



REPUBLIC OF KENYA



Wanjohi & another v Nyambura & 5 others (Environment & Land Case 641 of 2017) [2024] KEELC 6927 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6927 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 641 OF 2017
MN GICHERU, J
OCTOBER 17, 2024
(FORMERLY MACHAKOS ELC NO. 303 OF 2012)**

BETWEEN

ISAAC GATHUNGU WANJOHI 1ST PLAINTIFF

ISAIAH KARINDI WAMBUGU MUTONYI 2ND PLAINTIFF

AND

CATHERINE NYAMBURA 1ST DEFENDANT

CHIEF LAND REGISTRAR 2ND DEFENDANT

ZEPHANIA GITAU MBUGUA 3RD DEFENDANT

SUSAN WANJIRU MBUGUA 4TH DEFENDANT

LAND REGISTRAR, KAJIADO 5TH DEFENDANT

THE HON ATTORNEY GENERAL 6TH DEFENDANT

JUDGMENT

1. The plaintiffs seek the following reliefs against the six (6) defendants.
 - a. A declaration that the plaintiffs are the bona fide owners of LR Kajiado/Kisaju/1177, suit land, and further that their title deed is the genuine one.
 - b. A declaration that the documents in respect of the suit land held by the 2nd defendant at Kajiado Land Registry showing the 1st defendant as the proprietor of the suit land are null and void.
 - c. An order that the 2nd defendant do cancel all records relating to the suit land which do not show the plaintiffs as the proprietors.



- d. A mandatory injunction requiring the 2nd defendant to restore at the Kajiado Land Registry the true records in respect of the suit land.
 - e. A declaration that the 1st, 3rd and 4th defendants have committed the tort of trespass to the suit land
 - f. A permanent injunction to restrain the 1st defendant by herself, her agents and servants from entering into the suit property.
 - g. General damages.
 - h. The costs of this suit.
 - i. Interest on (d) and (e).
2. The plaintiffs' case is as follows. The plaintiffs are both civil engineers who practise civil engineering together. They are the joint registered owners of the suit land which measures about 100 acres. They bought the suit land from Meriabile Ole Isina Katopi in September 1991. The value of the land then was Kshs 1.5 million or Kshs 15,000/- per acre. The purchase price was not to be paid to the seller in cash. Instead it was paid in kind. The seller asked the plaintiffs to build for him a commercial building in Kitengela town similar to a building known as Tarino in the same Kitengela town. The plaintiffs duly obliged by not only buying the plot which is No L.P. Noonkopir/120 and constructing the desired project but also obtaining the first tenant for Mzee Isina. This tenant was called Saidia Furaha, an NGO that helps disadvantaged children in Kajiado County. Today, the building has two businesses on the front part and many residential rooms at the back. The businesses are synchrony fabrication workshop and Nahome Posho Mills. The opening ceremony of the sellers business premises was attended by many people who included the late Daniel Ole Muyaa, the then chairman of Olkejuado County Council. The sale of the suit land to the plaintiffs and their construction of a commercial building for the seller was a matter of local notoriety in Kitengela and beyond. It was widely praised by all those who knew about it.
 3. The 100 acres that the plaintiffs bought were part of a large parcel known as Kajiado/Kisaju/86 which was subdivided into three parcels namely Kajiado/Kisaju/1177, 1178 and 1179 upon purchase of the suit land, the plaintiffs were issued with a title deed by the District Land Registrar Kajiado dated 12/9/1991. Around the year 2003, the plaintiffs employed Isaac Gituku as a caretaker for the suit land and other land that they owned in the area.
 4. The relationship between the plaintiffs and the seller and his family was very cordial. The plaintiffs met the seller's wives and children even before the purchase of the suit land. The first wife was Tataa and the children were Thomas Kipayio, Nickson Simitia, Kapah and Faith. The plaintiffs came to know them because at one time, on 24/10/2003 their mother borrowed Kshs 1200/- from the 1st plaintiff to pay fees for them after they had been sent home for non payment of school fees. The mother received money from both plaintiffs on many occasions. The plaintiffs were well known to the area elders who included Daniel Ole Muyaa, John Lekati, a friend of the land seller and his age mate too and councillor Musa Korinko who sold LR No Noonkopir/120 to the plaintiffs. When the seller's building was complete, the plaintiffs attended the opening ceremony on 20/11/1992 presided over by Ole Muyaa. The plaintiffs assisted in printing the invitation cards for the guests at the request of chairman, Ole Muyaa. When the seller died the plaintiffs attended the burial.
 5. In the year 2006, there was a request by the family of the seller to the plaintiffs that they be allowed to access a water point at the road on the western boundary of the suit land. The request was made through the then District Officer, Isinya Division, one D.S. Wanyonyi who recorded an agreement



dated 6/3/2006. On 26/5/2006, the plaintiffs carried out a search at Kajiado Land Registry and they were issued with a certificate of official search which shows that they are the absolute owners of the suit land. There was never any doubt that the plaintiffs were the registered owners of the suit land.

6. In May 2012, three strange events happened. The first one was that the 1st defendant visited the suit land with people who she wanted to sell the suit land to. She had by then applied for the consent of the Land Control Board. Secondly, the plaintiffs learnt that the 1st defendant and some officials in the Kajiado Land Registry had forged documents pertaining to the suit land. The forged documents showed the 1st defendant as proprietor of the suit land which she wanted to sell to the third and fourth defendants. Thirdly, the County Commissioner Kajiado got involved in the resolution of the dispute. The plaintiffs objected to this involvement of the County Commissioner and that is how this suit ended up in court.
7. In support of their case, the plaintiffs filed the following evidence.
 - i. witness statements by the two plaintiffs, Peter Karari Migwi, John Martine Lekati, Isaac Gituku, Daniel Ole Muyaa, John Obel, Samuel Ole Muyaa, Jonah Gitu Maina and David Simiyu Wanyonyi.
 - ii. Copies of title deeds for LR Kisaju/86 and 1177 dated 12/7/1983 and 12/9/1991 respectively in the names of Meriabile Ole Isina Katopi and the plaintiffs.
 - iii. Copy of mutation form for LR Kajiado/Kisaju/86 registered on 9/7/1991.
 - iv. Copy of sale agreement between the plaintiffs and Meiriabe Isina Ole Katopi dated 1/7/1991.
 - v. Copies of receipt Nos. 111314 and 111315 both dated 9/7/1991.
 - vi. Copy of tenancy agreement between Mr. and Mrs. I.K. Isina and Saidia Furaha dated 20/4/1998.
 - vii. Copy of certificate of official search for the suit land in the names of the plaintiffs dated 25/5/2006.
 - viii. Copy of certificate of official search in the name of the 1st defendant dated 22/5/2012 showing that she is proprietor of the suit land.
 - ix. Copy of register for the suit land showing that the 1st defendant got registered as the owner of the suit land on 9/1/2002.
 - x. Two photographs showing damaged beacons on the suit land.
 - xi. Copy of witness statement made by the 1st plaintiff to the police on 30/5/2012.
 - xii. Copy of letter by the seller to councillor Korinko dated 24/4/1992.
 - xiii. Register of projects including Noonkopir Plot No 120.
 - xiv. Copy of letter to the 1st plaintiff from D.K. Ole Muyaa.
 - xv. Copy of arbitration notes dated 10/9/2003.
 - xvi. Copies of receipts of rent paid by Saidia Furaha.
 - xvii. Copies of KPLC bills for account No 0168281.
 - xviii. Copies of sale agreements between the seller and the 1st plaintiff dated 5/7/1995 and 27/12/2000.



- xix. Copy of memorandum of understanding between the seller and the 1st plaintiff over the suit land and LR No Kajiado/Kisaju/1179 dated 9/9/2002.
 - xx. Acknowledgment of Kshs 12,000/- by Mrs. Tataa Meinabi Katopi ID No 0792023 dated 24/10/2003.
 - xxi. Copy of letter by D.O. Isinya dated 6/3/2006.
 - xxii. Copies of photographs of the buildings on Plot No Noonkopir/120.
 - xxiii. School certificates of the seller's children.
 - xxiv. A letter by Thomas Ole Isina 9/9/2002 applying for a job.
 - xxv. Copy of letter by the District Land Registrar Kajiado dated 13/8/2012.
 - xxvi. 1st plaintiff's statement to the police.
 - xxvii. Copy of DPP's letter to the OCS Kitengela Police Station.
 - xxviii. Copy of letter by DCIO Kitengela to the 1st defendant dated 11/7/2012.
 - xxix. Copy of letter by DCIO Kitengela to the 1st defendant dated 11/7/2012.
 - xxx. Other relevant material.
8. The 1st defendant, through counsel on record filed a written statement of defence and counterclaim dated 8/10/2012 in which she pleads as follows. Firstly, the plaintiffs' claim is denied in its entirety. Secondly, it is the plaintiffs and not the 1st defendant who possess a fake title deed. Thirdly, it is the 1st defendant who has been in possession of the suit land and not the plaintiffs. Her possession dated back to the date that she bought the land from the late Meriabei Ole Katopi the original owner. Fourthly, being the registered owner of the suit land, the 1st defendant is the person mandated by the law to deal with it and anyone who encroaches or otherwise trespasses thereon is liable to pay damages to the 1st defendant. Fifthly, the sale agreement produced by the plaintiffs and dated the year 1991 is illegal and does not contain the prerequisites of a contract for disposition of an interest in land under the Law of Society Conditions of Sale (1990) and that the same was not drafted by a qualified person under the *Advocates Act* and this cannot transfer an interest in land. The second plaintiff is not mentioned as a party to the sale transaction. Sixthly, all the particulars of fraud are denied as the Land Registrar is the only legal authority mandated to deal with title deeds including rectification of the title registration documents in the registry, issuing of certificates of official search and his signature in any search document is conclusive proof that the title documents are held by the person whose name appears in the official search. Seventhly, the Land Registrar had jurisdiction to adjudicate over the dispute in line with Sections 8, 149, 150 and 154 of the *Registered Land Act* (cap 300), now repealed. Such jurisdiction includes seeking an explanation from the parties as to how they obtained registration. Finally, it is the 1st defendant who initiated a complaint to the police as per OB No 23/30/5/2012 after realising that the plaintiffs were claiming ownership to the suit land. The plaintiffs refused to cooperate with the police who were able to establish that the 1st defendant is the bona fide owner of the suit land as per the land records at the Kajiado Land Registry.
9. In the counterclaim the 1st defendant seeks the following orders as per paragraph 20 of the defence and counterclaim dated 8/10/2012.
- a. The plaintiffs' suit be dismissed with costs to the 1st defendant and the counter claim be granted with costs to the 1st defendant.



- b. Judgment be entered with costs to the 1st defendant against the plaintiffs in so far as the counter claim is concerned.
- c. A declaration that the 1st defendant is the lawful owner of the suit land.
- d. Such other or further relief as this court may deem just to grant.

The 1st defendant's case in the counterclaim is that the plaintiffs' title documents in particular the official search and title deed are not genuine and prays that they be nullified by the court for failure to be backed by the land records at the registry including the copy of register (green card). The particulars of fraud are as follows. Relying on a forged title deed to claim ownership to the suit land, relying on a sale agreement which does not show that the 2nd plaintiff became a buyer of the land, relying on a title deed which is not supported by the records available at the Kajiado Land Registry and relying on a fraudulent certificate of search dated 26/5/2006.

10. In the witness statement dated 8/10/2012, the 1st defendant states that in the year 1999, she met Meriabei Ole Katopi through the husband Daniel Muraria. The deceased told them that he had a big parcel of land in Kisaju area and he wished to sell part of it. She became interested in buying the land which measured 100 acres. She was introduced to Katopi's family especially the wife Tataa Katopi. In the year 2000, the 1st defendant and Katopi agreed that he would sell her the 100 acres at Kshs 3.5 million. She paid the purchase price through instalments and completed paying in the year 2002. She was registered as the proprietor of the suit land after going through all the requisite procedures including the seller obtaining the consent of the Land Control Board at Ngong Town. The family of the seller took up the role of caretaker up to the year 2012 when the 1st defendant planned to sell the land to Stima Sacco. When she applied for the consent of the Land Control Board, she learnt that the plaintiffs were claiming the land as theirs. The Land Registrar and the District Officer were unable to resolve the dispute because the plaintiffs were not cooperative. The DCIO and the DPP found the 1st defendant's title to be genuine and that is why she seeks to be declared the lawful owner of the suit land. Finally, she has the support of the widow of the deceased seller whose evidence is that her husband sold the suit land to the 1st defendant and not to the plaintiffs.
11. In support of her case, the 1st defendant filed the following evidence.
 - i. Witness statements by herself, Tataa Meriabi Katopi, Robert Ondieki, Jack Otieno Mauga and Micah Nyandoro.
 - ii. Copy of title deed for the suit land in her name.
 - iii. Copies of certificates of official search dated 28/2/2012 and 22/5/2012 in her name.
 - iv. Certified copy of green card for the suit land in her name.
 - v. Photographs of structures on the suit land put up by the 1st defendant.
 - vi. Copy of letter by DPP Machakos dated 10/7/2012.
 - vii. Copy of proceedings before the Land Registrar.
 - viii. Copy of report by CID Kitengela dated 11/7/2012.
 - ix. Copies of letters by DCIO Kitengela dated 4/8/2012 and 4/1/2016.
12. The 2nd, 5th and 6th defendants filed an amended statement of defence dated 1/11/2019 in which they aver as follows. Firstly, they deny the plaintiffs claim against them generally. Secondly, they deny that



they altered the Land Register in respect of the suit land to facilitate its sale by the 1st defendant to the 3rd and 4th defendants. Thirdly, it is averred that the 5th defendant has never issued any document in favour of the 1st, 3rd and 4th defendants in respect to the suit land. Fourthly, the documents in favour of the 1st, 3rd and 4th defendants have been investigated and found not to have emanated from any of the registries, agents or employees of the 5th defendant. Fifthly, fraud is denied on the part of the 2nd, 5th and 6th defendants. It is averred that the 1st defendant made a green card by forging the signatures of entries numbers 1, 2, 3 and 4 for the suit land and misrepresented the same to have been a genuine green card. Sixthly, the 1st defendant fraudulently uttered a false document purporting the same to be a genuine title for the suit land. Finally, the Attorney General prays that the plaintiffs suit be allowed to the extent admitted.

13. According to a witness statement by Sgt. Gilbert Okello dated 1/11/2019, the 1st defendant is to be charged at Kajiado Law Courts for the offences of forgery and giving false information. The reasons are that the title deed that she holds as well as the title deed are not signed by the Land registrars purported to have done so, namely Mr. James Mugambi Njeru and Joseph Munguti. The two officers have recorded witness statements disputing their signatures. Further, her title deed is not reflected in the presentation book of 9/1/2002. James Mugambi Njeru, the retired Land Registrar recorded a witness statement dated 7/12/2016 confirming that the plaintiffs' title deed for the suit land dated 12/9/1991 is genuine and he is the one who signed it.
14. In support of the case by the 2nd, 5th and 6th defendants, the Attorney General filed the following evidence.
 - i. Witness statements by Sgt. Gilbert Okello, IP. Winnie Inganza, James Mugambi Njeru, Joseph Mulinge Munguti and Philip Mikini Onyiego.
 - ii. Copy of letter by Nderitu W. Timothy dated 27/2/2017.
 - iii. Copy of letter by complainant dated 6/11/2014.
 - iv. Copy of presentation book dated 13/11/2015 relating to 9/1/2002.
 - v. Copy of report by the documents' examiner dated 4/1/2017.
 - vi. Copy of charge sheet against the 1st defendant dated 9/3/2018.
 - vii. Certified extract of Kajiado Land Registry presentation book for the period 1st July, 1991 to 30th September 1991.
15. At the trial which began in the year 2014 and concluded on 7/2/2023 the plaintiffs called the following witnesses, Isaac Wanjohi, Isaac Gituku, Daniel Ole Muyaa, Peter Karuri, Jonah Gitu and John Lekati. These witnesses reiterated the plaintiffs' case as per the pleadings as summarised above. They did not change their script which is simply that the plaintiffs purchased the suit land from the original owner and in exchange, they built a commercial premises for him at Kitengela town on a plot that they purchased from the then local councillor Moses Korinko. They acquired good title and they have never sold the land to any person.

On the other hand, the 1st defendant who is the main party on the side of the defence called a total of five witnesses, who included Jack Otieno, Robert Omwenga, Tataa Katopi and Micah Nyandoro. The totality of their evidence is that the 1st defendant bought the suit land from Meriabie Ole Katopi Isina for Kshs 3.5 million between 1999 and the year 2002. She build a circular tank on the land and some semi permanent structures. The widow of Ole Katopi Isina testified on her behalf that she is the person that her late husband sold the land to and not the plaintiffs. On the part of the 2nd, 5th and



6th defendants, even though they support plaintiffs' case as per the pleadings dated 1/11/2019, one of the witnesses Paul Tonui who testified on 24/3/2022 appeared to recognize the 1st defendant as the legitimate owner of the suit land. The land registry was however unable to produce any documents to support the 1st defendant's title deed. Finally, the 3rd defendant said in his testimony that he has not yet purchased the suit land and he is waiting for the conclusion of this case before buying depending on the outcome of the case.

16. Counsel for the parties filed written submissions dated 24/5/2024 (The Attorney General), 5/1/2024 in the case of the 1st defendant and 26/8/2023 in the plaintiffs' case. The issues identified by the defendants are as follows.
 - i. Who between the plaintiffs and the 1st defendant is the lawful owner of the suit land.
 - ii. Whether the plaintiff is entitled to the grant of an order of mandatory injunction.
 - iii. Whether the plaintiff has established a basis for grant of special damages for trespass.
 - iv. Whether the plaintiffs have proved their case as pleaded to the required standard and whether they are entitled to the reliefs sought.
 - v. Whether the 1st defendant has proved her counter claim to the required standard and if she is therefore entitled to the reliefs sought.
 - vi. To who did the original owner of the suit property Mairiabic Ole Isina Katopi sell the suit land and on what terms did he sell it.
 - vii. Which witnesses are to be believed and why.
 - viii. Who is the lawful registered proprietor of the suit land.
 - ix. Who should bear the costs.
17. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and testimony at the trial. I have also considered the written submissions by learned counsel for the parties, the issues raised therein and the law cited. I find that the issues as identified by learned counsel will resolve the dispute.
18. On the first issue, I find that the plaintiffs are the lawful owners of the suit land and the 1st defendant's claim thereto is not lawful. In making this finding, I have relied on the overwhelming evidence adduced by the plaintiffs. This evidence includes a sale agreement between the owner of the suit land and the plaintiffs dated 1/7/1991. The said agreement complies with Section 3(3) of the Law of Contract Act because it is signed by the 1st plaintiff as the buyer, Isina as the seller and two witnesses named Daniel Ole Kuyau and Jimmy M. Kiama. The 1st defendant has no such agreement. An agreement for sale of land must be evidenced in writing unless the buyer is already in occupation of the land at the time of the agreement. Secondly, the signature on the title deed held by the 1st defendant as well as the entry in the green card have been disowned by the two Land Registrars who are purported to have signed them. Even though Mr. Munguti and Mr. Njeru, Land Registrars did not testify in this cases, their evidence is part of the record and it has not been controverted by any evidence by the 1st defendant. One of the two registrars Mr. Njeru has confirmed that the signature on the plaintiffs' title deed is authentic and appended by him.
19. Thirdly, the plaintiffs have adduced overwhelming evidence to prove that they paid consideration to the seller. This consideration is a building on Plot No Noonkopir/120 which was put up by the plaintiffs for the benefit of the seller and his family. This evidence by the plaintiffs is corroborated by



the evidence of honourable and respected elders like the late Daniel Ole Muyaa who was a witness to the transaction between the plaintiffs and the seller and Ole Muyaa even presided over the opening ceremony of the building. In contrast, the 1st defendant has not annexed any evidence of payment of the purchase price to the seller when he was alive. Fourthly, there is the evidence filed by the assistant County Commissioner Mr. Wanyonyi to the effect that he presided over a dispute between the plaintiffs and the wives of the seller who included Tataa wife of Katopi. The dispute was over access to a water point beyond the suit land. The family of the seller wanted to access the water point by passing over the suit land. The dispute was resolved by adjusting the original boundaries of the suit land. This was in the year 2006. By then, the original owner of the land was dead. It is therefore incredible for the 1st defendant to claim to have been the owner of the land from 2002. If that was the case, then the dispute over the water point access should have been between her and the family of the deceased seller. The plaintiffs would not have been parties to the case before the Assistant County Commissioner. It is therefore a blatant falsehood for Tataa wife of Ole Katopi Isina to claim that her husband sold the suit land to the 1st defendant and not to the plaintiffs. I could bring out more reasons but those will suffice.

20. On the second issue of whether the order to be granted is a mandatory injunction or simply an order requiring the 2nd defendant to restore the true records in respect to the suit parcel, I find no serious dispute between the plaintiffs and the Attorney General. Counsel appearing for the Attorney General has committed to abide by the court's directions. I find the proper description of the order is simply an order and not a mandatory injunction.
21. In regard to the third issue, the orders sought in paragraphs (e) and (g) are a declaration that the 1st, 3rd and 4th defendants committed the tort of trespass to the suit land while (g) is for general damages. There is no claim for special damages. From the evidence adduced by the plaintiffs, I have not heard them say that the 1st defendant or any other defendant is in occupation of the suit land. Even though the 1st defendant called three witnesses to prove that she has built structures on the suit land and even a circular water tank, I was not convinced that this was the case. In cross examination of the 1st defendant and her witnesses, it was put to them that they did not occupy the land at all. Even the submissions by the plaintiffs' counsel have not asked for any such damages. I find that such damages though pleaded are not proved by cogent and deliberate evidence.
22. As for the fourth issue of the plaintiffs proving their case as pleaded, I find that they have as per the finding on paragraph (18) above. That finding also covers the fifth issue. The 1st defendant did not prove her case at all. She did not have any sale agreement. She has no evidence of payment of purchase price and it was recommended that she be charged with criminal offences.
23. As per the finding in paragraph 18, it is the plaintiffs who bought the suit land from Marsabie Ole Isina Katopi and not the 1st defendant. Having sold the land to the plaintiffs Ole Isina Katopi could not sell the same land to the 1st defendant more than ten years later. It is only the plaintiffs who could lawfully sell the suit land and they did not sell it to the 1st defendant.
24. The witnesses to be believed are the plaintiffs witnesses including Daniel Ole Muyaa, John Lekati and Peter Karuri who know of the transaction between the seller of the suit land and the plaintiffs. Witnesses such as Tataa wife of Isina Katopi are not to be believed because her evidence is out rightly false. She took cash from the plaintiffs to pay school fees and even thumbprinted the acknowledgment of the Kshs 12000/- received but lied on oath that she did not receive such money. The plaintiffs have exhibited in this case school certificates for those children showing clearly that they are the children of the witness. Yet she claims not to have had any dealings with the plaintiffs when the local elders have stated clearly that the building at Kitengela town where Mrs. Tataa has been collecting rent for over 30 years was constructed on her behalf by the plaintiffs.



25. The plaintiffs are therefore the lawful owners of the suit land and for the reasons set out herein before, I enter judgment for them as prayed for in the plaint in terms of prayers (a), (b), (c), (d), (h) and (i). The judgment is against the 1st, 2nd and 5th defendants only. Secondly, I dismiss the 1st defendant's counterclaim against the plaintiffs with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 17TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

