



**Gathuthi Tea Factory Company Limited v Muraya (Environment & Land
Case 20 of 2020) [2022] KEELC 15252 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15252 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 20 OF 2020**

**JO OLOLA, J
DECEMBER 8, 2022**

BETWEEN
GATHUTHI TEA FACTORY COMPANY LIMITED PLAINTIFF
AND
AMOS KANYI MURAYA DEFENDANT

RULING

1. By the notice of motion dated June 11, 2020 and filed herein on July 15, 2020, Gathuthi Tea Factory Company Limited (the plaintiff) prays for orders:
 3. That there be an urgent temporary injunction order restraining the defendant himself, his agents, servants, employees, proxies and/or any person claiming under them from entering, trespassing, trading on and interfering in any manner with the plaintiff's parcel of land Thegenge/Gathuthi/753 situated in Nyeri County pending the hearing and determination of this suit;
 4. That a mandatory injunction do issue directing the defendants by themselves or their agents, servants, nominees and or employees to demolish the unlawful structures which have been erected by the defendants by themselves or their agents, servants, nominees and or employees;
 5. That an eviction order do issue to evict the defendants and the Officer Commanding Station Ndungamano Police Station supervise its enforcement; and
 6. That the costs of this application be provided for.
2. The application which is supported by an affidavit sworn by the plaintiff's Factory Unit Manager Daniel K Mugo is premised on the grounds:



- (i) That the defendant illegally and unlawfully trespassed into the plaintiff's parcel of land Thegenge/Gathuthi/753 and set up residence, planted crops and even erected rental houses thereon.
 - (ii) That the plaintiff is the lawfully and legally registered owner of the said parcel of land and has all the necessary documentation supporting this claim and is hence entitled to enjoy quiet possession of its parcel of land and all benefits accruing from the land;
 - (iii) That as a result of the defendant's actions, the plaintiff has suffered and continues to suffer huge losses and damages;
 - (iv) That the defendant will not suffer any prejudice if the orders sought herein are granted by this honourable court; and
 - (v) Unless the orders sought are granted, the plaintiff stands to continue suffering and incurring losses as the defendant illegally and unlawfully continues to benefit from that which rightfully belongs to the plaintiff.
3. In response to the application, Amos Kanyi Muraya (the defendant) has on May 4, 2021 filed a preliminary objection dated March 24, 2021 stating:
1. That the plaintiff's suit/claim against the defendant is time barred under the provisions of (the) Limitation of Actions Act, section 7 of the Chapter 22 of (the) Laws of Kenya: and
 2. That this honourable court has no jurisdiction under section 18(2) as read together with section 19 of the Land Registration Act, 2012 to hear and determine the plaintiff's suit/claim against the defendant the same being a boundary dispute vis a viz the boundary for LR No Thegenge/Gathuthi/753 and Thegenge/Gathuthi/1090.
4. In addition to the objection, the defendant has filed a replying affidavit sworn on May 24, 2022 in which he avers that it is true the plaintiff is the owner of the parcel of a land known as Thegenge/Gathuthi/735 the same having been initially registered in the name of Kenya Tea Development Authority in the year 1976.
5. The defendant avers further that even before the said parcel of land was transferred to the plaintiff's name, the boundary thereof and that of the defendant's adjacent title No Thegenge/Gathuthi/1090 have remained the same. The defendant asserts that the boundaries of the two parcels were marked by a fence of concrete posts that was put up by the said Kenya Tea Development Authority in the 1970s and has remained so to-date.
6. The plaintiff asserts that he acquired his parcel of land from his mother Grace Nyawira Muraya who was previously registered as the owner and that he acquired title in his name on November 5, 2007. The defendant therefore denies encroaching in any way on the plaintiff's land and avers that even before the sub-division creating his title No Thegenge/Gathuthi/1090, the original land had been owned by his grandfather who transferred the same to his father in 1969 before the same was transferred to the defendant's mother.
7. I have carefully perused and considered both the application by the plaintiff as well as the defendant's preliminary objection. I have similarly perused and considered the submissions and authorities placed before me by the learned advocates representing the parties herein.
8. The defendant herein has raised a preliminary objection to the plaintiff's claim on two grounds, namely, that first, the suit is time barred and secondly, the same if not time-barred would amount to



a boundary dispute for which this court is deprived of jurisdiction by dint of section 18(2) as read together with section 19 of the Land Registration Act, 2012.

9. In support of his position that the suit herein is time-barred, the defendant avers that the boundary of the plaintiff's parcel of land Thegenge/Gathuthi/753 and that of his own parcel – Thegenge/Gathuthi/1090 has remained the same as it was in 1976 when the plaintiff's property was still registered in the name of Kenya Tea Development Authority.
10. As it were, it is not in dispute that the plaintiff's parcel of land was previously registered in the name of the said Kenya Tea Development Authority. At paragraph 3 and 4 of the affidavit filed in support of the motion, the plaintiff concedes this fact and avers that the said title was transferred to its name on May 28, 1986. The plaintiff has annexed the said title issued to itself indicating that the property measures approximately 4.29 Ha in size.
11. It was not apparent from the plaintiff's pleadings the portion of land which the defendant is said to have encroached upon. From the defendant's own replying affidavit, it is apparent that he was issued with a title deed for the said Thegenge/Gathuthi/1090 measuring 0.33 Ha on November 5, 2007. From a copy of the Green Card annexed as annexure "AKM 4" to the defendant's replying affidavit, it is evident that the defendant's parcel of land is a sub-division of the parcel of land known as Thegenge/Gathuthi/280 which had been registered on February 3, 1989 in the name of the defendant's mother Grace Nyawira Muraya.
12. As it is, the plaintiff's claim against the defendant is one for the recovery of land. At paragraphs 5, 6 and 7 of the affidavit of Daniel K Mugo sworn in support of the plaintiff's application, he avers as follows:
 - “ 5. That the plaintiff has never at any given time before sold and or transferred the parcel of land Thegenge/Gathuthi/753 to any person whether natural or juristic;
 6. That it came to our attention that the said parcel of land had been encroached by the defendant who had embarked on carrying out farming activities on the land; and
 7. That the defendant has failed to vacate the said parcel of land despite our efforts to have them do so.”
13. As we have observed above, the defendant acquired his parcel of land said to be encroaching on the plaintiff's land from his mother who had been utilizing the same on November 5, 2007. That would be some 13 years before the defendant instituted this suit and almost 31 years after the property was registered in the name of the defendant's mother. It was telling that the plaintiff does not deny the defendant's contention that the boundary between the two parcels were marked by a concrete fence and wire mesh placed by the plaintiff's predecessor in title around the year 1976 and that the fence remains to date and was inherited by the plaintiff.
14. As it were, section 7 of the Limitation of Actions Act bars the institution of any suit for the recovery of any parcel of land after 12 years from the date when the right of action accrued to the claimant or to some person through whom he claims. It follows that in the circumstances herein, I am persuaded that this suit was filed outside the time stipulated under statute and thus is incompetent.
15. Having arrived at that conclusion, I did not find it necessary to consider the other limb of the preliminary objection.



16. Having determined that the suit is time-barred under section 7 of the *Limitation of Actions Act*, both the motion dated June 11, 2020 and the entire suit herein are struck out with costs to the defendant.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 8TH DAY OF DECEMBER, 2022.**

In the presence of:

Mr. Momanyi holding brief for Manyara for the Plaintiff

Mr. Ndurumo for the Defendant

Court assistant - Kendi

J. O. OLOLA

JUDGE

