



Mwangi & 2 others v Attorney General (Environment & Land Case E020 of 2021) [2023] KEELC 15835 (KLR) (2 March 2023) (Judgment)

Neutral citation: [2023] KEELC 15835 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT & LAND CASE E020 OF 2021**

YM ANGIMA, J

MARCH 2, 2023

BETWEEN

LABAN NGUGI MWANGI 1ST PLAINTIFF

HUMPHREY MUTHOKIA MWANGI 2ND PLAINTIFF

HANNAH WANJIRU MWANGI 3RD PLAINTIFF

AND

THE HON. THE ATTORNEY GENERAL DEFENDANT

JUDGMENT

A. The plaintiffs' Claim

1. By a plaint dated 17.12.2021 the plaintiffs sued the defendant seeking an order for removal of a restriction registered against Title No. Nyandarua/Malewa/557 (the suit property) together with costs of the suit.
2. The plaintiffs pleaded that at all material times their late mother, Mary Waithira Mwangi (the deceased) was the registered proprietor of the suit property measuring 55.9 ha. It was pleaded that the District Land Registrar – Nyandarua (the registrar) had irregularly registered a restriction against the suit property in 1989 without notifying the deceased of the registration thereof as required by law.
3. The plaintiffs further pleaded that the said restriction had been registered at the instance of one Monica Wambui Njuguna, a daughter in-law of the deceased, who had filed Nyahururu SRMC No. 57 of 1989 against the deceased. The said suit was said to have been dismissed in 1990 whereas the said Monica Wambui Njuguna was said to have died in 1999.
4. The plaintiffs pleaded that they only came to discover the existence of the said restriction during succession proceedings for the estate of their deceased mother in Engineer SPM's Succession Cause



No. 153 of 2015 –In the matter of the Estate of Mary Waithira Mwangi when they were called upon to avail a certificate of official search for the suit property during confirmation proceedings.

5. It was the plaintiffs' case that despite demand, the registrar had refused to remove the restriction without a court order to that effect even though Nyahururu SRMCC No. 57 of 1989 was concluded. The plaintiffs contended that they could not avail copies of the proceedings or judgment in the said case because the relevant court file was destroyed in a fire incident at Nyahururu Law Courts.

B. The Defendant's Defence

6. The defendant filed a defence dated 07.02.2022 making a general denial of the plaintiffs' claim. The defendant denied all the allegations in the plaint and put the Plaintiffs to strict proof thereof. It was further pleaded that the Plaintiffs were ignorant of the land laws which provided for removal of such restrictions. The defendant, therefore, prayed for dismissal of the Plaintiffs' suit with costs.

C. The Plaintiffs' Evidence

7. At the trial hereof the plaintiffs called one witness, the 1st plaintiff, who testified on their behalf. The 1st plaintiff adopted the contents of his witness statement dated 17.12.2021 as his evidence in-chief. He also produced the documents in the Plaintiffs' list of documents dated 17.12.2021 as exhibits. It was his evidence that the deceased was not aware of the entry of the restriction and that the Plaintiffs only became aware of it during the succession proceedings for the estate of the deceased. It was the Plaintiffs' case that if the deceased had been notified of the entry of the restriction she would have notified the registrar of the conclusion of the suit filed by Monica Wambui Njuguna to facilitate removal thereof.

D. The Defendant's Evidence

8. The Defendant did not attend court on the hearing date to contest the Plaintiffs' suit despite the date having been taken by consent of the parties.

E. The Issue for Determination

9. The court has considered the pleadings, documents and evidence on record in this matter. The court is of the opinion that the main issue for determination is whether the Plaintiffs have made out a case for removal of the restriction entered against the suit property in 1989.

F. Analysis and Determination

10. Section 136 of the Registered [Land Act](#) (cap.300) (repealed) provided as follows on the powers of the registrar to register restrictions:
 - (1) For the prevention of any fraud or improper dealing or for any other sufficient cause, the Registrar may, either with or without the application of any person interested in the land, lease or charge, after directing such inquiries to be made and notices to be served and hearing such persons as he thinks fit, make an order (hereinafter referred to as a restriction) prohibiting or restricting dealings with any particular land, lease or charge.
 - (2) A restriction may be expressed to endure:-
 - a) for a particular period; or
 - b) until the occurrence of a particular event; or
 - c) until the making of a further order,



and may prohibit or restrict all dealings or only such dealings as do not comply with specified conditions, and the restriction shall be registered in the appropriate register.

- (3) The Registrar shall make a restriction in any case where it appears to him that the power of the proprietor to deal with the land, lease or charge is restricted.
 - (4) The Registrar shall make a restriction expressed to endure until the making of a further order when the Registrar is informed by the National Museums of Kenya that a declaration of heritage by the Minister under the [National Museums and Heritage Act](#) has been applied for, or is about to be gazetted or has been gazetted affecting the property in question and upon gazettelement the restriction shall take effect as a charge over the land
11. The obligation of the registrar upon making a restriction in the registrar was provided for under section 137(1) of the said Act as follows:
- “The Registrar shall give notice in writing of a restriction to the proprietor affected thereby.”
12. It is evident from the above provisions of the law that a restriction is not meant to remain in place indefinitely but only for a limited period of time to facilitate resolution of a particular issue or dispute. It is also evident that the registrar is legally obligated to give a notice in writing to the registered proprietor of the making of the restriction. There is no evidence on record to demonstrate that the registrar ever gave such written notification to the deceased or any of his family members at the material time. The restriction has now been in place for about 34 years.
13. The court has noted that the Plaintiffs’ evidence at the trial was not challenged by the Defendant and neither was it rebutted in any manner since the Defendant did not tender any evidence at the trial. The court accepts the Plaintiffs’ evidence on record on the issue for determination. The court is satisfied that the registrar did not notify the deceased of the entry of the restriction as required by law. The court is also satisfied that the Plaintiffs have given a reasonable explanation for their inability to avail a copy of the proceedings or judgment in Nyahururu SRMCC No. 57 of 1989. In the premises, the court is satisfied that the Plaintiffs have made out a case for removal of the restriction against the suit property.

G. Conclusion and Disposal Order

14. The upshot of the foregoing is that the court is satisfied that the Plaintiffs have proved their case against the Defendant to the required standard as required by law. Accordingly, judgment is hereby entered for the Plaintiffs against the Defendant in the following terms:
- a. The Land Registrar – Nyandarua County shall forthwith remove the restriction entered against Title No. Nyandarua/Malewa/557 on 24.07.1989.
 - b. There shall be no order as to costs of the suit.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYAHURURU THIS 2ND OF MARCH, 2023 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

N/A or the Plaintiffs

N/A for the Defendant

C/A - Carol



Y. M. ANGIMA
JUDGE

