</sup> plaintiff, testified as PW1 on 7/02/2022 and adopted her witness statement as part of her evidence. Her evidence is that she was born in 1976; that she knew Mary Wanini



Muriithi, the 1<sup>st</sup> defendant; that she used to live with her father and her stepmother in Nakuru but upon attaining 7 years of age she was taken to Kirinyaga to live with her aunt and continue with her education there; that while in Nakuru her father used to take her to the suit land; that Mary used to take care of land parcel No. Dundori Lanet Block 5/124 on behalf of her late father who had died on 02/02/2002. That in the year 2000 after she completed her education she went back to Nakuru to check on the suit land and the 1<sup>st</sup> defendant, who was then occupying the land, chased her away and prohibited her from ever setting foot thereon since her father had sued the 1<sup>st</sup> defendant in court; that she returned to the suit land in 2006 intending to construct a house thereon and she was chased away again. Her further evidence is that she returned to the suit land once more in 2012 and met with the 1<sup>st</sup> defendant who informed her that her father had given the 1<sup>st</sup> defendant 1 acre out of the suit land; that in 2014 she went to the suit land with building materials only to find that the 1<sup>st</sup> defendant had already subdivided the property, and that she had the original title deed thereof. She informed her siblings of that development and they arranged to visit the 1<sup>st</sup> defendant. When they met her she repeated that she had the title deed and they could do nothing to her and they should sue her, hence the instant suit.

7. Her further evidence was that Serah Wambui Muriithi was her step mother while her mother's name was Alice; that she does not know the defendants but has sued them over the suit property because the defendant had subdivided it and sold it. She produced the green card annexed to her list of documents for land parcel No. Dundori Lanet Block 5/Kiamunyeki 'A'/124 whose entry No. 2 read James Muriithi Ngacha and Mary Wairimu Muriithi as P. Exh 1; she stated that she had lived on the suit land until the year 2011. She testified that she did not know whether her father had a title deed to the property but added that he had taken her to Nakuru Kiamunyeki Company Ltd where she was informed that there was a case in court and therefore titles could not be issued.
8. It was her evidence that her family filed Succession Cause No. 69/2002 in Kerugoya which was not successful, and so they filed an appeal in Embu in Succession Appeal No. 91/2008 where the court, on appeal, held that the Kirinyaga land be shared into two and the Nakuru land to be shared among the plaintiffs. She testified that Mary was not involved in the Kerugoya succession matter and produced the grant in PMCC Succession 69 of 2002, the proceedings and judgement as P. Exh. 2(a), P. Exh 2(b) and P. Exh 2(c).
9. She testified further that her late father was buried in Kirinyaga while Mary Wanini was buried in Nyeri; that she lived on the land on and off until the year 2011 when she went back and found out that the portion that had been said to belong to her father had been subdivided and sold. She decided to involve her siblings and they filed a case at Kerugoya and that she never saw Mary's title deed before coming to court. She testified that she only knows James Maina Muriithi (13<sup>th</sup> defendant) who was son to Mary Wanini, but that she does not know if she had any children with her father.
10. It was her evidence that she went to the lands office where she was informed that the land had been subdivided and she therefore prayed that the titles be annulled.
11. She stated that the land situate in Kirinyaga was shared amongst the 7 plaintiffs in the present suit and that her mother did not participate in the proceedings because of instability of mind.
12. On cross-examination she confirmed that their late father died on 02/02/2002 and that she had in court the eulogy, chief's letter and death certificate to prove it. She also confirmed that the Succession Cause No. 69/2002 involved only two houses, which were that of Serah Wambui the 2<sup>nd</sup> wife and Alice Wambui Muriithi the 1<sup>st</sup> wife. She stated that the petitioner was Serah Wambui while Newton Kiragu was the protestor. She admitted that both Newton and Serah testified in court and the court gave its judgement on 12/09/2008 and a grant was issued; that Mary Wanini, the 1<sup>st</sup> defendant, was not involved in the succession proceedings; according to her in evidence in cross-examination, the land in



- dispute is land parcel No. Nakuru Kiamunyeki/124 which is the same parcel of land in the succession cause both before the Principal Magistrate's courts and on appeal.
13. She admitted that they did not conduct any search at the lands registry before they filed the succession cause. When she was referred to the amended plaint, she pointed out that the suit property was described as Nakuru/Munyeki/124 while the green card which she had produced as P. Exh 1 was for plot number Dundori Lanet Block 5/Kiamunyeki 'A'/24. She admitted that they did not do a search for land parcel No. Nakuru/Munyeki/124 but that they did a search for the Dundori Kiamunyeki land. She further admitted that by the time of filing the succession, Mary, the 1<sup>st</sup> defendant, was living on the suit property. She stated that she visited often and that her late father told her that Mary was "a caretaker." She stated that they were claiming fraud because the land was transferred while they were doing succession and that they never involved Mary in the succession cause. She asserted there existed a case involving the company which had owned the land which had hindered the issuance of titles.
  14. She also alleged that in 2014 after she went to the land and Mary informed her that there was no land for them on the suit parcel, she conducted a search which revealed the names of the purchasers who have now built on the land; by then there were dwelling houses and foundations in various parts of the land. She asserted that she does not agree that Mary Wanini Muriithi procedurally got the land after the death of her father James Muriithi Ngacha.
  15. On re-examination, she stated that the suit parcel is number Dundori Lanet Block 5/Kiamunyeki "A"/124 and that entry No. 6 which is in favor of Mary Wanini Muriithi was made in 2007 when her father was already deceased.
  16. Newton Kiragu Muriithi, the 1<sup>st</sup> plaintiff, testified as PW2 and adopted his witness statement as part of his evidence. He stated that he was born in 1970, that he is 6<sup>th</sup> born in his family; that he lived with his parents in Nakuru but the family later on migrated to Kirinyaga to a place called Mutira Kaguyu where they lived with his stepmother called Serah Wambui Muriithi. His father used to speak to them of their land in Nakuru, but he only got to know of its location through the 6<sup>th</sup> plaintiff. It was his evidence that Mary Wanini Muriithi, the 1<sup>st</sup> defendant, lived on his father's parcel of land No. Dundori Lanet Block 5/Kiamunyeki "A"/124; he admitted that he had never lived on the suit land and that Mary Wanini Muriithi had sold the suit property to the other defendants.
  17. He further testified that Serah Wambui Muriithi was his stepmother and that Mary was not involved in the succession cause which he participated in as a son of the deceased. It was his evidence that his family never knew that Mary Wanini Muriithi as a wife to their father and that the suit property is listed in the grant issued in Succession Cause No. 69/2002. It was further his evidence that they did not conduct a search on the property prior to filling for succession but that he did so in the year 2014. He testified that he does not know the defendants except for Mary Wanini and James her son and further that he did not know how the suit property was subdivided and sold.
  18. On cross-examination he confirmed that he knew that the land was at Kiamunyeki but that it was many years since he went there. He further confirmed that he filed Case No 69/2002- Kerugoya and that Serah conducted the succession in which one David Kinyua and one James Munene testified. He also admitted that he was living on land parcel No. Mutira Kaguyu/629 with his mother and that the lower court judgement excluded him from the land and that as a result of the judgement he appealed.
  19. He admitted that Mary was not involved in the succession matter and that he knew the 13<sup>th</sup> defendant James Maina when he was young. He also confirmed that he does not know who is on the ground.
  20. On re-examination, he stated that land parcel No. Nakuru/Munyeki/124 was part of the succession cause and that though there was a mistake in the reference, that number refers to the suit land.



21. James Munene Muriithi testified as PW3 and adopted his witness statement as part of his evidence. He stated that he does not know Mary Muriithi and that Serah Wambui is his step mother. He testified that he gave evidence in the succession proceedings in Embu and Kerugoya where Mary Wambui was not involved. When he was referred to the green card, he stated that, that is the parcel number and that he did not know if Mary lived on the suit property. It was his evidence that he had gone to the land with his father but he never got a share of it because someone else came and claimed the property.
22. On cross-examination he stated that his mother's name is Alice Muriithi. He admitted that two co-wives gave their evidence in the Kerugoya case. He further admitted that they appealed the decision of the court and that it involved land at Nakuru. He confirmed that the title number on the green card is Dundori/Lanet Kiamunyekei "A" Block 5/124 but he was not sure if the numbers refer to the same land. He stated that he went to the land in the year 2014 when they filed the present matter and that he was aware of its existence because their late father had informed them of it.
23. He stated that when he went to the suit property, he found Maina, Wanjiru and Wachira but he did not find Mary there. He admitted to have lived on the suit property when he was young and that he did not know the relationship between Mary and his father. He also admitted that he did not know that the land was registered in the names of both James and Mary and neither did he know the procedure where people were joint owners. He admitted that their father died on 02/02/2002 and that by the time of succession, the property was registered in both names. After filing of the case, he came to Nakuru and found a house on the suit property where Mary lived with her three children. He was not sure whether their father used to visit Mary. He has not been on the land lately; he does not know what is on the land; at the time of the succession matter the family never knew where the suit land was located.
24. Geoffrey Migwi Muriithi testified as PW4 and adopted his witness statement as part of his evidence. He testified that his father was James Muriithi Ngacha while Serah Wambui was his step mother; that his father died on 02/02/2002; that the suit property is registered in the names of James Muriithi Ngacha and Mary Wanini. It was his evidence that they filed for succession and that the suit property is in the grant as land parcel No. Nakuru Munyekei /124. He testified he does not know James Maina the 13<sup>th</sup> Defendant and that he only came to know about the sale of the property when it was done. It was his evidence that their late father was buried in Kirinyaga and he is not aware if Mary was buried on the land.
25. On cross-examination he confirmed that he was born in 1972 and that his mother is Alice Wangui and he was not sure if his mother testified in the Kerugoya succession cause. He also confirmed that he has two brothers Mwaniki and Maina. He admitted that the plot number in the plaint differs from the title number in the green card; that the family did not conduct any search and that when he went to the suit property, he found houses on the land. He also admitted that he does not have a title deed to the property. The Plaintiffs then closed their case.
26. Joyce Wanjiru Njogu testified as DW1. She testified that Mary Wanini Muriithi was her mother who died on 15/01/2021 and that she was given letters of administration to her estate which she produced as D. Exh 1. She adopted her late mother's statement dated 18/07/2017 as her evidence in chief. She testified that Mary Wairimu Muriithi was the owner of Dundori/Lanet Block 5/125 Kiamunyekei "A" and produced the green card as D. Exh 1(a). She testified that her title deed is dated 27/06/2007 and produced it as D. Exh 2, she also produced the Certificate of Official Search dated 27/01/2010 as D. Exh 3.
27. It was her evidence that she lived on the land in 1975 and that Mary Wanini Muriithi's children were herself, Wachira and Justus Mwangi; that Mary Wairimu subdivided the land and sold it to the buyers; that even James Maina Muriithi, the 13<sup>th</sup> defendant was given land; she produced the mutation copy



- as D. Exh 4. She also testified that she does not know land parcel No. Nakuru/Munyeki/124 and her family never participated in the plaintiffs' succession proceedings and so none of them inherited anything through it.
28. It was her evidence that James and Mary were registered as owners as per the green card and that they were husband and wife and as per entry 6 on the green card Mary was registered as the owner on 27/06/2007. Entry No. 8 showed that the title was closed on 31/10/2010 and the resultant plots were No's 1441 to 1453 and the buyers issued with titles. She testified that she does not agree that the title should be nullified and that she was not aware that her father had other families or other children.
29. On cross-examination she admitted that she was born in 1961 and that her father's name is James Muriithi and they lived at Kiamunyeki as a family with her father and mother. She confirmed that once her father died, the land was registered in her mother's name as the land was registered jointly. She was shown a copy of a title and she confirmed that it was for land parcel No. Dundori/ Lanet Block 5/124 but that the title No. on the green card was Dundori/Lanet Block 5 Kiamunyeki "A" /124. She stated that at the time the land was registered in her parents' names it had "Kiamunyeki "A"" and the mutation also has "Kiamunyeki "A"" indicated. She stated further that her mother's homestead is now occupied by James Maina and that her mother was buried in Nyeri but she did not know where her father was buried as she never went for the burial.
30. On re-examination she stated that her late mother submitted her late father's certificate of death and the original title and the land was transferred to her name. That the area as per the title is 0.9850 Ha. She stated that the sheet number on the title and the green card is 119/3/3 which details were on the mutation. She further stated her late mother's death certificate shows that she was the wife of James Muriithi as her name is indicated as Mary Wairimu Muriithi.
31. Moffat Gathiru Mwaniki testified as DW2. He adopted his witness statement dated 17/07/2017 as part of his evidence-in-chief. He testified that he is the registered owner of land parcel No. Dundori/Lanet Block 5/1450 Kiamunyeki and produced a copy of his title deed as DExh.5. He produced as D. Exh 6 the sale agreement dated 8/3/2012 between Mungai Njuguna who had earlier on purchased it from Mary Wanini. He also produced a search certificate dated 22/11/2012 as D. Exh 7 to show that the land is registered in his name. He testified that he lives on the property and has never had any disputes over it.
32. On cross-examination he confirmed that he bought the suit property from Mungai Njuguna who bought it from Mary Wairimu. He admitted that Mungai Njuguna never showed him any authority from Mary authorizing him to sell and neither did Mary sign the agreements. He admitted that he bought parcel No's 1450 and 1446 but that he did not have the consent or the transfer form in court. He admitted that he never signed the transfer and had given it to Stephen Gichuki who had taken them to see the land to deal with it. He also admitted that he did not go to the Land Control Board.
33. On re-examination he stated that Mary was his co-defendant and that she filed a statement where she admitted that she was aware that the land was being sold to the purchasers, and that nobody in Mary's family opposed the title. He further stated that they signed transfer documents and that the documents given to Stephen Gichuki were Land Control Board forms which he believes that Stephen would have used to procure special consents.
34. Jacinta Njoki Githinji testified as DW3 and adopted her witness statement as part of her evidence-in-chief. She testified that she is the wife to Benard Githinji Wanjohi. She produced a copy of their marriage certificate serial No. 400134 as D. Exh 16. It was her evidence her husband is the owner of Plot No. 1453 which he had purchased from Mary Wairimu through an agreement dated 7/11/2022 which she produced as DExh.8. She also produced a certificate of search dated 31/1/2012 as DExh.10. She testified that her husband built on the land and has paid land rates, has a house plan for their house



- and plan approval documents and produced the documents such as rates payment requests and rates receipts in her husband's name; building plans fees receipts, and a copy of her identity card.
35. It was her evidence that her husband is a Kenya Defence Forces soldier in Somalia and that they have built a house on the land and she produced a photograph of the house as D. Exh. 36(b). She concluded her testimony by stating that that she does not know the plaintiffs and prayed that their case be dismissed.
  36. On cross-examination she confirmed that she was not present when the agreements were signed and that she didn't know the original size of the mother parcel. She admitted that their portion of land is 50 feet wide and 100 feet long. She also confirmed that her husband went to Somalia in the year 2012 after buying the land in 2011.
  37. On re-examination she reiterated that her husband went to Somalia in the year 2012 but during the title processing he was in Kenya and that Mary did not complain of any irregularity in the process.
  38. Rachel Wairimu Mwangi testified as DW4 and adopted her witness statement dated 18/7/2017 as part of her evidence. It was her evidence that her husband is the 11<sup>th</sup> Defendant and she produced the marriage certificate as DExh.28. It was further her evidence that her husband had purchased his parcel of land vide the agreement the dated 25/11/2011 (DExh.22) which she had purchased from Mary's broker known as Mungai Njuguna.
  39. She testified that they conducted a search on 17/11/2011 which she produced as DExh.23 that showed that the land was registered in the name of Mary. She further testified that Mary was involved in the agreement and that her husband acquired a title dated 29/11/2011 a copy of which she produced as DExh.25. She also testified that they made a transfer dated 7/5/2014 (DExh.26,) the copy of application for consent as DExh.27, copy of title issued in both their names on 20/5/2014 as DExh.24, a copy of her Identity Card as DExh.29, and that they built a house where they live now. She produced a photograph of the house as DExh.32(c). She concluded her testimony by stating that they did not have a dispute with Mary since they took possession of the suit property; she did not know the plaintiffs and therefore sought that their suit be dismissed with costs.
  40. On cross-examination, she confirmed that Simon and Mungai are parties to the agreement where Mungai was the broker.
  41. On re-examination she stated that she did not know why the plot did not have the name Kiamunyeki "A" and that its size is 0.045 Ha and that there was no dispute between them and Mungai and Mary.
  42. Jacob Ndirangu Kimani testified as DW5 and adopted his witness statement dated 18/7/2017 as part of his evidence. He testified that he owns land parcel No. Dundori/Lanet Block 5/1451 and 1452 and produced copies of the following documents; title for Plot 1451 as DExh.33(a), Copy of title for Plot No. 1452 as DExh.33(b), Certificates of official search for LR No. 1451 and 1452 dated 17/7/2017 as DExh.33(c) and DExh.33(d) respectively and the land sale agreement between him and Mungai dated 2/2/2011 as DExh.34.
  43. It was his evidence that he knew Mary Wanini the former owner of the suit property who had introduced him to her agents and that he did not know the plaintiffs. He concluded his evidence by stating that he followed the right procedure in buying the land and so the case should be dismissed with costs.
  44. On cross-examination, he confirmed that he bought the suit property from Mungai Njuguna, the agent of Wanini. He admitted that he did not know of any power of attorney allowing him to do so and neither did Mary Wanini sign the agreement even though the property was in her name. He further



- admitted that he did not see the title in the name of Mary Wanini as his title deeds came readymade. He also admitted that he was not conversant with the Land Control Board consent and the transfer forms. When he was shown the searches for parcel No's 1451 and 1452, he confirmed that Kiamunyeki "A" was missing from the titles.
45. On re-examination he stated that Wanini introduced him to Mungai and was present at the execution of the agreement. He further stated that he signed a number of documents and that some of them would have been transfers and consent forms.
  46. John Mwangi Ndungu testified as DW6 and adopted his witness statement dated 18/7/2017 as part of his evidence. He testified that he and Agnes Wachera are registered owners of A Dundori/Lanet Kiamunyeki "A"/1445 and produced a copy of the title deed as DExh.20, a copy of search dated 18/1/2012 as DExh.21, a land sale agreement dated 27/1/2012 as DExh.19 which he entered into after he had been introduced to Wanini's agent named Mungai. He went on to testify that he did not know the plaintiffs and that he is developing the suit property and he therefore seeks that the suit be dismissed with costs.
  47. On cross-examination he confirmed that he did a search prior to purchasing the suit property which was for land parcel No. 1445. He further admitted that Mary Wanini never signed the agreement. He signed the transfer forms. He added that Mary Wanini had signed the vendor's side of the agreement before he paid the purchase price and was issued with a title deed.
  48. On re-examination he stated that Wanini could not execute the agreement in his favor if he did not have an agreement with Mungai.
  49. James Maina Muriithi testified as DW7 and adopted his witness statement dated 18/7/2017 as part of his evidence-in-chief. It was his evidence that land parcel No. Dundori Lanet/Block 5/ "Kiamunyeki A"/1442 belonged to him and produced a copy of the title deed as DExh.38. He went on to testify that before subdivision the suit property was known as Dundori/Lanet Block 5/124 and produced a copy of official search as DExh.35(a). He further testified that he has lived on the land since the year 1992 and that there has been no dispute regarding the suit property. He reiterated and that plot No. 1442 belonged to him and he produced a search certificate for the same as DExh.35(b). He further testified that the local area is known as "Kiamunyeki" and produced a copy of the map after subdivisions as DExh.37. It was his evidence that he does not know the plaintiffs and that Mungai Njuguna was his mother's agent selling the property.
  50. On cross-examination he confirmed that Wanini was buried in Nyeri and that his father was James Muriithi Ngari. He also confirmed that his mother had informed him that he has a step sister known as Rehema. When he was referred to entry 6 of the green card, he admitted that he did not know how the land was transmitted from the government to his mother and that his father had consented that DW7 be given a portion of the suit property. He stated that plot No. 1442 is the portion he has always been in occupation of.
  51. On re-examination he stated that his father lived in Nakuru and that he had never introduced them to any other family. He further stated that as per the green card the entry in the year 1997 is government registration.
  52. Stanley Nyoro Mbugua testified as DW8 and adopted his witness statement dated as 18/7/2017 as part of his evidence. He testified that plot No's 1447 and 1448 belonged to him and he produced copies of the title deeds as DExh.18(a) and D. Exh. 18(b). He produced a search dated 27/1/2010 as exhibit DExh.39 and searches dated 17/7/2017 as DExh.40 (a) and (b) respectively. He concluded his evidence



by stating that he did not have any problems with Wanini when he took possession of the property and that he did not know the plaintiffs.

53. On cross-examination he admitted that he signed transfer forms for plot No's 1447 and 1448 but he did not have a copy of the Land Control Board consent.
54. The 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> to 13<sup>th</sup> defendants' cases were then closed.

### **Submissions**

55. The plaintiffs filed their submissions dated 4/05/2022 on 10/05/2022 while the 1<sup>st</sup> to 5<sup>th</sup> and the 7<sup>th</sup> to 13<sup>th</sup> defendants filed their submissions dated 31/03/2022 on 8/06/2022.
56. The plaintiffs in their submissions identified three issues for determination as follows: whether the land known as Nakuru/Munyeki/124 is part of the estate of the deceased, whether the defendant is the sole proprietor of the suit property and whether the plaintiffs are entitled to the reliefs sought.
57. On the first issue the plaintiffs submitted that the court issued a grant where the suit property was declared to be part of the estate of the deceased. They submitted further that the fact that the suit property was registered in the 1<sup>st</sup> defendant's name does not mean that it was jointly owned. They relied on the cases of KN vs MPN [2017] eKLR and Moses Bii vs Kericho District Land Registrar & Another [2015] eKLR in support of their arguments.
58. On the second issue, they submitted that the suit property was registered under the Registered [Land Act](#), Chapter 300 (now repealed) in the names of the Plaintiff and the deceased as joint tenants. They relied on Sections 101, 102, 103 and 118 of the Registered [Land Act](#) and submitted that no proof of transfer was produced by the 1<sup>st</sup> defendant to show how the property was transferred and further that no death certificate was produced which raises questions as to how the property was transferred without proof of death.
59. On the third issue, they reiterated that the suit property forms part of the estate of the deceased and therefore it ought to be distributed amongst all the beneficiaries of the deceased. They submitted further that Mary Wanini Mureithi was merely a caretaker of the suit property and did not have the right to dispose it off and further that the transfer and subdivision of the property was done when the succession case was ongoing. They concluded their submissions by seeking that the relief sought in the plaint be granted.
60. The 1<sup>st</sup> to 5<sup>th</sup> and 7<sup>th</sup> to 13<sup>th</sup> defendants in their submissions gave the history of the matter, a summary of the evidence and identified two issues for determination which are whether the plaintiffs are entitled to the orders sought and who should bear the costs of the suit.
61. On the first issue, they relied on the cases of Nguruman Limited vs Jan Bonde Nielson & 2 Others [2014] eKLR and Naftali Ruthi Kinyua vs Patrick Thuita Gachure & Another [2015] eKLR, and submitted that the plaintiffs herein have not demonstrated that they have a valid claim capable of defeating a third party claim in respect of the same property. They further relied on Section 26(1) of the [Land Registration Act](#) 2012 and the case of PWM vs JMM & 3 Others [2019] eKLR and submitted that the documents placed before the court are that the plaintiffs' claim is in respect of land parcel LR No. Nakuru/Munyeki/124 which was confirmed in the Kirinyaga Succession cause No 69 of 2002 but that they have failed to establish any relationship between their said property and the 1<sup>st</sup> Defendant's property Dundori/Lanet Block 5/ (Kiamunyekei "A")/124.
62. They also submitted that the plaintiffs allege that the transfer of the suit property to the 1<sup>st</sup> defendant was fraudulent but they failed to particularize any grounds of fraud and/or adduce any evidence in



support thereof that would merit the impeachment of the said title by dint of Section 26(a) and (b) of the [Land Registration Act](#).

63. It was their submissions that the plaintiffs do not dispute that James Muriithi Ngacha (now deceased) and the 1<sup>st</sup> defendant were registered as joint owners of LR No. Dundori/Lanet Block 5/124(Kiamunyeki “A”) and that upon the demise of James Muriithi Mbachia, the 1<sup>st</sup> defendant became the registered owner as per the provisions of Section 60 of the [Land Registration Act](#) 2012. They relied on the case of Isabel Chelengat vs Samuel Tiro Rotich & 5 Others [2012] eKLR in support of their argument.
64. They relied on Section 24 and 25 of the [Land Registration Act](#) and submitted that the defendants herein have proved that they are lawful owners of the suit properties and that they stand to suffer irreparable loss if the court enters judgement that denies them peaceful occupation and use of their lawfully acquired property. They relied on various cases and concluded their submissions by stating that the plaintiffs are not entitled to the orders sought as they have not demonstrated that they are deserving of those orders and prayed that the suit be dismissed and that they be awarded costs.

### **Analysis and determination**

65. After considering the pleadings, evidence and the submissions in the present case, the only issues that arise for determination are as follows:
  - a. Whether the 1<sup>st</sup> defendant, her servants and/or agents ought to be enjoined from in any manner interfering with the parcel of land known as Nakuru/Munyeki/124.
  - b. Whether the titles arising from the subdivision of LR No. Dundori/Lanet Block 5/ (Kiamunyeki “A”)/124 ought to be cancelled.
  - c. Have the plaintiffs sustained any damage arising from the defendants’ dealings with the suit land?
  - d. Who ought to pay the costs of the suit.
66. Regarding the first issue, it is noteworthy that the backbone of the plaintiff’s case is that the 1<sup>st</sup> defendant illegally appropriated to herself and subdivided and later sold part of, the suit land which they claim belonged to their father. The plaintiffs’ case is that they are the children of the late James Muriithi Ngacha who was the registered owner of land parcel No. Nakuru/Munyeki/124. In support of their case they produced a green card for land parcel No. Dundori Lanet Block 5/Kiamunyeki “A”/124. Entry No. 1 on the green card is dated 14/08/1997 in favor of the Government of Kenya, entry No. 2 is also dated 14/08/1997 in favor of James Muriithi Ngacha and Mary Wanini Mureithi; by entry No. 3 the title deed was issued; Entry No.4 is dated 9/08/2005 which is a restriction; Entry No. 5 is dated 27/06/2007 marks the removal of the restriction; entry No. 6 and No. 7 are dated 27/06/2007 and show that Mary Wanini Mureithi was registered as the owner and title deed issued to her; by entry No. 8 dated 31/03/2010 the title was closed on subdivision into parcel No’s 1441 to 1453 inclusive. The Plaintiffs also produced a certificate of Confirmation of grant issued by the High Court of Kenya at Embu in Civil Appeal No. 91 of 2008 for the estate of James Muriithi Ngacha (deceased) on 29/06/2011 and among the properties listed on the grant is land parcel No. LR Nakuru/Munyeki/124.
67. The 1<sup>st</sup> defendant’s case on the other hand is that she is not aware of land parcel No. LR No. Nakuru/Munyeki/124. She alleges that she was the joint owner of land parcel No. Dundori/Lanet Block 5/ Kiamunyeki “A”/124 together with the late James Muriithi Ngacha and were registered as owners on 14/08/1997 as they were husband and wife. A copy of the green card for land parcel No. Dundori/



Lanet Block 5/Kiamunyekei "A"/124 was produced together with a copy of the title deed for land parcel No. Dundori/Lanet Block 5/ Kiamunyekei "A"/124 in the name of Mary Wanini Mureithi issued on 27/06/2007 and a certificate of official search dated 27/01/2010.

68. DW1 testified that the late Mary Wanini Mureithi subdivided the suit property and sold it and a Mutation Form dated 8/03/2010 was produced. It was further the 1<sup>st</sup> defendant's case that she did not participate in the succession proceedings between the plaintiffs.
69. The 1<sup>st</sup> defendant Mary Wanini Mureithi died and was substituted by her daughter Joyce Wanjiru Njogu. The defendants testified that they purchased various portions of the suit property from Mary Wanini Mureithi and her broker known as Mungai Njuguna and produced copies of searches, land sale agreements and titles in support of their assertions.
70. As pointed out before, it is the 1<sup>st</sup> defendant's argument that she was not aware of land parcel No. Nakuru/Munyekei/124 and that since she was a joint owner of land parcel No. Dundori/Lanet Block 5/ Kiamunyekei "A"/124, upon the demise of James Muriithi Ngacha, she was registered as the owner of the property.
71. In this matter, the plaintiffs claim in the body of their amended plaint that the 1<sup>st</sup> defendant subdivided their late father's parcel of land No. Nakuru/Munyekei/124 and sold it to the defendants. The plaintiffs did not produce any title deed to land parcel No. Nakuru/Munyekei/124 but only produced the certificate of confirmation of grant which listed land parcel No. Nakuru/Munyekei/124 as part of the estate of James Muriithi Ngacha (deceased) and a green card for land parcel No. Dundori/Lanet Block 5/ Kiamunyekei "A"/124.
72. Now it must be realized that a certificate of confirmation of grant can not be equated to a title deed. In a certificate of confirmation, the court confirms distribution only in respect of the deceased's property as submitted or agreed by the parties. Save in recent times when copies of title deeds have become a feature in succession causes and thus reduced the cases of misdescription in grants, it may be possible that none were insisted on in the earlier times, for nothing else can explain why the plaintiffs described the suit land as land No. Nakuru/Munyekei/124 which the court is not entitled to presume to be an error.
73. Sections 107 and 112 of the Evidence Act Chapter 80 of Laws of Kenya provides as follows:
- 107
- (1) Whoever desires any court to give judgment as to why any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.
  - (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.
112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.
74. Land reference numbers are crucial in any litigation concerning land. a party who comes to court must plead the proper description of land that he seeks relief in respect of.
75. The provisions of Order 4 rule 3 of the Civil Procedure Rules emphasize that fact as hereunder:
- " 3. Where the subject-matter of the suit is immovable property [Order 4, rule 3.]  
Where the subject-matter of the suit is immovable property, the plaint shall contain a description of the property sufficient to identify it."



76. In the instant case, the land reference number given by the plaintiffs differs from the land reference number of the parcel owned by the 1<sup>st</sup> defendant. It should not be presumed by court that because they identify the defendants to be settled on some land which they by way of some ancient memory they are able to physically identify, the land reference number they give refers to that land.

77. It must also be noted that parties are bound by their pleadings as stated in *Kenya Airports Authority v Mitu-Bell Welfare Society & 2 others* [2016] eKLR as follows:

“We have examined the prayers in the amended petition as reproduced at the beginning of this judgment. It is trite that a court is required to base its decision on the pleadings before it. The Malawi Supreme Court in *Malawi Railways Ltd. -vs- Nyasulu* [1998] MWSC 3 quoting an article by Sir Jack Jacob entitled “The Present Importance of Pleadings.” published in [1960] *Current Legal problems*, at page174 stated:

“As the parties are adversaries, it is left to each one of them to formulate his case in his own way, subject to the basic rules of pleadings...for the sake of certainty and finality, each party is bound by his own pleadings and cannot be allowed to raise a different or fresh case without due amendment properly made. Each party thus knows the case he has to meet and cannot be taken by surprise at the trial. The court itself is as bound by the pleadings of the parties as they are themselves. It is no part of the duty of the court to enter upon any inquiry into the case before it other than to adjudicate upon the specific matters in dispute which the parties themselves have raised by the pleadings. Indeed, the court would be acting contrary to its own character and nature if it were to pronounce any claim or defence not made by the parties. To do so would be to enter upon the realm of speculation. Moreover, in such event, the parties themselves, or at any rate one of them might well feel aggrieved; for a decision given on a claim or defence not made or raised by or against a party is equivalent to not hearing him at all and thus be a denial of justice....

In the adversarial system of litigation therefore, it is the parties themselves who set the agenda for the trial by their pleadings and neither party can complain if the agenda is strictly adhered to. In such an agenda, there is no room for an item called “Any Other Business” in the sense that points other than those specific may be raised without notice.”

78. Though the plaintiffs produced in evidence a certified copy of the land register that bore a land reference number similar to that of the land formerly held by the 1<sup>st</sup> defendant, that evidence does not support their claim in the body of the plaint and prayer no (a) sought in the same pleading.

79. After considering the evidence in the instant case, and taking stock of the conflict between the land reference number pleaded and that on the green card produced by the plaintiffs, it is this court’s view that the plaintiffs have not established that plot No. Nakuru/Munyeki/124 is the same as land parcel No. Dundori/Lanet Block 5/ Kiamunyeki “A”/124. Consequently, as even in its status as a whole undivided parcel, the latter parcel is not liable to be affected by prayer (a) of the plaint dated 16/2/2015 if that prayer were to be granted. Also, the same prayer can not issue against the defendants in respect of parcel no Nakuru/Munyeki/124 as that parcel was not proved to exist, and in case it does, the owner has not been identified in this suit by way of production of a certificate of official search or a title deed as required by Section 26 of the *Land Registration Act* which provides as follows:

“26. Certificate of title to be held as conclusive evidence of proprietorship.

(1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission



by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

80. Besides, issuance of orders sought in prayer (a) of the plaint may prejudice a person who is not party to this suit, if indeed that land parcel exists.

81. Land parcel No. Dundori/Lanet Block 5/ Kiamunyeki “A”/124 was registered in the joint names of James Muriithi Ngacha and Mary Wanini Mureithi and the defendants have in my view demonstrated that the property was jointly owned and as such upon the demise of James Muriithi Ngacha, the property was properly registered in the name of Mary Wanini Mureithi.

82. The various subdivisions that the plaintiffs are challenging are as per the green card subdivisions of land parcel No. Dundori/Lanet Block 5/ Kiamunyeki “A”/124 and not land parcel No. Nakuru/Munyeki/124 that is indicated in the plaint.

83. Since the plaintiffs have failed to draw any nexus between Dundori/Lanet Block 5/ Kiamunyeki “A”/124 and land parcel No. Nakuru/Munyeki/124, it is not open to this court to presume that all those parcels referred to as Dundori/Lanet Block5/1452(Kiamunyeki“A”),Block5/1450(Kiamunyeki“A”),Block5/1451(Kiamunyeki“A”)Block5/1453(Kiamunyeki“A”) emanated from parcel number Nakuru/Munyeki/124. For that reason, this court declines to issue any orders cancelling the said titles.

84. As regards the claim for damages, I find that the plaintiffs have not proved any loss or damage in their case and so, no award will be made under that head.

85. In conclusion therefore, I hold that the plaintiffs have failed to prove their case on a balance of probabilities and their claim as contained in the amended plaint dated 16/2/2015 is hereby dismissed with costs to the defendants.

**DATED, SIGNED AND ISSUED AT NAKURU VIA ELECTRONIC MAIL ON THIS 11<sup>TH</sup> DAY OF OCTOBER, 2022.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

