



REPUBLIC OF KENYA



Wairimu & 3 others v Munyi & 2 others (Environment & Land Case E011 of 2023) [2024] KEELC 6800 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6800 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E011 OF 2023**

**JM MUTUNGI, J
OCTOBER 17, 2024**

BETWEEN

**BRIAN NJAMA WAIRIMU 1ST PLAINTIFF
JULIUS GITHINJI MAINA 2ND PLAINTIFF
MICHAEL KUBWA MACHARIA 3RD PLAINTIFF
JACKLINE WAMBUI KINYUA 4TH PLAINTIFF**

AND

**JOHN MUNGAI MUNYI 1ST DEFENDANT
JOHN MWANGI MWONO 2ND DEFENDANT
PETER KINYUA GICHIMU 3RD DEFENDANT**

JUDGMENT

1. The Plaintiffs filed a Complaint dated 27th March 2023, seeking for Judgment against the Defendants, jointly and severally for:-
 - a. A declaration that the cancellation of the title nos. Mwerua/Kithumbu/4564, Mwerua/Kithumbu/4563, and Mwerua/Kithumbu/4565 and subsequent registration of the titles in the name of the 2nd Defendant were irregular, illegal and unlawful.
 - b. An order that the orders issued by the Honourable court G. Waithera (RM) on the 31st of October 2022 be set aside/varied.
 - c. A mandatory injunction compelling the District Land Registrar, Kirinyaga to revoke and/or cancel the title re-issued in the name of the 2nd Defendant and any other subsequent titles thereto, in relation to title nos. Mwerua/Kithumbu/4564, Mwerua/Kithumbu/4563, and Mwerua/Kithumbu/4565 now Mwerua/Kithumbu/4130.



- d. A mandatory injunction compelling the District Land Registrar, Kirinyaga to reinstate/reissue the title deeds Mwerua/Kithumbu/4564, Mwerua/Kithumbu/4563, and Mwerua/Kithumbu/4565 in the names of the Plaintiffs and issue fresh titles thereto.
 - e. General damages.
 - f. Costs of this suit and interest thereon at court rates till payment in full.
 - g. Any other order that this Court shall deem fit to grant.
2. The Plaintiffs claimed that the 1st Defendant obtained land parcel number Mwerua/Kithumbu/4130 from the 2nd Defendant and subdivided the land into Mwerua/Kithumbu/4564, Mwerua/Kithumbu/4563, and Mwerua/Kithumbu/4565, which were then sold to Brian Njama Wairimu (1st Plaintiff), Julius Githinji Maina and Michael Kubwa Macharia (2nd and 3rd Plaintiffs), and Agnes Wanjiku Muthonjia. The purchasers (Plaintiffs) contended they adhered to all the legal procedures to acquire titles to the subdivided parcels. They averred that Agnes Wanjiku Muthonjia later sold land parcel number Mwerua/Kithumbu/4565 to Francis Maina Gitwandii (4th Plaintiff).
 3. The Plaintiffs stated that the 3rd Defendant (Peter Kinyua Gichimu) filed an application on 3rd October 2022 in Kerugoya MCCC E006 of 2022 seeking to annul the subdivisions of the titles held by the Plaintiffs but never served the application on the Plaintiffs. The Court granted the orders, which the Plaintiffs claim were prejudicial to them as the bona fide owners who had acquired the land through sale agreements and held legitimate titles. The Plaintiffs argued that the Court did not have the jurisdiction to annul the titles or entertain the application, as the matter related to environment and land in respect of which the trial Court never had jurisdiction.
 4. The Plaintiffs further stated that despite knowing that ownership of the land had changed hands, the 3rd Defendant failed to serve the Plaintiffs with the necessary documents and orders in the Lower Court Case. The Plaintiffs claim that the Defendants knowingly and illegally withheld important and relevant information relating to the ownership of the land and unlawfully and maliciously caused the revocation of the titles in the names of the Plaintiffs. The Plaintiffs contend the 3rd Defendant acted fraudulently in filing the application for nullification and revocation of the Plaintiffs titles to the suit properties without giving to the Plaintiffs notice and/or opportunity to be heard.
 5. Despite service, the Defendants did not enter any appearance. On 1st November 2023, the Court directed the matter to proceed as undefended and fixed the same for formal proof hearing on 12th March, 2024.
 6. The 1st Plaintiff testified on 12th March, 2024 and as his evidence he adopted his statement dated 27th March, 2023, and relied on the Plaintiffs bundle of documents filed on the same date. The 1st Plaintiff testified on behalf of the other Plaintiffs and it was his evidence that he together with the 2nd and 3rd Plaintiffs, purchased land from the 1st Defendant, and the 4th Plaintiff acquired hers from a person who had been sold the land by the 1st Defendant. The 1st Plaintiff explained that his parcel was Mwerua/Kithumbu/4563, the 2nd and 3rd Plaintiffs jointly owned Land parcel Mwerua/Kithumbu/4564, and the 4th Plaintiff owned Land parcel Mwerua/Kithumbu/4565. He stated that the Magistrate in Kerugoya MCCC E006 of 2022 revoked their titles without giving them a chance to be heard and without any reference to them.
 7. In his witness statement, the 1st Plaintiff stated that the 1st Defendant acquired land parcel No. Mwerua/Kithumbu/4130 from the 2nd Defendant and subsequently subdivided the Land parcel into Mwerua/Kithumbu/4564, Land Parcel Mwerua/Kithumbu/4563, and Land Parcel Mwerua/



Kithumbu/4565, which were then sold to Brian Njama Wairimu (1st Plaintiff), Julius Githinji Maina and Michael Kubwa Macharia (2nd and 3rd Plaintiffs), and Agnes Wanjiku Muthonjia. He further stated that upon completion of the process, Agnes Wanjiku Muthonjia legally and procedurally acquired titles to the resultant subdivided parcels and she subsequently sold her parcel no. Mwerua/Kithumbu/4565 to Francis Maina Gitwandii.

8. The Plaintiffs filed their written submissions on 14th May 2024. They argued that the Magistrate Courts sometimes function as the Environment and Land Court, handling cases within their pecuniary jurisdiction. However, in the instant case the Subordinate Court was not a Court designated to handle Environment and Land matters and therefore did not have jurisdiction to entertain and handle the matter which related to land as it did in the instant matter.
9. The Plaintiffs further contended that the 1st and 2nd Defendants had before the Lower Court recorded a Consent dated 1st February, 2021 settling the suit that was adopted by the Court on 16th February, 2022 and that the decree arising therefrom had been executed which rendered the Court fuctus officio. On execution of the decree of the Lower Court following the Consent Order adopted on 16th February, 2022 land parcel number Mwerua/Kithumbu/4130 was transferred to the 1st Defendant by the 2nd Defendant. The 1st Defendant subdivided the land and sold and transferred the resultant subdivisions to the Plaintiffs who were issued titles in respect of land parcels Mwerua/Kithumbu/4563, 4564 and 4565. The Plaintiffs argued that the application made by the Interested (3rd Defendant herein) before the Lower Court for joinder and for orders to set aside the consent dated 1st February, 2022 and decree issued on 16th February, 2022 and to cancel and/or annul entries Nos. 4, 5, 6 and 7 of the register in regard to title number Mwerua/Kithumbu/4130 and all subsequent subdivisions was not made in good faith. They argued that despite having known the land had been subdivided and the Plaintiffs had acquired titles to the subdivisions, the Interested Party never joined them in the application and/or served them with the same notwithstanding that the Plaintiffs stood to be affected by the orders that he sought in the application.
10. The Plaintiffs contended that the Defendants connived and obtained the orders annulling and cancelling their titles fraudulently through concealment of material facts. The Plaintiffs in their submissions sought to rely on the Case of *Interim Independent Electoral Commission* (2011) eKLR, the Case of *Brooke Bond Liebig Ltd v Mallya* (1975) EA 266 and *Hirani v Kassam* (1952) 19 EA CA 131.
11. I have considered the pleadings, the evidence on record and the submissions made on behalf of the Plaintiffs. The Defendants did not file any defence and/or any submissions. The issue for determination is whether on the evidence presented before the Court the Plaintiffs are entitled to the orders prayed for.
12. In essence the Plaintiffs in this matter are seeking to have the orders granted by the Hon. Resident Magistrate, in Kerugoya CM ELC No. E006 of 2022 reviewed, as the Learned Magistrate in ordering the revocation and cancellation of land titles Numbers Mwerua/Kithumbu/4563, 4564 and 4565 had no jurisdiction and therefore the orders were a nullity. It is trite that if a Court acts without jurisdiction such proceedings are null and void and any orders that such a Court issues are a nullity and of no legal effect.
13. Parties cannot even by consent confer jurisdiction on a Court as jurisdiction is conferred to a Court either by the *Constitution* and/or by statute. The Supreme Court in the Case of *S. K. Macharia v Kenya Commercial Bank Ltd* (2012) KESC 8(KLR) (23 October 2012).



At paragraph 68 of its Judgment stated thus:-

“(68) A Court’s jurisdiction flows from either the Constitution or legislation or both. Thus a Court of Law can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law—”

14. The Magistrates Courts are conferred jurisdiction to hear and determine disputes relating to Environment and Land under the provisions of Section 26 of the Environment and Land Court Act, 2011 and Section 9 of the Magistrates’ Court Act, 2015. Section 26(3) and (4) of the Environment and Land Court Act provide as follows.

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- (3) The Chief Justice may, by notice in the Gazette, appoint certain Magistrates to preside over cases involving environment and land matters of any area of the Country.
- (4) Subject to Article 169(2) of the Constitution, the Magistrate appointed under subsection (3) shall have jurisdiction and power to handle —
 - a) disputes relating to offences defined in any Act of Parliament dealing with environment and land; and
 - b) Matters of civil nature involving occupation, title to land, provided that the value of the subject matter does not exceed the pecuniary jurisdiction as set out in the Magistrates’ Courts Act.

15. A part from the Chief Justice being empowered to appoint only certain Magistrates to handle Environment and Land matters, the value of the matters relating to Environment and Land must fall within the pecuniary jurisdiction of such Magistrates. Section 9(a) of the Magistrate’s Court Act, 2015 outlines the jurisdiction of Magistrates handling Environment and Land matters as follows:-

“9. A Magistrate’s Court shall:-

- (a) in the exercise of the jurisdiction conferred upon it by section 26 of the Environment and Land Court Act (Cap. 12A) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to -
 - (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
 - (ii) compulsory acquisition of land;
 - (iii) land administration and management;
 - (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
 - (v) environment and land generally”.



16. In the suit before the Magistrate's Court. Hon Grace Waithira Kinuthia (RM) on the 31st October, 2022 made the following orders by consent in respect of the application dated 3rd October, 2022 where the Applicant inter alia sought to be joined as an Interested Party:-
1. That the Court hereby joins the Applicant as an Interested Party in this suit.
 2. That the Honourable Court hereby sets aside the consent dated 1st February, 2022 and the subsequent decree issued on 16th February, 2022.
 3. That this Honourable Court hereby cancels and/or annuls entry numbers 4, 5, 6 and 7 of the register (Green card) of land parcel Number Mwerua/Kithumbu/4130 and all subsequent subdivisions and transfers thereon and the same is hereby reverted to the names of John Mwangi Mwono.
17. Evidently the consent order that the Intended Interested Party sought to have set aside had been reduced to a decree and had been executed and the suit the subject matter Mwerua/Kithumbu/4130 had been subdivided to create land parcels Mwerua/Kithumbu/4563, 4564 and 4565 which had been sold and transferred to third parties (the Plaintiffs herein). The effect of the Learned Magistrate's order having regard to order number (3) was to deal with title to land which she proceeded to order the cancellation and nullification of the transfers and titles issued following the subdivisions.
18. Hon. Grace Waithira Kinuthia had not been appointed by the Chief Justice to handle Environment and Land matters and consequently she acted without jurisdiction with the result that the orders that she made on 31st October, 2022 were nullity and of no legal effect.
19. This Court exercises supervisory jurisdiction over the Subordinate Court in as far as Environment and Land matters are concerned and hence can exercise review jurisdiction over decisions of the Subordinate Courts in regard to such matters. In that respect, the Court can issue declaratory orders to annul orders issued by the Subordinate Court relating to Environment and Land matters in excess of that Court's jurisdiction. I am satisfied that the Hon. Grace Waithira Kinuthia (RM) had no jurisdiction to give the orders that she did in Kerugoya CMCC No. E006 of 2022 affecting title to land parcel number Mwerua/Kithumbu/4130 and the subsequent subdivisions thereof. The orders were a nullity and liable to be set aside.
20. In the premises it is my determination that the Plaintiffs have proved their case on a balance of probabilities. I accordingly enter Judgment in favour of the Plaintiffs and make the following consequential orders:-
1. That a declaration is hereby issued that the orders issued by Hon. Grace Waithira (RM) on 31st October 2022 in Kerugoya CMCC No. E006 of 2022 were issued without jurisdiction and are hereby set aside.
 2. That a declaration is hereby issued that the cancellation of titles number Mwerua/Kithumbu/4563, Mwerua/Kithumbu/4564 and Mwerua/Kithumbu/4565 and subsequent registration of the titles in the name of the 2nd Defendant was irregular, illegal and unlawful.
 3. That the Land Registrar Kirinyaga is directed and ordered to cancel the registration of the 2nd Defendant and/or any other person who may have been registered and revert the titles to the Plaintiffs who were the registered owners before the illegal and unlawful orders made on 31st October, 2022.
 4. The parties shall bear their own costs of the suit.



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 17TH DAY
OF OCTOBER 2024.**

J. M. MUTUNGI

ELC - JUDGE

