



Rumui v Murage & another (Suing as the Legal Representative of the Estate of John Murage Nathan Gatheru (Deceased)) (Environment & Land Miscellaneous Case E008 of 2024) [2025] KEELC 792 (KLR) (6 February 2025) (Ruling)

Neutral citation: [2025] KEELC 792 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND MISCELLANEOUS CASE E008 OF 2024**

JM KAMAU, J

FEBRUARY 6, 2025

BETWEEN

BETH NJERI RUMUI PLAINTIFF

AND

ALLAN NJUKI MURAGE 1ST DEFENDANT

WILLIAM MWEMA MURAGE 2ND DEFENDANT

SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JOHN MURAGE NATHAN GATHERU (DECEASED)

RULING

1. The Application before the Court under certificate of urgency dated 28/11/2024 seeks for: -
 - a. That this Application be certified urgent and service of the same be dispensed with in the first instance.
 - b. That there be a temporary Order of injunction restraining ALLAN NJUKI MURAGE & WILLIAM MWEMA MURAGE (the Defendants) from entering into, trespassing into, subdividing, leasing, selling or in any other way interfering with the Plaintiffs' quiet possession of all those parcels of land formerly known as NYANDARUA/ OLJOROROK/2205 now NYANDARUA/OLJOROROK SALIENT/ 32919 and/or parts thereof, occupied by the Plaintiff/Applicant pending hearing and determination of this suit.
 - c. That the costs of this Application be provided for.
2. It is grounded on the following: -



1. That the late Ayub Riumui Muchina was the registered proprietor of NYANDARUA/OLJOROROK/2205 which the Applicant has occupied since 1990 as his wife when it was allocated to him by the Oljororok Salient Settlement Scheme.
2. That the Defendants/Respondents began selling of their land NYANDARUA/OLJOROROK/2205 which lies across the road from the Plaintiff/Applicant land and eventually they had exhausted all the land.
3. That the Plaintiff/Applicant had their land surveyed, the road forming the undisputed boundary between parties for many years and that was because the allottees of various properties under the Ol-jororok Salient Settlement Scheme were settled according to the development maps and on their part a Provisional RIM sheet 8 dated 14th November, 1983.
4. That the Defendant/Respondents have since availed to the Plaintiff/Applicant an Order requiring survey and a survey was carried out on 26th November, 2024 where the beacons were pointed out for the alleged demarcation of the two properties, but the Plaintiff/Applicant is aggrieved by the same as it substantially takes away about 13 Acres of what formed part of her deceased husband's property.
5. That the surveyors brought by the Defendants/Respondents on 26th November, 2024 under the guard of police officers also purported to demarcate an access road on the suit properties while all along there had been a road.
6. That despite the findings of the surveyor from the District Survey Office Nyandarua North, the Plaintiff/Applicant ought to be declared the owner of 18 Acres of land comprised in NYANDARUA/OLJOROROK/2205 by adverse possession having occupied, constructed a home, cultivated, subdivided and uninterrupted for over 18 years since 1990 when the land was registered from the Oljororok Salient Settlement Scheme.
7. That about 10 years after the Applicant's husband death, the Respondents filed NAKURU ELC/21A of 2015 against the Applicant herein, but which they later abandoned and filed NYANDARUA ELC JR NO. 4 OF 2023 (Formerly) NYAHURURU ELC JUDICIAL REVIEW 1 OF 2019 against the Attorney General, Ministry of Lands, the District Land Registrar, Nyahururu and the Chief Land Registrar.
8. That despite the Respondents having claimed that the Applicant had encroached onto 13 Acres forming part of the parcel number NYANDARUA/OLJOROROK/200 in NAKURU ELC/21A of 2015 and seeking injunctive Orders, declaratory Orders, eviction to prevent the Applicant from having a fair hearing by locking her out of the Court process.
9. That without the knowledge of the Applicant, the Respondents obtained ex-parte Orders against the Attorney General, Ministry of Lands, the District Land Registrar, Nyahururu and the Chief Land Registrar.
10. That the effects of the said Orders are to disposes the Applicant of their land and even their home where they have lived as a family since the year 1990 when her husband was allotted the land, without any justifiable cause.
11. That the Defendant/Respondents have now moved to the said land with surveyors and security officers, put up beacons thereon in enforcement of the ex-parte Judicial Review Orders and might transfer the same to third parties.



12. That if the Defendant/Respondents remain at liberty to enforce the said Orders the Plaintiff/Applicant shall s
 13. That the Plaintiff/Applicant stands to suffer irreparable loss as the Defendant/Respondents have sold all of their land comprised in NYANDARUA/OLJOROROK/200 and now want to sell the 13 Acres where the Plaintiff/Applicant have occupied as their own NYANDARUA/OLJOROROK/2205 since 1990 and which was subdivided and issued with new registration numbers.
 14. That in the premises, it is only fair and just that there be a conservatory Order on the two parcels of land pending the inter-partes hearing and determination of the Plaintiff/Applicant's Application and the hearing and determination of the suit.
3. The Respondents are the legal representatives of the late John Murage Nathan Gatheru who was the registered owner of the neighboring parcel of land initially known as L.R. No. Nyandarua/Ol'Joro Orok/200. The same borders Plot No. Nyandarua/Ol'Joro Orok/2205 belonging to the Plaintiff and which belonged to her late husband. The two were separated by a public road. The boundaries have now changed. A survey was carried out through a Court Order on 26/11/2024 which aggrieved the Plaintiff since about 13 Acres out of her land were taken away. She also claims to be entitled to the 18 Acres of land occupied in Nyandarua/Ol'Joro Orok/2205 by way of adverse possession. The survey in question was conducted vide a case in Court i.e. case number Nyahururu ELC Judicial Review No. 19 of 2019 against the Attorney General, Ministry of Lands, the District Land Registrar, Nyahururu and the Chief Land Registrar. She was not involved in the case yet her interests in L.R. No. Nyandarua/Ol'Joro Orok/2205 were affected hence dispossessing her. On his part, the Defendants said in a Replying Affidavit sworn by the 2nd Respondent on 21/1/2025 that the parcels of land are separated by an access road and that their land was sub-divided into 9902 and 9503 measuring 3.21 and 0.81 Hectares respectively and that their land, which on the ground could not tally with what was in the R.I.M., 13 Acres are said to be in dispute. It is said that the Court adjudicated this matter in Nyahururu J.R. No. 1 of 2019 in full and what remained was execution of the Decree which is what the Plaintiff has come to Court to obtain. Although the Respondent has not shown by way of documents, the Plaintiff has attached "BNRS" in her Supporting Affidavit sworn on 28/11/2024. These are the salient points raised by the respective parties.
4. I will grant the Order of injunction but reserve the reasons for doing so because it will form the basis of the hearing of the suit. I will also order that this suit be heard within the next 60 days.

RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 6TH DAY OF FEBRUARY, 2025.

MUGO KAMAU

JUDGE

In the Presence of:-

Court Assistant: Eric.

Mr. Ngotho for the Plaintiff

Mr. Gathumbi for the Defendant

