



Mahugu & 13 others v Jepkorir & another (Environment & Land Case 363 of 2017) [2023] KEELC 19862 (KLR) (19 September 2023) (Judgment)

Neutral citation: [2023] KEELC 19862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 363 OF 2017
A OMBWAYO, J
SEPTEMBER 19, 2023**

BETWEEN

JAMES KAMUTU MAHUGU & 13 OTHERS PLAINTIFF

AND

CATHERINE JEPKORIR 1ST DEFENDANT

MAINA KABUTHIA 2ND DEFENDANT

JUDGMENT

1. James Karutu Mahugu and 13 others have sued Catherine Jepkorir and Maina Kabuthia claiming that the 1st and 2nd Defendants (hereafter referred to as the Defendants are both sued in their capacity as the legal representatives of the Estate of the deceased Charles Kabuthia Maina a.k.a Charles Maina Kabuthia who died on 7th July 2008 while domiciled in Kenya. The 1st Defendant is the wife/widow of the deceased whilst the 2nd Defendant is the father of the deceased.
2. The plaintiffs allege that between the years 2006 and 2008, they purchased various sub-divisions of land parcel No. LR Subukia/Subukia Block 1/331 (TETU) from the deceased Charles Maina Kabuthia a.k.a Charles Maina Kabuthia and the 2nd Defendant and more particularly as follows:-



Party	Plot No.	Purchase Price (kshs)
James Kamutu Mahugu	602	260,000/-
Nancy Wairimu	603	250,000/
Join Namulen Lodoket	604	70,000/=
Joel Githure Muremi Simon Okenwa Macharia	605	250,000/=
Simon Kinyanjui Ndio	606	-
Thomas Kalemposi Kapenguri	607	65,000/=
Samuel Mwangi Gicheha	608	70,000/=
Harun Waciuri Wambugu	609/61	160,000/=
John Githuo Nduati	611	75,000/=
Julius Nungu	612	235,000/-
James Kibunja Kamau John Mwangi Kamau	613A	260,000/-
John Kamundia	613B	280,000/-

3. Sometimes in the year 2006, the deceased Charles Kabuthia Maina A.K.A Charles Maina Kabuthia applied for and obtained the Consent to sub-divide all that land known as Subukia/Subukia Block 1/331 (TETU) from the Bahati Land Control Board.
4. According to the plaintiff, sometimes in the year 2007, the deceased Charles Kabuthia Maina a.k.a Charles Maina Kabuthia executed the necessary Mutation Forms in favour of the sub-divisions but unfortunately died on 7th July 2008 before the process could be completed and Title Deeds issued to the Plaintiffs. The Plaintiffs immediately after the purchase and full payment of their respective parcels of land, took possession thereof, developed their respective parcels and have been in occupation since their respective dates of purchase.
5. The Defendants have all along never interfered with, nor interrupted the quiet occupation, possession, development and use by the Plaintiffs of their respective parcels of land since the date of purchase.
6. Following the demise of Charles Kabuthia Maina a.k.a Charles Maina Kabuthia, the 1st and 2nd Defendants filed Nakuru High Court Succession Cause No. 605 OF 2008 and obtained a Certificate of Confirmation of a Grant on 8TH December 2010 which was rectified on 13th July 2012.



7. The Rectified Certificate of Confirmation of a Grant granted the I Defendant as the beneficiary of the whole share in Subukia/Subukia Block1/33 1 (TETU) to the exclusion of all the Plaintiffs who were indeed never mentioned in the Succession Cause aforesaid as Purchasers of the whole parcel of land.
8. The Plaintiffs have approached the Defendants to have the Defendants execute the necessary documents to have the Plaintiffs registered as the owners of their respective parcels but the Defendants have refused and/or neglected to execute the necessary documents making the filing of this suit necessary. The Plaintiffs contend that the refusal by the Defendants to effect the transfer of the land to the Plaintiffs amounts to a breach of contract and this Honorable Court ought to order for specific performance of the agreements of sale.
9. The Plaintiffs' claim against the Defendants is therefore for a declaration that the Plaintiffs are the lawful owners of their respective parcels of land as purchased from the
10. deceased Charles Kabuthia Maina a. k.a Charles Maina Kabuthia and the 2nd Defendant , an Order directing the 1st and 2nd Defendant to execute all relevant [necessary documents to have the Plaintiffs registered as the owners of their respective portions, failing which the Registrar of this Honorable Court be authorized to execute the said documents and an Order of injunction restraining the Defendants by themselves, agents and/or assigns and anybody else claiming under them from in any way interfering with the Plaintiffs possession, occupation , development and use of their respective parcels of land as set out under paragraph 6 above.
11. The plaintiffs pray for a declaration that they are the lawful owners of the respective parcels of land they purchased from the deceased Charles Kabuthia Maina a.k.a Charles Maina Kabuthia and the 2nd Defendant and more particularly as follows:-



Party	Plot No.	Purchase Price (kshs)
James Kamutu Mahugu	602	260,000/-
Nancy Wairimu	603	250,000/
Join Namulen Lodoket	604	70,000/=
Joel Githure Muremi Simon Okenwa Macharia	605	250,000/=
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Thomas Kalemposi Kapenguri	607	65,000/=
Samuel Mwangi Gicheha	608	70,000/=
Harun Waciuri Wambugu	609/61	160,000/=
John Githuo Nduati	611	75,000/=
Julius Nungu	612	235,000/-
James Kibunja Kamau	613A	260,000/-
John Mwangi Kamau John Kamundia	613B	280,000/-

12. They further pray for an Order directing the Defendants to execute all the necessary documents to effect the transfer to each Plaintiff his respective portion failing which the Registrar of this Honorable Court be authorized to execute the said documents and effect transfer in favour of the Plaintiffs.
13. Furthermore, an Order of permanent injunction restraining the Defendants by themselves, assigns or agents and anyone claiming under them from in any way interfering with the Plaintiffs possession, occupation, development and use of their respective parcels of land as set out under paragraph 6 of this Plaint. The plaintiffs further pray for the costs of this suit. The defendant filed defence generally denying the particulars of the plaint.
14. When the matter came up for hearing the plaintiffs called the 1st plaintiff as the sole witness who testified on his behalf and for the 13 other plaintiffs. He adopted his statement and produced the authority of the other plaintiffs to testify on their behalf. The 1st plaintiff produced the statements of the other plaintiffs as PEX 2 to PEX 14. The list of documents plus the documents were produced as PEX 15- PEX 35. The 1st plaintiff testified that all plaintiffs reside on the land. There was no counter claim. The defendants did not call any evidence.



15. I have considered the pleadings evidence on record and rival submissions and do find that the plaintiffs' evidence is not controverted and therefore the evidence should be believed.

In *Edward Muriga Through Stanley Muriga Vs. Nathaniel D. Schulter* Civil Appeal No.23 of 1997, it was held that where a defendant does not adduce evidence the plaintiff's evidence is to be believed, as allegations by the defence is not evidence.

In the case of *Motex Knitwear Limited Vs. Gopitex Knitwear Mills Limited Nairobi (Milimani)* HCCC No.834 of 2002, Lesiit, J. citing the case of *Autar Singh Bahra And Another Vs. Raju Govindji*, HCCC No.548 of 1998 appreciated that:-

'Although the Defendant has denied liability in an amended Defence and counterclaim, no witness was called to give evidence on his behalf. That means that not only does the evidence rendered by the 1st plaintiff's case stand unchallenged but also that the claims made by the Defendant in his Defence and Counter-claim are unsubstantiated. In the circumstances, the Counter-claim must fail.'

17. Similarly, the Court of Appeal in the case *Edward Mariga through Stanley Mobisa Mariga vs. Nathaniel David Shulter & Another* [1979] eKLR said:-

"The respondents filed a defence in which they denied the appellant's claim and averred that the accident was caused by the appellant's own negligence in that he suddenly ran across the road and in the process was hit by the motor vehicle. The respondents did not give evidence and so the only explanation as to how the accident happened was the version put forward by the appellant and his brother."

18. This is made further clear in the case *CMC Aviation LTD vs. Crusair LTD (no.1)* (1987) KLR 103 as follows:-

"The pleadings in a suit are not normally evidence. They may become evidence if they are expressly or impliedly admitted as then the admission itself is evidence. Evidence is usually given on oath. Averments are not made on oath. Averments depend upon evidence for proof of their contents."

19. The plaintiffs have proved that they purchased the suit property. They entered into agreement and paid the prerequisite consideration and were given possession of the land. The plaintiff are entitled to the orders sought and I do grant a declaration that they are the lawful owners of the respective parcels of land they purchased from the deceased Charles Kabuthia Maina a.k.a Charles Maina Kabuthia and the 2nd Defendant and more particularly as follows:-



Party	Plot No.	Purchase Price (kshs)
James Kamutu Mahugu	602	260,000/-
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20. I do further grant an Order directing the Defendants to execute all the necessary documents to effect the transfer to each Plaintiff his respective portion failing which the Registrar of this Honorable Court is hereby authorized to execute the said documents and effect transfer in favour of the Plaintiffs.
21. Furthermore, I do grant an Order of permanent injunction restraining the Defendants by themselves, assigns or agents and anyone claiming under them from in any way interfering with the Plaintiffs possession, occupation, development and use of their respective parcels of land as set out under paragraph 6 of this Plaint. Cost of the suit to the plaintiffs. Orders accordingly.

JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 19TH DAY OF SEPTEMBER 2023.

A O OMBWAYO

JUDGE

