



**Ndung'u v Gichuhi & another (Environment & Land Case 30 of 2021)
[2023] KEELC 21988 (KLR) (8 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21988 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 30 OF 2021
AK BOR, J
NOVEMBER 8, 2023**

BETWEEN

SAMSON MUTHAMI NDUNG'U PLAINTIFF

AND

SHADRACK NDIRITU GICHUHI 1ST DEFENDANT

NANYUKI LAND REGISTRAR 2ND DEFENDANT

JUDGMENT

1. Through the Amended Plaint dated 11/5/2015, the Plaintiff sought cancellation of the title relating to the land known as Laikipia/Tigithi/Matanya/Block 3/517 and the sum of Kshs. 3,500/= against the 1st Defendant who he averred had refused to produce the certificate of registration and clearance certificate for the suit land despite being requested to do so by the Land Registrar in May 2003. The Plaintiff sought an order to the effect that he was the rightful owner and should be registered as the proprietor of the suit land.
2. The 1st Defendant denied being aware of any dispute involving his land known as Laikipia/Tigithi/Matanya Block 3/517 (Matanya Centre) and averred that he had no interest in the land known as Laikipia/Tigithi/Matanya Block 3/517, which in his view appeared to be different from his land. He denied receiving any demand letters as contended by the Plaintiff.
3. The Plaintiff joined the Nanyuki Land Registrar as a party to the suit on the basis that the Registrar was conversant with the dispute relating to Laikipia/Tigithi/Matanya/Block 3/517. The 2nd Defendant does not appear to have filed any pleadings or documents and did not participate in the trial. It is not clear whether the court documents were served on the Attorney General.
4. The matter proceeded to hearing and the Plaintiff gave evidence. He stated that around 2003, a dispute arose between him and the 1st Defendant over ownership of Laikipia/Tigithi/Matanya Block 3/517. The matter was referred to the Nanyuki Land Registrar, who wrote a letter to the 1st Defendant



requiring him to produce his title over the suit land and the land clearance certificate but he did not respond to the letter. The Plaintiff claimed that he was forced to engage the services of an agent who wrote a demand letter to the 1st Defendant, which did not yield any results.

5. The Plaintiff produced copies of the Land Registrar's letter dated 23/5/2003, the notice dated 23/3/2015 issued by Makandu Enterprises and the letter written by Matanya Estate Limited of 16th October confirming that Mr. Benson Ndungu Theuri owned ten plots which were placed under the care of the Plaintiff. The court notes that that letter was signed by the Plaintiff and the date is cut out. The Plaintiff also produced an unclear clearance dated 8/6/1994 addressed to the Land Registrar making recommendations for issuance of title deeds for some specified parcels of land giving the old and new numbers. The court informed the Plaintiff that the documents they had produced were not legible.
6. On cross-examination, the Plaintiff stated that the land was not his but belonged to his father who died in 1989. He told the court that they did the succession matter and he had the grant of letters of administration. He added that he had receipts for the payments made for the land and that the share certificate got burned in the house. The Plaintiff stated that his ballot was stolen by the committee. Further, that his father bought many plots from Matanya Estates Limited and that he was given 320 acres for his payment.
7. He clarified that the land in dispute was Laikipia/Tigithi/Matanya Block 3/517 and that Laikipia/Tigithi/Matanya/Block 3/517 (Matanya Centre) did not exist. He told the court that he got his title in 1994 and contended that the 1st Defendant was not a member of Matanya Company. On being referred to the documents, he told the court that the clearance dated 8/6/1994 was signed by the District Officer.
8. John Muthee Nderitu gave evidence on behalf of the 1st Defendant. He told the court that he was appointed guardian ad litem on 24/10/2022 to enable him conduct this matter on behalf of the 1st Defendant who is suffering from ill health. He adopted his father's statement in which the father stated that he was totally blind.
9. His father's evidence was that around 1980, one of his neighbours at Ciaraini called Francis Kamunya Kanguthu went and told him that he wished to sell his shares. They agreed on a purchase price and he paid him. In 1999 Matanya Company invited shareholders for a meeting to ballot for plots. He balloted after the officials had checked his documents. His ballot number was 1091 and he was therefore allocated plot number 517. He stated that he went to the Lands Office later, produced his documents including the clearance certificate and ballot card and was issued a title deed after making the necessary payments. He stated that they went to the land and his people put beacons. He would send his son to the land, who confirmed that the land was still empty. He stated that recently, the person filed a suit claiming Laikipia/Tigithi/Matanya Block 3/517 which in his view was different from the land he owned.
10. The 1st Defendant produced a copy of the share certificate issued by Matanya Estates Limited in his name on 21/5/1980 and the ballot card bearing number 1091 with number 517 inserted by ink. The ballot card for Matanya Estate Limited was signed and is dated 7/2/1989. It was endorsed on the reverse by the District Officer Central Division Laikipia and the District Commissioner Laikipia, Nanyuki. The 1st Defendant also produced a copy of the title deed for Laikipia/Tigithi Matanya Block 3/517 (Matanya Centre) which was issued on 20/7/1989 and a copy of the clearance certificate from Matanya Estate Limited dated 12/5/1988 and the search done on the suit land on 8/6/2016.



11. On cross-examination, he told the court that he thought the title bore Matanya Centre. He did not have evidence to show that his father bought shares from Francis. He stated that his father had three names after Gichuhi was added to his name. He sought leave to amend the defence at paragraph 3 and remove Matanya Centre from the land description.
12. After parties had closed their cases on 4/7/2023, the court directed that parties were to file and exchange written submissions which they were to highlight on 25/7/2023. No submissions were filed by 25/7/2023 and the court fixed the matter for the highlighting of submissions on 6/10/2023. The 1st Defendant's advocate informed the court that he had not filed submissions because the Plaintiff had not served them. The court noted that parties had had more than ample time to file and exchange written submissions but they failed to do so. The court went ahead to fix the matter for delivery of judgment.
13. The issue for determination is whether the court should grant an order for cancellation of the title deed relating to Laikipia/Tigithi/Matanya/Block 3/517 and award the Plaintiff Kshs. 3500/= as he sought in the plaint. The Plaintiff's claim is that that parcel of land belonged to his late father and that a dispute arose between him and the 1st Defendant in 2003 and the Land Registrar summoned the 1st Defendant to produce his title but he failed to do so.
14. It was the Plaintiff's evidence that his father who died in 1989 had purchased many plots in Matanya. He claimed that he had obtained a title in 1994 but what he actually produced was a clearance certificate dated 8/6/94 which the court notes had other numbers written over the initial ones. He produced a letter dated 16/10/2000 from Matanya Estate Limited indicating that the 10 plots which his father previously owned were under his care. The letter mentioned that the ten plots listed were cleared by the D.O's on 16/10/1990. He also produced a copy of the Land Registrar's letter dated 23/5/2003 addressed to the 1st Defendant summoning him to produce the clearance for Laikipia/tigithi/Matanya Block 3/517 (Matanya Centre). He filed suit on 20/4/2015.
15. The Plaintiff did not produce copies of the ballot issued by the land buying company or evidence of the payment that his late father made for the plot in dispute. He contended that the 1st Defendant was not a member of Matanya Estates Limited. However, the court notes that the 1st Defendant produced a copy of the share certificate issued by Matanya Estate Limited dated 21/5/1980 together with a copy of the ballot card number 1091 which has number 517 inserted in it by hand. The Plaintiff told the court that there was no land known as Laikipia/Tigithi/Matanya/Block 3/517 (Matanya Centre) and that the land was actually known as Laikipia/Tigithi/Matanya/Block 3/517. The 1st Defendant produced a copy of his title deed which reads Laikipia/Tigithi/Matanya/Block 3/517 (Matanya Centre).
16. Based on the totality of the evidence tendered in this case, the Plaintiff failed to prove that he is entitled to the reliefs sought in the Amended Plaint. His suit is dismissed with costs to the 1st Defendant.

DELIVERED VIRTUALLY AT NANYUKI THIS 8TH DAY OF NOVEMBER 2023.

K. BOR

JUDGE

In the presence of: -

Mrs. Gichama Maina for the 1st Defendant

Ms. Stella Gakii- Court Assistant

No appearance for Plaintiff and the 2nd Defendant

