



**Ndegwa v Burunji & 3 others (Environment & Land Case 31 of 2021)
[2022] KEELC 14898 (KLR) (2 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14898 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 31 OF 2021
AK BOR, J
NOVEMBER 2, 2022**

BETWEEN

SAMUEL NDEGWA PLAINTIFF

AND

PRISCILLA MUMBI BURUNJI 1ST DEFENDANT

SOLOMON MAGONDU 2ND DEFENDANT

PETER MAINA 3RD DEFENDANT

LAND REGISTRAR - LAIKIPIA 4TH DEFENDANT

JUDGMENT

1. This dispute relates to ownership of the parcel of land known as Laikipia/Tigithi/Matanya Block 3/1306 (Matanya Centre) measuring approximately 1.240 hectares (“the suit property”). The Plaintiff’s claim is that his father enjoyed quiet and peaceful possession of the suit property from 1981 until November 12, 2006 when he died. He contended that the land was fraudulently transferred to the 1st Defendant on August 27, 2009 without his father’s authority. The 1st Defendant transferred the suit property to Teresa Wanjiku Mwangi on 4/06/2010. Teresa Mwangi transferred the land to Titus Wamae Wachiuri on September 14, 2012. Titus Wachiuri transferred the land to the 2nd and 3rd Defendants.
2. The Plaintiff filed suit on 4/3/2015 seeking a declaration that the suit property belonged to the late Hannington Ndegwa and that the transfer of the land to the Defendants was illegal and void. He sought a permanent injunction to restrain the 2nd and 3rd Defendants from dealing with the suit property, nullification of the titles issued to the 2nd and 3rd Defendants by the Land Registrar, Laikipia and rectification of the land register. He The plaint was amended on March 9, 2015 and the names of Teresa Wanjiku Mwangi and Titus wamai Wachiuri were removed from the suit.



3. The 1st Defendant filed a defence in which she denied that she unlawfully caused herself to be registered as the owner of the suit property. She averred that she legally became the registered proprietor of the suit property after paying the requisite fees for the transfer of the suit land to her name. She averred that the land had exchanged hands and the failure to include all the persons who were involved in the transfer of the land in the suit made it effective and incompetent. She averred that she had never transacted any business with the 2nd and 3rd Defendants over the suit property.
4. The 2nd and 3rd Defendants claimed in their defence filed on 25/3/2015 that they purchased the suit property for Kshs. 730,000/= which they paid to the vendor. They pleaded that they were innocent purchasers for value without notice and that they conducted due diligence and confirmed that the land was registered in the name of Titus Wamae Wachiuri, the vendor.
5. This suit was initially filed in Nyeri as ELC Case No. 77 of 201. It was transferred to the Nanyuki ELC on 29/07/2021. The suit was heard on 15/6/2022. The Plaintiff gave evidence. He stated that he was the son of the late Hannington Ndegwa Kiriungi who was the registered owner of the suit property and had been in occupation of the suit land from 1981 until November 12, 2006 when he died. A title over the land was issued to him on June 12, 1998. He stated that there was a protracted legal dispute over the ownership of the suit land between the Plaintiff's father and the late Burunji Ndirangu, who was the 1st Defendant's husband. The late Burunji Ndirangu referred the dispute the Laikipia Land Disputes Tribunal (the Tribunal) which ruled in his favour. The tribunal's award was adopted as a judgment of the court in Nanyuki SRMCC No. 15 of 2004.
6. Being aggrieved by the award made by the Tribunal, Hannington Ndegwa lodged Rift Valley Appeals Committee Appeal No. 7 of 2005. The Appeals Committee ruled in his favour and declared him the lawful owner of the suit property. To the best of his knowledge, the late Burunji Ndirangu did not lodge an appeal in the High Court against the award given by the Rift Valley Appeals Committee.
7. He stated that when he obtained a copy of the green card from the Lands Registry he discovered that the 1st Defendant had unlawfully caused the land to be registered in her name and later sold the land. He stated that they had extensively developed the suit property by putting up structures and cultivating the land only for those structures to be demolished by the 1st Defendant.
8. He produced a copy of the title deed issued to his father on 12/06/1998 and the limited grant ad litem issued in Nakuru High Court Probate & Administration Cause No. 358 of 2014 on January 20, 2015. He also produced copies of the abstract of title showing the entries registered against the suit property, the proceedings in Nanyuki SRMC Land Case No. 15 of 2004 between Burunji Ndirangu and Hannington Ndegwa Kiriungi and the decree issued on 4/3/2005 directing the District Land Registrar, Laikipia to nullify the title over the suit property and issue another one to Burunji Ndirangu. He also produced a copy of the Memorandum of Appeal lodged in the Provincial Appeals Tribunal (Rift Valley) dated 15/3/2005 together with the proceedings before that Tribunal. The verdict passed by the Tribunal was that the suit property belonged to Hannington Ndegwa Kiriungi. The decision which set aside the award in Lamuria Land Dispute No. 15 of 2004 is dated 5/6/2007 and allowed each party aggrieved by that decision to appeal to the High Court within 60 days. He also produced a copy of the certificate of death showing that Hannington Ndegwa Kiriungi died on November 12, 2006 and the typed proceedings of the land Disputes Tribunal.
9. On cross examination, the Plaintiff stated that he sued the 1st Defendant because his father had the original title deed over the suit property and they were not asked to surrender that title before a title was issued to the 1st Defendant. He was taken through the entries on the register of the suit property. Entry No. 4 showed that the 1st Defendant was registered as proprietor of the suit property on August 27,



- 2009 pursuant to a court order. The 1st Defendant transferred the land and the subsequent transfers are reflected in entry numbers 6, 8 and 10.
10. He stated that his father appealed against the Tribunal's decision and the appeal was determined in his favour on June 15, 2007. He explained that his father was sick and could not attend court during the hearing of the appeal. He maintained that his father had a ballot for the suit property. He still has the original title over the suit property up to now and did not know how the 1st Defendant obtained another title over the same land. He pointed out that the court order was not registered against the suit property but instead the 1st Defendant was registered as the proprietor.
 11. In his opinion after the appeal was heard and determined in his father's favour by the Rift Valley Provincial Disputes Tribunal, the land should have gone back to his father since Burunji did not challenge the decision of the Appeals Tribunal.
 12. The 1st Defendant gave evidence. She had never transacted any business with the 2nd and 3rd Defendants who acquired the suit property from Titus Wamae Wachiuri who was not a party in these proceedings. She stated that she was not aware of the cases the Plaintiff quoted between Hannington Ndegwa and Burunji Ndirangu. She contended that the Plaintiff had failed to establish any reasonable cause of action in this case and that he had deliberately omitted the persons who were involved in the transfer of the suit property. The 1st Defendant did not produce any documents.
 13. On being cross-examined, she claimed that the suit property initially belonged to Burunji Ndirangu. She stated that when her husband was alive they would go to the land. After her husband died she went to the lands office to pay for the title. She stated that she gave the lands officers the land reference number as 1306. She claimed that they confirmed that the land was in the name of Burunji Ndirangu. She informed them that he died before taking out a title. She told the court that they asked her to provide evidence of his death and she presented the death certificate and her national identity card to show that she was the wife of Burunji. She told the court that she was sent to pay for the land and to photocopy both her identity card and the death certificate and on submitting these, she was told to wait until 3 p.m. when she was called in.
 14. She confirmed that she did not take out letters of administration for her late husband's estate. She knew that her husband had a case that he used to go for and he told her he had won the case and the people on the land were to move out in 3 days. She did not go for the case before the Tribunal but was there when the decision was made. She did not know that an appeal was lodged against the Tribunal's award in favour of her husband. She told the court that she had the ballot and clearance from Matanya Estates Company which were in her husband's name but the documents were not returned to her when the title was issued to her. She stated that she went to the land company and maintained that the government looks at records and that they did not make a mistake in the entries made against the suit land.
 15. She did not know how the 2nd and 3rd Defendant came to be registered as the owners of the suit property. She knew Teresa Wanjiku who she sold the land to for funds to educate her children. She did not produce any documents.
 16. Peter Maina, the 2nd Defendant gave evidence. He stated that he and the 3rd Defendant are the registered proprietors of the suit property. They purchased the land on August 29, 2014 from Titus Wamae Wachiuri who was the registered proprietor at the consideration of Kshs. 30,000/= which he claimed they fully paid. Prior to purchasing the suit land, they ascertained its owner and conducted a search at the lands registry which showed that the land did not have any encumbrances or inhibitions. He produced copy of the sale agreement dated August 29, 2018, a copy of the search dated August 27,



- 2014, copy of the title dated September 14, 2012 certifying that Titus Wamae Wachiuri was the owner of the land.
17. On cross-examination, the 2nd Defendant stated that he went to the ground and saw the suit property before he did the search. That he went to the ground four times and found a perimeter fence on the land. He confirmed that there was a temporary mabati structure constructed by the person who was sold him the land. He did not see the Chief when he was buying the land and did not talk to the neighbours. He went to the lands office to ascertain if there were any encumbrances. He stated that the structure on the land had someone who was taking care of the land. The person had left by the time he bought the land. He claimed that they went to the normal Land Control Board (LCB). He stated that he bought the suit property for Kshs. 730,000/= which he paid through a bankers' cheque. He told the court that he gave his advocate the documents required for this case. He stated that he followed due process and that he paid stamp duty. He added that he sub-contracted someone who paid and that the title would not have come out if they had not paid the stamp duty.
 18. He maintained that apart from Titus there was nobody else on the land. On re-examination he told his advocate that he had given him the documents relating to the LCB.
 19. On conclusion of the hearing, the court directed parties to file their written submissions. The court has considered the submissions which the parties filed. The Plaintiff submitted that the 1st Defendant was not a party in the dispute between her husband and the Plaintiff's father over the suit land. That she did not seek to be substituted in the District Disputes Tribunal or the magistrates court. The Plaintiff argued that 1st Defendant could not enforce a decree in which she was not a party. He contended that the decree issued by the Nanyuki Magistrates Court was never executed. He added that the award of the Land Disputes Tribunal which formed the basis for the decree was set aside by the Provincial Appeals Committee and the land therefore remained his father's property.
 20. He submitted that the change of ownership of the suit property from the Plaintiff's father to the 1st Defendant was effected on August 27, 2009 yet Hannington Ndegwa Kiriungi died on November 12, 2006. He pointed out that there was no consent from the LCB and that the old title which his father held should have been surrendered. The Plaintiff contended that the 1st Defendant was unable to prove how she obtained title to the suit land and that showed that she must have committed fraud. He relied on *Martha Wambui Thurura & another v Henry Gitahi Thurura & 3 others* [2021] eKLR where the court drew the inference of fraud from the lack of explanation on how the transfer was signed post humously.
 21. The Plaintiff relied on Section 155 (2) of the repealed *Registered Land Act* which creates an offence where a person fraudulently issues or procures the making of a certificate over any registration or alteration of the register.
 22. The Plaintiff denied that the 2nd and 3rd Defendants were innocent purchasers for value. He submitted that his father took possession of the suit property from 1981 up to the time of his death and that he had fenced the land and built a house on it. Despite those being demolished by the 1st Defendant, the remains of the homestead could be seen and the 2nd and 3rd Defendants should have inquired about the history of the suit property from the neighbours who would have informed them about the dispute.
 23. He maintained that the 1st Defendant did not have a good title which she could pass to the 2nd and 3rd Defendants because she had obtained the title by committing a criminal offence. According to the Plaintiff, the 2nd and 3rd Defendant ought to seek a refund of the purchase money they paid. The Plaintiff relied on Section 23 of the *Sale of Goods Act* on the issue that a buyer of goods sold by a person



- who is not the owner acquires no better title to the goods than the seller had. They urged that this was upheld in *Daniel Kiprugut Maiywa v Rebecca Chepkurgat Maina* [2019] eKLR.
24. The 1st Defendant submitted that her late husband Burunji was a member of Matanya Company Limited where he bought shares equivalent to 1.24 hectares of land. That he got ballot number 389 and new number 1306 which later became Laikipia/Tigithi/Matanya Block 3/1306 (Matanya Centre). She submitted that her husband was shown the land by the Chairman then of the company and that he had all the required papers, documents, receipts and the ballot cards which he took on the day of balloting. She stated that her husband went to work in Nairobi and after some time he came back and found that the land had been registered in the name of a stranger known as Hannington Ndegwa through the corruption of the lands' office in Nanyuki and the directors of Matanya Company Limited. She submitted that her husband sued Hannington Ndegwa vide Nanyuki SRMC Land Case No. 15 of 2004. The case was decided in favour of her husband but before the title could be nullified, Burunji Ndirangu died through unclear circumstances and the land was registered in her name on the strength of the decree dated 2/3/2005 and issued on 10/3/2005 in Nanyuki SRMC Land Case No. 2 of 2015. She contended that the Plaintiff's father was unlawfully registered as the owner of the land and the magistrates court at Nanyuki gave judgment in favour of her husband.
25. She contended that from 2009 to 2014 the suit property had exchanged hands more than 5 times and the Plaintiff had no legal basis to sue her 13 years since she was registered as the owner of the land. She maintained that there was no legal connection allowing the Plaintiff to sue her and that this suit should be dismissed. She contended that it was the Plaintiff's father who fraudulently got the directors of Matanya Estates Company to allocate him the same plot number 389 in 1983 yet it had already been allocated to her husband Burunji Ndirangu in 1969. She challenged the manner in which the amended plaint was drawn and contended that the Plaintiff's claim against her was time-barred under the *Limitation of Actions Act*. She contended that the plaint should have included the Attorney General as a party otherwise the suit was a nullity.
26. The issues for determination are: -
- a) Whether the title issued to Hannington Ndegwa is valid;
 - b) whether the 1st Defendant had a good title that she could pass to another person;
 - c) Whether the 2nd and 3rd Defendants are innocent purchasers for value without notice of any defect; and
 - d) Who should pay the costs of this suit.
27. The Plaintiff's claim is that his late father owned and never transferred the suit property and that the 1st Defendant did not acquire a good title over the land which she could lawfully have transferred to Teresa Wanjiku and the subsequent transferors who claim to have purchased the land. The 1st Defendant's case is that a title over the suit land was issued to her at the lands office on the strength of her late husband's ballot, clearance form, death certificate and copy of her identity card when she informed them that her husband died before collecting his title. She relied on the award made by the Land Disputes Tribunal which determined the ownership dispute in favour of her husband Burunji Ndirangu and directed that the Land Registrar was to nullify the title held by Hannington Ndegwa and issue another one to Burunji Ndirangu.
28. It is not in dispute that Burunji Ndirangu referred the dispute over the ownership of the suit property to the Laikipia Land Disputes Tribunal and the Tribunal determined the case in his favour. The award was presented to the Magistrates Court and judgment was entered on 2/3/2005 when R.N. Muriuki, Senior Resident Magistrate explained the right of appeal to Burunji Ndirangu and Hannington



- Ndegwa. Hannington Ndegwa lodged Rift valley Provincial Tribunal Appeal No. 7 of 2005 on 18/3/2005. The Appeals Committee heard the appeal and, in its verdict dated 5/6/2007, determined that the suit property belonged to Hannington Ndegwa Kariuki. By the time that determination was made Hannington Ndegwa had died on November 12, 2006. It would seem that his family did not take any steps in the matter.
29. The repealed *Land Disputes Tribunals Act* was enacted to limit the jurisdiction of magistrate's courts in certain cases relating to land and conferred that jurisdiction on the Land Disputes Tribunal. The Tribunal was empowered by Section 3 of the Act to adjudicate upon claims relating to division of, determination of boundaries, occupation of or trespass to land in the manner prescribed by Section 6 of that Act. Once the Tribunal reached a decision, its chairman was to cause it to be filed in the magistrate's court together with the documents proved before the Tribunal in accordance with Section 7. The court's peripheral role was to enter judgment in accordance with the award given by the Tribunal. Upon entry of judgment by the court, a decree would issue which was to be enforced in the manner prescribed under the *Civil Procedure Act*.
 30. A party aggrieved by the Tribunal's decision could lodge an appeal with the relevant Provincial Appeals Committee under Section 8 of that Act. That section set out the manner in which appeals were heard and decided. Section 8(8) stipulated that the decision of the Appeals Committee was final on any issue of fact and no appeal lay to the court. Either party could only appeal against the decision of the Appeals Committee to the High Court on points of law within sixty days under Section 8(9).
 31. Hannington Ndegwa lodged his appeal with the relevant Provincial Appeals Committee within the time stipulated in the Act. The Appeals Committee gave its decision which was final under Section 8(8) of the *Land Disputes Tribunals Act*. Burunji Ndirangu did not lodge an appeal at the High Court on any point of law as prescribed in Section 8(9) of that Act. Through the dispute resolution mechanism provided for under the law in force then which was the *Land Disputes Tribunals Act*, Hannington Ndegwa was the legal owner of the suit property.
 32. A decree issued pursuant to the judgment entered by a magistrate based on the Tribunal's award could only be enforced in the manner provided in the *Civil procedure Rules*. Section 38 of the *Civil Procedure Act* empowers the court to order execution of the decree in different ways including through the delivery of any property specifically decreed. Order 22 of the *Civil Procedure Rules* sets out an elaborate framework for execution of decrees and orders. Rule 29 Order 22 of the *Civil Procedure Rules* which deals with decrees for immovable property is what would have come into play in the execution of decrees issued after entry of judgment based on the Tribunal's awards. This process was not followed when the 1st Defendant obtained her title over the suit property.
 33. The 1st Defendant obtained the title over the suit property unlawfully. By the time the 1st Defendant was registered as the owner of the suit property on 27/8/2009 the Appeals Committee had already reversed the Laikipia District Land Disputes Tribunal award. There was no legal basis for the Land Registrar to issue a title to the 1st Defendant over the suit property. The 1st Defendant did not have a good title over the suit property which she could pass to another person.
 34. The 1st Defendant claimed that the Plaintiff's suit was time barred. The plaint was filed on 4/3/2015. The 1st Defendant was registered as the owner of the suit land on 27/9/2009. The suit was filed within the time contemplated under the *Limitation of Actions Act*.
 35. The 2nd and 3rd Defendants contended that they were innocent purchasers for value without notice. Valuable consideration is defined in *Black's Law Dictionary*, 10th edition as consideration that is valid under the law and which either confers a pecuniarily measurable benefit on one party or imposes a



pecuniarily measurable detriment on the other. It is also termed as good and valuable consideration. These imports the attributes of something of value given or promised by one party in exchange for the promise of the other; it must either involve some gain or benefit to the promisor for the burden of his promise; or some loss or disadvantage to the promisee for which the benefit of the promise is a recompense.

36. The 2nd Defendant testified and only tendered copies of the sale agreement dated 29/8/2014, search dated 27/8/2014 and the title deed dated 14/9/2014 in evidence. He did not adduce any evidence to prove that they actually paid the consideration of Kshs. 730,000/= indicated in the sale agreement. They did not give good and valuable consideration for the suit property. Further, they did not prove that they obtained LCB consent or that they paid stamp duty for the transfer of the suit property to their names. They failed to prove that they were innocent purchasers for value without notice. Had they applied for LCB consent perhaps the local LCB Board would have brought it to their attention that there was a long running dispute over the suit property.
37. Had the court found that the 2nd and 3rd Defendants were innocent purchasers for value of the suit property the title registered in the name of Hannington Ndegwa would still have been upheld because it was the first in time.
38. The Plaintiff has proved his case on a balance of probabilities. The suit property is the property of the late Hannington Ndegwa. An order of injunction is issued to restrain the 2nd and 3rd Defendants from subdividing, further developing, selling, transferring, dealing with or interfering with the Plaintiff's occupation and possession of the suit property. An order is issued for the cancellation of the title issued to the 2nd and 3rd Defendants by the Land Registrar Laikipia.
39. The Plaintiff is awarded the costs of the suit to be borne by the 1st Defendant.

DELIVERED VIRTUALLY AT NANYUKI THIS 2ND DAY OF NOVEMBER 2022.

KOSSY BOR

JUDGE

In the presence of:

Mr. Kebuka Wachira for the Plaintiff

Ms. P. Mwangi holding brief for Mr. K. Kiminda for the 2nd and 3rd Defendants

Ms. Stella Gakii- Court Assistant

No appearance for the 1st Defendant

