



**Mburu & 7 others v Land Registrar Ruiru & another (Environment & Land  
Petition E007 of 2023) [2024] KEELC 6807 (KLR) (15 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6807 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND PETITION E007 OF 2023  
JG KEMEI, J  
OCTOBER 15, 2024  
IN THE MATTER OF VIOLATIONS OF ARTICLES 10, 20, 21, 22, 23,  
40, 50 & 47 OF THE CONSTITUTION OF KENYA  
AND  
IN THE MATTER OF RIGHT TO PROPERTY & FAIR  
ADMINISTRATIVE ACT  
AND  
IN THE MATTER OF CANCELLATION OF LAND TITLE NUMBERS  
RUIRU/KIU BLOCK 2/13950, 13951, 13952, 13953, 13954, 13955,  
13956, 13957, 13958, 13961, 13962, 13964, 13965, - 13965 BY  
COURT DECREE JUDGMENT IN THIKA CHIEF MAGISTRATES ELC  
CASE MCL&E 214 OF 2018**

**BETWEEN**

**ELIZABETH MUGURE MBURU ..... 1<sup>ST</sup> PETITIONER  
SAMUEL HAHANYU NDERI & TERESIA NJAMBI HAHANYU .... 2<sup>ND</sup>  
PETITIONER  
JESSEE WAGENDO MARARO ..... 3<sup>RD</sup> PETITIONER  
BENSON MAINA NJUGUNA ..... 4<sup>TH</sup> PETITIONER  
FRANCIS KAMAU MUGURO ..... 5<sup>TH</sup> PETITIONER  
GLADYS WAMBUI MUHURI ..... 6<sup>TH</sup> PETITIONER  
DOMINIC KARIUKI MWANGI & ALICE MWIHAKI  
KARIUKI ..... 7<sup>TH</sup> PETITIONER**



**SIMON MUGI KABUGI ..... 8<sup>TH</sup> PETITIONER**

**AND**

**LAND REGISTRAR RUIRU ..... 1<sup>ST</sup> RESPONDENT**

**HONOURABLE ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

### **JUDGMENT**

1. Before this Court is the instant Petition seeking orders for the reversal of the cancellation of the titles namely RUIRU/KIU BLOCK2/13950-13965 (suit lands) which were made contrary to the Judgement rendered by the Chief Magistrates Court in CMCLE No 214 of 2018 on the 11/2/2021. The Petitioners aver that in CMCLE No 214 of 2018, they were the Interested Parties in the suit.
2. The case of the Petitioners is comprised in the main Petition dated the 19/10/23 and the Supporting Affidavit sworn by Gladys Wambui Muhuri on behalf of the rest of the Petitioners and deponed on even date.
3. It was the Petitioners' case that contrary to the tone and tenure of the Judgement aforesaid, the 1<sup>st</sup> Respondent proceeded to illegally cancel their titles, an act that they were made aware in August of 2023 when an unidentified person visited the suit lands threatening them with eviction. That in the said pronouncements of the Court, the Court affirmed that the Plaintiff ( Damaraci Wamaitha Kihonge) was the bonafide and legal owner of the suit land but declined to grant the orders of cancellation of the resultant titles (suit lands after subdivision) in her favour for the reasons that the original title being RUIRU KIU BLOCK 2/3460 no longer existed and that the Defendants in that case were not in occupation and thirdly that the plaintiff had not sought any orders of cancellation.
4. The Petitioners aver that their right to property, fair administrative action and the right to be heard have been violated by the Respondents and in particular that the actions of the 1<sup>st</sup> Respondent were in error, unreasonable, unfair, in excess of the Court orders and ought to be set aside for want of jurisdiction, quashed, declared unconstitutional, abuse of Court process, illegal, irrational and null and void in law.
5. The Petitioners have anchored their plea on the constitutional provisions and aver infringement of their rights as set out in Articles 10, 40, 47 and 50 of *the Constitution* of Kenya.
6. In the main the prayers and reliefs sought are;
  1. Judicial Review orders for certiorari do and is hereby issued quashing and removing ALL the cancellation entries dated 26<sup>th</sup> February 2021 entered into proprietary section register of ALL Applicants titles numbers-
    - a. Title Number Ruiru/kiu Block 2/13950 – Elizabeth Mugure Mburu
    - b. Title Number Ruiru/kiu Block 2/13951 – Gladys Wambui Muhuri
    - c. Title Number Ruiru/kiu Block 2/13952 – Samuel Hahanyu Nderi & Teresia Njambi Hahanyu
    - d. Title Number Ruiru/kiu Block 2/13953 – Jessee Wagendo Mararo
    - e. Title Number Ruiru/kiu Block 2/13954 – Elizabethmugure Mburu
    - f. Title Number Ruiru/kiu Block 2/13955 – Franis Kamau Muguro



- g. Title Number Ruiru/kiu Block 2/13956 – Dominic Kariuki Mwangi & Alic Mwhiki Kariuki
  - h. Title Number Ruiru/kiu Block 2/13957 – Benson Maina Njuguna
  - i. Title Number Ruiru/kiu Block 2/13958 – Elizabeth Mugure Mburu
  - j. Title Number Ruiru/kiu Block 2/13961 – Elizabeth Mugure Mburu
  - k. Title Number Ruuiru/kiu Block 2/13962 – Simon Mugi Kabugi
  - l. Title Number Ruiru/kiu Block 213964 – Elizabeth Mugure Mburu
  - m. Title Number Ruiru/kiu Block 213965 – Elizabeth Mugure Mburu
2. A declaratory order declaring the cancellation of ALL Applicants titles herein as illegal null and void and restoration of the Applicants titles as the Thika Chief Magistrates Court in MCLE Case No. 214 of 2018 did not issue any orders for cancellation of titles namely-
- a. Title Number Ruiru/kiu Block 2/13950 – Elizabeth Mugure Mburu
  - b. Title Number Ruiru/kiu Block 2/13951 – Gladys Wambui Muhuri
  - c. Title Number Ruiru/kiu Block 2/13952 – Samuel Hahanyu Nderi & Teresia Njambi Hahanyu
  - d. Title Number Ruiru/kiu Block 2/13953 – Jessee Wagendo Mararo
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  - k. Title Number Ruuiru/kiu Block 2/13962 – Simon Mugi Kabugi
  - l. Title Number Ruiru/kiu Block 213964 – Elizabeth Mugure Mburu
  - m. Title Number Ruiru/kiu Block 213965 – Elizabeth Mugure Mburu
3. A prohibitory order prohibiting the Land Registrar Ruiru from using the Decree orders issued Thika Chief Magistrates Court in MCLE Case No. 214 of 2018 issued on 11<sup>th</sup> February 2021 to cancel the Applicants titles, namely-
- a. TITLE NUMBER RUIRU/KIU BLOCK 2/13950 – ELIZABETH MUGURE MBURU
  - b. TITLE NUMBER RUIRU/KIU BLOCK 2/13951 – GLADYS WAMBUI MUHURI
  - c. TITLE NUMBER RUIRU/KIU BLOCK 2/13952 – SAMUEL HAHANYU NDERI & TERESIA NJAMBI HAHANYU



- d. TITLE NUMBER RUIRU/KIU BLOCK 2/13953 – JESSEE WAGENDO MARARO
  - e. TITLE NUMBER RUIRU/KIU BLOCK 2/13954 – ELIZABETH MUGURE MBURU
  - f. TITLE NUMBER RUIRU/KIU BLOCK 2/13955 – FRANIS KAMAU MUGURO
  - g. TITLE NUMBER RUIRU/KIU BLOCK 2/13956 – DOMINIC KARIUKI MWANGI & ALIC MWIHAKI KARIUKI
  - h. TITLE NUMBER RUIRU/KIU BLOCK 2/13957 – BENSON MAINA NJUGUNA
  - i. TITLE NUMBER RUIRU/KIU BLOCK 2/13958 – ELIZABETH MUGURE MBURU
  - j. TITLE NUMBER RUIRU/KIU BLOCK 2/13961 – ELIZABETH MUGURE MBURU
  - k. TITLE NUMBER RUUIRU/KIU BLOCK 2/13962 – SIMON MUGI KABUGI
  - l. TITLE NUMBER RUIRU/KIU BLOCK 213964 – ELIZABETH MUGURE MBURU
  - m. TITLE NUMBER RUIRU/KIU BLOCK 213965 – ELIZABETH MUGURE MBURU
4. Declaratory Orders that restoring the Applicants titles, and declaring the cancellation based on Thika Chief Magistrates Court in MCLE Case No. 214 of 2018 as illegal and void, namely-
- a. TITLE NUMBER RUIRU/KIU BLOCK 2/13950 – ELIZABETH MUGURE MBURU
  - b. TITLE NUMBER RUIRU/KIU BLOCK 2/13951 – GLADYS WAMBUI MUHURI
  - c. TITLE NUMBER RUIRU/KIU BLOCK 2/13952 – SAMUEL HAHANYU NDERI & TERESIA NJAMBI HAHANYU
  - d. TITLE NUMBER RUIRU/KIU BLOCK 2/13953 – JESSEE WAGENDO MARARO
  - e. TITLE NUMBER RUIRU/KIU BLOCK 2/13954 – ELIZABETH MUGURE MBURU
  - f. TITLE NUMBER RUIRU/KIU BLOCK 2/13955 – FRANCIS KAMAU MUGURO
  - g. TITLE NUMBER RUIRU/KIU BLOCK 2/13956 – DOMINIC KARIUKI MWANGI & ALICE MWIHAKI KARIUKI
  - h. TITLE NUMBER RUIRU/KIU BLOCK 2/13957 – BENSON MAINA NJUGUNA



- i. TITLE NUMBER RUIRU/KIU BLOCK 2/13958 – ELIZABETH MUGURE MBURU
  - j. TITLE NUMBER RUIRU/KIU BLOCK 2/13961 – ELIZABETH MUGURE MBURU
  - k. TITLE NUMBER RUUIRU/KIU BLOCK 2/13962 – SIMON MUGI KABUGI
  - l. TITLE NUMBER RUIRU/KIU BLOCK 213964 – ELIZABETH MUGURE MBURU
  - m. TITLE NUMBER RUIRU/KIU BLOCK 213965 – ELIZABETH MUGURE MBURU
7. In opposing the Petition, the 1<sup>st</sup> Respondent through a Replying Affidavit sworn on 24/1/24 deponed that he was aware of the decree emanating from the CMCELC No 214 of 2018 – (Damaraci Wamaitha Kihonge Vs. Elijah Ngugi Njoroge & 7 Others) issued on the 11/2/21 in which the Court interalia declared Damaraci Wamaitha Kihonge the owner of the suit land being parcel RUIRU KIU BLOCK 2/3460 and that the sale and transfer of the suit land to the 1<sup>st</sup> - 4<sup>th</sup> Defendants was declared unlawful and fraudulent. That according to his understanding Damaraci Wamaitha Kihonge having been declared the owner, the only way to implement the orders was by cancelling the subdivisions emanating from the fraudulent subdivisions, reverting the main title to the owner and opening the green card that reflect Damaraci Wamaitha Kihonge as the owner of the land. That the current status therefore is that Damaraci Wamaitha Kihonge is the registered owner of the suit land.
  8. On the 3/7/24 parties elected to canvass the Petition by way of written submissions and were directed by the Court to file the same by close of business 13/8/24.
  9. The Petitioners submissions were filed by the firm of Nyende & Co Advocates while that of the Respondents were filed by the Learned State Counsel Ms Rose Nyawira.
  10. The Petitioners submitted that the 1<sup>st</sup> Respondent acted in excess of jurisdiction by purporting to cancel their titles without according them a hearing and thus infringing on their right to property hence the reliefs sought in the Petition. That the 1<sup>st</sup> Respondent had no such powers to implement orders not issued by the Court and the action of so cancelling the titles amounts to an abuse of the Courts power.
  11. The Petitioners further contend that their rights under Articles 47 and 50 of *the Constitution* of Kenya were violated by the 1<sup>st</sup> Respondent. That the 1<sup>st</sup> Respondent failed to accord them a hearing before exercising an administrative action to revoke their titles without any justifiable cause. That the cancellation was not only unlawful, irregular and illegal to the extent that the actions of the 1<sup>st</sup> Respondent usurped the authority of the Court and the Judgment of the Honourable Court.
  12. Relying on the provisions of Article 23(3) of *the Constitution* of Kenya, the Court was urged to exercise its mandate and issue appropriate remedies to the Petitioners. In particular the Court was urged to quash the decision of the 1<sup>st</sup> Respondent as the same was made ultravires a Court order. In support of this proposition, the Petitioners urged the Court to adopt the decisions rendered in interalia, Republic Vs. Naivasha District Land Registrar & Others (2022)eKLR and Lawrence Muriithi Mbabu Vs. District Land Registrar (2019)eKLR and hold that the action of the 1<sup>st</sup> Respondent amounts to violation of the right to property and fair administrative actions.
  13. On behalf of the 1<sup>st</sup> Respondent, it was submitted that the Court adjudged that the Petitioners herein did not acquire any interest in the suit lands since the sellers had none to convey and that the Damaraci Wamaitha Kihonge (then Plaintiff) was the lawful owner of the suit land. That notwithstanding



the Court declined to issue orders of cancellation of the resultant subtitles following the illegal and fraudulent subdivision of the head title and eviction of the Petitioners as the same had not been sought by the Plaintiff (Damaraci Kihonge).

14. Further the Respondents argued in their submissions that the Petition is superfluous given that the Court adjudged the property in favour of Damaraci Wamaitha Kihonge, a position that has not been challenged by the Petitioners who were parties in the CMCC No 214 of 2018. In addition, it was submitted that the properties had been acquired illegally by the Petitioners and therefore have come to Court with unclean hands.
15. The Respondents finally submitted that the acts of the 1<sup>st</sup> Respondent were in conformity with its mandate as set out in Section 14(5) of the [Land Registration Act](#) and for that reason the 1<sup>st</sup> Respondent cannot be faulted for cancelling titles in favour of Damaraci Wamaitha Kihonge whom the Court had held in her favour. That the Court was explicit that the land belonged to Damaraci Wamaitha Kihonge; the Defendants acquired the land fraudulently thus they acquired no lawful interest and consequently conveyed no interest to the Petitioners (the then Interested Parties in the trial Court). That the Land Registrar was right in cancelling the title to give effect to the orders of the Court by reverting the title to Damaraci Wamaitha Kihonge, the bonafide owner.
16. Having considered the Petition, the Supporting Affidavit and the rival submissions of the parties the Court finds the issues for determination are; whether there is a competent Petition before the Court; if yes whether the Petition has merit.
17. By way of background it is mutually agreed by the parties that the Petitioners in this case were the Interested Parties in MCEL No 214 of 2018 although there are scanty pleadings on record on the same. That said I find that this fact is admitted by all the parties and the Court will take it as it is.
18. Having been parties in the lower Court case, the Judgment of the Court aforesaid is explicit that the Court found that the land belonged to Damaraci Wamaitha Kihonge and that the Defendants acquired it fraudulently and the transfer to the Petitioners was tainted. The only reason why the Honourable Court did not order the cancellation of the titles was because the Plaintiff failed to seek for orders of cancellation of the resultant titles, the head title having been fraudulently subdivided and transferred to the Petitioners; eviction orders too could not be issued because the Defendants then were not in occupation of the land.
19. Following the orders of the Court aforesaid, the Petitioners allege that the 1<sup>st</sup> Respondent proceeded to cancel their titles in contravention of the orders of the Court.
21. Is there a competent Petition before the Court? In answering this issue the Court is being called upon to inquire whether the Petitioners have identified the constitutional entitlement threatened, infringed or violated and to demonstrate with some level of precision the manner of violation as to enable the Respondent to mount a defence.
23. In answering the above issue, the Court relies on the case of Anarita Karimi Njeru Vs. Republic [1979] eKLR when the Court stated as follows:

“If a person is seeking redress from the High Court on a matter which involves a reference to [the Constitution](#), it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed ...”



24. In this case I find that the matter before the Court is that of a right to land. I have perused the Judgement of the lower Court which adjudged Damaraci Wamaitha Kihonge as a bonafide owner of the land. There is no evidence that the Petitioners were held to have any lawful interest in the land. Secondly the Petitioners failed to enjoin the said Damaraci Wamaitha Kihonge in this Petition despite the Judgement of the Court having not been set aside appealed and or reviewed.
25. From the foregoing I find that the crux of this Petition being title to land, the Petition herein does not demonstrate any constitutional violations. In the Courts view, there being other mechanisms to resolve this dispute such as an ordinary suit, I find that the constitutional mandate of the Court has been prematurely invoked.
26. In the circumstances the answer to issue No 1 is in the negative and it is not necessary for the Court to go into the merit of the Petition. The second limb is therefore moot.
27. In the end I find that the Petition does not meet the constitutional standards as enumerated in the case of Anarita Kirimi (supra).
28. The Petition is therefore dismissed.
29. I order the Petitioners to meet the cost of the Petition.
30. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 15<sup>TH</sup> DAY OF OCTOBER, 2024 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

Delivered online in the presence of;

1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Petitioners – Absent but served via email

Nyawira for 1<sup>st</sup> and 2<sup>nd</sup> Respondents

Court Assistants – Phyllis/Oliver

