



**Mwaura v Land Registrar, Kajiado & another (Environment & Land Case 952 of 2017) [2024] KEELC 1174 (KLR) (4 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1174 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 952 OF 2017**

**MN GICHERU, J**

**MARCH 4, 2024**

**BETWEEN**

**VIRGINIA WANJIKU MWAURA ..... PLAINTIFF**

**AND**

**LAND REGISTRAR, KAJIADO ..... 1<sup>ST</sup> DEFENDANT**

**JOHN GITAU ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants both jointly and severally.
  - a. A declaration be issued that the deceased Francis Mwaura Njuguna and the late Dominic Makara are the owners of all that property known as Kajiado/Kitengela/ 3916, suit land.
  - b. A declaration be issued that the entries made in the register pertaining to the suit on 17/3/1992 and on 1/10/2009 are fraudulent and illegal and the same be quashed.
  - c. That the 1<sup>st</sup> defendant be ordered to maintain a proper deed file for the suit land showing the correct ownership as Francis Mwaura Njuguna and Dominic Makara (both deceased).
  - d. Costs of the suit.
  - e. Such further directions and/orders as the court shall deem fit and appropriate.
2. The plaintiff's case is as follows. She is the widow of Francis Mwaura Njuguna who filed this suit and sadly, passed away before it could be concluded. Her deceased husband and Dominic Maina Makara were employees of Panafric Hotel who formed a Staff Welfare Sacco known as Panstaff Company Limited. Panstaff purchased LR Kajiado/Kitengela/1962 measuring fifty (50) acres. They subdivided the land into five (5) acres as required by the Government Policy of the day as no land could be fragmented below five acres then. A list of members was prepared and both Francis Mwaura Njuguna



and Dominic Maina Makara were jointly registered as the owners of the suit land. Dominic Makara died on 6/4/2002 at Nyeri Provincial General Hospital. When the late Francis Mwaura conducted a search to establish the status of the suit land, he found that on 17/3/1994, a title deed had been issued to one Elias Oyamo Nguche and on 1/10/2009 another title deed for the same land had been issued to John Gitau, the second defendant. This was shocking because the title deed issued to the late Francis Mwaura and Dominic Makara on 3/5/1993 was still in their custody and they had not sold the land to anybody including Elias Oyamo Nguche.

3. Upon discovering the fraudulent activities conducted by the defendants, the deceased Francis Mwaura registered a caution against the suit land on 16/12/2009. He also instructed R.W. Chege, an advocate to lodge a complaint with the first defendant. The advocate wrote to the first defendant on 29/12/2009 complaining about the fraud. The first defendant wrote a letter to the 2<sup>nd</sup> defendant requiring him to appear at Kajiado land registry on 14/1/2010 with all documents to support his ownership of the suit land. Again, on 30/12/2009, a report was made to the DCI, Rongai Police Station about the fraud. The investigations by the police concluded that both the second defendant and Elias Oyamo Nguche be arrested and charged for the offence of obtaining false registration contrary to Section 320 of the *Penal Code*.

The family of Francis Mwaura Njunguna is in occupation of the suit land even though the second defendant had at one time been to the and threatened to evict them.

4. In support of the case, the plaintiff filed the following evidence.
  - a. Witness statement by Francis Mwaura, Virginia Wanjiku Mwaura and Jayne Wambui Mbuthia.
  - b. Affidavits dated 6/12/2017 and 15/11/2018.
  - c. List of members buying LR Kajiado/Kitengela/1962.
  - d. Copy of title deed for the suit land dated 31/5/1993.
  - e. Copy of mutation form for the suit land.
  - f. Copy of certificate of death of Dominic Maina Makara.
  - g. Copy of register of the suit land showing the fraudulent entries of 17/3/1994 and 1/10/2009.
  - h. Copy of letter by R.W. Chege advocate dated 29/12/2009.
  - i. Copy of letter by Land Registrar Kajiado dated 29/12/2009 summoning the second defendant on 14/1/2010.
  - j. Copy of statement by Francis Mwaura Njunguna to the police dated December 2019.
  - k. Copy of letter to the P.S. Land dated 5/3/2010 complaining of fraud.
  - l. Copy of letter by CID Ongata Rongai dated 19/2/2016 stating that the second defendant and Elias Oyamo Nguche had failed to honour summons by the DCIO because they were fully aware of their criminal activities.
  - m. Copy of mutation form LR 1962 showing the nine (9) subdivisions which include the suit land.
  - n. Certificate of incorporation of Panstaff Company Limited dated 21/1/1981.



- o. List of share holders of Panstaff Company Limited who include Dominic Makara (19) and Francis M. Njugua (31).
5. The first defendant in a written statement of defence dated 1/2/2018 avers that the second defendant, though the registered owner as per the land register did not appear with his original title deed when asked to do so by the Land Registrar. It adds that it has no objection to the reconstruction of the register if the 2<sup>nd</sup> defendant fails to prove his ownership of the suit land.
6. The second defendant, in a written statement of defence dated 20/6/2019 avers that he is the lawful owner of the suit land and acquired an indefeasible title after a lawful purchase from the then registered owner Elias Oyamo Nguche. He prays for a declaration to that effect and a permanent injunction to restrain the plaintiff from occupying the same.

In support of his case, he filed the following evidence.

- a. A witness statement by the second defendant.
  - b. Copy of sale agreement dated 22/9/2009.
  - c. Copy of title deed dated 2/10/2009.
  - d. Copy of deed of indemnity dated 6/8/2014.
  - e. Copy of receipt dated 6/8/2014.
  - f. Copy of letter of consent of the land control board.
  - g. Copy of replying affidavit dated 24/9/2018.
7. At the trial on 20/12/2022, only the plaintiff appeared. The defendants chose not to attend the trial even though the date had been taken by consent more than nine (9) months earlier. The plaintiff testified on oath and produced all her documents as exhibits.
8. Counsel for the plaintiff filed written submissions dated 5/10/2023 and identified four issues for determination as follows.
  - i. Whether the late Francis Mwaura Njuguna and the late Dominic Makara are the lawful owners of the suit property.
  - ii. Whether the 2<sup>nd</sup> defendant acquired the purported title fraudulently.
  - iii. Whether a declaration should be made that the entries against the suit property made on 17<sup>th</sup> March 1994 were illegal and fraudulent.
  - iv. Whether the first defendant should be ordered to maintain a proper file for the suit land and correct ownership reflecting the late Francis Mwaura Njuguna and Dominic Makara as the rightful owners.
9. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, the affidavits and the documents. I have also considered the plaintiff's testimony at the trial, the written submissions the issues raised therein and the law cited. I find that the four issues identified by learned counsel for the plaintiff will determine the dispute.
10. On the first issue, I find that the late Francis Mwaura Njuguna and the late Dominic Maina Makara are the lawful owners of the suit property.



Firstly, they have proved that they were employees of Panafric Hotel and that the land was purchased by employees of the said hotel.

Secondly, it has been proved that since they acquired the land, the two joint owners did not sell it to anybody.

Thirdly, it has been proved that the second defendant and Elias Oyamo Onguche are fugitives wanted by the police to be charged with obtaining registration by false pretense contrary to Section 320 of the [Penal Code](#).

Fourthly, the second defendant has failed to appear before the land registrar and the police to defend the title documents that he holds. He has also failed to come to court to do the same. If the title documents were genuine, he would have appeared before the three forums to defend them.

Finally, the first defendant who is the custodian of the records of the suit land has categorically stated vide paragraph 7 of the written statement of defence as follows.

“7. In response to the prayers sought in the plaint, the 1<sup>st</sup> defendant has no objection to the reconstruction of the green card if the 2<sup>nd</sup> defendant fails to prove his ownership of the suit land”.

This is a very powerful admission by the co-defendant that the 2<sup>nd</sup> defendant's title documents are to be treated with suspicion and it is up to him, and not the land registrar, to defend them as the land registrar cannot guarantee their authenticity.

I find that the second issue has already been decided in the affirmative for the third, fourth and fifth reasons given above.

11. Regarding the third issue, I find that a declaration should be made that the entries against the suit property made on 17/3/1994 should be nullified because they have been proved to be fraudulent. Again the reasons are to be found in paragraph (10), above.
12. Finally, on the final issue, I find that under Section 26(1) (b) of the [Land Registration Act](#), (Act No. 3 of 2012) it has been proved that the title deed in possession of the second defendant was acquired illegally, unprocedurally and through a corrupt scheme. Such a title deed should not be allowed to stand because it would encourage land fraudsters to flourish. It must be nullified.

For the foregoing reasons, I enter judgment for the plaintiff against the defendants jointly and severally as prayed for in paragraph 19 (a), (b), (c) and (d) of the plaint dated 6/12/2017.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 4<sup>TH</sup> DAY OF MARCH 2024.**

**M.N. GICHERU**

**JUDGE**

