



REPUBLIC OF KENYA



Mukururo & another v County Government of Nakuru & 3 others (Environment and Land Case E017 of 2023) [2025] KEELC 5141 (KLR) (10 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5141 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND CASE E017 OF 2023**

**MAO ODENY, J
JULY 10, 2025**

BETWEEN

**CHARLES MUCHERU MUKURURO 1ST PLAINTIFF
NDIKIRA MUTHONI UKULULO (SUING ON BEHALF OF THE ESTATE OF
JEREMIAH MUKURURU MUCHERU) 2ND PLAINTIFF**

AND

**COUNTY GOVERNMENT OF NAKURU 1ST DEFENDANT
LAND REGISTRAR NAKURU 2ND DEFENDANT
BAVUNI MUGUATHI WATER PROJECT 3RD DEFENDANT
JOSEPHAT NDERITU 4TH DEFENDANT**

JUDGMENT

1. By Plaintiff dated 3rd March, 2023, subsequently amended on 22nd March 2023 and further amended on 11th October 2024, the Plaintiffs sued the Defendants seeking the following orders:
 - a. A permanent injunction restraining the defendant either by himself, his servant and/or agent from, encroaching, alienating and/or interfering with the plaintiff's quiet use of all that parcel of land known as Dundori/Muguathi Block 1/1640 Wanyororo A. (sic)
 - b. Cancellation of all subdivision in relation to parcel of land known as Dundori/Muguathi Block 1/1640 Wanyororo A.
 - c. Eviction of the defendants from the suit property.
 - d. General damages and interest.
 - e. Costs of the suit.



- f. Any relief that the court may deem fit to grant.

Plaintiffs Case

2. PW1 Charles Mucheru Mukururo adopted his witness statement dated 10th October 2024 as his evidence and stated that he is acting on behalf of the 2nd Plaintiff. He also stated that he filed a list of documents dated 10th October 2024 which he produced as Pex No. 1 to 17. It was PW1's testimony that the suit land is registered under his father's name which he bought in 1975 of which he has a title deed.
3. PW1 further testified that in 2014, a project known as Bavuni Muguathi Water Project came to drill water and was told that they had equipment, which they asked him to keep for them at Sunshine School which land belonged to them. PW1 stated that he was informed that they had an agreement with his father who was 92 years old suffering from dementia and high blood pressure.
4. It was PW1's testimony that his father had four wives and twenty-five children and that four of his brothers represented his father but he did not see any minutes allowing them to represent the family. PW1 further testified that he had installed a three-phase electricity connection and they agreed to do a meter separation but they later went to Kenya Power Company and applied for electricity connection without informing him
5. According to PW1, in 2015, he discovered that a sub-division had been done in 2013 and beacons placed on the land and questioned how the sub-division had been done but he was shown the mutation form which his father had signed. He testified that the plots had been given two numbers being: 2932 and 2933 of which Dundori/ Muguathi Block 1 was charged to Family Bank in 2005. He urged the court to allow the prayers in the Complaint with costs.
6. Upon cross-examination by Mr. Kinuthia for the 1st Defendant, PW1 stated that Bavuni Muguathi Water Project had mutation forms and he got the documents from the Criminal Investigation Department's (CID's) Office. PW1 stated that the application for consent to subdivide dated 31st October, was signed by his father and the Chairman Bahati Land Control Board in 2013 but his father did not appear before the Board.
7. It was PW1's testimony that this was a forgery because the original title is charged at Family Bank through his father and the Surveyor. PW1 claimed that his father had dementia but did not have a medical report to show the same. He further admitted that he does not have any minutes authorizing him to file the suit on behalf of the family but filed it on his father's behalf who was the owner of the suit land.
8. PW1 stated that his father signed an agreement dated 22nd April, 2008 and further that it had a stamp of Jemus Academy whereby the family was to be supplied with water free of charge. He also stated that he has document revoking the said agreement and that Jemus Academy was charged to Sunshine School which he closed in 2022.
9. PW1 further testified that the water project is not operational as he objected to the electricity connection at a family meeting on 17th July 2014 where the agenda was connection of electricity to the water project whereby he was paid Kshs. 40,000. It was his evidence that the family did not object to the project being undertaken. He stated that he sued the government as they are the ones who drilled the borehole.
10. Upon cross examination by Mr. Kimotho, counsel for the 3rd and 4th Defendant, PW1 stated that he cannot tell in whose name plots 2932 and 2933 in the mutation form are registered. He stated that the suit plot is still in his father's name and that the agreement was not for sale of the land.



1st Defendant's Case

11. DW1 Josephat Nderitu adopted his witness statement dated 5th March, 2025 as his evidence and produced the documents in the list of documents as DEXh No 1 to 5. He stated that he was the Chairman of Bavuni Water Project from 1998 to 2013 and that they sat down in 1994 with other members and discussed how they can supply water to the community.
12. DW1 testified that the Catholic Diocese of Nakuru assisted them with tanks and connected the pipes in the whole farm of which the supply was enough at that time but later thought of how they could drill a borehole. He stated that Jeremiah Mukururo told them that there are people who surveyed and got water at his plot, and that they paid him Ksh 30,000/= and called the Mukururo family to enter into an agreement which they did together with the family representatives.
13. It was DW1's testimony that they agreed to give him water free of charge and asked the county government through the Member of the County Assembly (MCA) to help them drill the borehole. He also testified that the Plaintiff told them to put a fence as part of the land was a school but they did not fence as they were not interested in the school.
14. According to DW1, they had agreed with the Plaintiff that they would pay him Ksh 40,000/= as he had paid Ksh 80,000/= for the three phase electricity but the Plaintiff later reneged and returned the money. DW1 testified that they went to apply for electricity at Kenya Power and that Jeremiah Mukururo gave them land measuring 50 by 100 ft.
15. Upon cross-examination by the Plaintiff, DW1 stated that the Mukururo family were in the meeting and they did not enter into an agreement for sale. He stated that Jeremiah Mukururo signed the Mutation form and he does not know the numbers in the map that the Plaintiff was referring to. DW1 stated that the project brought the surveyor and he did not see the original title and cannot remember whether they did a search.
16. Upon re-examination by Mr. Kimotho, DW1 testified that it was not a sale agreement but Mr. Mukururo signed a consent letter and mutation form. Further that it was their MCA who approached the county government to help them drill the borehole.

3rd and 4th Defendants' Case

17. DW2, Joseph Mwangi Maina adopted his witness statement dated 5th March, 2025 as his evidence in chief and testified that he took over as the Secretary of the project and after two years, he was elected the Chairman by the community. He testified that a handover was done and he was given the documents in respect of the project.
18. It was DW 2's testimony that he found an agreement which was entered into by the owner (Jeremiah Mukururo) signed by the project directors and the owner. He stated that the sons represented different families of the four wives (houses) and knew them as he is a local. Further that Jeremiah had agreed to give the land for the project.
19. DW2 testified that Jeremiah Mukururo signed all the mutation forms and there was no objection by the family to the project being undertaken. He stated that the issue arose when electricity connection was to be done and that is when the Plaintiff objected.
20. Upon cross-examination by the Plaintiff, DW2 confirmed that there was no allocation of the plot to the project as the agreement was not a sale of land.



Plaintiffs' Submissions

21. The Plaintiff filed submissions dated 20th May, 2025 and submitted that the Defendant lied to court when he said that the 1st and 3rd Defendant had a permit. It was the Plaintiff's submission that he was occupying the land and used part of it for farming.
22. It was the Plaintiff's submission that the agreement only permitted the Defendant to dig a borehole and not subdivide the land into portions and further that neither him nor his father were part of the meeting held on 16th September, 2013 from the minutes adduced by the 3rd Defendant.
23. The Plaintiff submitted that the map was also amended without the Registrar's permission as indicated in the mutation form and that the sub-division took place in 2013 without spousal consent.
24. It was his submission that a sale agreement could not have been done before a discharge of charge of the title to the suit land and no transfer instruments were ever signed.
25. The Plaintiff relied on Article 40 of the *Constitution* of Kenya and Section 26 of the *Land Registration Act* and the cases of *Linda Chepkorir Ruto & Another v Joseph Yego & 4 others* ELC Nakuru No 322 of 2018, *Lucy Wanjiku Mwangi v Chief Land Registrar & 2 others* ELC No 1 of 2020, *James Toroitich Kisa v Joseph Njuguna Musa & Another* ELC Nakuru No 145 of 2013 and *Nairobi Civil Appeal No 465 of 2019*. The Plaintiff urged the Court pronounce judgment in his favour.

1st Defendant's Submissions

26. Counsel for the 1st Defendant filed submissions dated 30th May, 2025 and identified the issue for determination as whether the 1st Defendant is liable. Counsel submitted that the 1st Defendant has no interest in the suit property and the Plaintiffs have not proved the involvement of the 1st Defendant in the alleged dispute relating to the suit property. Counsel further submitted that the Plaintiffs have not proved the fraud claims against the Defendants and relied on the case of *Arthi Highway Developers Limited v West End Butchery Limited & 6 others* [2015] eKLR.
27. Counsel further submitted that the Plaintiff's cannot be allowed to feign ignorance in a matter that they were properly seized of and agreed to as he acknowledged the existence of the agreement sanctioning the drilling of the borehole on the suit property. It was counsel's submission that the Plaintiffs are barred by the doctrine of estoppel and relied on the case of *Sarah Njeri Mwobi v John Kimani Njoroge* (2013) eKLR.
28. Counsel further submitted that the 2nd Plaintiff lacks the locus standi to make any claim in the matter as he does not possess any proprietary interest in the suit property which is owned by his deceased father. Counsel relied on the cases of *Law Society of Kenya v Commissioner of Lands & Others* Nakuru High Court Civil Case 464 of 2000 and *Christopher Mutiembu & 3 others v County Surveyor, Trans-Nzoia & 4 others* (2022) eKLR and urged the court to dismiss the suit against the 1st Defendant with costs.

3rd and 4th Defendants Submissions

29. Counsel for the 3rd and 4th Defendants filed submissions dated 30th May, 2025 and identified the issue for determination as to whether the Plaintiffs are entitled to the reliefs they are seeking and submitted that the suit is unmerited. It was counsel's submission that the owner of the suit land as well as other family members sanctioned the license to drill a borehole in the suit land. Further that the 1st Plaintiff was in attendance of the meeting dated 17th July, 2014 discussing the sharing of electricity bills and the same is reflected on the minutes.



30. It was counsel's submission that the Plaintiffs acknowledge the existence of the agreement dated 22nd April, 2008 sanctioning the drilling of the water borehole and they are thus barred by the doctrine of estoppel and relied on the case of *Sarah Njeri Mwobi v John Kimani Njoroge* [2013] eKLR.
31. Counsel submitted that the area residents have since the institution of the case in 2016 been denied access to water, a fundamental right provided for under Article 43 (1) (d) of the 2010 *Constitution* of Kenya.

Analysis and Determination

32. The issues for determination are as to whether the Plaintiffs are entitled to a permanent injunction restraining the Defendants from interfering with land parcel known as Dundori/Muguathi Block 1/1640 Wanyororo A and whether the court should cancel all the subdivisions in relation to land parcel known as Dundori/Muguathi Block 1/1640 Wanyororo A, and who should pay the costs of this suit.
33. The Plaintiffs' case is well enumerated in the pleadings and the oral and documentary evidence. What stands out is that there was an agreement dated 22nd April 2008 between the 2nd Plaintiff Jeremiah Mukururu Mucheru and the 3rd and 4th Defendants whereby he sanctioned the drilling of a borehole to supply water to the community. It is also not disputed that there were representatives of the four houses of the 2nd Plaintiff four wives who were agreeable to the project being undertaken.
34. Further, it is not in dispute that on 17th July 2014 there was a meeting between the Plaintiffs and the defendants whose agenda was to agree on the electricity connection to the water project and that the 1st plaintiff was present and was given Kshs. 40,000/.
35. The Plaintiff admitted that he was present at the said meeting and received Kshs 40,000/ which he later stated that he returned when he realized the Defendants had applied for electricity directly to Kenya power without his consent.
36. What is in contention is that he realized on 20th December 2015 that the 2nd Defendant had subdivided the suit land in favour of the 3rd Defendant while the property had a charge dated 9th March 2006, with Family Bank Limited which meant that no transaction involving sub-division, transfer of interest, title, assignment, lease or sublease could be registered against the suit property without the consent of Family Bank Limited.
37. The Defendants acknowledged that the agreement dated 22nd April 2008 was not a sale agreement but authorization to use the land to drill a borehole to supply water to the community. Further that the project is not operational as they were not able to connect electricity due to the objection by the 1st Plaintiff and the case in court.
38. What is in question is, why was the subdivision being done if the agreement was not for sale of the land where the borehole was to be located? The whole of the suit land is still registered in the name of Jeremiah Mukururo. A Certificate of search dated 24th November 2022 confirms that the suit property was charged to Family bank Limited and there was no evidence adduced that the same had been discharged. A survey and subdivision cannot be done notwithstanding the consent that was purportedly given by the 2nd Plaintiff. Mutations were done by a licensed Surveyor but were never registered. The defendants admitted that the agreement was not for sale of the land and further they were not aware whose favour the subdivisions were.
39. The court notes that there was a consent to subdivide from the Bahati Land Control Board, but having found that there was no evidence of a discharge of charge from Family Bank Limited, such a consent could not confer rights to subdivide. If a discharge of charge has not been issued, then a Land Control



Board (LCB) consent to subdivide is indeed null and void. This is because the discharge of charge is a prerequisite for the subdivision process, and without it, the subdivision is considered illegal and unenforceable.

40. The 1st, 3rd and 4th Defendants submitted that they have no property in the suit land pursuant to the Agreement dated 22nd April 2008 which was not a sale of the suit land. It follows that the Plaintiff is entitled to the suit land, which is still registered in the name of Jeremiah Mukururu.
41. This is a project that started with good intentions to supply water to the community, but it seems that it hit a brick wall midstream. That is why there is always a danger of carrying out projects on donated land without proper documentation and finer details on the position of both parties.
42. I have considered the pleadings, the evidence on record and the submissions by the Plaintiff and counsel and come to the conclusion that the Plaintiff is entitled to an order of cancellation of the subdivision in relation to parcel of land known as Dundori/Muguathi Block 1/1640 Wanyororo A. The defendants are hereby restrained from interfering with the suit land. Each party to bear their own cost this being an initiative to benefit the community with water supply.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 10TH DAY OF JULY 2025.

M. A. ODENY

JUDGE

