



**Mwaniki v Naftali & 3 others (Environment & Land Case  
240 of 2016) [2023] KEELC 16083 (KLR) (3 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16083 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 240 OF 2016**

**A OMBWAYO, J  
MARCH 3, 2023**

**BETWEEN**

**CHARLES MWAURA MWANIKI ..... PLAINTIFF**

**AND**

**KARANJA MWANIKI NAFTALI ..... 1<sup>ST</sup> DEFENDANT**

**MWAURA MWANIKI NAFTALI ..... 2<sup>ND</sup> DEFENDANT**

**KAGURU MWANIKI NAFTALI ..... 3<sup>RD</sup> DEFENDANT**

**WANJERU MWANIKI NAFTALI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. Charles Mwaura Mwaniki (hereinafter referred to as the plaintiff) has sued Karanja Mwaniki Naftali, Mwaura Mwaniki Naftali, Kaguru Mwaniki Naftali and Wanjeru Mwaniki Naftali (hereinafter referred to as defendants) claiming that at all material times relevant to this suit, the plaintiff has been registered owner of the suit premises Land Title No. Naivasha /Mwichiringiri Block 1/38 situated at the Ihindu, Naivasha township in Nakuru County. The plaintiff has all the official ownership documents for the suit premises that is a title deed. The defendants herein are his step uncles and step aunt.
2. According to the plaintiff, the suit property was vested upon the plaintiff herein vide Nairobi High Court Succession Cause No. 616 of 2001 in the estate of Joseph Njuku Mwaniki who was the plaintiff's father and title therein gazetted and issued on the 30<sup>th</sup> April 2009. The defendants are step brothers and step sister to the plaintiff's now deceased's father.
3. The plaintiff has been enjoying quiet and peaceful use of the suit premises with the defendants' mother Loise Njoki, now deceased, whilst the defendants have been residing in alternative property within



- the locality. Since the demise of Loise Njoki, the plaintiff's attempts to cultivate have been met with resistance from the defendants, who have since embarked on laying claim over the suit premises.
4. The plaintiff has followed all the necessary steps in evicting the said defendants in vain, even after several hearings the elders that have decided in favor of the plaintiff. The defendant's actions are illegal, imperious, unjustified and the plaintiff prays that the honorable court issues order to evict the defendants. The cause of action arose within the jurisdiction of this honorable court.
  5. The plaintiff prays an injunction restraining the defendants whether by themselves their servants and/or agents from trespassing, entering upon, interfering, using or otherwise accessing the suit premises known as Naivasha/Mwichiringiri Block1/38.
  6. He further seeks a declaration that the suit premises Naivasha/Mwichiringiri Block 1/38 belongs to the plaintiff herein Charles Mwaura Mwaniki as per the ownership documents held by him from records as the Lands Officer- Nakuru.
  7. Moreover, the plaintiff seeks an order commanding all defendants, whether by themselves, their servants , agents, heirs, representatives, signs or anyone claiming through or under them to forthwith vacate the suit title of land Naivasha/Mwichiringiri Block1/38 and to leave or deliver vacant possession to the plaintiff.
  8. The plaintiff further seeks an order of eviction of the defendants and that the OCPD Naivasha do assist in evicting and/or restraining the defendants from interfering with the suit premises.
  9. The plaintiff prays for special, general and aggravated damages and mesne profits.
  10. The defendants responded to amended plaint by stating that they had filed an application for revocation of the grant dated 11<sup>th</sup> September 2018 seeking to have the fraudulent succession process revoked including all consequential orders. The defendants state that their parents had put up houses and had stayed in the property for decades. The defendants claimed they had utilized the property for decades.
  11. When the matter came up for hearing the plaintiff attended but the defendant did not attend despite being served. The plaintiff testified that he is the son of the late Joseph Njuuku Mwaniki and the registered owner of the suit property. The title deed was issued on 30<sup>th</sup> April 2009. He inherited the property from the estate of his late father Joseph Njuuki Mwaniki. A grant of letters of administration for the estate of his father was issued to Teresia Wangui Mwaniki and Robert Raymond Mwaniki on 18<sup>th</sup> May 2001. The said grant was confirmed on 22<sup>nd</sup> May, 2002. His grandfather was living on his father's land with this wife Loise Njoki.
  12. Although his grandfather remained on the suit land, the same remained the property of his father. The defendants are aware of the position. When the defendant's mother Loise Njoki passed away on 23<sup>rd</sup> March, 2015, she was not buried on the suit land because the land did not belong to her. She was buried in her land in Ihundu. Her late husband also has a 3 acre parcel of land at Mirera.
  13. None of the defendants have built any structures on the suit land. The 1<sup>st</sup> defendant has since taken possession of the structure that was built for his mother after the death of his mother. His father allowed the defendant's mother to remain on his land temporarily due to her relationship with his father. He attended a meeting held on 14<sup>th</sup> November 2014 in the defendant's mother's home in Munyu and the issue of the ownership of the property herein was raised. The purpose of the meeting was to establish when Njoki Naftali Mwaniki and her family would vacate the suit land.



14. He is aware that in 2006, the defendants and their mother had requested for 3 years to vacate the land. The defendants' claim over the suit land have no legal basis. The land does not belong to them.
15. He prays that the defendants be evicted from the land and an order to stop them from returning on the land upon eviction.
16. The plaintiffs' counsel Mr Waiganjo submits that basically, the plaintiff is asking for injunction and order of eviction and also for police assistant to remove the defendants. The defendants are well known to him. They are the children of Loice Njoki a second wife to his grandfather. The 1<sup>st</sup> defendant and siblings were not living on the land. Prior, their mother the step grandmother of the plaintiff was living on the ground. She died and was buried on her own land. She was left there by her husband who was living on the land. The husband of the lady was not the owner of the land he was allowed by Joseph Njuuku Mwaniki (his son) to occupy the land.
17. When Joseph Njuuku Mwaniki passed on, Teresia Wangui Mwaniki and Robert Raymond Mwaniki applied for a grant of representation in Nairobi Succession case number 616 of 2001. The grant was confirmed by the court on 22<sup>nd</sup> May 2002. Following the confirmation, the plaintiff was issued with a title for Naivasha /Mwachiringiri Block 1/38. The title was issued on 30<sup>th</sup> April 2009. The plaintiff demanded that the defendants vacate the land but they declined. The defendants raised one issue in defence. Thus, they sought to challenge the grant of letters of administration intestate. They applied for revocation but failed. The court declined to revoke the grant in HCC Succession cause No. 616 of 2001. Section 26 of *Land Registration Act* applied.
18. I have considered the evidence on record and the plaintiff's counsel's submissions and do find that Sections 24, 25 and 26 of the *Land Registration Act* no 3 of 2012 envisages the vesting of absolute ownership of land to the person in whose name the property is registered together with all rights and privileges appurtenant thereto and that the rights of a proprietor should be protected as evidenced by the certificate of title unless acquired fraudulently or illegally. The said sections are worded as follows:-
  24. Interest conferred by registration.  
Subject to this Act—
    - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
    - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.  
Section 25 provides
  25. Rights of a proprietor.
    - (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—



- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.

Section 26 provides:-

26. Certificate of title to be held as conclusive evidence of proprietorship.
- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
    - (a) the ground of fraud or misrepresentation to which the person is proved to be a party; or
    - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
  - (2) A certified copy of any registered instrument, signed by the Registrar and sealed with the Seal of the Registrar, shall be received in evidence in the same manner as the original.
19. The plaintiff being the registered proprietor of the suit land is entitled to the orders sought. His evidence was not controverted. I do grant a declaration that the suit premises Naivasha/Mwichiringiri Block 1/38 belongs to the plaintiff herein Charles Mwaura Mwaniki.
20. Moreover, I do grant an order commanding all defendants, whether by themselves, their servants, agents, heirs, representatives, assigns or anyone claiming through or under them to forthwith vacate the suit title of land Naivasha/Mwichiringiri Block1/38 and to leave or deliver vacant possession to the plaintiff within the next 120 days failure of which they be evicted. Costs of the suit to the plaintiff.

**JUDGMENT DATED, SIGNED AND DELIVERED VIA EMAIL AT NAKURU THIS 3<sup>RD</sup> DAY OF MARCH 2023.**

**A O OMBWAYO**

**JUDGE**

