



**Muriuki v Njeru (Environment & Land Case 3 of 2021)
[2022] KEELC 14880 (KLR) (1 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14880 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 3 OF 2021**

AK BOR, J

NOVEMBER 1, 2022

BETWEEN

JOHN MURAGE MURIUKI PLAINTIFF

AND

ANN WANGU NJERU DEFENDANT

JUDGMENT

1. Through the plaint filed on December 19, 2013, the Plaintiff who is a resident of Laikipia County, averred that he was the absolute proprietor of the land known as Nanyuki/South Timau Block 1/600 (Mia Moja) (“the Suit Property”) and that on or about 2002 the Defendant began trespassing upon the Suit Property claiming a portion of it and erected temporary structures on his land. That in November 2013, she attempted to subdivide the Suit Property with the intention of disposing of portions of it to third parties.
2. The Plaintiff sought a permanent injunction to restrain the Defendant and her agents from dealing with the Suit Property. He also sought to have the Defendant, her family members or agents compelled to vacate the Suit Property, general damages for trespass and costs.
3. The Defendant filed her initial defence on March 10, 2014 and the Amended Defence and Counterclaim on July 31, 2014. She denied the Plaintiff’s claim and averred that half of the Suit Property was legally hers, having been apportioned to her by her late father. She averred that there was a pending before the Nanyuki Chief Magistrate’s Court between her and the Plaintiff’s father over the Suit Property and Miscellaneous Application No 266 of 2002 before the Nyeri High Court, both of which the Plaintiff was aware of and that the Plaintiff was abusing the court process in a bid to deny her justice.
4. The Defendant pleaded that in Nanyuki SRMC Land Case No 8 of 2002 the Learned Magistrate adopted the award of the Land Disputes Tribunal and directed that the Suit Property be divided



into two equal portions between herself and her brother Muriuki Njeru. The decree was issued on 19/9/2002. The Tribunal also decided that the Defendant would remain on the portion of the Suit Property which she had developed and buried her daughter.

5. The Defendant averred that the Plaintiff had trespassed and encroached upon her portion of the Suit Property measuring 3.98 hectares (ha) and ploughed it to the extent that the Defendant could not access her pit latrine. She added that the Plaintiff was in the process of evicting her from the Suit Property with the intention of selling her portion to a third party. The Defendant counterclaimed for a permanent injunction to restrain the Plaintiff and his agents from dealing with her portion of the Suit Property measuring 3.98 ha.
6. This case was heard by Lady Justice Lucy Waitthaka on May 22, 2018 and on 3/10/2018. John Muriuki Njeru, a prison warder, gave evidence. He is the Defendant's nephew. He stated that he purchased the Suit Property from his father in 1999 for Kshs. 400,000/= vide a sale agreement recorded before a lawyer and that his brother witnessed the sale transaction. He produced copies of the sale agreement dated 15/5/1999 together with title deed issued to him on 7/5/2002 during the trial.
7. He testified that according to the records held by the Land Registrar, the land was transferred from the Government of Kenya to his father, Muriuki Njeru in 1992. His father transferred the land to him but on 23/8/2002 the Defendant, who is his aunt, registered a caution against the Suit Property claiming beneficial interest. He produced an extract of the title. He was emphatic that his father purchased the Suit Property and that it was not family land. He confirmed that the Defendant had been in occupation since 1990 and had refused to move out of the land. He urged the court to issue orders for her eviction and demolition of the temporary structures which the Defendant had erected on the Suit Property.
8. He denied that the Defendant was given the Suit Property by her father but confirmed that he was not a party to the suit in Nanyuki. He contended that the Defendant had not stated in the counterclaim that he obtained his title through fraud. He argued that the Tribunal lacked jurisdiction to order the subdivision of the Suit Property into two.
9. On cross-examination, the Plaintiff admitted that while his father was alive there was a suit in Nanyuki between his father and the Defendant. He knew that the Tribunal decided that the Suit Property was to be divided into two and that the Tribunal's decision was adopted by the Senior Resident Magistrate Court and a decree was issued on 19/9/2002. He did not know when the claim before the Tribunal was commenced but by 7/7/2002 the Tribunal had made the decision for the Suit Property to be subdivided into two. He maintained that he purchased the Suit Property in 1999 even though the title was issued to him in 2002. He was not aware that his grandfather was a shareholder of Mia Moja Company or that he was allotted the Suit Property by that company. He was not aware that his father took the title for his grandfather's land from the company after his grandfather died.
10. He did not challenge the decision by the Senior Resident Magistrate Court to subdivide the Suit Property between his father and the Defendant. He had seen documents signed by the Executive Officer of the Nanyuki Chief Magistrates' Court transferring parcel number 1048 to the Defendant. However, he claimed that he was not aware of those documents and had never received any letter to that effect.
11. He confirmed that the Defendant was already living on the Suit Property by the time the Tribunal made its decision. Further, that the Defendant's daughter died in 1998 and was buried on the portion of the Suit Property which she occupies. Neither he nor his father objected to his cousin being buried on the Suit Property. He did not produce the Land Control Board (LCB) consent in relation to the transfer of the Suit Property to him.



12. On re- examination he denied being aware of the suit between his father and the Defendant and reiterated that there was no restriction registered against the Suit Property when his father sold and transferred it to him. He did not know the history of the Suit Property save that he had purchased the land from his father.
13. The Defendant called Gladys Muthoni Muthiora, the Executive Assistant of Nanyuki Law Courts who produced the court file in respect of Nanyuki SRMCC No 8 of 2002. She confirmed that the Defendant in this case was the Plaintiff in that suit and that the Plaintiff here was not a party to that suit. She also confirmed that a decree was issued in that suit on 19/9/2002 to the effect that Nanyuki/ South Timau Block 1/600 was to be divided into two equal parts and the Defendant was to remain on the part she had developed, and in default, the Executive Officer was directed to sign all the necessary documents to effect the transfer.
14. She stated that the Executive Officer applied for LCB consent on 1/10/2012 and a letter of consent was granted on October 13, 2012 after which the Executive Officer signed a transfer dated 2/10/2012. Further, that there was no order in the file vacating that decree.
15. On being questioned about the outcome of Nyeri Miscellaneous Application No 266 of 2002, she told the court that she did not know whether the decree was quashed in that suit, but according to the records, the stay granted in Miscellaneous Application No 266 of 2002 was vacated on April 8, 2003 and that case was dismissed for want of prosecution.
16. The Defendant gave evidence. She knew the Plaintiff, he is the son of her brother Muriuki Njeru. Muriuki Njeru was the Defendant in Nanyuki CMC Land Case No 8 of 2002 in which the court adopted the favourable award which the Tribunal gave her on 7/7/2002. After the court adopted the Tribunal's award, she attended the Daiga LCB meeting in which approval for the subdivision of the Suit Property into two equal portions was given. On obtaining the LCB consent, she engaged the District Surveyor, Laikipia East District to subdivide the Suit Property as evidenced by the mutation form which she tendered in evidence.
17. She averred that between March and April 2014, the Plaintiff trespassed upon her portion of the Suit Property and ploughed it to the extent that she could not access the pit latrine. She claimed that the Plaintiff was in the process of evicting her from the Suit Property so that he could sell her portion of the land without her consent.
18. She explained that she removed the caution she had previously registered against the Suit Property so that her portion measuring 3.98 ha could be registered in her name but the registration was not done owing to the suits which the Plaintiff and his father filed over the Suit Property. Her attempts to register a caution with the Laikipia Land Registrar proved futile.
19. She told the court that the Suit Property initially belonged to her father as a shareholder of Mia Moja Society through which he was allotted the land. She stated that the matter before the Tribunal was going on at the time the Suit Property was transferred to the Plaintiff. She claimed that she had been in occupation of the Suit Property since 1990 and that the Plaintiff and his family took possession in 1996.
20. The witnesses testified before the Environment and Land Court (ELC) in Nyeri and the parties closed their respective cases. Since the Suit Property is situated in Laikipia County, the case was transferred to the Nanyuki NLC for determination. Parties filed their submissions which the court considered.
21. The Plaintiff submitted that the Defendant was not entitled to have the land register rectified in her favour by the Land Registrar pursuant to Section 79 of the *Land Registration Act*. He contended that



his father, John Muriuki Njeru, was not bound by the outcome of Nanyuki SRMC Land Case No 8 of 2002 because his consent was mandatory in case of rectification of his title deed and that the Defendant had not proven fraud or mistake as required by Section 80(2) of the [Land Registration Act](#).

22. He submitted that the Defendant trespassed on the Suit Property in 2010 and erected a pit latrine and that on 31/10/2012 she engaged the District Surveyor, Laikipia East, to prepare a subdivision plan despite not being the registered owner of the land contrary to Section 79(1)(2)(3)(4) of the [Land Registration Act](#). Further, that the Defendant's subdivision of the land with the intention of selling the portions to unsuspecting persons contravened his rights to property under Article 40 of the [Constitution](#).
23. The Defendant submitted that the Suit Property was owned by her late father who allocated it to her and her brother Muriuki Njeru in two equal portions and that she was therefore a beneficial owner since she had lived on the half portion of the suit land which she inherited since 1988. Further, that the Land Tribunal based its decision for the award in her favour on the fact that the Suit Property was ancestral land and the Defendant had been allocated half of it. The Defendant submitted that the Plaintiff and other family members were aware of the allocation, and that this is buttressed by the fact that she was allowed to bury her daughter on the land which was proof that she was the owner and had occupied the land for a long time.
24. She submitted that it was not in dispute that the Suit Property had been the subject matter of disputes in different courts as well as the Laikipia Land Disputes Tribunal. That the Tribunal's award in the dispute pitting her against her brother was adopted in Nanyuki SRMCC No 8 of 2002 and orders for enforcement were issued on 19/9/2002 by Hon. E.G. Mbaya, Magistrate to the effect that the Suit Property be subdivided.
25. Further, that in Nyeri High Court Misc. Appl. No 266 of 2002 the Plaintiff sought leave to apply for judicial review orders to quash the decision made in Nanyuki SRMCC No 8 of 2002. He was granted leave and was required to apply for judicial review orders within 21 days as Nanyuki SRMCC No 8 of 2002 was stayed. Subsequently, Honourable Justice J.V.O. Juma heard Nyeri High Court Misc. Appl. No 266 of 2002 and on April 8, 2003 he stood over the application generally and ordered that the stay orders granted on October 16, 2002 would be vacated. The Defendant argued that this confirms that the only valid orders in place are those issued in Nanyuki SRMCC No 8 of 2002.
26. As to whether the parties are in occupation of their respective portions of the Suit Property, the Defendant submitted that she is a frail woman aged 80 years and in occupation of her portion as an owner and even buried her daughter on that land. Further, that she had developed the Suit Property and had lived there for a long time and wished to be left to live her sunset years peacefully. She added that she had no desire to trespass on others land but that the Plaintiff has not been civil having trespassed on her portion, dug trenches, demolished her pit latrine at one point and was showing people her land for sale.
27. Finally, it was submitted that there was no valid sale agreement between the Plaintiff and Muriuki Njeru as the Plaintiff claimed. The Defendant added that there was no evidence of the sale and there were no receipts produced. Additionally, that there is no evidence that consideration was paid despite the purported agreement being done before an advocate. It was further submitted that there was no LCB consent and there were no transfer forms produced before the court. Further, neither the witnesses to the agreement nor the advocate who drew it were called to testify. It was submitted that it is suspicious for a father to sell ancestral land to his son and the court was invited to take judicial notice of the fact that this seldom happens in the African set-up.



28. The court has considered the pleadings, testimony and evidence tendered by the parties. The dispute in this suit is over ownership of the Suit Property. The record of the proceedings before the Laikipia Land Disputes Tribunal reveals that the Defendant's father purchased the Suit Property around 1968 through shares in Mia Moja Society. He died in 1978 leaving behind five children. After hearing the evidence of the parties, the Tribunal found that after the death of their father, Muriuki Njeru took control of the Suit Property and changed the title to his own name under the authority of the clan with the help of the then Secretary of Mia Moja Society.
29. The Tribunal noted that that process was done unprocedurally without the authority of the Directors of Mia Moja Society and the three sisters were not informed. It also found that the Plaintiff's grandfather had asked the Plaintiff's father to take care of the Defendant who was unmarried hence he settled her on the Suit Property around 1990 where she had lived for 13 years, developed it and buried her daughter. They found that the Plaintiff's father changed his mind and instead chose to relocate the Defendant to the Pesi land which led to the dispute before the Tribunal.
30. Based on these findings, the Tribunal arrived at the determination that Muriuki Njeru and the Defendant should subdivide the Suit Property equally with the Defendant retaining the portion which she had occupied and buried her daughter on.
31. The Defendant took the matter to the Nanyuki Senior Resident Magistrate's Court in Land Case No 8 of 2002 where the Tribunal's award was adopted by Hon E.G. Mbaya Resident Magistrate on August 7, 2002. A decree to that effect was issued on 19/9/2002. The Plaintiff lodged Nyeri Miscellaneous Application No 266 of 2002 seeking judicial review through an order of certiorari to quash the decision made in Nanyuki SRMC Land Case No 8 of 2002. Leave was granted but the Plaintiff failed to prosecute the suit and it was stood over generally on April 8, 2003. The order for stay issued on October 16, 2002 was vacated by Justice JVO Juma. There is a dismissal order on the court record signed by Lady Justice Kasango on October 21, 2007 dismissing the matter under Order XVI Rule 6 of the Civil Procedure Rules because no step had been taken by either party since 2003.
32. The Defendant had registered a caution against the Suit Property on 23/8/2002 claiming beneficial interest. She began the process of subdividing the Suit Property in line with the Tribunal's award and the court decree. She produced an official search certificate dated September 26, 2012 showing that the Suit Property was registered in the Plaintiff's name with a pending application dated April 12, 2012 indicating that the Suit Property was to be subdivided between Murage Muriuki and Anne Wangu as per the court's ruling. She produced a letter from the District Land Surveyor dated August 7, 2012 showing plans to visit the Suit Property on August 30, 2012 to execute the court order. She also produced duly executed mutation and transfer forms and consent from the LCB.
33. The Plaintiff submitted that the Defendant was not entitled to have the land register rectified in her favour by the Land Registrar pursuant to Section 79 of the [Land Registration Act](#) and that his father, John Muriuki Njeru, was not bound by the outcome of Nanyuki SRMC Land Case No 8 of 2002 because his consent was mandatory for any rectification of his title deed. He also argued that the Defendant had not proven fraud or mistake as required by Section 80(2) of the [Land Registration Act](#). The [Land Registration Act](#) came into force in May 2012 and did not apply in 2002 when the Plaintiff was registered as proprietor of the Suit Property.
34. Under Section 3 of the [Land Disputes Tribunals Act](#) all civil cases involving a dispute as to trespass to land or a claim to occupy land were to be heard and determined by a Tribunal established under Section 4 of that Act. A decision of the Tribunal would be filed in the magistrate's court under Section 7 of that Act and the court would enter judgment in accordance with the Tribunal's decision and thereafter



- issue a decree which was enforceable under the *Civil Procedure Act*. A party aggrieved by the Tribunal's decision could appeal within 30 days of the decision to the Provincial Appeals Committee.
35. It is not in dispute that there was a determination made by the Laikipia Land Disputes Tribunal for the Suit Property to be subdivided into two for the benefit of the Defendant and the Plaintiff's father. The Plaintiff's father did not pursue any of the appeal mechanisms provided in the Land Disputes Tribunals Act. The Plaintiff's father was bound by the Tribunal's award because the Land Disputes Tribunals Act was in force at the time and the Tribunal's award was valid in law.
 36. The Defendant obtained judgment and a decree was drawn in tandem with the Tribunal's decision. When the Defendant commenced the process of enforcing that decree, the Plaintiff moved the High Court for an order of certiorari to quash the Magistrates court decision based on the Tribunal's award and obtained an order of stay on October 16, 2002. The order of stay was vacated on April 8, 2003. The Plaintiff failed to prosecute that suit and it was eventually dismissed for want of prosecution on October 21, 2007.
 37. The court disagrees with the Plaintiff's contention that he was not bound by the outcome of Nanyuki SRMCC Land Case No 8 of 2002. This is what prompted him to file the application for judicial review which he failed to prosecute and the judicial review matter was dismissed by the court. Judicial review was the proper channel for the Plaintiff to seek to have the decision of the Tribunal set aside and not these proceedings.
 38. The sale agreement which the Plaintiff tendered in evidence is dated May 15, 1999 stated that it was subject to consent being obtained from the Laikipia Land Control Board. It mentions how the consideration was to be paid. The Plaintiff did not prove that he paid the consideration stated in the agreement. He did not produce a copy of the transfer and evidence of payment of stamp duty on the transfer. The Plaintiff conceded at the hearing that the Defendant had been living on the land since 1990. He was aware of this fact at the time he claims to have entered into a sale agreement with his father to purchase the land.
 39. The court agrees with the Defendant's submission that there is no conclusive evidence that the Plaintiff's father sold and transferred the Suit Property to him. There was no proof that the consent from the LCB was granted for that sale. By the time that sale agreement was drawn in 1999 the Defendant was living on a portion of the Suit Property and had buried her daughter on the land the previous year without any objection from the Plaintiff's father. It is not believable that the Plaintiff did not know the history of the land and the Plaintiff's claim to the Suit Property.
 40. The Plaintiff's father caused the Suit Property to be transferred and registered in the Plaintiff's name at the time the Tribunal was dealing with the dispute, which must have been intended to defeat the Defendant's claim to the land.
 41. The court finds that the Plaintiff has failed to prove his case on a balance of probabilities.
 42. The court dismisses the Plaintiff's claim. A permanent injunction is issued to restrain the Plaintiff or his agents from entering upon, evicting, ploughing, selling, transferring, alienating, charging, wasting, damaging or otherwise interfering with the Defendant's possession of 3.98 hectares excised or to be excised from the land known as Nanyuki/South Timau Block I/600.
 43. The Defendant is awarded the costs of the suit and the counterclaim.

DELIVERED VIRTUALLY AT NANYUKI THIS 1ST DAY OF NOVEMBER 2022.

KOSSY BOR



JUDGE

In the presence of:

Ms. N. Simiyu holding brief for Mr. D. Ombongi for the Plaintiff

Ms. Anne Wangu, the Defendant appearing in person

Ms. Stella Gakii- Court Assistant

