



REPUBLIC OF KENYA



**Waitiki v Karanja & 2 others (Environment & Land Case
236 of 2017) [2023] KEELC 20919 (KLR) (12 October 2023) (Order)**

Neutral citation: [2023] KEELC 20919 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 236 OF 2017
BM EBOSO, J
OCTOBER 12, 2023**

BETWEEN

ALICE NJAMBI WAITIKI PLAINTIFF

AND

WILSON KARANJA 1ST DEFENDANT

MAGDALINA NJOKI 2ND DEFENDANT

THE LAND REGISTRAR, KIAMBU 3RD DEFENDANT

ORDER

1. The plaintiff and the 2nd defendant hold alleged parallel titles relating to a parcel of land allegedly registered as Gatwanyaga/ Ngoliba/ 1860 and Gatwanyaga/Ngoliba Block 1/1860 respectively. One of the key issues to be determined in this suit is the question as to which of the two alleged titles is the legitimate title relating to the land in dispute. The other key issue is the question as to who is the legitimate owner of the suit land.
2. Hearing of this suit commenced before Gacheru J on 15/7/2019. On that day, the Land Registrar testified. His evidence was that the land register relating to the suit land was missing in the binder held in the Land Registry. The parcel file was also missing. The Land Registry did not therefore have any records from which to verify the genuine ownership of the land. The Land Registrar testified that physically, the suit land exists on the ground.
3. The plaintiff too testified before Gacheru J. She traced the root of her title to M/s Gatundu Nyakinyua Company Limited, the land buying company that owned the subdivision scheme where the suit land is located. Her case was that the land company allocated the land to her mother-in-law, Milka Wangui Kinuthia [also known as Milica Wangui Kinuthia] through balloting, adding that her mother-in-law in turn gifted the land to her.



4. The 2nd defendant testified before me on 24/11/2022. In addition, she led evidence by one Jane Wanjiku Ngugi. She too traced the root of her title to M/s Gatundu Nyakinyua Company Limited, contending that the said land buying company allocated the suit land to one Alice Njeri Ngugi following a shareholders' balloting exercise. It was her case that Alice Njeri Ngugi sold the land to her.
5. A perusal of the court file reveals that M/s Gatundu Nyakinyua Company Limited were at one point joined as the 3rd defendant in the primary suit. The circumstances under which the amended plaint was further amended to remove them from this suit are not clear. It is, however, clear that for the effectual and complete adjudication of the question of legitimacy of the alleged parallel titles and the question as to who is the legitimate owner of the suit land, the land buying company is a necessary party to this suit. The land buying company is a necessary party because it owned the subdivision scheme in which the suit land is located. It carried out the subdivision survey. It was the land allocating authority. It conveyed the suit land to the allottee. Its presence in this suit is therefore necessary if the court is to adjudicate and settle the question of legitimacy of the titles and the rival claims of ownership of the suit land effectually and completely.
6. For the above reason, the court does invoke the provisions of order 1 rule 10(2) of the *Civil Procedure Rules* and does order the joinder of M/s Gatundu Nyakinyua Company Limited as a defendant in both the primary suit and the counterclaim. The said company shall be served with the relevant pleadings and shall file their pleadings and documentary evidence relating to the balloting, allocation and conveyance of the suit property. The court having come to the finding that the said company is a necessary party for the complete and effectual adjudication and settlement of the key questions in the suit, they will be required to tender the above records and be cross-examined.
7. Lastly, the order reserving a judgment date in this suit is hereby vacated.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 12TH DAY OF OCTOBER 2023

B M EBOSO

JUDGE

