



**Kirigi v Nyeri District Land Registrar & 2 others (Environment & Land Petition
E001 of 2020) [2022] KEELC 15302 (KLR) (9 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15302 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND PETITION E001 OF 2020
JO OLOLA, J
DECEMBER 9, 2022
IN THE MATTER OF ARTICLES 2(2), 10(20, 19, 21(1),
22(1), 23(1), 50(1) & 165(3)(B) & (6) & (7) OF
THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF ALLEGED CONTRAVENTION OF
RIGHTS OR FUNDAMENTAL FREEDOMS UNDER
ARTICLES 10, 19, 20, 21, 40, 47 AND 50 OF
THE CONSTITUTION OF KENYA
AND
IN THE MATTER OF RULES 3, 4(1), 10 & 13 OF
THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)
PRACTICE AND PROCEDURE RULES, 2013

BETWEEN

PETER MUTHEE KIRIGI PETITIONER

AND

NYERI DISTRICT LAND REGISTRAR 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

GLADYS WAMUYU WAHOME INTERESTED PARTY



JUDGMENT

1. By his petition dated October 19, 2020 as amended on February 17, 2022, Peter Muthee Kirigi (the petitioner) prays for:
 - (a) A declaration that the respondents herein have contravened article 10 of the *Constitution of Kenya* in that the national values and principles of governance set out have not been observed and that the decisions relating to the cancellation of the petitioner's title over title number Kabaru/Ngonde/Block II/709 (Ngatha) is an abuse of social justice;
 - (b) A declaration that the 1st respondent herein acted unlawfully, illegally and unconstitutionally in cancelling the petitioner's title over title number Kabaru/Ngonde/Block II/709 (Ngatha);
 - (c) A declaration that the petitioner's right to a fair trial have been violated;
 - (d) A declaration that the petitioner's rights to fair administrative action has been violated;
 - (e) A declaration that the 1st respondent's amendment of the survey map for title numbers Kabaru/Ngonde/Block II/709 (Ngatha) and Kabaru/Ngonde/Block II/611 (Ngatha) was unlawful, irregular, unconstitutional and bad in law;
 - (f) An order directed to the 1st respondent to cancel title number Kabaru/Ngonde Block II/740 (Ngatha) in the name of Gladys Wamuyu Wahome and title number Kabaru/Ngonde/Block II/741 respectively.
 - (g) An order directed to the 1st respondent to reissue a title deed for title number Kabaru/Ngonde Block II/709 in the name of the petitioner and title number Kabaru/Ngonde Block II/710 respectively;
 - (h) Aggravated damages;
 - (i) Any further relief or orders that this honourable court shall deem just and fit to grant;
 - (j) Costs of this petition.
2. Those prayers arise from the petitioner's contention that he is the registered proprietor and is in actual occupation of title number Kabaru/Ngonde/Block II/709. The petitioner avers that sometime in the year 2018, he applied for a search over his property which was futile. The petitioner then launched an investigation which came to reveal that sometime in the year 2008, his title was cancelled following a sub-division thereof and a portion thereof had been transferred to the name of Gladys Wamuyu Wahome.
3. The petitioner avers that the 1st respondent ought to have summoned him and afforded him a hearing before taking such a draconian move.
4. The district land registrar nyeri and the honourable the attorney general named herein as the 1st and 2nd respondents respectively are opposed to the petition. In a replying affidavit sworn on their behalf by the Nyeri county land registrar, Nathan G. Gathaiya, the two Respondents aver that Ephraim Wahome Gatere was the registered owner of Parcel No. Kabaru/Ngonde/611 measuring approximately 1.514 to which he was issued with the title deed on March 8, 1994.
5. The respondents further aver that Gladys Wamuyu Wahome (the interested party) did apply for registration of a caution on the land claiming purchaser's interest on July 27, 2007 but later applied for



- its withdrawal on November 24, 2008. Thereafter, Ephraim Wahome Gatere applied for sub-division of the said land into two portions which resulted in Kabaru/Ngonde 709 and 710. On December 11, 2008, the said Ephraim transferred parcel number 709 measuring 0.405 Ha. to the petitioner.
6. The Respondents aver further that after the transactions were registered in the 1st respondent's office, the 1st respondent was served with a court order confirming an award by Kieni land dispute tribunal in case number 44 of 2007 directing that the disputed land number 611 be sub-divided into two portions and a transfer to be effected to the interested party.
 7. The respondents assert that they believe that Ephraim Wahome Gatere acted in bad faith in reselling the land in dispute to defeat a court order and that he should be enjoined in these proceedings for a just conclusion to be reached.
 8. Gladys Wamuyu Wahome (the interested party) is equally opposed to the petition. In her replying affidavit to the amended petition sworn on March 8, 2022 and filed herein on March 14, 2022, the interested party avers that she holds a genuine title deed to her parcel of land having fulfilled all the legal mandatory requirements.
 9. The interested party further avers that the petitioner failed to meet the required procedures in acquiring his revoked title and he should not drag the names of the respondents into a problem of his own.
 10. The petition herein proceeded by way of affidavit evidence and written submissions. I have carefully perused and considered the pleadings filed herein and the averments made by the parties in their respective affidavits. I have similarly perused and considered the submissions made herein by the petitioner. I was unable to find any submissions filed on behalf of the respondents and the interested party.
 11. By his petition as amended, the petitioner has sought a number of declarations and orders in regard to land parcel number Kabaru/Ngonde/Block II/709 (Ngatha). It is the Petitioner's case that he is the registered proprietor of the said parcel of land. The petitioner accuses the respondents herein of arbitrarily cancelling the said title in his name and subsequently causing the same to be registered in the name of the interested party.
 12. The petitioner asserts that in so acting, the respondents had abused their offices and acted illegally and irrationally. It is further the petitioners' case that by so acting the respondent had violated his rights as enshrined in articles 10, 19, 20, 21, 40 47 50 and 156 of the Constitution.
 13. In his affidavit sworn on February 17, 2022 in support of the amended petition, the petitioner gives the circumstances under which he came to learn that his title deed had been cancelled. The Petitioner avers that sometime in the year 2018, he applied for an official search over his property but the search proved futile. When he applied for the green card, he discovered that the title had allegedly been cancelled without any notice to himself.
 14. The petitioner avers at length at paragraphs 6 to 21 of the supporting affidavit on the investigations he carried out and how his title was cancelled without any reference to himself. It is apparent from the material placed before me that the interested party herein had some time in the year 2006 lodged a claim against one Ephraim Wahome Gatere with the then Kieni east land disputes tribunal.
 15. On July 26, 2007, the Tribunal directed the said Ephraim Wahome Gatere to transfer 3 acres from his title No. Kabaru/Ngonde/Block II/611 to the interested party otherwise he would be required to refund the sum of Kshs.105,000/- to the interested party. On September 17, 2007, that award of the tribunal was adopted as an order of the court in Nyeri CMC award case no. 44 of 2007.



16. Again by an order made in the said Nyeri CMC Award Case No. 44 of 2007 on March 19, 2008, the court authorized the executive officer of the court to sign the necessary conveyance documents in respect of title no. Kabaru/Ngonde/Block II/611 and the district surveyor was thereby required to sub-divide the said parcel of land to transfer 3 acres therefrom to the interested party.
17. As it were, the parcel of land known as Kabaru/Ngonde/Block II/709 claimed by the Petitioner herein is also a sub-division of the said L.R No. Kabaru/Ngonde/Block II/611 which belonged to the said Ephraim Wahome Gatere. Strangely, throughout his lengthy affidavit in support of the petition, the petitioner does not state when or how he acquired the land. All he states at paragraph 13 of the affidavit is that title no. Kabaru/Ngonde/Block II/709 measuring 0.405 Ha. “emanates from the sub-division of title no. Kabaru/Ngonde/Block II/611 (Ngatha) which belonged to Ephraim Wahome Gatere.”
18. While he places reliance on a mutation form dated January 29, 2005 in the name of the said Ephraim Wahome Gatere to purport that the land was sub-divided in 2005, a copy of the green card filed initially with the petition reveals under entry no. 6 that Title No. Kabaru/Ngonde/Block II/611 (Ngatha) in the name of Ephraim Wahome Gatere remained in existence until November 24, 2008 when it was purportedly closed on sub-division and new nos. 709 and 710 created thereby.
19. It is also apparent from a perusal of the petitioner’s title exhibited by himself that it was issued to him on December 11, 2008. By the time the sub-division was purported to be done and title purportedly issued in the name of the petitioner, there had been a valid court order in existence for a period of one year directing the said Ephraim Wahome Gatere to sub-divide the land and transfer 3 acres to the interest party herein. Indeed, the court had some 8 months before the purported sub-division was done directed the district surveyor to sub-divide the land and have the 3 acres transferred to the interested party.
20. That being the case, it was apparent that the purported transfer of title no. Kabaru/Ngonde/Block II/709 by Ephraim Wahome Gatere to the petitioner was done solely for purposes of defeating the court order that had been issued against the transferor. by filing the present petition leaving out the said Ephraim Wahome Gatere, the petitioner is asking this court to aid him in his wrongful pursuit.
21. From his own documents filed herein, it is clear that the title issued in the name of the interested party was the result of a court order. By asking this court to direct the 1st respondent to cancel the title issued to the interested party, the petitioner is trying to appeal the said court order through the back door.
22. It follows that I am not persuaded that the petitioner had any valid rights to the suit land and/or that the same were violated by any of the respondents herein. Accordingly I reject the Petition and dismiss the same with costs.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 9TH DAY OF DECEMBER, 2022.

In the presence of:

No appearance for the Petitioner

No appearance for the Respondents

No appearance for the Interested party

Court assistant - Kendi

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J. O. Olola



JUDGE

