



**Rwagi v Gatua & another (Environment and Land Appeal E003 of 2022)  
[2022] KEELC 15076 (KLR) (21 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 15076 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT AND LAND APPEAL E003 OF 2022  
AK BOR, J  
NOVEMBER 21, 2022**

**BETWEEN**

**PETER MURIUKI RWAGI ..... APPELLANT**

**AND**

**MONICA WANGECHI GATUA ..... 1<sup>ST</sup> DEFENDANT**

**FLORENCE WAIRIMU GATUA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The appellant and the respondent were in a love relationship which resulted in the birth of a daughter. During the time when their relationship blossomed, the parcel of land known as Nanyuki/Marura Block III/5625/ Sweetwaters was purchased and a title over this land was issued in the joint names of the appellant and the 1<sup>st</sup> respondent on August 13, 2015. A house was built on the suit property in which the 1<sup>st</sup> respondent resides. The appellant caused the name of the 1<sup>st</sup> respondent to be removed from the title and a new title to be issued in his name on June 27, 2018. The 2<sup>nd</sup> respondent is the mother of the 1<sup>st</sup> respondent.
2. The appellant filed Nanyuki Chief Magistrate's Court Environment and Land case No 4 of 2020 against the two respondents seeking to be declared the sole proprietor of the suit property and the eviction of the 1<sup>st</sup> respondent from the suit land.
3. In her defence and counterclaim, the 1<sup>st</sup> respondent denied the appellant's claim and averred that she and the appellant jointly purchased the suit property and they were registered as joint proprietors. She averred that they embarked on constructing a matrimonial house on the suit property which they moved into. She stated that in 2018 the appellant fraudulently removed her name from the title. She sought a declaration that the registration of the appellant as the sole proprietor of the suit property was fraudulent. Further, she sought cancellation of the title deed issued to the appellant and for the



land to be registered jointly in her name and the appellant. She also sought a declaration that the suit property was matrimonial property.

4. The learned magistrate Hon B Mararo (Principal Magistrate) heard the case and in the judgment which he delivered on February 1, 2022, he found that the suit land was not a matrimonial home but that it belonged to both the appellant and the 1<sup>st</sup> respondent. He observed that what comes after joint registration was joint proprietorship and he found that the suit property was owned by the appellant and the 1<sup>st</sup> respondent as joint tenants. The learned magistrate went on to analyse the unities of a joint tenancy and found that the appellant had equal rights over the suit land and the building erected on it just as the 1<sup>st</sup> respondent. He noted that there was a fall out between the parties but did not delve into the arena of that conflict.
5. The learned magistrate entered judgment in favour of the 1<sup>st</sup> respondent to the effect that the registration of the appellant as the sole proprietor of the suit property was fraudulent. Further, the court issued an order for the cancellation of the title issued to the appellant and directed that one was to be registered bearing the joint names of the appellant and the 1<sup>st</sup> respondent. It also directed the land registrar, Nanyuki to remove the caution registered against the suit land. The court ordered that each party would bear its own costs.
6. Being aggrieved by that decision, the appellant lodged his appeal on July 14, 2022. He faulted the learned magistrate for finding that there was a joint tenancy between him and the 1<sup>st</sup> respondent. Additionally, he faulted the court for arriving at the conclusion that he was fraudulently registered as the sole proprietor of the suit property yet no particulars of fraud were pleaded or proved. He took issue with court for finding that the 1<sup>st</sup> respondent did not contribute anything towards purchase of the suit property and that it was not matrimonial property yet still holding that there was a joint tenancy. Further, he contended that the learned magistrate erred in concluding that his removal of the 1<sup>st</sup> respondent's name from the register of the suit property without her knowledge as a joint tenant amounted to an irregularity.
7. Essentially, the appellant took issue with the court's finding that he had equal rights with the 1<sup>st</sup> respondent over the suit land which could not be wished away by applying to the land registrar for the removal of the 1<sup>st</sup> respondent's name from the title. The appellant sought to have the judgment of the learned magistrate set aside and his suit allowed together with costs.
8. The appeal was canvassed through written submissions. The appellant submitted that the 1<sup>st</sup> respondent failed to meet the standard of proof required in civil cases. He submitted that he gave oral and documentary evidence to demonstrate that he was the sole proprietor of the suit land and that the 1<sup>st</sup> respondent did not make any contribution towards its purchase or the development of the house standing on the land. He added that the learned magistrate went off tangent in making a finding on joint tenancy when it was not pleaded or sought in the counterclaim. He pointed out that the 1<sup>st</sup> respondent sought a declaration in her counterclaim that the suit property was matrimonial property and the learned magistrate found that there was no matrimony between the parties. He submitted that he only registered the 1<sup>st</sup> respondent as a trustee for the child they got together but that he had the right to remove her name from the title when their relationship went sour. He maintained that there was no joint tenancy in the ownership of the suit land.
9. He urged that no particulars of fraud were set out in the counterclaim and that the 1<sup>st</sup> respondent did not adduce any evidence to prove fraud. He faulted the learned magistrate for stating in the body of the judgment that he had proved his case on a balance of probabilities and reversing this finding in concluding that the 1<sup>st</sup> respondent had succeeded in proving her case against him on a balance



- of probabilities. He asserted that having found that the 1<sup>st</sup> respondent did not contribute anything towards the purchase and development of the suit property and that it was not matrimonial property, it was erroneous for the court to find that there was joint ownership of the land yet in reality he only registered the 1<sup>st</sup> respondent's name on the title over the land in trust to ensure that his daughter had a roof over her head.
10. The respondent submitted that it was not in dispute that she lived with the appellant from 2009 to 2018 as husband and wife and that they were blessed with one child. That while their relationship was still sweet they acquired the suit land in 2015 and were registered as joint proprietors.
  11. She submitted that the process of transferring the land required various documents including certified copies of identity cards, Kenya Revenue Authority pin, executed transfer deed, spousal consent, land control board consent, proof of payment of stamp duty and the surrender of the original title. She added that she was neither consulted nor did she give her consent for the change of proprietorship of the suit land. She stated that it was only when she realised what the appellant had done that she registered a restriction against the suit land. She urged that the appellant used her documents without her knowledge and that the transfer of the suit land from joint proprietorship to sole proprietorship was done fraudulently.
  12. She relied on section 26 of the *Land Registration Act*. She maintained that she contributed towards the purchase of the suit property. She urged the court to protect her and relied on *MGNK v ANG* (2016) eKLR where the court stated that it was not realistic to expect partners to keep track of the contributions they made towards the purchase of family property. In the court's view this case cannot assist the 1<sup>st</sup> respondent since neither the 1<sup>st</sup> respondent nor the appellant is challenging the finding by the learned magistrate that no marriage or presumption of marriage existed between these two.
  13. The 1<sup>st</sup> respondent submitted that the appellant only added the 2<sup>nd</sup> respondent who was his mother in law to the proceedings to demean and ridicule her since the appellant's allegations that the respondents conspired to chase him away from the suit land were false and unfounded he having left their home on his own free will.
  14. She submitted that in as much as the trial court found that there was no marriage or presumption of marriage between her and the appellant, the appellant previously filed a divorce petition against her which he withdrew. Further, that the appellant lied to her that he had no family and for ten years she believed she was his only wife only to learn later that the appellant had another wife and family. The 1<sup>st</sup> respondent submitted that their daughter was now 12 years and she ought to continue living in the place which she knows as her home with her mother.
  15. What is at the heart of this appeal is whether the appellant owned the suit property solely or he jointly owned it with the 1<sup>st</sup> defendant and could not remove her name from the certificate of title. The appeal does not challenge the findings made by the learned magistrate regarding there being no marriage between the appellant and the 1<sup>st</sup> respondent. The issue that falls for determination therefore is whether the court should allow the appeal.
  16. It is not in dispute that the appellant and the 1<sup>st</sup> respondent were registered as owners of the suit land on August 13, 2015. It is also not disputed that the appellant got the title deed over the land issued in his sole name on June 27, 2018. The appellant's contention in the appeal and in the trial was that the 1<sup>st</sup> respondent did not contribute to the acquisition of the suit property and that he only added the 1<sup>st</sup> respondent's name to the title as a trustee.
  17. The copy of the title deed over the suit property which was tendered in evidence showed that the appellant and the 1<sup>st</sup> respondent were registered as owners of the suit property on August 13, 2015.



- There is no indication in the register or the title whether this was joint or ownership in common. Had this been common ownership then the ratio in which the appellant and 1<sup>st</sup> respondent owned the land would have been indicated on the register.
18. The effect of the registration of the 1<sup>st</sup> respondent as the joint owner of the suit land on August 13, 2015 vested in her the absolute ownership of the land with the appellant with all the rights and privileges appurtenant to ownership under section 24 of the Act. The 1<sup>st</sup> respondent's rights over the land were secured by section 25 of that Act and could only be defeated in the manner provided under that Act.
  19. Section 91 of the [Land Registration Act](#) applied to the suit property at the time both the appellant and the 1<sup>st</sup> respondent were registered as the owners of the suit property. The section deals with ownership of land by two or more persons as well as joint tenancies and tenancies in common. Had the instrument *vide* which the land was transferred to the appellant and the 1<sup>st</sup> respondent been produced in court it would have been possible to ascertain whether the intention was for the appellant and the 1<sup>st</sup> respondent to hold the suit property as joint tenants or tenants in common with their respective shares if it were held on a tenancy in common basis. This court agrees with the finding made by the trial court on the appellant's and 1<sup>st</sup> respondent's joint ownership of the suit land.
  20. Where land was occupied jointly as was the case for the appellant and the 1<sup>st</sup> respondent, neither the appellant nor the 1<sup>st</sup> respondent was entitled to a separate share in the land and consequently dispositions ought to have been made by both of them pursuant to section 91 (4) (a) of the [Land Registration Act](#). Under subsection (c) a joint owner can only transfer their interest inter vivos to the other joint owner but not to a third party. Since the suit land was jointly owned, only the 1<sup>st</sup> respondent could have transferred her interest in the land to the appellant. The appellant could not transfer her interest in the land to his sole name as he purported to do.
  21. The court agrees with the contention by the 1<sup>st</sup> respondent that when the new title deed over the suit land was issued to the appellant in his sole name, he ought to have filed in the registry the previous title issued in their joint names pursuant to section 31 of the [Land Registration Act](#). The appellant did not prove that the land registrar dispensed with the requirement for him to produce that certificate of title when he was registered as the sole proprietor of the suit land and a new title issued to him. The old certificate should have been cancelled under that legal provision. The title issued to the appellant on June 27, 2018 was irregularly issued.
  22. Had the appellant intended to protect the interest of the child he admitted that he got with the 1<sup>st</sup> respondent as he contended in the appeal, then he ought to have caused the name of the minor to be entered in the register to enable her interest to be held in trust in accordance with section 47 of the [Land Registration Act](#).
  23. Even if the 1<sup>st</sup> respondent were registered as a joint proprietor of the suit land without valuable consideration as the appellant contended, once the transfer was registered it had the same effect as a transfer for valuable consideration under section 27(2) of the [Land Registration Act](#).
  24. The 1<sup>st</sup> respondent and the appellant held the rights over the suit land free from all other interests but subject to any restrictions shown on the register, the overriding interests set out in section 28 and to duties as a trustee. The appellant raised the issue of trusteeship in his submissions. He did not take up this point in the memorandum of appeal or at the trial. The court is not satisfied that the appellant established that the 1<sup>st</sup> respondent was registered as a co-owner of the suit property as a trustee.
  25. Perhaps this case exemplifies the fact that love, or lust for that matter, is indeed blind and that being intoxicated on love, lovers will do things or enter into transactions that they would wish to run away from once the "blinds of love" are drawn and reality dawns on them or they face the naked truth. Since



legal consequences flow from registration of persons as proprietors of land, those wishing to add the names of those they love to titles over land must remain alive to the fact that when romantic love, seasonal as it is, finally dies, the law will still recognise and uphold the property rights transferred to the erstwhile lover. Unlike the feeling of love which waxes and wanes over time, the law is perennial until it is changed by the law makers.

26. The appeal lacks merit and is dismissed. Each party will bear its costs.

**DELIVERED VIRTUALLY AT NANYUKI THIS 21<sup>ST</sup> DAY OF NOVEMBER 2022.**

**KOSSY BOR**

**JUDGE**

**In the presence of:**

Mr. George Gori for the Appellant

Mr. Solomon Mukhama for the Respondents

Ms. Stella Gakii- Court Assistant

