



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**E.L.C. CASE NO. 558 OF 2008**

**GEORGE KAMAU NJUGUNA.....1<sup>ST</sup> PLAINTIFF**

**STEPHEN GATHECHA MBUGUA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**FLORENCE WAIRIMU MBUGUA**

**GRACE WANJIKU MBUGUA**

**PETER CHEGE KIARIE**

**SYLVIA MURUGI MBUGUA**

(Sued as the Administrators and Personal Representatives of the Estate of Joseph Kiarie

Mbugua (Deceased) & in their individual capacities.....1<sup>ST</sup> TO 4<sup>TH</sup> DEFENDANTS

**THE ATTORNEY GENERAL ON BEHALF OF THE**

**REGISTRAR OF LANDS.....5<sup>TH</sup> DEFENDANT**

**JUDGEMENT**

1. In the Amended Plaint dated 22/7/2010, the Plaintiffs seek a declaration that any further continued occupation of their parcels of land being Nairobi Block 119/574 and 575 (“the Suit Property”) by the Defendants is illegal, fraudulent and is an attempt at illegal conversion of the Plaintiffs’ property. They seek an order for demolition of the structures developed on the Suit Property and that the Defendants vacate the land; together with an order for the Registrar of Lands to cancel any title issued to the late Joseph Kiarie Mbugua or the beneficiaries of his estate in respect of L.R. No. Nairobi Block 119/574, 575 and 578.

2. In the alternative, the Plaintiffs seek an order authorising them to demolish the structures erected on these parcels of land and to recover the costs of demolition as part of the decree of this court. They further seek to have the police supervise and provide security during the demolition exercise.

3. The Plaintiffs owned L.R. Numbers Nairobi Block 119/574, 575, 578 and 3372 which were formerly known as plot numbers 574, 575, 578 and 3372 Githurai respectively, which they acquired on or about 1994. They approached their friend Joseph Kiarie Mbugua and requested him to introduce them to an architect to draw up plans for the construction of a petrol station which they wished to put up on their plots. Mr. Mbugua asked them to submit the title in respect of Nairobi Block 119/578 to him which they did.

4. They claim that Mr. Mbugua fraudulently and unlawfully applied to the Registrar of Lands to be registered as the owner of the properties known Nairobi Block 119/574, 575 and 578. He then put up a petrol station on the suit land. When the Plaintiffs attempted to confront Mr. Mbugua to recover their land, he threatened them and the Plaintiffs fearing for their lives could not stop Mr. Mbugua. The Plaintiffs averred that the Land Registrar unlawfully issued certificates of lease over the three parcels of land to Mr. Mbugua who died on 22/12/2006. They denied that the three parcels of the land formed part of the estate of the late Joseph Kiarie Mbugua.

5. The Defendants filed the Amended Statement of Defence and Counterclaim denying the Plaintiffs’ claim. The 1<sup>st</sup> to 4<sup>th</sup> Defendants averred that the Plaintiffs are only taking advantage of the demise of Joseph Kiarie Mbugua to lay claim to the three parcels of land yet they knew that he took possession in 1993 and the Plaintiffs did not take any action for more than 14 years. They argued that the late Joseph Kiarie Mbugua openly, legally and lawfully put up the petrol station and that the Plaintiffs never lodged any claim against Mr. Mbugua.

6. The 1<sup>st</sup> to 4<sup>th</sup> Defendants averred that in view of the late Joseph Mbugua Kiarie's quiet occupation of the suit plots, he became the lawful owner of the suit plots before this suit was filed by virtue of adverse possession under the Limitations of Actions Act. They urged that the Plaintiffs title whose validity they dispute was extinguished by operation of law.
7. As against the 5<sup>th</sup> Defendant, they argued that the Land Registrar issued lawful and legitimate titles to the 1<sup>st</sup> to 4<sup>th</sup> Defendants. In the event that the court found that the Plaintiffs title preceded the 1<sup>st</sup> to 4<sup>th</sup> Defendant's titles then the 1<sup>st</sup> to 4<sup>th</sup> Defendants seek appropriate compensation from the 5<sup>th</sup> Defendant being the value of suit property and any developments being on the suit land.
8. The 1<sup>st</sup> to 4<sup>th</sup> Defendants sought a declaration that they are the lawful owners of L.R. No. Nairobi Block 119/574, 575 and 578 by virtue of adverse possession and that the Plaintiffs titles were extinguished by virtue of the adverse possession. They also sought an order that the 5<sup>th</sup> Defendant issues fresh leases or titles to the 1<sup>st</sup> to 4<sup>th</sup> Defendants.
9. During the hearing of this suit, it emerged that the late Joseph Kiarie Mbugua started developing the plots in 1995. It also emerged that the building which Mr. Mbugua had put up on the suit land was partially demolished when the Thika Super Highway was constructed. It came out in the evidence that plot number 1332 was eaten up by the road. Half of plot number 578 was used up in the construction of Thika Super Highway. Plot numbers 574 and 575 were not affected by the road construction.
10. The 1<sup>st</sup> Plaintiff testified that they tried to talk to Mr. Mbugua to reconstitute the plots but he threatened them and pointed a gun at them. This frightened the Plaintiffs after which they never tried to get him out of their land. It was his evidence that the mother title for the land was number 3543. He stated that he was the Managing Director of Githurai Ting'ang'a Company which was a land buying company. The company would buy land and subdivide it and allocate the plots created from the subdivision to its members.
11. He stated that his plot was number 575 for which he got a lease in 1995 and has never sold this property. This plot has another title which was issued in 2005. It was his evidence that Joseph Kiarie Mbugua built on his land forcefully. He also stated that Joseph Kiarie Mbugua was not a member of Githurai Ting'ang'a Company. The witness gave evidence on how the Plaintiffs acquired the suit plots from the Company leading to the registration and issuance of titles to them.
12. The 2<sup>nd</sup> Plaintiff confirmed that Joseph Kiarie Mbugua entered the suit plot in 1995 and built a petrol station which was demolished by the Government of Kenya. He also stated that Mr. Kiarie refused to return the title for 578 to the Plaintiffs but they still hold the titles for 574 and 575. It was his evidence that if a member of the Githurai Ting'ang'a Company was selling a plot to a third party, they had to go through the Company which would process the titles. Had Mr. Joseph Mbugua Kiarie bought the plots through the Company he would have gone through the offices which he did not do.
13. Florence Wairimu Mbugua the widow of Joseph Kiarie Mbugua gave evidence. She maintained that her late husband was the registered owner of the three properties and was issued certificates of leases over the parcels of land on 9/3/2005. She believed that the titles her husband held are protected by Article 40 of the Constitution. She stated that her late husband told her that he bought the suit plots from John Ngugi Kimani vide a sale agreement dated 21/8/1996 and that he was a member of the Company that originally owned the land. She denied the Plaintiffs' claim and accused the 5<sup>th</sup> Defendant's witness of giving biased evidence.
14. The 5<sup>th</sup> Defendant's witness gave evidence. He produced copies of the white cards in respect of the three parcels of land in dispute. The cards show that a certificate of lease was issued to John Ngugi Kimani in respect of parcel number 574 on 6/11/1998. Joseph Kiarie Mbugua was registered as the owner of the same land separately on 9/3/2005. Joseph Kiarie Mbugua was also registered as owner of plot number 575 and 578 on the same day. The card for plot number 575 shows that a certificate of lease over this parcel of land was issued to George Kamau Njuguna on 19/12/1995 while John Ngugi Kimani was issued a lease over plot number 578 on 6/2/1996. The card in respect of plot number 3372 shows that Gladys Njoki Gathecha and Nancy Wairimu Kamau were registered as tenants in common of this parcel on 10/7/2008. A restriction was noted against the cards in respect of the titles held by John Kiarie Mbugua for plot numbers 578, 575 and 574 on 6/4/2005 to the effect that no dealing should be registered against these titles except by the order of the Chief Land Registrar.
15. The issue for determination is whether the court should grant the orders sought in the Complaint or those sought in the Counterclaim. The 5<sup>th</sup> Defendant submitted that the Suit Properties belonged to and were subdivided by Githurai Ting'ang'a Company Limited. The role of the Land Registrar was to register the plots in accordance with the documents presented by this Company for registration. The 5<sup>th</sup> Defendant submitted that the titles issued to Joseph Kiarie Mbugua were illegally and fraudulently issued since there were leases subsisting over the same parcels of land prior to the registration of Joseph Kiarie Mbugua. It submitted that to date the restrictions entered by the Registrar of Lands have never been challenged by 1<sup>st</sup> to 4<sup>th</sup> Defendants.
16. The Honourable Attorney General submitted that the titles which were first in time should be allowed to stand since these were accompanied by the requisite supporting documents from the land buying company. The 5<sup>th</sup> Defendant contended that the 1<sup>st</sup> to 4<sup>th</sup> Defendants failed to produce documentation to prove that they had a clean root of title to the plots in dispute. The 5<sup>th</sup> Defendant relied on the case of **Munyu Maina v. Hiram Gathiha Maina [2013] eKLR** in which the Court of Appeal stated that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. The registered proprietor must go beyond the instrument and prove that the title was acquired legally free from any encumbrances including those which are not be noted on the register.
17. The 1<sup>st</sup> to 4<sup>th</sup> Defendants did not prove on a balance of probabilities that they are entitled to a declaration of ownership of the suit land by virtue of adverse possession. The 1<sup>st</sup> to 4<sup>th</sup> Defendant's counterclaim is dismissed with costs to the Plaintiff.
18. The court is satisfied on a balance of probabilities that the 1<sup>st</sup> and 2<sup>nd</sup> Plaintiffs are the owners of L.R. No. Nairobi Block 119/575 and Nairobi Block 119/574 respectively. The court grants a declaration that the 1<sup>st</sup> to 4<sup>th</sup> Defendants' continued occupation of L.R. No. Nairobi

Block 119/574 and Nairobi Block 119/575 is illegal and fraudulent. The Plaintiffs are awarded the costs of the suit to be borne by the 1<sup>st</sup> to 4<sup>th</sup> Defendants.

19. The 1<sup>st</sup> to 4<sup>th</sup> Defendants are directed to demolish the structures developed on Nairobi Block 119/574 and 575 and to vacate the land within three months of the date of this judgement. In the event that the 1<sup>st</sup> to 4<sup>th</sup> Defendants do not demolish the structures, the Plaintiffs are authorised to demolish the structures and to recover the demolition costs from the 1<sup>st</sup> to 4<sup>th</sup> Defendants as part of the decree.

20. The Officer commanding Kasarani Police Station is directed to supervise and give security during the demolition exercise.

Dated and delivered at Nairobi this 1<sup>st</sup> day of October 2018.

**K. BOR**

**JUDGE**

In the presence of: -

Mr. Mulaki holding brief for Mr. Namada for the Plaintiffs

Ms. Nyaanga holding brief for Mr. Mbaabu for the 1<sup>st</sup> to 4<sup>th</sup> Defendants

Mr. A. Kamau for the 5<sup>th</sup> Defendant

Mr. V. Owuor- Court Assistant