



**Njoroge v Njoroge & 2 others (Environment & Land Case E291 of 2021)  
[2023] KEELC 20693 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20693 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E291 OF 2021**

**JE OMANGE, J  
OCTOBER 12, 2023**

**BETWEEN**

**PETER MUGI NJOROGE ..... PLAINTIFF**

**AND**

**LAWRENCE NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**PATRICK NJOROGE ..... 2<sup>ND</sup> DEFENDANT**

**TERESIA WANJIKU NJOROGE ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. This suit arises out Dagoretti/ Riruta/TA /736 and Dagoretti/ Riruta/T. 286.
2. The Plaintiff vide a plaint filed on 30<sup>th</sup> July, 2021 sought the following orders;
  - a. A permanent injunction do issue to the defendants from trespassing, offering for sale, occupying and generally interfering in any way the Plaintiff's/Applicant's possession of Plot No Dagoretti/Riruta/T.289 Nairobi and Plot No Dagoretti/Riruta/TA 736.
  - b. A declaration that the Plaintiff is the registered owner of a ¼ of Plot Dagoretti/Riruta/T.286 Nairobi.
  - c. A declaration that the unlawful demolition of the Plaintiff's property was illegal null and void.
  - d. A declaration that Plaintiff is entitled to an equal portion of all that piece of land known as Plot No Dagoretti/Riruta/Ta 736.
  - e. A permanent order directing the demarcation of the said properties known as Plot No Dagoretti/Riruta/Ta 736 and Dagoretti/Riruta/T.286 Nairobi in equal share.



- f. A permanent injunction do issue restraining the Defendants jointly and severally by themselves, their agents, officers, servants and/or employees from trespassing, offering for sale, occupying or in any way interfering with the Plaintiff's employment or occupation of the suit property.
  - g. Damages.
  - h. The Honourable court do issue such orders and such relief it may deem fit and just in the circumstances.
  - i. The Defendants be ordered to pay the costs of the suit.
3. The plaintiff deponed that the Plaintiff, the 1<sup>st</sup> Defendants father and the 2<sup>nd</sup> Defendant are registered owners of Dagoretti/ Riruta/T.286. The Plaintiff further averred that the Plaintiff, 1<sup>st</sup> Defendants deceased father, Samwel Njoroge Ndungu, the 2<sup>nd</sup> Defendants deceased father, Daniel Njoroge and the 3<sup>rd</sup> Defendant Grace Waceke and 3<sup>rd</sup> Defendant are registered proprietors of Plot Dagoretti/ Riruta/ TA/ 736.
  4. The Plaintiff averred that he has had peaceful possession of the two properties since 1998 and 2000 respectively. The Properties were a gift from his deceased father who died in 2010. The Plaintiff averred that the 1<sup>st</sup> Defendant had invaded Dagoretti/ Riruta T 286 and if not restrained by the court might invade Dagoretti/ Riruta/ TA/ 736.
  5. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Defence and Counterclaim in which they prayed for the following orders;
    - a. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants own ¼ share of the suit land Dagoretti/Riruta/T.286.
    - b. An order compelling the Plaintiff to demolish the metallic gate closing off entry into Dagoretti/Riruta/T.286.
    - c. An order compelling the Plaintiff to grant the lawful access to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants into the ¼ share of Dagoretti/Riruta/T.286.
    - d. The OCS Muthangari Police Station to oversee implementation of the orders (b) and (c) above.
    - e. Costs of this suit.
    - f. Any other remedy the Honourable Court wishes to grant.
  6. It was their contention that the Plaintiff had obstructed the Defendants from accessing Dagoretti/ Riruta/T.286 in which they had a defined stake. They urged the court not to grant an injunction restraining them from accessing the land which is rightfully theirs.
  7. The Plaintiff did not attend court. As such the 1<sup>st</sup> Defendant testified in support of the counterclaim. He testified that Dagoretti/ Riruta/T. 286 belonged to their late father who inherited it from their grandfather. The Plaintiff who is their uncle owns a share of the property. He stated that the Plaintiff had refused them access to their portion of the land. This is in spite of the fact that a succession court had issued letters of administration to his late fathers estate to him and Lawrence Njoroge. T 286 was confirmed in his name and Lawrence Njoroge to hold in trust for their sisters.



8. He urged the court not to grant the injunction sought by the Plaintiff. He further prayed that the court allows him to demolish a metallic gate which has prevented him from accessing their property. He stated that no surveyor had been able to sub divide the property as the Plaintiff had not allowed access.
9. I have considered the Pleadings and documents filed by all parties herein and the evidence adduced by the 1<sup>st</sup> Defendant. There is no dispute that Dagoretti/ Riruta/T. 286 has a title in the name of Patrick Njoroge Ndungu half share, Samwel Njoroge Ndungu quarter share and Peter Mugi Njoroge quarter share. There is also no dispute that the plaintiff resides on the said parcel of land. His witness statement dated 30<sup>th</sup> July, 2021 is emphatic that he has been having quiet enjoyment of the property Dagoretti/ Riruta/T.286 which he admits is owned by him, Samwel Njoroge Ndungu and Patrick Njoroge Ndungu.
10. The issues that arise for the court to determine are;Should the court issue an injunction to restrain the Defendants from accessing the property Dagoretti/ Riruta/ T.286?Who owns the property Dagoretti/ Riruta/ T. 286?Should the metallic gate be demolished?Should the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be allowed access to a share of Dagoretti/Riruta/t.286
11. The prayer for injunction was made by the Plaintiff who did not give evidence. The witness statement which he filed in court while admitting that the title of Dagoretti/ Riruta/ T.286 was owned jointly with others averred that he had enjoyed quiet possession of the same and prayed that the other family members be excluded from the property. In view of the uncontroverted testimony of the 1<sup>st</sup> Defendant who produces a certified grant to confirm that the shares of Patrick Njoroge Ndungu devolved to him and his siblings, it would be unconscionable to issue an injunction as sought by the Plaintiff.
12. The title for Dagoretti/ Riruta/ T. 286 is clear that the property is owned by Patrick Njoroge Ndungu ½ share; Samwel Njoroge Ndungu ¼ share and Peter Mugi Njoroge ¼ share. This is further confirmed by a document dated 8<sup>th</sup> September, 2005 in which the original owner of the land Paul Njoroge Ngoru clearly detailed how his properties were to be divided amongst his family members. In the face of the painstaking efforts that the deceased made to ensure that his property was equitably divided to his heirs, this court has no option but to carry out his will.
13. I find that Dagoretti/ Riruta/T.286 is jointly owned by the three proprietors in the shares above. Since each proprietors' share was clearly indicated in the title, in their absence, their share devolves to the beneficiaries of their estate. In the case of Samwel Ndungu Njoroge, his ¼ share according to the Certificate of Confirmation of grant dated 30<sup>th</sup> April, 2019 devolves to Patrick Njoroge and Lawrence Njoroge, the 1<sup>st</sup> and 2<sup>nd</sup> Defendant herein for themselves and in trust for Jane Mweru Kiarii, Catherine Njeri Ndungu and Christine Wahu Waithaka.
14. The issue of demolishing the metallic gate and allowing access to the 1<sup>st</sup> and 2<sup>nd</sup> Defendants access to their share is related so I will deal with both jointly. The evidence on record from both the Plaintiff and the Defendant is that the property has not been subdivided and efforts to resolve the issue amicably or with the assistance of various government agencies have not borne any fruit. Given that each registered owner has a clearly defined share to the property, it is imperative that a surveyor visit the property and demarcate each share of the property. Only then can an order for access be realized.
15. In the end, the Plaintiff's suit is dismissed, Judgement is entered for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in the counterclaim against the Plaintiff in the following terms;



- a. A declaration is hereby issued that a  $\frac{1}{4}$  share of Dagoretti/ Riruta/ T.286 is owned by the 1<sup>st</sup> and 2<sup>nd</sup> Defendant by themselves and in trust for Jane Mweru Kiarii, Catherine Njeri Ndungu and Christine Wahu Waithaka.
- b. A surveyor is to identify the  $\frac{1}{4}$  share that belongs to the 1<sup>st</sup> and 2<sup>nd</sup> Defendant and which they hold in trust for Jane Mweru Kiarii, Catherine Njeri Ndungu and Christine Wahu Waithaka.
- c. That the Plaintiff is to allow the 1<sup>st</sup> and 2<sup>nd</sup> Defendant access to the  $\frac{1}{4}$  share of Dagoretti/ Riruta/ T.286.
- d. The OCS, Muthangari Police Station to oversee implementation of orders (b) and (c) above.
- e. Each party to bear their own costs for the suit.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 12<sup>TH</sup> DAY OF OCTOBER 2023.**

**JUDY OMANGE**

**JUDGE**

