



REPUBLIC OF KENYA



KENYA LAW
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**Mugo v Muthui & 6 others (Environment & Land Case
255 of 2014) [2025] KEELC 3638 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3638 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 255 OF 2014**

JO OLOLA, J

MAY 8, 2025

BETWEEN

ISAAC WAHOME MUGO PLAINTIFF

AND

ESTHER WANJIKU MUTHUI 1ST DEFENDANT

ALLAN KANYI KINYANJUI 2ND DEFENDANT

PETER MWANIKI GATHII 3RD DEFENDANT

JOSEPH KIBE WANANIA 4TH DEFENDANT

JAMES WAMBUGU KIMENYI 5TH DEFENDANT

MARY WANJIRU GATHIRIMU 6TH DEFENDANT

BEATRICE NYAGUTHI KARIUKI 7TH DEFENDANT

JUDGMENT

1. By a Plaint dated 23rd November, 2011 as amended on 14th March, 2022, Beatrice Njeri Mbuthia (the Original Plaintiff) prays for judgment against the seven (7) Defendants jointly and severally for:
 1. An order that the registers of land parcel Number Nyeri/ Mweiga/2108, 2109, 2110, 2111, 2112, 2113 and 2114 be cancelled and the register of land parcel number Nyeri/Mweiga/296 be restored with the plaintiff as the registered proprietor;
 2. An order of eviction against all the Defendants herein in line with the decree and order issued by the Honourable Court in High Court Civil Case No. 36 of 1990 issued at Nyeri on 28th November, 2007 and dated 12th November, 2007; and
 3. Costs of this suit.



2. It is the Plaintiff's case that on 18th July, 1974, she did purchase LR. No. Nyeri/Mweiga/296 from the Settlement Fund Trustees (SFT) on loan upon which he got registered as the proprietor thereof. She asserts that vide the said Nyeri HCCC No. 36 of 1990, he sued the 1st Defendant herein together with one Jichunie Muthui who had trespassed onto the land.
3. It is further the Plaintiff's case that on 12th November, 2007 Judgment was entered in her favour with the Defendants being declared as trespassers and an order for their eviction being made. The Plaintiff avers that in order to defeat the said Judgement, the 1st, 2nd, 3rd and 7th Defendants together with eight (8) other individuals instituted Kieni West Division Land Disputes Tribunal Case No. 17 of 2009 whose award was read in the absence of the Plaintiff.
4. The Plaintiff accuses the 1st Defendant of fraudulently using the Tribunal proceedings to change the proprietorship of the property to her name on 11th March, 2011 and thereafter causing the same to be sub-divided into various portions. It is her case that the registration of the suit land in the name of the 1st Defendant was fraudulent and tainted with illegality.
5. Esther Wanjiku Muthui (the 1st Defendant) is opposed to the Plaintiff's claim. In her Statement of Defence and Counterclaim dated 2nd March, 2013, the 1st Defendant avers that the proceedings in the High Court related to her occupation and use of the original suit land and that the decision therefrom did not affect her right to be registered as a proprietor of the suit property. The 1st Defendant denies that she obtained the said registration by way of fraud and/or misrepresentation.
6. By way of her Counterclaim, the 1st Defendant avers that she is the absolute registered owner of LR. No. Nyeri/Mweiga/2108 and that the Plaintiff's continued use and occupation thereof is an infringement on her rights. Accordingly, the 1st Defendant prays for an order of eviction of the Plaintiff her agents and/or servants from the said LR. No. Nyeri/Mweiga/2108 and from any other resultant sub-division of the original LR. No. Nyeri/Mweiga/296. She also prays for costs and interests.
7. The 2nd to 7th Defendants are equally opposed to the Plaintiff's claim. In their joint Statement of Defence dated 6th February 2012, the Defendants assert that they are the registered proprietors of the subject respective parcels of land. They deny any allegations of fraud on their part and aver that they were registered as bona fide purchasers for valuable consideration without notice of the alleged fraud for their respective portions of the suit land.
8. At the trial herein, the Plaintiff called two (2) witnesses in support of his case. The Defendants called a total of three (3) witnesses who gave testimony in support of their case.

Analysis and Determination

9. I have carefully perused and considered the pleadings filed by the parties herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
10. This suit was initially instituted by Beatrice Njeri Mbuthia. Upon her demise on 10th May, 2017, she was substituted by her legal representative Isaac Wahome Mugo. It was the deceased's case that she had purchased the parcel of land known as LR. No. Nyeri/Mweiga/296 through a loan from the Settlement Fund Trustees (SFT) in 1974.
11. The Plaintiff told the Court that following an invasion of the suit property by the 1st Defendant herein and one Jichunie Muthui, the deceased had instituted Nyeri HCCC No. 36 of 1990 seeking to have the two declared as trespassers and to be evicted from the land. It was the Plaintiff's case that in a Judgment



- delivered on 12th November, 2007 in the said suit, the Plaintiff was declared the rightful owner of the suit property with the two Defendants therein being declared as trespassers.
12. The Plaintiff told the court that in order to scuttle the said Judgement, the 1st, 2nd, 3rd and 7th Defendants together with some eight (8) individuals did institute Kieni West Division Land Dispute Tribunal Case No. 17 of 2009 whose award was read in the Plaintiff's absence and was subsequently used to register the suit land into the 1st Defendant's name.
 13. While conceding that there were previous proceedings in the High Court in relation to the suit land, Esther Wanjiku Muthui (the 1st Defendant) avers that the proceedings in the High Court related to her occupation and use of the original parcel of land. It was her position that the decision in the said suit did not affect her right to be registered as proprietor of the suit land and denies that she obtained such registration by way of fraud and/or misrepresentation.
 14. Through her counterclaim, the 1st Defendant asserts that she is the registered proprietor of LR. No. Nyeri/Mweiga/2108 and urges the court to find and order that the Plaintiff's continued use and occupation of the said parcel of land constituted an infringement on her rights. Accordingly, the 1st Defendant has sought an order for the eviction of the Plaintiff from the said parcel of land and from any of the resultant sub-divisions of the original L.R. No. Nyeri/Mweiga/296.
 15. As it turned out the 1st Defendant also passed away before she could testify in this case. Her position was taken by her daughter Mary Wanjiru Gathirimu (DW1) who was also sued as the 6th Defendant herein. Relying on her witness statement dated 16th February, 2023, DW1 told the court that after the Plaintiff's mother Beatrice Njeri Mbuthia procured the land from the SFT, she was unable to clear the loan.
 16. DW1 told the Court that Beatrice thereafter agreed to transfer the land to DW1's father the late Muthui Nyaga Gichuki on condition that the said Muthui Nyaga would pay the loan due to the SFT. According to DW1 the two agreed that upon completion of the payment, Beatrice would transfer the land to her father who was to add some unspecified amount of money and give Beatrice another parcel of land in Molo in return.
 17. DW1 testified that based on that arrangement her father continued paying the loan until his death in the year 1982 after which DW1's mother (the deceased 1st Defendant) continued to pay until the loan was settled in 1988.
 18. DW1 told the court that upon the demise of her father in 1982, Beatrice went back to Mweiga and in 1989, she started claiming that L.R. No. Nyeri/Mweiga/296 belonged to her and caused herself to be registered as the proprietor thereof. It was further DW1's case that sometimes in the year 1990, Beatrice sued the deceased 1st Defendant herein for trespass in Nyeri HCCC No. 36 of 1990.
 19. From the material placed before the Court, it was not clear which parcel of land was given to Beatrice in Molo and whether or not she was added the unspecified amount of money as per the arrangement that DW1 referred to. What was clear was that on 30th November 1989, Beatrice was issued with a Title Deed for the parcel of land measuring some 5.5. Ha in size.
 20. Armed with the said title, Beatrice moved to court in May 1990 and instituted the said Nyeri HCCC No. 36 of 1990 against Esther Wanjiku Muthui (the deceased 1st Defendant) and one Jichunie Muthui.
 21. From a perusal of the Judgment rendered by Makandia J. (as he then was) on 12th November 2007, it was evident that the Defendants herein had raised the same issues claiming to have paid the loan



and compensated Beatrice with another parcel of land in Molo. Having considered those issues, the Learned Judge concluded at pages 7 and 8 of the Judgement as follows:

“The Plaintiff has sufficiently demonstrated that the land parcel Nyeri/Mweiga/296 belongs to her. She has a title to the same. I have looked at the previous proceedings in this matter and apart from the claim by the 1st Defendant that the Plaintiff sold her husband the parcel of land and also as part of the agreement the Plaintiff was to get one acre of land from Molo presumably from the 1st Defendant’s husband, there is no other tangible evidence that the land was ever transferred and registered in the name of the Defendants. A title deed is prima facie evidence of ownership of land. In the absence of such a document it can only be deemed that the defendants can occupy the parcel of land with the permission or consent of the Plaintiff. The Plaintiff has testified that there is no such permission or consent. Accordingly, the Defendant in occupying the parcel of land, they are doing so without the permission or consent of the Plaintiff and are therefore trespassers to the same and liable to eviction.

On the evidence before me; I would hold that the Defendants occupation of the land belonging to the Plaintiff is illegal. They are trespassers. Accordingly, they together with their families, servants and/or agents should be evicted from Nyeri/Mweiga/296 forthwith. I would further grant a permanent injunction to restrain the Defendants, their families, agents and servants from entering and or committing further trespass on the land ...”

22. That being the decision, I was unable to see how the Defendants could come to court and purport that the said case did not affect the 1st Defendant’s right to be registered as proprietor of the suit property. There was absolutely no doubt that the court had heard and had determined the issue of the ownership of the parcel of land as comprised in the original title.
23. The deceased Defendant and her family were aware of the court case and the determination made therein. They have never appealed the decision or moved the court to vary or set aside the decree. That being the case, their act of moving back to the SFT some three (3) years later and causing the suit property to be transferred to the name of the 1st Defendant’s deceased husband and subsequently to her name were acts not only that were fraudulent but carried out in contempt of the orders of the court.
24. The decision of the 1st Defendant to sub-divide the original parcel of land into parcels No. Nyeri/Mweiga/2108, 2109, 2110, 2111, 2112, 2113 and 2114 equally amounted to an illegality. DW1 admitted in court that it was true when they did the sub-division and transfers in 2010, the High Court had already made the decision and that her mother had not appealed the same.
25. In regard to the 2nd to 7th Defendants it was their case that they were registered as proprietors of the various sub-divisions on account that they were bona-fide purchasers for valuable consideration without notice of any defect on the 1st Defendant’s title. As was stated in *Lawrence Mukiri –vs- The Attorney General & 4 Others* (2013) eKLR:

“... a bona fide purchaser for value is a person who honestly intends to purchase the property offered for sale and does not intend to acquire it wrongly. For a purchaser to successfully rely on the bona fide doctrine, he must prove the following:

- a. He holds a Certificate of title;
- b. He purchased the property in good faith;
- c. He had no knowledge of the fraud;



- d. The vendors had apparent valid title;
 - e. He purchased without any notice of the fraud; and
 - f. He was not party to any fraud.
26. From the material placed before the court, Allan Kanyi Kinyanjui (the 2nd Defendant) entered into a sale agreement with the deceased 1st Defendant on 23rd May, 1988 for the sale of 3 acres out of Nyeri/Mweiga/296. At the stated time, that property was not registered in the name of the deceased 1st Defendant and she could therefore not give any title to the 2nd Defendant.
 27. Peter Mwaniki Gathii (the 3rd Defendant), Beatrice Nyaguthii Kairuki (the 7th Defendant) and three other persons entered into a Sale Agreement with the deceased 1st Defendant on 17th March, 2009. That sale was entered into after the Court issued the orders of 12th November, 2007. At the time, the property was not registered in the name of the deceased 1st Defendant and she had no title that could be acquired by the said buyers.
 28. For Joseph Kibe Wainaina (the 4th Defendant), their agreement was dated 2nd June, 2010 for 1/8 of an acre. Having found that the root title of the deceased 1st Defendant was fraudulent and illegal, she could not confer a good title to the 2nd to 7th Defendants.
 29. It was also apparent from a perusal of the material placed before the court that on 30th March, 2011, the Honourable Justice J.K. Serگون had issued an order in the said Nyeri HCCC No. 36 of 1990 inhibiting the registration of the land parcels Nos. Nyeri/Mweiga/2108, 2109, 2110, 2111, 2112, 2113, and 2114. That being the case, the registration of the resultant sub-divisions were similarly illegal and in further contempt of the court orders.
 30. Arising from the foregoing, I was not persuaded that the 2nd to 7th Defendants could be permitted in the circumstances herein to rely on the doctrine of bona fide purchasers. They are the authors of their own misfortune and are liable to have their wrongfully obtained titles revoked and to be evicted from the suit property.
 31. In the premises herein I am persuaded that the Plaintiff has proved his case to the required standards. Accordingly, I make the following orders:
 - a. The 1st Defendant's Counterclaim is hereby dismissed with costs.
 - b. An order is hereby issued that the registers of land parcel numbers Nyeri/Mweiga/2108, 2109, 2110, 2111, 2112, 2113 and 2114 be cancelled and the register of land parcel number Nyeri/Mweiga/296 be restored with the Plaintiff as the registered proprietor.
 - c. An order of eviction is hereby issued against all the Defendants herein in line with the decree and order issued by the Honourable Court in Nyeri HCCC No. 36 of 1990 on 12th November, 2007.
 - d. The costs of this suit shall be borne by the 1st Defendant's estate.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 8TH DAY OF MAY, 2025

.....

J.O. OLOLA

JUDGE



In the presence of:

a. Ms. Firdaus Court Assistant.

b. No appearance for the Plaintiff

c. Mr. Kibe holding brief for Ms. Chege Advocate for the 8th Defendant.

