



REPUBLIC OF KENYA



KENYA LAW
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Kinundu & 3 others v Njoroge & another (Environment & Land Case E007 of 2021) [2022] KEELC 15353 (KLR) (15 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E007 OF 2021**

YM ANGIMA, J

DECEMBER 15, 2022

BETWEEN

WAIRIMU KIHANYA KINUNDU 1ST PLAINTIFF

**ELENA NYAWIRA MAINA (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF PETER MAINA BISMAL DECEASED) 2ND PLAINTIFF**

ALEX MWANGI KANGARA 3RD PLAINTIFF

CATHERINE WANJIRU MUIRU 4TH PLAINTIFF

AND

MARY RUGURU NJOROGE 1ST DEFENDANT

**THE LAND REGISTRAR DISTRICT LAND REGISTRY,
NYAHURURU 2ND DEFENDANT**

RULING

A. Introduction and Background

1. By a plaint dated January 10, 2021 and amended on April 22, 2022 the plaintiffs sued the defendants seeking the following reliefs against the 1st and 2nd defendants:
 - a. An order compelling the 1st defendant to cause the removal of the cautions registered on June 28, 2013 against the 1st, 2nd and 3rd plaintiffs' titles to parcels known as Nyandarua/Nandarasi/2207, Nyandarua/Nandarasi/2018 and Nyandarua/Nandarasi/2208 respectively within a specific timeline.
 - b. In default of (a) above, an order directing the 2nd defendant to remove the cautions registered over the titles to parcels known as Nyandarua/



Nandarasi/2207 measuring 0.045 ha belonging to the 1st, 2nd and 3rd Plaintiffs within a specific timeline.

- c. An order that the 4th defendant is the only person entitled to L.R. No. Nyandarua/Nandarasi/3662 measuring approximately 0.135 ha as well as an order of permanent injunction restraining the 1st Defendant, her agents, assigns, and/or persons claiming in her name from interfering with the 4th plaintiff's quiet ownership, possession, occupation and/or enjoyment of her said parcel of land.
 - d. Costs of the suit plus interest thereon at court rate.
2. The plaintiffs pleaded that they were the registered owners of the suit properties but the 1st defendant had on or about June 28, 2013 wrongfully caused cautions to be registered against the 1st, 2nd and 3rd Plaintiffs' titles without lawful justification or excuse and that she had even threatened to evict the 4th plaintiff from her parcel of land. it was further contended that the 1st defendant's actions constituted a violation of their right to own and enjoy property without interference hence the suit.
 3. The 1st defendant filed a defence and counterclaim to the suit dated April 13, 2022. by her defence, the 1st defendant denied liability for the Plaintiffs' claim and pleaded that the suit properties were initially part and parcel of her late husband's estate, Njoroge Kige who died in 1999. It was contended that the suit properties were sub-divisions of Title No. Nyandarua/Nandarasi/1148 measuring 4.13 ha. It was contended that the sub-division of Parcel 1148 and the subsequent transfers to the defendants was illegal and fraudulent as the actions were undertaken without the consent of her husband during his lifetime or her consent as the administrator of the estate of the deceased.
 4. By her counterclaim, the 1st defendant reiterated the contents of the defence and sought the nullification and cancellation of the alleged illegal and fraudulent transactions relating to Parcel 1148. The 1st defendant pleaded several particulars of fraud, impropriety and illegality on the part of the plaintiffs and the Land Registrar-Nyandarua County and sought the following reliefs against them in the counterclaim:
 - a. A declaration that the 1st defendant is the legal owner and is entitled, as the Administratrix of the Estate of Njoroge Wanyange Kiige, deceased, of the parcel of land known as Nyandarua/Nandarasi/1148 measuring approximately 4.13 ha situate in Nandarasi area of Nyandarua as previously delineated on Registry Map Sheet No.3.
 - b. Orders to the 2nd defendant to cancel all those titles known and described as title numbers Nyandarua/Nandarasi/2204, 2205, 2206, 2207, 2208 and 2209 and Nyandarua/Nandarasi/3662 and to reinstate title number Nyandarua/Nandarasi/1148 measuring approximately 4.13 ha, as previously delineated on Registry Map Sheet No.3 and to register the 1st defendant, Mary Ruguru Njoroge as proprietor as Administratrix of the Estate of the late Njoroge Wanyange Kiige.
 - c. An order of permanent injunction to restrain the plaintiffs by themselves, their servants, agents and/or persons claiming under or in trust for them, from entering into, remaining upon, cultivating, leasing, planting trees or grass, fencing, building or erecting any structures, permanent or temporary, digging pit latrines, wells, boreholes or dams, or in any other manner



whatsoever, interfering with the quiet enjoyment, use and possession of the 1st defendant and other beneficiaries of the Estate of the late Njoroge Wanyange Kiige, deceased, of the parcel of land known as Nyandarua/Nandarasi/1148 measuring approximately 4.13 ha situate in Nandarasi area of Nyandarua South Sub County in Nyandarua County and as previously delineated on Registry Map Sheet No.3 or any portion(s) thereof.

- d. An order of permanent injunction to restrain the Plaintiffs by themselves, their servants, agents and/or persons claiming under or in trust for them, from selling, charging, mortgaging, leasing, disposing, alienating, putting themselves out as, and purporting to be, the legal or registered owners, or in other manner entitled, to the said parcel of land known as Nyandarua/Nandarasi/1148 measuring approximately 4.13 ha, as previously delineated on Registry Map Sheet No.3 or any portion(s).
 - e. Costs of the suit and the counterclaim.
 - f. Any other or further relief as this honourable court may deem just to grant.
5. The 1st defendant further pleaded that the suit properties were all located within Nandarasi in Nyandarua South Sub-County within the jurisdiction of the SPM's Court at Engineer hence the suit ought to have been filed there. It was pleaded that he suit properties were worth about Kshs. 5 million whereas the magistrate's court there had jurisdiction up to Kshs. 15 million.

B. The 1st Defendant's Application

6. Simultaneously with the filing of the defence and counterclaim, the 1st defendant filed a notice of motion dated April 13, 2021 expressed to be based upon section 2 of the Land Registration Act, 2012, sections 1A, 1B, 3, 3A, 18 and 63(e) of the Civil Procedure Act (Cap.21), Order 1 rule 10, Order 40 rule 1, and Order 51 rules 1 & 3 of the Civil Procedure Rules, 2010 seeking the following orders:
- a. Spent;
 - b. Spent;
 - c. Spent;
 - d. That this honourable court be pleased to issue orders of temporary injunction restraining the plaintiffs and the proposed 3rd, 4th, 5th and 6th defendants/respondents by themselves, their servants, agents and/or persons claiming under or in trust for them, from entering into, remaining upon, cultivating, leasing, planting trees or grass, fencing, building or erecting any structures, permanent or temporary, digging pit latrines, wells, boreholes or dams, or in other manner whatsoever, interfering with the quiet enjoyment, use and possession of the 1st defendant's and other beneficiaries of the Estate of the late Njoroge Wanyange Kiige, deceased, of the parcel of land known as Nyandarua/Nandarasi/1148 measuring approximately 4.13 ha situate in Nandarasi area of Nyandarua South Sub County in Nyandarua County and as previously delineated on Registry Map Sheet No.3, pending the hearing of the suit herein.
 - e. That this honourable court be pleased to issue orders of temporary injunction restraining the plaintiffs and the proposed 3rd, 4th, 5th and 6th defendants/



respondents by themselves, their servants, agents and/or persons claiming under or in trust for them, from dealing with title to, selling, charging, mortgaging, leasing, disposing, alienating, putting themselves out as, and purporting to be, the legal or registered owners, or in other manner entitled, to the parcel of land known as Nyandarua/Nandarasi/1148 measuring approximately 4.13 ha, as previously delineated on Registry Map sheet No.3 or any portion(s) thereof, whether described as title numbers Nyandarua/Nandarasi/2204, 2205, 2206, 2207, 2208 and 2209 and Nyandarua/Nandarasi/3662, or otherwise, pending the hearing of this suit herein.

- f. That this honourable court be pleased to make orders that Paul Mungai Guru, Catherine Wanjiru Muiruri, John Muturi Kimani and Peter Mwangi Karanja, be enjoined in this suit as the 3rd, 4th, 5th and 6th Defendants respectively and to such pleadings as they find fit to the Plaintiffs' suit and the 1st Defendant's counterclaim.
 - g. That this honourable court be pleased to order that the suit herein be transferred to Senior Principal Magistrate's Court at Engineer for hearing and determination.
 - h. That the costs of this application be provided for.
7. The application was based upon the grounds set out in the body of the motion and the contents of the supporting affidavit sworn by the 1st defendant on April 13, 2021 and the various exhibits thereto. The 1st defendant contended that most of the transactions complained of in the counterclaim were undertaken long after the death of her late husband without her participation as the administratrix of his estate. She also contended that the suit properties were located about 15 Kilometers from Engineer Law Courts and that is where the parties to the suit also resided. She, therefore, prayed that the suit be transferred to Engineer Law Courts for trial and disposal.

C. The Plaintiffs' Response

8. The plaintiffs were yet to file any responses to the 1st defendant's application despite being accorded an opportunity to do so on several occasions. The court has further noted that the 1st defendant also sought to join other registered owners as defendants to the counterclaim. It would appear that those persons are yet to be served.

D. Directions on Submissions

9. The court gave directions to the effect that the pending application shall be canvassed through written submissions. The parties were given timelines within which to file and exchange their submissions. However, by the time of preparation of the ruling none of the parties had filed submissions.

E. The Issues for Determination

10. In view of the fact that there are 3 persons sought to be joined in the suit, the court shall not consider the substantive application for the temporary injunctions sought. The court shall only consider the prayers for joinder of the additional parties and the prayer for transfer of suit to Engineer Law Courts. The prayer for temporary injunctions shall be deferred until the two issues are determined.



11. Accordingly, the court shall consider the following two issues:
 - a. Whether the 1st defendant has made out a case for the joinder of Paul Mungai Guru, John Muturi Kimani & Peter Mwangi Karanja as parties to the counterclaim.
 - b. Whether the suit should be transferred to Engineer Law Courts for trial and disposal.

F. Analysis and Determination

Whether the 1st Defendant has made out a case for joinder of Paul Mungai Guru, John Muturi Kimani & Peter Mwangi Karanja as parties to the counterclaim

12. The 1st defendant sought the joinder of those parties on the basis that they were the registered proprietors of some of the sub-divisions of Parcel 1148 which she contended was part of the estate of her late husband. She swore in her supporting affidavit that Paul Mungai Guru was registered as proprietor of Parcel 2205, John Muturi Kimani was registered as proprietor of Parcel 2206 whereas Peter Mwangi Karanja was registered as proprietor of Parcel 2209. The 1st defendant intends to challenge their registration and has in fact sought orders to that effect in her counterclaim.
13. The copies of the green cards annexed to the 1st defendant's supporting affidavit indicate that the trio sought to be joined in the counterclaim are indeed the registered proprietors of the respective parcels of land. The court is satisfied that their joinder is necessary under Order 1 rule 10 of the [Civil Procedure Rules](#) to enable the court to effectively and completely adjudicate upon all the issues in controversy in the suit. Accordingly, the court is inclined to allow their joinder and order that they be served with court process.

Whether the suit should be transferred to Engineer Law Courts for trial and disposal

14. The court has considered the material on record on this issue. The 1st defendant swore in her supporting affidavit that the suit properties were within 15 km or so from Engineer Law Courts and that the litigants herein were resident within that locality. It was further contended that the suit properties were worth about Kshs. 5 million hence the Senior Principal Magistrate's court at Engineer was competent to entertain the suit. It is evident from the record that the plaintiffs have not disputed the 1st defendant's averments.
15. It is a requirement of section 11 of the [Civil Procedure Act](#) (cap.21) that a suit should be instituted in the court of the lowest grade with jurisdiction to try it. The said section stipulates, inter alia, that:

“Every suit shall be instituted in the court of the lowest grade competent to try it, except that where there are more subordinate courts than one with jurisdiction in the same county competent to try it, a suit may, if the party instituting the suit or his advocate certifies that he believes that a point of law is involved or that any other good and sufficient reason exists, be instituted in any one of such subordinate courts.”
16. On the other hand, section 12 of the same Act stipulates as follows with respect to claims for immovable property:

“Subject to the pecuniary or other limitations prescribed by any law, suits:-

 - a. for the recovery of immovable property, with or without rent or profits;



- b. for the partition of immovable property;
- c. for the foreclosure, sale or redemption in the case of a mortgage of or charge upon immovable property;
- d. for the determination of any other right to or interest in immovable property;
- e. for compensation for wrong to immovable property;
- f. for the recovery of movable property actually under distraint or attachment; where the property is situate in Kenya, shall be instituted in the court within the local limits of whose jurisdiction the property is situate.”

17. The court is thus of the opinion that the suit ought to have been filed before the Senior Principal Magistrate’s court at Engineer. The stated value of the suit properties has not been disputed by the Plaintiffs. Accordingly, the court is inclined to grant an order for transfer of the suit to Engineer Law Courts for trial and disposal.

G. Conclusion and Disposal

18. The upshot of the foregoing is that the court finds merit in the two of the 1st defendant’s prayers for consideration. Accordingly, the court makes the following orders with respect thereto:
- a. An order be and is hereby made for the joinder of Paul Mungai Guru, John Muturi Kimani and Peter Mwangi Karanja as the 3rd, 5th and 6th defendants respectively to the 1st defendant’s counterclaim.
 - b. The 1st defendant shall serve the trio with summons to enter appearance, the defence and counterclaim and the notice of motion dated April 13, 2021.
 - c. An order be and is hereby made for the transfer of this suit to the SPM’s Court at Engineer for trial and disposal.
 - d. The remaining prayers for injunction shall be canvassed before the trial court at Engineer Law Courts upon service of the 3 parties who have been joined to the counterclaim.
 - e. The status quo order first made on November 8, 2021 is hereby extended until the hearing and disposal of the remainder of the prayers in the notice of motion dated April 13, 2021.
- 19 Orders accordingly.

RULING DATED AND SIGNED AT NYAHURURU THIS 15TH DAY OF DECEMBER, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Ms. Kimani holding brief for Mr. Mathea for the Plaintiffs

N/A for the Defendants

C/A - Carol

Y. M. ANGIMA

JUDGE

