



**Mugumo v Kingi & 2 others (Environment & Land Case
10 of 2021) [2022] KEELC 3187 (KLR) (6 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3187 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 10 OF 2021**

AK BOR, J

JUNE 6, 2022

BETWEEN

JOSEPH KINYUA MUGUMO PLAINTIFF

AND

MARGARET MUTHONI KINGI 1ST DEFENDANT

LAND REGISTRAR NYERI COUNTY 2ND DEFENDANT

THE HONOURABLE ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. This dispute revolves around the ownership of land reference number Laikipia/Nanyuki/West Timau Block 2/618 (Matanya Marura) measuring 1.225 hectares (“the Suit Property”). Both the plaintiff and defendant claim ownership of this land. In the Originating Summons filed on 29/5/2017, the plaintiff claimed to have acquired the Suit Property by adverse possession and sought a declaration that the 1st defendant obtained the Suit Property through fraud or misrepresentation. He sought to have the 2nd defendant ordered to cancel the title issued to the 1st defendant and for him to be registered as the owner of the Suit Property. The 1st defendant denied the plaintiff’s claim in the replying affidavit which was filed in court on 27/7/2017.
2. The plaintiff filed a supporting affidavit in support of the originating summons. In his testimony, he stated that he had been in occupation of the Suit Property since 21/4/1989, which was before the land buying company known as Matanya Estate Company Limited (Matanya Company) bought the land from the Government of Kenya. That after Matanya Company purchased the land, he bought shares and the Suit Property was assigned plot no. 2234. He stated that the plot number was later changed to plot no. 618. Further, that after the Directors of Matanya Company issued the clearance certificate dated 16/10/2014 to him, he visited the Laikipia Land Registry on 22/10/2014 where he paid transfer and stamp duty fees for the Suit Property. However, the Land Registrar discovered that a title over



the Suit Property had already been issued to the 1st defendant on 16/6/1994. He stated that the Land Registrar wrote the letters dated 30/6/2011, 14/1/2014 and 17/3/2014 to the 1st defendant requiring her to surrender her title over the Suit Property but she failed to do so.

3. On being cross-examined by the 1st defendant's advocate, the Plaintiff admitted that the Suit Property belonged to his late brother-in-law, Mwangi Ngatia Kamutu, who had married his late sister. He hastened to add that he takes care of his late brother in law's children and was representing them in this matter. He was emphatic that he had authority to pursue recovery of the Suit Property vide the court order issued in Nanyuki Senior Resident Magistrate Court Case No. 15 of 2005.
4. The plaintiff stated that he balloted for the land with his brother in law in 1980 and that he took out the clearance certificate in his name. He denied knowing that a person was required to return their ballot to Matanya Company if the corresponding piece of land was already occupied. He stated that he lived in Kiamariga while his family lived in Matanya. He conceded that the 1st defendant had been living on the Suit Property from 1980 but clarified that the 1st defendant owned another piece of land where she currently lives. On cross examination by the 2nd defendant's advocate, he confirmed that he did not report fraud against the defendants to the police but came to court instead.
5. The plaintiff produced ballot numbers 2234 and 618 pertaining to the Suit Property. He also produced copies of the letters dated 30/6/2011, 14/1/2014 and 17/3/2014 vide which the 2nd defendant summoned the 1st defendant to its office to discuss the title over the Suit property. He produced a copy of the clearance certificate dated 16/10/14 issued by the Directors of Matanya Company in his name. It would seem that the certificate was issued pursuant to the court order dated 12/2/2007 which the Plaintiff construed as empowering him to act on behalf of the beneficiaries of the late Mwangi Ngatia Kamutu in pursuing recovery of the Suit Property.
6. The 1st defendant gave evidence. She averred that she was the registered proprietor of the Suit Property. She claimed that she acquired the land through the purchase of shares from Matanya Company in 1980 for Kshs. 640/=. That after that, the Directors of the Matanya Company issued her a clearance certificate which she used to procure a title deed from the Land Registrar, Laikipia County. She stated that at that time the land in Matanya had not been demarcated and assigned plot numbers and explained that the Directors of Matanya Company showed her the plot on the ground. She stated that she took possession immediately, built a house for her son and started cultivating hay for sale on the land.
7. She stated that around 1984 when the company started subdividing the land and giving plots numbers, her plot became number 2234. She added that members started to ballot for the plots. According to her, the members who had already taken possession did not ballot and the ones who balloted were required to visit the plot designated by their ballot and if it was occupied, they were to ballot for a different plot.
8. She stated that the late Mwangi Ngatia Kamutu balloted but failed to ascertain whether his designated plot was occupied, which is why his name was entered in the register of members of Matanya Company against the Suit Property. She maintained that the clearance certificate produced by the plaintiff was not authentic firstly, because by the time it was issued on 16/10/14, she was already registered as the proprietor of the Suit Property and secondly, that that company had been wound up.
9. She stated that the plaintiff lodged Lamuria Land Disputes Tribunal Case No. 7 of 2001 and the Tribunal's award was to the effect that the land the plaintiff was claiming was different from hers and the plaintiff was directed to engage a surveyor to show him his land.



10. The 1st defendant stated that she visited the Land Registry, Laikipia County on 16/4/14 in compliance with the summons dated 17/3/14 whereby her title was scrutinised and the Plaintiff's claim was found to be baseless. She denied being asked to surrender her title over the suit land. She reiterated that she had been in occupation of the Suit Property for over 30 years.
11. The 1st defendant produced copies of the official search dated 22/4/2014, the title deed over the Suit Property issued on 16/6/1994, the ballot dated 25/4/1980 on the notepaper of Matanya Estate Ltd and the proceedings and determination of the Lamuria Land Disputes Tribunal which indicates that the matter before the tribunal was finalised on 7/12/2004.
12. On being cross-examined by the plaintiff, the 1st defendant denied receiving the three notices from the Land Registrar requiring her to surrender her title over the Suit Property. On cross examination by Ms. Kiarie, she stated that she bought the Suit Property from Matanya Company and that she was a shareholder of the company. She explained that she entered the land in 1980 after it was shown to her by wazees and after a private survey. She added that the title over the Suit Property was issued to her in 1994 and that she collected it from the District Officer. On being questioned regarding the dispute before the Lamuria Land Disputes Tribunal, she admitted that she did not survey the land as the Tribunal directed since she had previously surveyed it.
13. The 2nd and 3rd defendants opposed the plaintiff's claim through the affidavit of Pamela Muthoni Mutegi, Land Registrar, sworn on 25/9/2017. Ms. Mutegi testified that according to the records held by the 2nd Defendant, the Suit Property was registered in the name of the 1st Defendant following a transfer from the Government of Kenya. She stated that the transfer was done validly and that due process was followed. She stated that the Plaintiff's name did not appear in the members' register for Matanya Company. On being cross examined by the Plaintiff, she denied having seen the letters dated 30/06/2011 and 17/03/2014 which the Land Registrar wrote to the 1st defendant.
14. When the court requested the Land Registrar to explain the process for issuing titles to members of Matanya Company, she informed the court that after subdividing its land, Matanya Company prepared and submitted to the Lands office a register of beneficiaries with their respective land parcel numbers. The Directors of the Company would then issue clearance certificates to shareholders and forward the list of those who had been issued with clearance certificates to the Land Registrar for purposes of processing titles. She conceded that in this case, the Lands office did not receive the list from the Directors of Matanya Company. She also admitted that the 1st defendant's name was not in the members' register which she produced and confirmed that the name indicated against parcel no. 618, which is the Suit Property, was that of Mwangi Ngatia Kamutu.
15. Parties filed submissions which the court considered. The plaintiff's submissions basically summarised his case and gave an account of what initially happened in these proceedings. He maintained that the Suit Property did not belong to the 1st Defendant but belonged to the late Mwangi Ngatia Kamutu who had married his late sister. He was emphatic that according to the documents which he tendered in evidence, the suit land belonged to him.
16. The 1st defendant raised five issues for determination in her submissions which were filed in court on 22/4/2022. These can be condensed into the locus standi of the Plaintiff; whether the plaintiff's claim is barred by the *Limitation of Actions Act*; and whether the plaintiff proved fraud on the part of the 1st and 2nd defendants. On the issue of locus standi, it was submitted that the court order in Nanyuki Land Case No. 15 of 2005 confirms that Mwangi Ngatia Kamutu died before this suit was instituted yet no grant of letters of administration was produced or alluded to. The 1st defendant contended that the court order in Nanyuki Land Case No. 15 of 2005 does not amount to a grant and the suit therefore



is incompetent because the plaintiff did not obtain letters of administration with respect of the estate of the late Mwangi Ngatia Kamutu.

17. The 1st defendant relied on the decision in *Troustick Union International & another v Mrs. Jane Mbeyu & another* Civil Appeal no. 145 of 1990 which was quoted in *Bannes Muema v Francis Masuni Kyangungu* (2019) eKLR. She submitted that these decisions reinforce section 82(a) of the *Law of Succession Act*. The 1st defendant also cited other decisions on the issue of locus standi and urged the court to strike out the suit and award her costs.
18. The 1st defendant submitted that the plaintiff's claim was time-barred by section 7 of the *Limitation of Actions Act* because it was filed 37 years after the fact, yet the plaintiff knew that the 1st defendant had occupied the suit property from 1980; in addition, that it was brought more than 12 years after registration of the Suit Property in the 1st defendant's name.
19. The 1st defendant submitted that despite the fact that fraud has to be specifically pleaded and proved, the plaintiff did not plead particulars of fraud in the Originating Summons and that he also failed to prove that there was fraud in the registration of her title over the suit land. She relied on the decision in *Kuria Kiarie & 2 others v Sammy Magera* (2018) eKLR. The 1st defendant contended that she acquired absolute and indefeasible rights over the suit property under sections 27 and 28 of the *Registered Land Act* and sections 25 and 26 of the *Land Registration Act*.
20. Further, the 1st defendant submitted that the Plaintiff's pleadings are incompetent because he filed an Originating Summons instead of a plaint. She argued that that is not the manner prescribed by section 2 of the *Civil Procedure Act* and added that the plaintiff's claim is not contemplated by Order 37 of the *Civil Procedure Rules* thereby making the suit fatally defective.
21. Lastly, the 1st defendant argued that the clearance certificate which the plaintiff produced was invalid because the plaintiff was neither a shareholder nor member of Matanya Company. She contended that by 16/10/14, when that certificate was issued, the Suit Property had already been registered in her name.
22. In their submissions filed in court on 28/4/2022, the 2nd and 3rd defendants argued that the plaintiff was not the legal representative of the estate of his late brother-in-law. They adverted to the fact that the Plaintiff claimed that his authority to bring this suit on behalf of his dead brother in law was premised on the court order issued in Nanyuki Senior Resident Magistrate's Court on 12/2/2007.
23. The 2nd and 3rd defendants raised one main issue for determination, which is whether the title in favour of the 1st defendant was obtained through fraud and false misrepresentation to the Land Registrar. The Defendants relied on section 24(a) of the *Land Registration Act* and the decision in *Dr Joseph Arap Ngok v Justice Moiwo Ole Keiwua & 5 others* Nairobi Civil Appeal No 60 of 1997 in support of the submission that the 1st defendant is the absolute owner of the suit property unless her title is impeached under the circumstances set out in section 26(1) of the *Land Registration Act*.
24. The 2nd and 3rd defendants submitted that the plaintiff failed to prove fraud and misrepresentation to the required standard. They relied on the decision in *Alice Chemutai Too v Nickson Kipkurui Korir & 2 others* [2015] eKLR. They contended that the Plaintiff's suit was brought as an afterthought since he knew that the 1st Defendant had been on the Suit Property for over 30 years. They argued that the Plaintiff's claim was statute barred by Sections 7 and 26 of the *Limitation of Actions Act* for having been lodged more than 12 years after the plaintiff discovered in 2001 that the 1st defendant had a title over the land.



25. The main issues for determination in this suit are whether the plaintiff's claim to the suit property through adverse possession has merit; whether the title over the suit property was issued to the 1st defendant procedurally; whether the plaintiff's claim is statute-barred; and lastly whether this court should grant the orders sought by the plaintiff.
26. The court notes that the issue of the plaintiff's capacity to bring this suit was never raised by the defendants in their pleadings. Ideally, this point should have been raised at the preliminary stage of the suit but it was only taken up in submissions. It is noteworthy that the Plaintiff appeared in person and conducted the trial himself without the benefit of legal counsel. It would seem that armed with the court order issued on 12/2/2007, he filed this suit claiming the suit property on behalf of the children of his late sister and his late brother-in-law. This was based on his belief that the court order authorised him to represent his late brother's children in the land dispute.
27. It is not clear why none of the defendants who had the benefit of legal counsel failed to notice this fact. It may well be that they chose not to bring it up during the preliminary stages of the case and instead waited until they got to the submissions stage. In the court's view, raising this issue at the submissions stage was an afterthought for it ought to have been brought up early in the proceedings so that the plaintiff would have been afforded an opportunity to seek legal advice and tackle the issue.
28. The court order which the plaintiff relied on shows that he was substituted in Nanyuki SRMCCC No. 15 of 2005 by the Learned Acting Resident Magistrate in place of Mwangi Ngatia Kamutu pursuant to an application dated 23/8/2006. It may well be that the plaintiff had obtained limited letters of administration for the estate of Mwangi Kamutu in that suit, which formed the basis for his substitution by the court in the suit. The wider interest of justice will best be served if this court proceeds to determine the dispute on merit based on the evidence adduced and the documents tendered in evidence.
29. Turning to the issue of limitation, section 7 of the *Limitation of Actions Act* bars the commencement of an action to recover land 12 years after the date the action accrued. In cases of fraud or mistake, the 12-year period is extended by section 26 of the Act in that time begins to run from the date of discovery of the fraud or mistake. It is apparent from the copy of the green card tendered in evidence that there was a restriction registered against the Suit Property on 25/8/2011 pending the determination of Provincial Land Dispute Tribunal Case No. 57/2007. According to the Plaintiff's testimony, that matter stopped when the Tribunal was disbanded. The Plaintiff registered another restriction dated 8/3/1996 barring dealings with the Suit Property because he claimed ownership.
30. From the evidence adduced, it is evident that the plaintiff was a party to the three suits against the 1st defendant over the Suit Property, which are: Lamuria Land Disputes Tribunal Case No. 7 of 2001, Nanyuki Senior Resident Magistrate Court Case No. 15 of 2005 and Provincial Land Dispute Tribunal Case No. 57 of 2007. Against the background of these suits, the 1st Defendant's plea for limitation fails.
31. During the pendency of Nanyuki SRMCCC No. 15 of 2005, Mwangi Ngatia Kamutu, who was the Plaintiff died and was substituted by the plaintiff vide the order dated 12/2/2007. The instant case was commenced before the Environment and Land Court in Nyeri in 2017 and is grounded on the Plaintiff's clearance certificate from Matanya Estate Company Limited dated 16/10/2014 and his consequent payment of stamp duty and transfer fees for the Suit Property on 22/10/2014. He undertook these processes with a view to obtaining a title deed over the suit land.
32. Regarding the ownership of the Suit Property, the 2nd and 3rd defendants maintained that the records held by the 2nd defendant confirmed that the 1st defendant was the registered owner of the suit land



- and that the transfer of the Suit Property from the Government of Kenya to the 1st defendant was done properly and that due process was followed. While there is no dispute as to whose name the Suit Property is registered under, when the court asked the Land Registrar Ms. Pamela Mutegi to explain the process followed in the issuance of titles to shareholders for plots in Matanya Company, she conceded that the 2nd defendant did not have a list of the members who had been issued clearance certificates by the Directors of Matanya Company. She also admitted that the 1st defendant's name was not in the members' register for Matanya Company which she produced and confirmed that the name indicated against the Suit Property was that of the plaintiff's brother-in-law, the late Mwangi Ngatia Kamutu.
33. The 1st defendant did not call a witness from Matanya Estates Limited to corroborate her assertion that for the members who had already taken possession of plots they did not have to ballot and that those who balloted were required to visit the plot designated by their ballot and if it was occupied they were to ballot for a different plot. She did not tender evidence of when Matanya Company was wound up.
 34. Neither the 1st defendant nor the 2nd defendant explained the process that led to the 1st defendant being registered as the owner of the Suit Property. The 1st defendant produced a ballot dated 25/4/1980 issued in her name by Matanya Company. However, she did not produce the clearance certificate from Matanya Company or a member register containing her name, which according to the evidence of the Land Registrar would have been the basis upon which the Lands office issued her title. The circumstances under which the 2nd defendant issued a title over the suit property to the 1st defendant are not clear and were not explained during the trial. The Land Registrar stated that she did not see the letters dated 30/6/2011, 14/1/2014 and 17/3/2014 which her office wrote to the 1st Defendant summoning her to appear before the Registrar over the Suit Property. This shows that there may have been tampering with the land records.
 35. The court notes that the ballot which the 1st defendant tendered in evidence does not bear the plot number unlike the ballot produced by the plaintiff which bears number 2234 and 618. These are the plot numbers indicated in the clearance certificates dated 10/02/2001 and 16/10/2014 issued by Matanya Company to Mwangi Ngatia Kamutu and the plaintiff respectively.
 36. The 1st defendant's name was not in the Matanya Estate Company Limited members' register. The name noted in the register against the Suit Property is that of Mwangi Ngatia Kamutu, which confirms that he was a member and shareholder of Matanya Estate Company Limited.
 37. Looking at the proceedings of the Lamuria Land Tribunal which the 1st defendant produced, it is apparent that the 1st defendant informed the Tribunal that the Suit Property was sold to her by the Chief of Tigithi Location who had died. She also stated to the Tribunal that she bought the land in 1980 and balloted in 1983 and that the ballot got burnt in a house blaze. She claimed that the DC Mr. Saleh ordered the surveyor to show her the land which was number 2234 on 31/08/90. There are inconsistencies in how the plaintiff came to be in possession of the suit land and how she got registered as proprietor of the land.
 38. The defendants common contention was that upon the registration of the Suit Property in the 1st defendant's name, she acquired absolute and indefeasible rights under Sections 27 and 28 of the *Registered Lands Act* and Sections 25 and 26 of the *Land Registration Act*. These rights can be impeached under the circumstances set out in section 26 of the *Land Registration Act*, section 80 (1) of the *Land Registration Act* empowers the court to order rectification of the register if it is satisfied that the registration was done by fraud or mistake.



39. The Plaintiff has demonstrated that the title over the Suit Property was issued to the 1st defendant unprocedurally, which is one of the grounds for challenging a title under section 26 of the [Land Registration Act](#).
40. The late Mwangi Ngatia Kamutu sued the 1st defendant vide Case no. 7 of 2001 and the case was heard by Lamuria Land Disputes Tribunal. His claim was that he was the original shareholder of ballot no. 2234 (old) no. 618 (new) and that he had been issued a clearance certificate by the District Officer of Lamuria Division on 10/01/2001. However, when he went to the Lands office to undertake the registration of the title over the suit land, he found that the land was already registered in the name of the 1st defendant. In its award, the Tribunal ordered both parties to get a government surveyor to show them their actual land on the ground because it found that they were fighting over two different parcels of land. It is not clear how the Tribunal arrived at the conclusion that both parties were claiming different parcels of land on the ground because by then the land was already surveyed and had land reference numbers.
41. Before this suit was transferred from Nyeri to Nanyuki, the Judge in Nyeri directed that the Originating Summons be taken as a plaint and the replying affidavits by the defendants were to be taken as their defences in the matter. This was done with the consent of the parties following the suggestion by one of the Defendant's counsel. It is disingenuous for the same parties to turn around and urge the court to strike out the Plaintiff's suit at this late stage case for the same reason.
42. Apart from claiming the Suit Property by adverse possession in the Originating Summons, the Plaintiff did not mention that claim in the other documents which he filed in court and when he gave evidence. He did not address this issue in his submissions and failed to prove this claim.
43. The 1st defendant contended that the plaintiff filed incompetent pleadings. As a layperson acting in person, the Plaintiff may not have understood the procedure for filing pleadings under the [Civil Procedure Act](#) and [Civil Procedure Rules](#). Although ignorance is not a defence before the law, in the interest of justice, this court is inclined to defer to article 159 (2)(d) of the [Constitution](#) of Kenya which directs courts to administer justice without undue regard to procedural technicalities.
44. Weighing the evidence of the plaintiff against that of the defendants the court is satisfied that the plaintiff has proved on a balance of probabilities that the Suit Property rightfully belonged to the late Mwangi Ngatia Kamutu and not the 1st defendant. The 2nd defendant unprocedurally registered the suit property in the 1st defendant's name.
45. An order is issued for the 2nd defendant to cancel the title held by the 1st defendant over the suit land. The plaintiff will be registered as the proprietor of the suit land and will hold the land in trust for the beneficiaries of the Estate of the late Mwangi Ngatia Kamutu. The plaintiff is awarded the costs of the suit to be borne by the 1st defendant.

DELIVERED AT NANYUKI THIS 6TH DAY OF JUNE 2022.

K. BOR

JUDGE

In the presence of: -

Mr. Joseph Mwangi Mugumo- Plaintiff

Mr. Muchiri Mwangi for the 1st Defendant

Mr. Jesse Mkok for the 2nd and 3rd Defendants



Ms. Stella Gakii- Court Assistant

