



**Runo & another v Runo (Environment & Land Case 254 of 2013)  
[2024] KEELC 4069 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4069 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 254 OF 2013**

**JO OLOLA, J**

**MAY 9, 2024**

**BETWEEN**

**MARION NYAKAIRU RUNO ..... 1<sup>ST</sup> PLAINTIFF**

**ISAIAH GICHOHI RUNO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JASAN NDUNGU RUNO ..... DEFENDANT**

**JUDGMENT**

**Background**

1. By a Plaint dated and filed herein on 18<sup>th</sup> December 2013, Marion Nyakairu Runo and Isaiah Gichohi Runo (the Plaintiffs) pray for Judgment against the Defendant for:
  - (a) An order requiring the Defendant together with his families servants and agents to vacate from the Plaintiffs' suit land Parcel Number Thegenge/Ihithe/542 together with their belongings and in default the defendant together with his families, servants and agents be forcibly evicted from the Plaintiffs' suit land.
  - (b) Mesne profits at the rate of Kshs.5,000/- per year from the date of filing this suit till such time as this Honourable Court deems fit;
  - (c) Costs of this suit with interest thereon; and
  - (d) Any further or better relief (as) the Honourable Court may deem fit to grant.
2. The prayers by the two Plaintiffs arise from their contention that they together with the Defendant are the children of one Runo Mukunu Njagi who had distributed the suit property to the two Plaintiffs while at the same time allocating Land Parcel No. Laikipia/Tigithi Matanya Block 3/393 to the Defendant.



3. It is the Plaintiffs case that the Defendant had on 4<sup>th</sup> August, 2023 been requested to vacate the suit land and to move and settle on the parcel of land allocated to himself but he has to-date refused and/or neglected to do so.
4. But in his Statement of Defence and Counterclaim dated 16<sup>th</sup> January 2014, Jasan Ndungu Runo (the Defendant) denies that their father had allocated and/or transferred the parcels of land cited by the Plaintiffs.
5. It is the Defendant's case that he has been in occupation and has extensively developed at least 1 ½ acres of the parcel of land known as Thegenge/Ihithe/542 from the year 1954 to-date by virtue of being a son and a member of his clan.
6. By way of the Counterclaim, the Defendant accuses the Plaintiffs of taking advantage of their father's indisposition and proceeding on 15<sup>th</sup> October, 2013 to fraudulently, illegally and without any colour of right purporting to transfer the suit property into their joint names. Accordingly, the Defendant prays for an order of cancellation of the registration done on 15<sup>th</sup> October, 2013 as well as a rectification of the register.

### **The Plaintiffs' Case**

7. The Plaintiffs called two witnesses at the trial herein which commenced before the Honourable Justice L. Waithaka in March, 2017.
8. PW1 – Rachel Nyamugu Runo is the mother of all the parties in this case. Relying on her Statement filed herein on 4<sup>th</sup> February 2014, PW1 testified that L.R No. Thegenge/Ihithe/542 previously belonged to her husband Runo Mukunu Njagi before he transferred the same to the Plaintiffs herein.
9. PW1 told the Court that on 18<sup>th</sup> August 2013, her husband had called a family meeting wherein he gave the Plaintiffs the suit property while allocating the Defendant Land Parcel No. Laikipia/Tigithi Matanya Block 3/393 (Matanya Centre). PW1 further told the Court that her other sons were allocated 2 pieces of land in Kieni West District and that his son Nkabuthu Runo had already settled there.
10. PW1 testified that her husband had no mental issues and that herself and the husband attended the Land Control Board where they obtained consent to transfer the suit property to the Plaintiffs. She further told the Court that even though the entire family had previously been residing on the suit land, they had now to move to their respective portions following the distribution of the family property.
11. On cross-examination, PW1 told the Court that the Defendant was born on the suit property in 1954. She confirmed that the property was ancestral land and that her husband had inherited the same from his father. PW1 further confirmed that the Defendant had built a house at the edge of the suit land and that he had buried his daughter on a portion thereof.
12. PW2 – Marion Nyakairu Runo is the 1<sup>st</sup> Plaintiff herein. Relying on her Statements dated 18<sup>th</sup> December, 2013 and 4<sup>th</sup> February 2014, PW2 told the Court that she has four (4) brothers and 2 sisters, namely Jasan Runo (the Defendant), John Runo, Paul Runo and Isaiah Runo. She further told the Court her sisters are Grace Wambugu and Zipporah Runo. PW2 testified that her father had many pieces of land.
13. PW2 testified that she resides on the suit land with the 2<sup>nd</sup> Plaintiff while their brother Jasan Runo was given the land in Matanya Centre, Laikipia by their father. PW2 told the Court the father had called a family meeting on 18<sup>th</sup> August, 2013 whereat he shared out his properties. The Defendant refused to attend the meeting.



14. PW2 further testified that after the distribution, they proceeded to the Land Control Board to obtain consents for the transfer and that once the suit property was registered in her name and that of the 2<sup>nd</sup> Plaintiff, their father gave notice to the Defendant to vacate the same. The Defendant asked for 3 months to vacate but subsequently refused to do so. Their father later succumbed to illness.
15. On cross-examination, PW2 conceded that the suit property was previously registered in her father's name. She was born in 1970 and did not know how her father got the land. She further told the Court that the Defendant was born in the 1950s and had been brought up on the land.

### **The Defence Case**

16. On his part, Jasan Ndungu Runo (DW1) testified as the sole witness in his case. He told the Court the Plaintiffs are his siblings and that he was born in 1954 and has always stayed on the suit property. DW1 further told the Court he has built a home on the property which he occupies with his wife and six (6) Children. He has also planted tea and bananas on the portion of the land.
17. On cross-examination, DW1 testified that by the year 2013, he had heard that his father had decided on which of his children would inherit the various parcels of land in his name. Upon learning of the same DW1 placed a caution on the suit property. He denied that his father had called a family gathering in August 2013. DW1 further denied that his father had asked him to take up the land in Matanya.

### **Analysis And Determination**

18. I have carefully perused and considered the pleadings filed 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.
19. The two Plaintiffs herein are a brother and sister of the Defendant. They are all the biological children of one Runo Mukunu Njagi (now deceased) and Rachel Nyamugu Runo (PW1). By their suit as filed herein, the two Plaintiffs have urged the Court to issue an order requiring the Defendant, his family, servants and/or agents to vacate from the parcel of land known as Thegenge/Ihithi/542. In addition, the Plaintiffs pray for mesne profits assessed at Kshs.5,000/- to be paid by their brother from the date of filing this suit.
20. The basis of the said prayers is the Plaintiffs' contention that prior to his death, their father Runo Mukunu Njagi had distributed all his properties to his children. In that respect, the Plaintiffs assert that their father had gifted them the entire suit property and that the defendant had been allocated and required to move to a parcel of land known as Laikipia/Tigithi Matanya Block 3/393 situated at Matanya Centre in Laikipia.
21. It is the Plaintiffs' case that upon being gifted the suit property as afore said, they had together with their father moved to the Land Control Board and had obtained a consent for the transfer of the suit property into their names. It is further the Plaintiffs' case that on 15<sup>th</sup> October 2013, they were registered as the proprietors of the suit property but the Defendant had since refused to vacate the land as per the wishes of their father and/or in acknowledgment of their proprietorship thereof.
22. On his part, the Defendant denied that their father had gifted the suit property to the Plaintiffs herein. It was his case that the two Plaintiffs had merely taken advantage of their father's indisposition to alter the land records in their favour. The Defendant further denied that his father had allocated him the parcel of land in Matanya Centre in Laikipia and that he had been thereby required to vacate the suit property.



23. According to the Defendant, the parcel of land known as Laikipia/Tigithi Matanya Block 3/393 belonged to the entire family of his father while the suit property herein was their ancestral land to which he was entitled by virtue of being a member of his father's clan. The Defendant accordingly urged the Court to declare the Plaintiffs' registration as the proprietors of the suit property illegal and to proceed to have the register rectified accordingly to reflect the proprietor of the land as the late Runo Mukunu Njagi.
24. In support of their case, the Plaintiffs called their mother – Rachel Nyamugu Runo (PW1) who told the Court that the suit property was initially registered in the name of her husband. PW1 told the Court that at a family meeting held on 18<sup>th</sup> August 2013, her husband expressed his wishes regarding the distribution of his properties. It was her case that it was during that meeting when her husband gifted the suit property to the Plaintiffs while the Defendant was allocated the parcel of land situated at Matanya Centre in Laikipia.
25. According to PW1, the Defendant had no valid reason to refuse to vacate the suit land as all her children had been using the suit land but had now to move to their respective pieces in accordance with what was allocated to them by their father.
26. From the material placed before the Court, it was apparent that since his birth in or around the year 1954, the Defendant had lived on the suit property by virtue of the fact that he was the son of the late Runo Mukunu Njagi and his wife Rachel Nyamugu Runo. Upon attaining the age of majority, the Defendant continued to occupy a portion of the suit land which according to him measures some 1 ½ acres. While the Plaintiffs and their mother put the area occupied by the Defendant as ¼ acre, they did not deny that he had overtime developed the same and built a house thereon which he occupied with his wife and six children.
27. Asked during cross-examination as to the circumstances under which her son came to be on the land, PW1 responded as follows:
- “The Defendant was born on 25<sup>th</sup> October 1954. He has always lived on the suit land. I confirm that this was ancestral land. Their father inherited the land from his father. It is true that Jasan (Defendant) has built at the edge of the shamba (he was given this small portion to build because he was going to build elsewhere). It is true the Defendant has buried his daughter on the suit land but this issue was disputed as his father wanted him to bury his daughter elsewhere (i.e in Matanya where the Defendant had been given land).”
28. Indeed the fact that the Defendant had always lived on the suit land were confirmed by the 1<sup>st</sup> Plaintiff herself (PW2) who told the Court that the Defendant had built a house on the land in the year 2001. It was PW2's case that the Defendant had been shown where to build by their father and that he had also been given 300 tea bushes by their father to tend to.
29. As to the circumstances that led to the distribution of the suit property to the Plaintiffs, PW2 told the Court in her cross-examination as follows:
- “Regarding the meeting called by my father on 18<sup>th</sup> August 2013, my father contacted each of us individually. He told us he contacted the Defendant who did not show up. We also tried to call him but he stated that he did not want my father's foolishness. By the time my father called the meeting he had been out of hospital for 1 month. He had been admitted between 2<sup>nd</sup> – 5<sup>th</sup> August, 2013. When my father called the meeting on 18<sup>th</sup> August, 2013 there was bad blood between him and the Defendant.”



30. From the material placed before the Court, it was apparent that it was this bad blood between the old man and his first-born son that informed the idea to re-locate him to Matanya Centre in Laikipia. That much is clear from the contents of a letter written by the late Runo Mukunu Njagi's Advocates – Messrs S. K. Njuguna & Company Advocates dated 4<sup>th</sup> August, 2013 (Pexh 2) wherein he addressed the Defendant as follows:

Quote

“re: Runo Mukunu Njagi

Acting under instructions from our above named client, we have been instructed to write and address you as follows:

That our client is your father and that you have been disrespectful to our client whom you have been abusing in presence of his grandchildren and neighbours. This is a fact well known by those within your area. The matter has been reported to the area Chief and the OCS Nyeri Police Station and you have been warned against abusing our client and or creating disturbance in our client's home within our client's Land Parcel No. Thegenge/Ihithi/542 where our client has temporarily allowed you to settle.

Our client states that he has allocated you with his Land Parcel No. Laikipia/Tigithi Matanya Block 3/393 (Matanya Centre) measuring 1.40 Ha. where you are supposed to settle with your family.

Our client has on diverse occasions requested that you vacate from his Land Parcel No. Thegenge/Ihithi/542 but you have refused to vacate. As a result of your refusal to vacate, you have subjected our client to a lot of mental torture as our client is not comfortable with your continued to stay on his said piece of land.

We have been instructed to write and Demand on behalf of our client, which we hereby do, that you vacate from our client's Land Parcel No. Thegenge/Ihithi/542 and relocate to Land Parcel No. Laikipia/Tigithi Matanya Block 3/393 (Matanya Centre) within the next Thirty (30) days from the date of our Letter.”

31. It is clear from the institution of this suit that the Defendant did not heed to the demand to vacate the suit land and hence the orders sought herein seeking for his eviction therefrom by the siblings. As it were, there was no doubt that the suit property was family property and that the Defendant's occupation thereon was with the consent and knowledge of the family. The Plaintiffs did not obtain the land for value or by way of purchase. Instead, the Plaintiffs appear to be beneficiaries of the land arising from the frustrations that his father had had with their sibling, the Defendant.
32. While it was easy to sympathise with the Old Man given his accusations against his son, he had overtime allowed the Defendant to occupy and invest on what was undisputedly the family's ancestral land. As at the time of their registration as proprietors of the suit property on 5<sup>th</sup> October 2013, the Plaintiffs were aware of their brother's occupation and investments on the suit land. Such registration could only be in trust for the Defendant and could not vest them with absolute rights over the portion occupied by the defendant.
33. The Court of Appeal had occasion to consider the place of customary trust in the case of Mbui Mukangu -vs- Gerald Mutwiri Mbui, Civil Appeal No. 281 of 2000 (2004) eKLR. In that particular case, Gerald had unsuccessfully sued his father to have him transfer a piece of land registered in his father's name to himself. His father no doubt, emboldened by his sons loss filed a case seeking to evict the son from “his” land. The father's case was dismissed at the High Court leading to the appeal to the Court of Appeal. Having analysed the issues of registration of land as earlier decided in the ground – breaking precedents of Obiero -vs- Opiyo & Others (1972) EA 227 and Esiroyo -vs- Esiroyo & Another



(1973) EA 388, the Court came to the conclusion that although registration extinguished customary law claims over land, the proprietors of such land were subject to overriding interest such as trust over the said parcels of land. The Court thus concluded as follows:

“It is significant, we think, that unlike the Muriuki Marigi case (supra) where the father had his own land and could therefore do whatever he wished with it, the land registered in the name of Mbui was ancestral land that devolved to him on the death of his father.

It was unregistered land held under custom but the tenure changed during the land consolidation process and subsequent registration under the Registered *Land Act*. It is a concept of intergenerational equity where the land is held by one generation for the benefit of succeeding generations. It is also significant that unlike the Esiroyo Case, where the sons invaded land occupied by their father, Gerald in this case, was in possession and occupation of the land with the consent and knowledge of Mbui since his birth in 1956. He has constructed a five-roomed permanent house and has planted coffee in the suit land. The Respondent is not ready to compensate him for those permanent developments. We think the superior Court was right in distinguishing the authorities cited on that score. But more significantly, we think a trust arose from the possession and occupation of the land by Gerald which has the protection of Section 28 and 30(g) of the Act unless there is an inquiry made which discloses no such rights, which would be superfluous in this case.”

34. In the matter herein, it was evident that the Defendant had been on the land which as admitted by the Plaintiffs was ancestral land since his birth in the year 1954. He had been in occupation of his portion as pointed to him by his father and had extensively developed the same. It follows that in the circumstances, I was not persuaded that the Plaintiffs had any better rights to the suit land than the right held by the Defendant over the same. The transfer of the suit property to the Plaintiffs was subject to the overriding interest which had accrued by the Defendant’s possession and occupation of his portion of the land over time.
35. In the premises, I did not find any merit in the Plaintiff’s suit. The right of eviction and for mesne profits are unavailable to them in the circumstances of this case.
36. The suit is dismissed with an order that the Plaintiffs registration as proprietors of the suit property is hereby cancelled and that the record be rectified henceforth as sought in the Defendant’s Counterclaim.
37. Given the relationship of the Parties herein, I make no order as to costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 9<sup>TH</sup> DAY OF MAY, 2024.**

**J. O. OLOLA**

**JUDGE**

In the presence of:

Mr. C. M. King’ori holding brief for S. K. Njuguna for the Plaintiff

Mr. Nderi for the Defendant

Court assistant - Kendi

