



**Rugoiyo & 2 others v The Board of Governors, Kagumo Teachers  
Training College & another (Environment & Land Case 657 of 2014)  
[2023] KEELC 21447 (KLR) (10 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21447 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 657 OF 2014  
JO OLOLA, J  
NOVEMBER 10, 2023**

**BETWEEN**

**IMMACULATE NYAMBURA RUGOIYO ..... 1<sup>ST</sup> PLAINTIFF  
EMMA MUTHONI RUGOIYO ..... 2<sup>ND</sup> PLAINTIFF  
ROSE MWIYERIA RUGOIYO (IN PLACE OF PETER GICHUKII RUGOIYO –  
DECEASED) ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**THE BOARD OF GOVERNORS, KAGUMO TEACHERS TRAINING  
COLLEGE ..... 1<sup>ST</sup> DEFENDANT  
KENYA COMMERCIAL BANK NOMINEES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. This matter was initially instituted at the High Court at Nyeri as Nyeri HCCC No. 30 of 2012.
2. By his Plaint dated and filed in Court on 9<sup>th</sup> February, 2012, Peter Gichuki Rugoiyo (the Original Plaintiff) has sought Judgment against the two Defendants herein for:
  - (i) A declaration that Aguthi/Gatitu/361 and Aguthi/Gatitu/570 belongs to the Plaintiff;
  - (ii) A permanent injunction to prevent the Defendants through their agents, servants or nominees or any person or persons or entity claiming through them from trespassing upon, constructing on, selling, transferring or otherwise dealing with the suit properties, that is to say, Aguthi/Gatitu/361 and Aguthi/Gatitu/570;
  - (iii) In the event of the Defendants trespassing on the suit properties, orders of eviction (to issue);



- (iv) An order of rectification of the register restituting the Plaintiff as the proprietor of Aguthi/Gatitu/361 and Aguthi/Gatitu/570 in place of Kenya Commercial Bank Nominees Limited (the 2<sup>nd</sup> Defendant); and
  - (v) Costs.
3. Those prayers arose from the contention by the Original Plaintiff that at all times material, he was the duly registered owner of the two properties. It was the Plaintiff's case that on 13<sup>th</sup> June, 1967 while exercising his right as proprietor, he charged the said properties to Standard Chartered Bank and that having repaid the loan, the same was discharged on 14<sup>th</sup> August, 1973.
  4. The Plaintiff asserted that on 22<sup>nd</sup> August 1973, the 2<sup>nd</sup> Defendant at the behest of the Board of Governors Kagumo Teacher College (the 1<sup>st</sup> Defendant) was registered as the proprietor of the suit properties. It was the Plaintiff's case that the said registration had no basis in law or otherwise for the reasons that:
    - (a) The said Plaintiff did not sell his properties to the Defendant;
    - (b) There were no documents at all to prove that any sale took place;
    - (c) There is no basis for the 2<sup>nd</sup> Defendant to act as a trustee or otherwise as proprietor of the suit properties.
  5. But in its Statement of Defence dated 29<sup>th</sup> March, 2012 as filed in Court on 4<sup>th</sup> April 2012, The Board of Governors Kagumo Teachers College (the 1<sup>st</sup> Defendant) asserted that the suit properties were its own properties and that the same did not belong to the Plaintiff. It was the 1<sup>st</sup> Defendant's case that on 20<sup>th</sup> September 1972, it had entered into negotiations with the Plaintiff for the purchase of the two parcels of land and that following the finalization of the negotiations in August 1973, it did purchase the land and the title deeds which were then in possession with the Standard Chartered Bank were transferred to the 2<sup>nd</sup> Defendant who are the trustees of the Kagumo Teachers Training College and remain so to-date.
  6. The 1<sup>st</sup> Defendant avers that the Plaintiff sold the parcels of land on the basis of a willing seller willing buyer basis. The 1<sup>st</sup> Defendant has since been in occupation thereof and have been cultivating the same for food crops, animal fodder and other purposes.
  7. It was further the 1<sup>st</sup> Defendant's case that the transfer of the land having been done way back in 1973, the Plaintiff's suit was time barred and the same ought not to be entertained by the Court.
  8. Kenya Commercial Bank Nominees Limited (the 2<sup>nd</sup> Defendant) is equally opposed to the suit. In its Statement of Defence dated 14<sup>th</sup> June 2012, the 2<sup>nd</sup> Defendant states that they were appointed Trustees of the 1<sup>st</sup> Defendant vide a Trust Deed dated 13<sup>th</sup> December, 1961 and executed between the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant then known as National & Grindlays Bank Limited.
  9. The 2<sup>nd</sup> Defendant avers that pursuant to the said Trust Deed, it was to be appointed as Trustees of all the immovable and movable properties as well as stocks of the 1<sup>st</sup> Defendant and was empowered to acquire and hold properties from time to time upon trust for the benefit of the 1<sup>st</sup> Defendant.
  10. The 2<sup>nd</sup> Defendant states that it was registered as the proprietors of the suit properties sometimes in 1973 in its capacity as the Trustees of the 1<sup>st</sup> Defendant after the properties were acquired from the Plaintiff.



### **The Plaintiff's Case**

11. As it turned out, the Original Plaintiff passed away on 18<sup>th</sup> December, 2018 and pursuant to orders issued herein on 15<sup>th</sup> July 2019, he was substituted by his three daughters – Immaculate Nyambura, Emma Muthoni and Rose Mwiyeria (hereinafter the Plaintiffs).
12. Prior to his death, the Original Plaintiff has testified herein as PW1. He told the Court that the two parcels of land belonged to him and that he had never sold or transferred the same to the Defendants.
13. PW2 – Nyambura Rugoiyo is a daughter to the Original Plaintiff. She told the Court that in the year 1973, their father moved the family to Mombasa. Before then they used to live in the suit properties. She told the Court that after she completed secondary school, she came to hear that the 1<sup>st</sup> Defendant had allegedly bought their land. Sometime in 1978/79 when she started working, they started making efforts to have the land back as there was no documentation to show how the 1<sup>st</sup> Defendant became the owners of the land.
14. PW2 further told the Court that their mother was buried in one of the properties and that the 1<sup>st</sup> Defendant had never denied them access to the grave. Later in 2010, her sisters who had gone to visit the grave were stopped by policemen on account that they were trespassing on the college's property.
15. PW3 – Emma Muthoni Rugoiyo is also a daughter of the Original Plaintiff. She too told the Court they used to reside in the two properties when they were young. In 1973, they moved to Mombasa and they later heard rumours that the 1<sup>st</sup> Defendant had acquired the suit properties from her father.

### **The Defence Case**

16. On their part, the Defendants called two witnesses at the trial.
17. DW1 – Samuel Ndiritu Ndirangu was the Land Registrar, Nyeri County. He testified that from their records, the parcel known as Aguthi/Gatitu/361 was allocated to the Plaintiff in 1959. On 5<sup>th</sup> August, 1973 it was transferred to the 2<sup>nd</sup> Defendant as a nominee at a consideration of Kshs.50,600/-. There were transfer forms in the file signed by the Plaintiff and a representative of the 2<sup>nd</sup> Defendant. The same was witnessed by the then District Commissioner Nyeri. A Land Certificate was issued after the transfer to the 2<sup>nd</sup> Defendant on 22<sup>nd</sup> March, 1973.
18. DW1 further told the Court that Parcel No. 570 was equally sold and transferred to the 2<sup>nd</sup> Defendant at a consideration of Kshs.6,600/-. There was an application for Land Control Board consent duly signed by the Plaintiff. A Letter of Consent was subsequently issued before the land was registered in the name of the 2<sup>nd</sup> Defendant.
19. DW2 – Ronald Gathua is the Principal Kagumo Teachers College. He told the Court that the College has been in occupation of the suit properties since 1973. They have planted trees and nappier grass on the land. He told the Court the Plaintiff has used the suit properties to acquire a loan. When the 1<sup>st</sup> Respondent agreed to purchase the land from him, the 1<sup>st</sup> Respondent paid the loan although he did not have any documents in proof of the payments. He did not also have any evidence of the Sale Agreements executed between the Plaintiff and the 1<sup>st</sup> Respondent.

### **Analysis And Determination**

20. I have carefully perused and considered the pleadings herein, the testimonies of the witnesses as well as the evidence adduced by the Parties. I have similarly perused and considered the written submissions as well as the authorities placed before me by the Learned Counsels representing the Parties herein.



21. By his Complaint filed in Court on 9<sup>th</sup> February 2012, Peter Gichuki Rugoiyo (the original Plaintiff) has sought a declaration that the parcels of land known as Aguthi/Gatitu/361 and Aguthi/Gatitu/570 (the suit properties) belong to himself as the proprietor. The Plaintiff further urged the Court to issue a permanent order of injunction restraining the two Defendants jointly and severally from trespassing upon, constructing on, selling, transferring or otherwise dealing with the suit properties.
22. It was further the Plaintiff's prayer that in the event that the Defendants were found to be trespassing on the suit properties, an order for their eviction should issue. Ultimately, the Plaintiff urged the Court to issue an order for the rectification of the register in regard to the suit properties to cancel the registration of the 2<sup>nd</sup> Defendant as the proprietor of the land and instead to reinstate his own name as the proprietor of the two parcels of land.
23. Those prayers arise from the Plaintiff's contention that at all times material to this suit, he was the registered proprietor of the suit properties. It was the Plaintiff's case that on 13<sup>th</sup> June, 1967 while exercising his rights as such proprietor, he had charged the said properties to Standard Chartered Bank and that having subsequently repaid the Loan, the two properties were discharged on 14<sup>th</sup> August, 1973.
24. It was the Plaintiff's case that on 22<sup>nd</sup> August 1973, the 2<sup>nd</sup> Defendant acting at the behest of the Board of Governors of Kagumo Teachers College (the 1<sup>st</sup> Defendant) caused itself to be registered as the proprietor of the suit properties. The Plaintiff asserted that the said registration had no basis in law or otherwise for the reasons that:
  - (i) He did not sell his properties to the Defendant;
  - (ii) There was no documentation to prove that any sale took place; and
  - (iii) There was no basis for the 2<sup>nd</sup> Defendant to act as a trustee or otherwise as proprietor of the suit properties.
25. On their part, the Defendants asserted that the suit properties belonged to the 1<sup>st</sup> Defendant Teachers Training College and that the same was registered in the name of the 2<sup>nd</sup> Defendant as a trustee in line with the Ministry of Education regulations and guidelines. It was the Defendants' case that contrary to the Plaintiff's contention, the 1<sup>st</sup> Defendant did enter into negotiations with the Plaintiff for the purchase of the two parcels of land sometime on 20<sup>th</sup> September 1972.
26. It was further the Defendants case that consequent upon the finalization of the said negotiations, it did purchase the said properties from the Plaintiff in August 1973 and that the title deeds that were then in possession of the Standard Chartered Bank were subsequently transferred in the name of the 2<sup>nd</sup> Defendant as trustees for the College. The Defendants assert that the Plaintiff willingly entered into the transaction and that following the purchase, the 1<sup>st</sup> Defendant has since been in occupation and possession of the land with the full knowledge of the Plaintiff.
27. In support of his case, the Plaintiff relied on his brief statement dated and filed in Court on 9<sup>th</sup> September, 2012. That Statement reads in full as follows:

“I Peter Gichuki Rugoiyo, a resident of Mpeketoni do hereby state as follows:

The properties known as Aguthi/Gatitu/361 and Aguthi/Gatitu/570 belong to me and I have never sold, transferred or otherwise ceded possession thereof to any individual group of individuals or institution.



The registration of the 2<sup>nd</sup> Defendant as the Trustee/proprietor of the aforesaid properties has no basis at all and is a breach of my titles that ought to be remedied by the Court.”

28. Testifying before the Honourable Justice L. N. Waithaka (then seized of the case) on 16<sup>th</sup> November 2015, the Plaintiff adopted the above Statement as his evidence-in-chief. On cross-examination by the 1<sup>st</sup> Defendant’s counsel, the Plaintiff testified as follows:

“I cannot remember when I bought the parcels. I bought many different portions which were consolidated.

I initially had title to the two parcels registered in my name but after my wife died, I do not remember what happened to the title deeds.

I never took out any loan from Standard Bank in the 1970’s. I may have met the Board of Governors Kagumo Teachers Training (College) but I cannot recall whether we discussed that I would sell the parcels to them to offset my loan with Standard Bank.

I cannot remember who has titles to the parcels. When my wife was alive, she was responsible for all the record keeping transactions.”

29. It was rather apparent that as at the time of giving his testimony, the Plaintiff was quite advanced in age. Some three (3) years after giving his testimony, he passed away on 18<sup>th</sup> December, 2018 at the prime age of 90 years. He was thereafter substituted in these proceedings with his daughters Immaculate Nyambura, Emma Muthoni and Rose Mwiyeria who were granted Limited Letters of Administration ad litem for the purposes of prosecuting this case.

30. As it were, the three substituted Plaintiffs were in their tender years as at the time the suit properties were transferred from the name of their father to that of the Defendants. Their recollection of the circumstances then were at best captured in the recorded Statement of Emma Muthoni Rugoiyo (PW3) dated 4<sup>th</sup> May, 2012 and filed in Court on 22<sup>nd</sup> May, 2012. The Statement which she adopted as her evidence-in-chief when she testified in Court reads in the relevant part as follows:

“The Plaintiff in this case is my father. In 1973, I was aged 16 years old and in Form three in Kerugoya Girls Secondary School. I remember that our father had left home to go to Mombasa to find work.

I also do recall that some of my siblings the oldest being twelve years and the youngest being just five years had been transported to Mombasa by the Kagumo College bus.

I did not understand then and I do not understand now how or why a whole family was relocated from ancestral land.

In 1976/77 or thereabouts having heard rumours that Kagumo College was claiming to have bought the land, I approached the Principal of the College in the hope that he could help me to understand what was going on and I made a specific demand that we needed to resettle on the land. This was because I had no knowledge whatsoever of our father having sold the land to the college.

The then Principal of Kagumo College told me that our father had sold the land to the College. He did not disclose any documentation and insisted that most of the Board members resided in the United Kingdom meaning that no decision on our interest in the land could be made as this could only be done by the Board.



I did subsequently write to the college inquiring about the land but my letter elicited no response.

I am aware that at least two of my siblings, Joseph Maina Rugoiyo and Elizabeth Wangari Rugoiyo, made inquiries with the college verbally and in writing regarding our land.”

31. It was not clear to me why the substituted Plaintiffs were making these inquiries from the College and not from their father who was then alive and well. While, as noted by the Court, the Original Plaintiff had memory lapses at the time he testified in Court in 2015, that apparently was not always the case. That much was clear from the testimony of PW2 – Nyambura Gichuki Rugoiyo who testified under cross-examination as follows:

“According to the documents filed, it appears that KCB holds the land in trust for Kagumo College. I am not surprised that my father has said he cannot remember many things including entering into a transaction with the 1<sup>st</sup> Defendant.

When I came back in 2013 from the US, I found my father has started losing his memory. Before then, he was o.k but I do not have any correspondence that my father wrote to try and reclaim this land ...”

32. That testimony by PW2 exposed one of the greatest intrigues of the claim herein. It was apparent that the Plaintiff and his family were aware from the early 1970s that the 1<sup>st</sup> Defendant was claiming to have purchased their land yet no suit was filed to reclaim the same until some 39 years later when this suit was instituted in the year 2012.

33. It is indeed telling that the Original Plaintiff while he asserted that his properties were discharged by the Standard Chartered Bank in 1973 does not state whether or not the titles were returned to him. Instead he confesses knowledge of the Defendants claim at Paragraph 7 of the Plaintiff where he avers as follows:

“7. The Plaintiff shall at all times maintain that soon after the 22<sup>nd</sup> August 1973 the administrators of Kagumo Teachers Training College started spreading rumours that they had acquired the aforesaid parcels but inquiries made by the Plaintiff and his children went unanswered.”

34. As it were, on matters of recovery of land Section 7 of the Limitation of Actions Act Cap. 22 of the Laws of Kenya provides that:

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

35. As my sister Aburili J explained in Bosire Ogero -vs- Royal Media Services Limited (2015) eKLR:

“The law of limitation of actions is intended to bar the Plaintiffs from instituting claims that are stale and aimed at protecting defendants against unreasonable delay in the bringing of suits against them.

The issue of limitation goes to the jurisdiction of the Court to entertain claims and therefore if a matter is statute barred, the Court has no jurisdiction to entertain the same. And even if the issue of limitation is not raised by a party to the proceedings, since it is a jurisdictional issue, the Court cannot entertain a suit which it has no jurisdiction over.”



36. In the matter herein, it was apparent that as early as 1973, the original and the substituted Plaintiffs were aware of the Defendants' claim on their land. They neither complained nor lodged a suit until some 39 years down the line. Their claim is in my considered view stale and barred under Section 7 of the *Limitation of Actions Act* aforesaid.
37. But even if this Court were to take it that the Plaintiff's family were only barred from entering the suit property from the year 2010 as contended by both PW2 and PW3, it was rather difficult to swallow the story by the original Plaintiff that he did not sell his land. To begin with, there was no Reply to the 1<sup>st</sup> Defendant's Statement of Defence in which the institution contended that they entered into negotiations with the Plaintiff to buy the suit properties in 1972.
38. In support of their case, the Defendants produced minutes of a Board of Governors meeting held on 20<sup>th</sup> September, 1972 which minutes record the Plaintiff (referred to simply as Gichuki) as one of the people in attendance. The said Minutes read in the relevant part as follows:

“Min 3/72 – the Committee met to discuss the possibilities of buying Gichuki's land, they discussed the matter and recommended as follows:

1. That the land should be bought at Kshs.2,000/- an acre;
2. That the money should be paid to the (Standard Chartered) Bank;
3. That about Kshs.6,000/- should be held by the college and then be given to Mr. Gichuki when it would be certain that he would put the money to proper use;
4. That Gichuki should declare what loans he had against his land.

Mr. Gichuki was interviewed by the Committee and agreed to the points listed above. He admitted he had a loan of about Kshs.26,000/- from the Standard Chartered Bank.

He wished to move to Mombasa on health grounds. He was going to seek employment and later buy a house and land if he could get it.

He pressed that if the land was to be bought at Kshs.2,000/- per acre then he should be compensated for fencing and the clearing which he had done near the stream. After some discussions, it was agreed that the District Agriculture Officer should be invited to assess how much Gichuki should be given.

The Committee then decided to go and see the land. After viewing the land, Mr. Ndegwa was nominated to go with Gichuki to the Land Registrar's Office and the Standard Bank on 22<sup>nd</sup> September, 1972 and then the next Land Board's meeting likely to be held on 13<sup>th</sup> October, 1972.”

39. From his own testimony before the Court, the deceased Plaintiff did not deny meeting the Board of Governors of the College stating instead that he may have met the Board although he was unable to recollect what was on the table for discussion. The other Minutes produced at the trial herein by the College's Principal Ronald Githua (DW2) were of a meeting held on 27<sup>th</sup> September, 1973. In regard to the purchase of Mr. Gichuki's land, the Minutes read as follows:

“The Secretary reported that finally Mr. Gichuki's land had been acquired for Kshs.40,208/-.  
The clearing of the land was already started ...”

40. In addition, the College Principal (DW2) also produced a receipt being payment voucher No. 496 which indicated that the deceased Plaintiff had been paid Kshs.100/- in advance towards the purchase



of the suit properties. The Land Board minutes of 10<sup>th</sup> August, 1973 (Dexh. 13) reveal that the Board consented to the transfer of the two parcels of land to the 1<sup>st</sup> Defendant.

41. It was interesting to note that it is the same year 1973 that the deceased Plaintiff claims the 1<sup>st</sup> Defendant's started spreading "rumours" that they had bought the suit properties. That is also the time his daughter (PW3) recalls that his father left home for Mombasa and that the rest of her nine (9) siblings were transported by the Kagumo College Bus to Mombasa and the entire family ceased to have a home in Gatitu in Nyeri.
42. Those occurrences were in my view not out of coincidence. They were but the direct result of the successful negotiations that the deceased Plaintiff had had with the 1<sup>st</sup> Defendant over the sale of the suit properties. The transaction having been completed, the Plaintiff moved his family away from the suit land and eventually settled in Mpeketoni where he resided until his death in 2018.
43. From the totality of the circumstances herein, it was apparent that the deceased Plaintiff had willingly disposed of his interests in the suit properties and that this suit was filed in his twilight years following pressure from his children who still felt the urge to revisit their original home given that their mother had been buried there in 1969. I did not however find any basis to grant the orders sought as their claim was not only time-barred but was also unsupported by any evidence.
44. In the premises the Plaintiffs' suit is hereby dismissed with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI THIS 10<sup>TH</sup> DAY OF NOVEMBER, 2023.**

In the presence of:

Ms Wangechi for the Plaintiff

Mr. Simitu and Ms Mugambi holding brief for Ms Chege for the 1<sup>st</sup> Defendant

Ms Malungu for the 2<sup>nd</sup> Defendant

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**J. O. OLOLA**

**JUDGE**

