



Muriuki v Githunguri Constituency Ranching Co Ltd & another (Environment & Land Case 276 of 2013) [2024] KEELC 524 (KLR) (1 February 2024) (Judgment)

Neutral citation: [2024] KEELC 524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 276 OF 2013
AA OMOLLO, J
FEBRUARY 1, 2024**

BETWEEN

WILSON NDIRANGU MURIUKI PLAINTIFF

AND

GITHUNGURI CONSTITUENCY RANCHING CO LTD 1ST DEFENDANT

KANYUA WAINAINA 2ND DEFENDANT

JUDGMENT

1. The Plaintiff filed the plaint dated 21st February 2013 and amended it on 13th March 2013 against the 1st and 2nd Defendants seeking for the following orders;
 - i. That an order of injunction do issue restraining the defendants herein either by themselves, their employees, agents, servants relatives or anybody else whomsoever from entering, trespassing thereon or in any other way whatsoever dealing with parcel of land known as Ruiru/Ruiru West Block 1/2122 pending the hearing and final determination of this suit.
 - ii. That the officer commanding Ruiru Police Station to ensure that order one hereof is strictly complied with.
 - iii. That this honourable court be pleased to give a declaratory order that the parcel of land known as Ruiru/Ruiru West Block 1/2122 rightfully and lawfully belongs to the Plaintiff herein Wilson Ndirangu Muriuki.
 - iv. That the 2nd Defendant be ordered to demolish all the structures or buildings he has or may have erected on Ruiru/Ruiru West Block 1/2122 and remove all the debris and any other of his belongings he may have brought to the said parcel of land therefrom within a period to be set or stipulated by this Honourable court, failure to which the Plaintiff be authorized to



demolish the said structures or buildings and forcefully evict the 2nd Defendant therefrom at the 2nd Defendants cost.

- v. That the defendants be ordered to compensate the Plaintiff by way of general damages for trespass on the said land, loss of use of the same by the Plaintiff together with the damages the Plaintiff has incurred in trying to resolve the issue of the wrongful occupation of the said parcel of land by the 2nd Defendant, prior to filing of this suit.
 - vi. That the 2nd Defendant be ordered to ensure that the said parcel of land reverts to the condition it was prior to his entry in the same.
 - vii. That the costs of and incidental to this suit be provided for.
 - viii. Interest on 3(a)(b) and 4 above at courts rate.
2. The Plaintiff stated that in the year 1984, he purchased all the shares of one Kiarie Thuo which had been issued by the 1st Defendant, transactions carried out amongst the Plaintiff, the 1st Defendant and Kiarie Thuo and he paid all the requisite monies to the relevant parties and the said shares were transferred to him with all their entitlements.
 3. The Plaintiff explained that among the entitlements of the said purchased shares was a parcel of land Ruiru/Ruiru West Block 1/2122 herein after referred to as “the suit land” which he took possession of, paid land rates and acquired the certificate of lease. He added that without any justifiable cause and without his consent, the 2nd Defendant in collusion with the 1st Defendant encroached the suit land and erected some structures on the same.
 4. The Plaintiff contended that he took requisite steps such as involving the 1st defendant, the local administration and the area police to have the 2nd Defendant vacate the suit land but has failed to comply.
 5. The 1st Defendant filed a defence dated 1st March 2018 denying the averments by the Plaintiff that it was in collusion with the 2nd Defendant to encroach the suit land and affirmed that the Plaintiff (Wilson Ndirangu Muriuki) is the owner of the suit property.
 6. The 2nd Defendants filed a statement of defence and counterclaim dated 9th May 2013 and amended on 29th May 2013 seeking for the following orders;
 - a. The Plaintiffs suit be dismissed
 - b. A declaration that the 2nd Defendant is the legal and lawful owner of Ruiru/Ruiru West Block 1/2122.
 - c. Costs of the suit
 - d. Any other order that this Honourable Court deems fit to grant
 7. The 2nd Defendant pleaded that his father Wainaina Muturi was a shareholder of Githunguri Constituency Ranching Company vide share certificate number 414 which shares were transferred to him and his brother Richard Gakungu Wainaina after the demise of his father and mother. He added that by virtue of these shares, he was entitled to one (1) acre parcel of land and a plot measuring quarter (1/4) of an acre. Consequent to the demise of his father, the estate was distributed and he was given the suit land and his brother was given the one (1) acre parcel of land.
 8. The 2nd Defendant averred that he had lived on and has developed the suit plot uninterrupted from 1997 until 2012 when the Plaintiff started to claim the plot. Further, he contended that he is the



legal and rightful owner of the plot as per the records held by the 1st Defendant and that the Plaintiff fraudulently acquired the suit land's title documents.

9. The 2nd Defendant gave the particulars of fraud levelled against the Plaintiff as follows;
 - i. obtaining title documents without the authority of the 1st Defendant
 - ii. obtaining the title documents without a valid share certificate from the 1st Defendant
 - iii. forging the title documents and misrepresenting himself as the rightful owner of the suit land.
10. He added that it is false and curious that the Plaintiff bought shares in 1984 and never acquired physical possession of the suit land and the other one (1) acre of land which a shareholder of the 1st Defendant was entitled to.
11. The Plaintiff filed a reply to the defence and counter claim dated 22nd May 2013 denying the 2nd Defendant's averments that he had lived and developed the suit land since the year 1997. The Plaintiff further denied the fraud allegations pleaded against him by the 2nd Defendant

Evidence

12. In support of his case, the Plaintiff gave evidence by adopting his written statement dated 21/2/2013. He explained that in the year 1994, his neighbor Kiarie Ndungu approached him for assistance to offset a loan by buying all the shares he had with the 1st Defendant thus became entitled to three parcels of land; 1/8 of an acre, 1 1/4 of acre and 1 1/2 acres.
13. It is his further evidence that upon the 1st Defendant forwarding ballot numbers for the allocated plots to the Ministry of Lands, he was issued with a title for the suit land in the year 1992. He added that the said title was stolen in the year 2007 together with his share certificate and Identity Card causing him to process a duplicate certificate of title. In support produced the said title and police abstract as PExh 1 and 2.
14. Mr. Ndirangu continued with his testimony that when he obtained the title to the suit land, it was in vacant state and that he has been paying land rent for the same as evidenced by payment documents produced as PExh.3. He averred that when the 2nd Defendant started constructing in the suit land, he reported the matter to Ruiru Police station and to the chief as shown in the letter produced in evidence as PExh.4.
15. In support of his case, the 2nd Defendant took the witness stand on 8th February 2022 presenting both oral and documents attached to the list of documents dated 14/5/2012 (DExh1) and Dex-2. He stated that his father Joseph Wainaina became a shareholder of the 1st Defendant since 1972 and on his demise in the year 1976 the shares were transferred to his mother Philomena Wanjiru. The witness averred that his mother who was allocated by the 1st Defendant inter alia, the suit land and 1 1/4 acre portions.
16. DW1's evidence is that he has lived on the suit land from 1997 to date and that the ballot of the plot was 2122 produced as DExh2. He affirmed that they also got the land measuring 1 1/4 acres which has been assigned to his brother. He added that he constructed a house on the suit land in 1997 while the Plaintiff only came to the land in the year 2010 to claim ownership. He continued when the dispute arose, they visited the offices of the 1st Defendant who admitted that the matter at hand was a result of double allocation as per the 1st Defendant Chairman's letter produced as DExh3.
17. Kanyua asserted that the Plaintiff did not produce in support of his claim thus the 2nd Defendant's contention that the Plaintiff acquired the title to the suit land fraudulently as pleaded in his counter claim. He urged the court to find in his favour and enter judgement as per the counter-claim.



18. On cross examination, the 2nd Defendant confirmed that the initial owner of the land was his father. He conceded the fact of not producing a certificate of confirmation of grant of his Father's estate (Wainaina Muturi-deceased) and that the receipts produced bear the name "Velomena" which was his Mother's other name. DW1 contended that the 100 shares entitled them to 3 parcels of land and that they were yet to receive one parcel measuring ¼ acre. He confirmed that the ballot number on Dexh 2 was inserted by pen and which was normal because the insertion was counter-signed by the then chairman of the 1st Defendant. He denied the proposition to him that their ballot number was 332.
19. In further cross-examination by counsel for the 1st Defendant, DW1 admitted that his mother was the administrator of their father's estate although he did not know when the letters were issued. He maintained that the share certificate produced entitled them to land measuring 1 ¼ acre, ¼ acre and 1/8 acre. That they had not paid for clearance for the 1/8 acre because they did not have money for both plots. He also did not know how the balloting was done as it is his mother who balloted.
20. John Maina Mburu who is the current chairman of the 1st Defendant gave evidence as DW2. He stated that he was elected in the year 2009. DW2 adopted his written statement dated March 1, 2018 and the documents in his dated March 1, 2018. He averred that the records held by the 1st Defendant show the suit property is registered in the Plaintiff's name. The 1st Defendant asserted that they have never taken occupation or use of the suit property and wondered why they had been sued.
21. DW2 affirmed that the 2nd Defendant is also their member by virtue of being the son of one of their initial members. It is his evidence that the 2nd Defendant jointly own plot number 1556 and not the suit plot and confirmed by the receipt dated March 12, 2010 paid to the 1st Defendant for clearance and transfer fee. In cross-exam, DW2 stated that the size of land depended on a member's contribution. That a full member was entitled to three plots comprised in 1 ¼ acre, ¼ acre and 1/8 acre. He reiterated that the extract of their register produced confirmed the Plaintiff was the owner of the suit property Ruiru/Ruiru West/ Block 1/2122
22. The witness averred that the Plaintiff got his certificate of lease long before he was elected the chairman so he could not have colluded with him in acquiring the suit plot. He further stated that he was not the one who entered the Plaintiff's name in the register as the same was prepared by the former directors. Mr Mburu admitted that the 2nd Defendant was in physical possession of the suit property.

Submissions

23. The Plaintiff filed submissions dated 26th July 2023 and the 1st Defendant the 1st Defendant filed submissions dated 5th October 2013. The Plaintiff submitted that in 1984, he purchased shares, including entitlements thereof, from Kiarie Thuo in Githunguri Constituency Ranching Company Limited. He paid all required monies Ksh.20,000 for the shares and land, obtaining a lease certificate in September 2011.
24. The Plaintiff presented evidence, relying on the land buying company's records, while the 2nd Defendant failed to produce relevant documents. The defendant alleges adverse possession since 1997, but the plaintiff disputes this, pointing out the 2nd Defendant started erecting structures in 2012. In support he cited the case of Khalif Mohammed Hure v Mohammed Abdi Karim ELC No.E 002 of 2020-Garissa and Joseph Kipkoech Chemor Appellant -versus-Kimaiyo Chemor and another Respondents Civil Appeal No.11 of 2015.
25. The plaintiff argues the 2nd defendant failed to prove his counter-claim and states that none of the documents relied on by him relate ownership of the suit land to the 2nd Defendant. He submitted he has proven his case, while the 2nd defendant has failed to substantiate his counter-claim based on fraud



against the Plaintiff and the 1st Defendant. The plaintiff requests the court to grant his prayers, and dismiss the defendant's counter-claim with costs.

26. The 1st Defendant submitted that as per the certified copy of register extract showing the shareholders and their respective portions they own reveals that the Plaintiff is the owner of the suit land. Further, the 1st Defendant submitted that it upholds the Plaintiff's evidence; certificate of lease and certificate of official search in regard to ownership of the suit land as adduced before the court.
27. They submitted that the 2nd Defendant intentionally and without knowledge or consent of the Plaintiff built developments on the suit land occasioning irreparable damage thus his actions amount to an illegal entry into private property and should be deemed as trespass. It added that the trespass is continuous as even after being issued with a notice to be sued, he failed to terminate his actions.
28. The 1st Defendant stated that the court should award them costs of this suit as there was no cause of action against it, only that its participation was necessary in shedding green light as it pertains origin, ownership and registration of the suit as they are the original owners thereof.

Determination:

29. The core dispute in this matter is ownership of the suit land in which the Plaintiff and the Defendant were laying claim. The Plaintiff has the advantage of having secured a title in his name way back on 7th February 1994 before he was later given a replacement title on 19th September 2011. The evidence of the 1st defendant both verbally and documentary supports the Plaintiff as the owner of the Land, For instance, the extract of the 1st Defendant's register to the effect that the suit plot was balloted in favour of the Plaintiff.
30. Despite this position, the 2nd Defendant contend that the Plaintiff acquired the suit plot illegally because the land belonged to his deceased father who had purchased shares from the 1st Defendant. The 2nd Defendant also produced documents in support of his counter-claim. It is on the basis of this conflicting claims and as evidenced by the 1st Defendant's letter dated 21/9/2012 which stated this plot was a case of double allocation that the court is now called upon to determine the legal owner.
31. Section 26 of the *Land Registration Act* is categorical that a certificate of title is *prima facie* evidence that the person named therein is the proprietor of the land but the same can be challenged where the Certificate of title has been acquired fraudulently, unprocedurally or through corrupt practice, the position taken in case law such as *Elijah Makeri Nyangwe v Stephen Mungai Njuguna & another* [2013] eKLR, and *Chemei Investments Limited v The Attorney General & others* Nairobi Petition No. 94 of 2005.
32. The certificate of lease held by the Plaintiff has been challenged by the 2nd Defendant who claims that the same was acquired fraudulently. The court of Appeal in the case of *Embakasi Properties Limited & another v Commissioner of Lands & anor* [2019] eKLR held as follows:

“ Although it has been held time without end that the certificate of title is:

“conclusive evidence that the person named therein as proprietor of the land is the absolute and indefeasible owner thereof”, it is equally true that ownership can only be challenged on the ground of fraud or misrepresentation to which the proprietor named is proved to be a party. See section 23 of the repealed Registration of Titles Act. Section 26 of the *Land Registration Act*, 2012 though not as emphatic as section 23 aforesaid on the conclusive nature of ownership, confirms that the certificate is *prima facie* evidence that the person named



as proprietor is the absolute and indefeasible owner. It adds that apart from encumbrances, easements, restrictions to which the title is subject, there is no guarantee of the title if it is acquired by fraud or misrepresentation or where it has been acquired “illegally, unprocedurally or through a corrupt scheme”.

33. The burden of proof of the allegations of fraud against the Plaintiff lies on the 2nd Defendant who wishes the court to believe their existence (Section 109 of the *Evidence Act*). In the case of *Urmila w/ o Mabendra Shab v Barclays Bank International Ltd & Another* [1979] eKLR, the Court of Appeal took the view that the onus to prove fraud in a matter is on the party who alleges it.
34. Similarly, in the case of *Christopher Ndaru Kagina v Esther Mbandi Kagina & Another* [2016] eKLR the court pronounced itself as follows:

“It is trite law that he who alleges fraud must prove fraud. Allegations of fraud must strictly be proved. Great care must be taken in pleading allegations of fraud or dishonesty. In particular, the pleader needs to be sure that there is sufficient evidence to justify the allegations.....”
35. The Plaintiff explained on how he bought shares from one Kiarie Thuo, a member of the 1st Defendant in 1984 and the same was transferred to him with all its entitlements. In the OB extract produced in evidence by the Plaintiff, the items listed in the police abstract dated 23/10/2007 is ID No 3343983; share certificate for plot number 3090, Ruiru West/Block/2; Ruiru West/Block1/2122 receipts; and Ballot for ¼. By the time the documents were reported lost, the Plaintiff already had a title to the suit plot in his name.
36. In contesting the claim by the Defendant, the Plaintiff in his testimony took issue with the Defendant’s documents produced in evidence. For instance, the Plaintiff pointed out that the receipt dated 12th March 2010 which was paid for the transfer of shares to the names of the 2nd defendant and his brother mention ballot 1556 for 1 ¼ acre shamba. On the receipt, it is also handwritten certificate no. 414 dated 19th October 1972. This certificate number 414 is repeated in the receipt 18th May 1983 issued to Wainaina Muturi by the 1st Defendant. The certificate number 414 is written on the receipt dated 10th May 1984 to Wainaina Muturi and stamped balloted. All these receipts were produced by the 2nd Defendant.
37. The witness of the 1st Defendant stated that the 2nd Defendant’s father-deceased was entitled to land number 1556. The 2nd Defendant in his evidence stated that his father’s shareholding with the 1st Defendant entitled them to 1 ¼ plot and 1/8 of a plot and the land in dispute is the 1/8 plot. He admitted that they got the land measuring 1 ¼ which is currently occupied by his brother Richard Gakunga Wainaina.
38. The documents presented by the 2nd Defendant point to their ownership of a share given as 414 which after balloting seemed to have been allocated land number 1556. He then referred this court to a document produced as Dex 2 which had two numbers. On the front of this document is a number 332 while at the back is 2122 and has no nexus to the payment receipts produced by the 2nd Defendant. The 2nd Defendant would like the court to rely on this document (Dex-2) to cancel the Plaintiff’s title as having been acquired fraudulently.
39. As already stated above, fraud cannot be inferred merely because the Plaintiff has not been in possession. The 2nd Defendant is the one who alleged fraud and was there required in law to call evidence including calling for documents from the lands office for the list of members and their ballot numbers sent by the 1st Defendant to the Ministry of Lands for purposes of issuance of titles. Such evidence would have helped to confirm that indeed ballot 2122 was allocated to his mother/father.



Further, the evidence he presented shows that what has been transferred to them jointly is ballot number 1556. There is nothing produced to this court to prove that indeed ballot no 2122 if indeed it belonged to Wainaina Muturi-deceased, it has now been re-assigned/allocated to the 2nd Defendant.

40. The Plaintiff sued the 2nd Defendant for trespass after he found him building on his land. The 2nd Defendant admitted he was undertaking construction on the suit parcel and stated that the construction works began in 1994 but he was yet to complete the building. The admission of undertaking activities on the suit land without the permission of the registered land owner amounts to acts of trespass and which then is evidence that the Plaintiff has made out a case on a balance of probabilities.
41. The Plaintiff prayed for order of compensation for the acts of trespass. His evidence was that when he visited the land, he found the 2nd Defendant was construction a house. He called on him to stop and when he did not cooperate, he reported the matter to the area Chief, the Police and the 1st Defendant. Between 1992 to 2012 when he found the 2nd Defendant trespassing, he had not undertaken any activity on the suit plot. Thus, he has not demonstrated how he has suffered damage when all these years he had not put the land to use. I am not persuaded to award him any damages.
42. In conclusion, I find no merit in the counter-claim brought by the 2nd Defendant. I find merit in the case by the Plaintiff Wilson Ndirangu Muriuki and enter judgement for him as against the 2nd Defendant and make the following orders: -
 - a. That this honourable court do and hereby issue a declaratory order that the parcel of land known as Ruiru/Ruiru West Block 1/2122 rightfully and lawfully belongs to the Plaintiff herein Wilson Ndirangu Muriuki.
 - b. That the 2nd Defendant ordered to voluntarily surrender vacant possession and to demolish all the structures or buildings he has or may have erected on Ruiru/Ruiru West Block 1/2122 and remove all the debris and any other of his belongings he may have brought to the said parcel of land therefrom within a period of Ninety (90) days from the date of this judgement. In default, the Plaintiff is authorized to demolish the said structures or buildings and to evict the 2nd Defendant using lawful means.
 - c. That an order of permanent injunction do issue restraining the 2nd defendant herein either by himself, his employees, agents, servants relatives or anybody else whomsoever from entering, trespassing thereon or in any other way whatsoever dealing with parcel of land known as Ruiru/Ruiru West Block 1/2122.
 - d. That the Officer Commanding Ruiru Police Station to provide security during the execution of the decree to ensure peace and order is maintained.
 - e. Cost of the suit to the Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 1ST DAY OF FEBRUARY, 2024

A. OMOLLO

JUDGE

