



Muoria & 3 others v New Roysambu Housing Company Ltd & 3 others (Environment & Land Case 631 of 2017) [2025] KEELC 319 (KLR) (5 February 2025) (Judgment)

Neutral citation: [2025] KEELC 319 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 631 OF 2017
MN GICHERU, J
FEBRUARY 5, 2025**

BETWEEN

**STEPHEN KINYANJUI MUORIA 1ST PLAINTIFF
SAMUEL CHEGE KARANJA 2ND PLAINTIFF
HUMPHREY MUCHOGIA 3RD PLAINTIFF
LEAH WANGARI MIAKO 4TH PLAINTIFF**

AND

**NEW ROYSAMBU HOUSING COMPANY LTD 1ST DEFENDANT
ELIZABETH WARUGURU KANG'ETHE 2ND DEFENDANT
THE DISTRICT LAND REGISTRAR KAJIADO DISTRICT ... 3RD DEFENDANT
THE COMMISSIONER OF LANDS 4TH DEFENDANT**

JUDGMENT

1. The four Plaintiffs seek the following reliefs against the four(4) Defendants.
 - i. The Defendants jointly or severally do issue title deeds to the Plaintiffs.
 - ii. The Court do issue a Permanent Injunction compelling the 3rd and 4th Defendants to register the Plaintiffs as the respective owners of their plots.
 - iii. Declaration that the Plaintiffs are the lawful owners of the plots at Ngong/Ngong/14941.
 - iv. There be such further or other relief as the Court deems fit and just in the circumstances of the case.
 - v. Costs.



This is as per the Plaintiff dated 28th March 2007.

2. The Plaintiffs' case is as follows. On 18-2-1998, the 1st Defendant agreed to sell and the Plaintiffs agreed to buy plots measuring 50 x 50 feet. The Plots were to be excised from L.R. Ngong/Ngong/14941 which measures about 20 hectares. At that time, L.R No. 14941 was registered in the name of the 1st Defendant. The purchase price was Kshs. 40,000/=. The plots were sold to a total of about 300 members of the 1st Defendant.
3. Plot No. 87D was sold to the 1st Plaintiff. He constructed a two-bedroom permanent house in December – 1998 on the plot. He occupied the land until the year 2003 when he left the house to his Son Collins Matindi who occupies it todate. The house is now fenced with a perimeter wall among other improvements.
4. The second Plaintiff purchased Plot No. 66D which he occupied after paying the purchase price. He built a permanent house in January 1999. He also planted trees. He lives on the plot where he has raised his family.
5. According to a letter by the Registrar of companies dated 25/11/2005, the Directors of the 1st Defendant were John Kangethe Kaburu, Francis Wainoga Kamata, Muiruri Mukundi, John Irungu Huma and James Wangige Ngunjiri. By then only the last two directors were alive. However, they were not living in Kenya. Their absence created a vacuum. The second Defendant occupied that vacuum by imposing herself as a Director in place of her deceased husband, Joseph Kangethe Kaburu. Even though she had no capacity to sue on behalf of the 1st Defendant, the second Defendant purported to file a suit, Miscellaneous Application No. 1 of 2006 against the second Plaintiff seeking to lift a caution that he had lodged with the Land Registrar restricting L.R. No. Ngong/Ngong/14941. The said suit was dismissed on the grounds that the 2nd Defendant did not have authority to swear an affidavit on behalf of the 1st Defendant.
6. In support of their case, the Plaintiffs filed the following evidence.
 - a. Witness Statements by Collins Matindi Nyambura, Samuel Chege Karanja and Peter Mwaura Njoroge.
 - b. Copies of sale agreements for Stephen Kinyanjui Mworio, Samuel Chege Karanja and Peter Mwaura Njoroge.
 - c. Copies of Share certificates for Stephen Kinyanjui Mworio and Peter Mwaura Njoroge.
 - d. Copies of receipts issued to Stephen Kinyanjui Mworio, Samuel Chege Karanja and Peter Mwaura Njoroge.
 - e. Copies of letters by Registrar of Companies dated 25-11-2005, 19-5-2015, 4-6-2015, 8-10-2014 and 16-9-2015.
 - f. Photographs showing houses on plots allocated to the Plaintiffs.
 - g. Copy of entry of Judgement in Civil Case No. 2723 of 2005 in the CM'S Court at Nairobi.
 - h. Copy of application for official search for L.R. N. 14941 Ngong/Ngong.
7. The 1st and 2nd Defendants through their Counsel on record filed a written statement of defence dated 1st July 2013 in which they aver as follows.

Firstly, they deny the Plaintiffs' claim against them generally. Secondly, they admit that the 4th Plaintiff purchased plot Number Ngong/Ngong/94D on 30-7-1977 for Kshs 6,400/=. Thirdly, it is the



Defendants' case that the 1st Defendant is in existence. Fourthly, the 1st to 3rd Plaintiffs are strangers to the Defendants and they did not purchase any land from them and therefore they do not deserve any title documents from them. Fifthly, the Plaintiffs are victims of fraudulent dealings by people who were prosecuted in Criminal cases in Nairobi Chief Magistrate Cases No. 1046, 1423, 1424 and 46 of 2000. For the above and other reasons, the 1st and 2nd Defendants pray for the dismissal of the Plaintiffs' suit with costs.

8. In support of their case, the 1st and 2nd Defendants filed the following evidence.
 - i. Witness statements by Elizabeth Kangethe, Joseph Mwangi Maikonya, Benny Thuka Gachora and Joseph Mugo.
 - ii. Copy of grant of letters of administration in Nairobi High Court Succession Cause No. 3086 of 2001.
 - iii. Copies of title deeds for L.R. No. Ngong/Ngong/14941 and 35715-7.
 - iv. List of purchasers.
 - v. Copies of Judgements in Nairobi Chief Magistrates Criminal Cases Numbers 1046/1999, 1424/1999, 1423/ 1999, 1425/1999 and 46 of 2000.
 - vi. Copy of charge sheet in case No. 1423/1999.
 - vii. Copy of list of Directors of the 1st Defendant – dated 8/10/2014.
 - viii. Copy of minutes of the 1st Defendant's meeting held on 26/12/2013.
 - ix. Copies of letters dated 30-11-22 and 24-10-22.
 - x. Copy of Memorandum and Articles of Association of the 1st Defendant.
9. John Irungu Huma, the interested party filed two witness statements. One is by himself while the other is by Maina Karanja. In summary, they state as follows. Firstly, the Interested Party is the only surviving Director of the first Defendant. Secondly, the 2nd Defendant who is now deceased took advantage of the absence of the directors and the death of her husband, Joseph Kaburu Kangethe, to fraudulently and irregularly deal with the suit-land without the knowledge and consent of the Directors. This is because she had access to the Company records through her late husband. Thirdly, the Plaintiffs acknowledge that the 2nd Defendant was never a Director. Fourthly, the 2nd Defendant's Children have made several attempts to alter the 1st Defendant's records at the Companies Registry and they have been flagged by the Register of companies for this fraud. Finally, the genuine shareholders of the Company have put a lot pressure on the interested parties demanding for their title deeds.
10. In addition to the witness statements, the interested party filed the following documents.
 - i. Copy of charge sheet in Kajiado Chief Magistrate's Criminal Case No. 1332 of 2017.
 - ii. Copies of letters from the Registrar of Companies dated 19-5-2015 and 25-11-2005.
 - iii. Copy of Resolution by the 1st Defendant dated 10-12-1990 appointing the Interested Party and one James Wangige Ngunjiri as Directors of the 1st Defendant.
 - iv. Copy of records by the Registrar of Companies dated 5-1-2024 showing the Interested Party as one of the Directors of the 1st Defendant.



11. At the trial on 25/10/23, 21/5/2024 and 4/11/2024 a total of six witnesses testified. They included Samuel Chege Karanja (2nd Plaintiff), Collins Matindi Nyambura and Peter Mwaura Njoroge on the part of the Plaintiffs and Joseph Mwangi Maikonya, Joseph Mugo Kangethe and Benny Thuku Gachora on the part of the Defendants and Interested party. Each of the witnesses reiterated the case of the party calling him as it is in the witness statements. None of the parties changed its position as set out in the above summaries. In short, nothing new arose. The parties and their witnesses simply hardened their positions as set out in their respective pleadings and witnesses statements.
12. Counsel for the 1st and 2nd Defendants filed written submissions dated 11-11-2024 and identified six issues for determination. They are as follows.
 - i. Whether the Plaintiffs purchased their properties from the 1st Defendant Company?
 - ii. Whether the Plaintiffs are entitled to the prayers sought.
 - iii. Who pays the costs of the claim.
 - iv. Who are the Directors of the 1st Defendant Company.
 - v. Representation of a deceased person.
 - vi. Legal position of uncontroverted evidence.

On the other hand Counsel for the 2nd Plaintiff filed written Submissions dated 19-12-2024. He identified the following issues.

- i. Whether the 2nd Plaintiff is the lawful owner of Plot No. 66D.
 - ii. Whether the 2nd Defendant had authority to evict the 2nd Plaintiff.
 - iii. Whether the 2nd Defendant can continue with this case posthumously.
 - iv. Whether Joseph Mwangi Maikonya and Joseph Mugo Kangethe are Directors of the 1st Defendant.
 - v. Reply to the submissions dated 11-11-2024.
13. I have carefully considered the evidence adduced by all the parties in this case including the witness statements, the documents and the evidence by all the witnesses at the trial. I make the following findings on the issues identified by the parties. Firstly, on the issues, I find that ideally, as envisaged by Order 18 rule 2(1) and (2) of the Civil Procedure Rules, the Plaintiffs' Counsel should have submitted on the issues identified by counsel for the 1st and 2nd Defendants. The rule provides as follows;

“2. Unless the Court otherwise orders;-

1. On the day fixed for hearing of the suit.....the party having the right to begin(the Plaintiff) shall state his case and produce his evidence in support of the issues which he is bound to prove.
2. The other party(the Defendant) shall then state his case and produce his evidence, and may then address the court(submit) generally on his case. The party beginning(Plaintiff) may then reply.”

Be that as it may, I will determine the Plaintiffs' issues first before I come to the Defendants, if necessary.

14. On the first issue, I find that the 2nd Plaintiff is not the lawful owner of Plot No. 66D. For him to succeed he must prove that he bought the land from the lawful owner. There is evidence to prove that the 2nd



Plaintiff purported to buy Plot No. 66D from Martha Wairimu Waithaka, Bernard Joseph Miako and Isaya Kigo Njoroge who were charged and convicted in Criminal Case No. 1046/1999 with offences of making documents without authority and obtaining money by false pretences contrary to Sections 357(a) and 313 of Penal Code respectively. None of the three accused persons was authorised to sell land on behalf of the 1st Defendant. The money collected from the second Plaintiff who was a witness in the Criminal case, PW 6, was returned to the police. It was not received by the 1st Defendant. There was therefore no sale of Plot No. 66D by the 1st Defendant to the 2nd Plaintiff.

The name of the 2nd Plaintiff does not appear in the list of the shareholders of the 1st Defendant. He has no consent of the Land Control Board and no transfer instrument. Worse still the Plaintiffs say that their plots are 50 X 50 feet. None of them has evidence that such land is registrable under the [Land Registration Act](#) as Agricultural land and whether the requisite procedure for change of user was ever complied with.

15. Regarding the second issue of eviction of the 2nd Plaintiff by the 2nd Defendants, I find that this issue does not arise in this case. It arose in Civil Case No. 2733 of 2005 in the CM'S case in Nairobi. I need not say more on the issue.
16. Coming to the 3rd issue of whether the 2nd Defendant can continue with this case posthumously, I have this to say. Under Order 24 of the Civil Procedure Rules where there are more than one Defendants and one of them dies, the suit shall continue against the remaining Defendants if the cause of action survives the deceased Defendant. See Order 24 rule 2 of the Civil Procedure Rules.

Even though this case has been pending in Court since 28th March 2007, almost 18 years, it is not until December 2023 that the Plaintiffs recorded their witness statements. In fact on 25/11/23, the Plaintiff's Counsel sought an adjournment to enable the Plaintiffs file their witness statements. The issue of the death of the 2nd Defendant or any other party had never been raised before me since I took over the matter on 21/9/2021. It is not even raised in the witness statements dated December 2023. It is not fair to raise it abruptly in written submissions. It should have been raised by way of application or pleadings but not in final submissions.

17. On the Fourth issue of the Directorship of Joseph Mwangi Maikonya and Joseph Mugo Kangethe in respect to the 1st Defendant, I find that they were not Directors. There is no evidence in form of the Company records to show that any of the two was ever a Director of the 1st Defendant. The letter by the Registrar of Companies dated 19th May 2015 is proof enough that both Joseph Mugo Kangethe and Joseph Mwangi Maikonya are not Directors of the 1st Defendant. It reads as follows in part.

“Joseph Mugo Kangethe, Leah Wangui Kangethe, Maina Karanja, Benard Waweru Gitau, Joseph Mwangi Maikonya.”

It has been brought to our attention that the documents you submitted to this office on 6-1-2014 and 22-1-2015 on alteration of the Company records were based on false information, hence misleading this office as the correct the position of the file.....”

The fact that these two witnesses are not Directors of the 1st Defendant does not avail the Plaintiffs any advantage or benefit. The fact that the Company had internal wrangles does not diminish the burden on the Plaintiffs to prove that they bought land from the 1st Defendant. As set out in Paragraph [14] above it is beyond doubt that the Plaintiffs dealt with imposters and not officials of the 1st Defendant. Even the Interested Party who seems to be the only surviving Director of the 1st Defendant has categorically stated that the Plaintiffs did not buy land from the 1st Defendant.



18. Peter Mwaura Njoroge and Collins Matindi Nyambura are not parties in this case. In his testimony, Peter Mwaura Njoroge said that he bought Plot No. 146D from John Kangethe. As for Collins Matindi Nyambura, apart from his oral evidence that he is a Son of the 1st Plaintiff, he had nothing to prove that he is indeed a son of Stephen Kinyanjui Mworja. Like I said earlier, the issue of compliance with Order 24 Civil Procedure Rules regarding the substitution of deceased parties was not complied with by Collins Matindi.
19. By deciding on the issues raised by the Plaintiffs' I have exhaustively dealt with the ones raised by the Counsel for the 1st and 2nd Defendants. It would be superfluous to decide on the issues identified by the 1st and 2nd Defendant's Counsel.
20. In Conclusion, I find no merit in the Plaintiffs' suit and I dismiss it with costs to the Defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF FEBRUARY, 2025.

M.N. GICHERU

JUDGE.

5/02/2025

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs' Counsel – Njagi Advocate

1st and 2nd Defendants' Counsel – Mokaya Advocate

Interested Party – Miss Ngotho Advocate

M.N. GICHERU

JUDGE

5/02/2025

