



REPUBLIC OF KENYA



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Mutune Substituted by Joseph Nderitu Thuita v Gitonga & another (Environment & Land Case 442 of 2014) [2025] KEELC 3889 (KLR) (15 May 2025) (Judgment)

Neutral citation: [2025] KEELC 3889 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 442 OF 2014**

**JO OLOLA, J
MAY 15, 2025**

BETWEEN

**MUCHEMI MUTUNE SUBSTITUTED BY JOSEPH NDERITU
THUITA PLAINTIFF**

AND

**BERNARD KIMATHI GITONGA 1ST RESPONDENT
JOYCE WANJIRA NDUHIU 2ND RESPONDENT**

JUDGMENT

1. This suit was first instituted in the Nyeri High Court as HCCC No. 51 of 2011. It was transferred to this court on 26th November, 2014 and given its current reference.
2. By a Plaint dated 11th January, 2011, the Plaintiff – Muchemi Mutune (now deceased) prays for the following:
 1. The registration of land (Parcels) Nos. L.R Thegenge /Kihora/7X1 and 7X2 be cancelled and the land to revert to its prior position as L.R Thegenge/Kihora/1X8 in the names of the Plaintiff and the 2nd Defendant as joint owners; and
 2. A declaration that the Land Dispute Tribunal had no jurisdiction to entertain a matter touching on an issue of title deed.
 3. Those prayers arise from the Plaintiff's contention that at all material times relevant to this suit, he was the registered proprietor of LR. No. Thegenge/Kihora/1X8 jointly with the 2nd Defendant. The Plaintiff avers that the 1st Defendant has been their tenant paying an annual rent of Kshs. 1,000/=.
 4. It is the Plaintiff's case that sometime in September, 2010, the 1st Defendant started preparing a building site in the Plaintiff's portion of land and upon verbal demands by the Plaintiff that



he stops, the 1st Defendant retorted that the said portion was registered under his name as LR. No. Thegenge/Kihora/7X1.

5. The Plaintiff avers that he has been in occupation of the said parcel of land since 1958 and that the registration in the name of the 1st Defendant was fraudulently done in collusion with the 2nd Defendant.
6. Bernard Kimathi Gitonga (the 1st Defendant) is opposed to the grant of the prayers sought by the Plaintiff. In his Statement of Defence dated and filed on 10th June, 2011, the 1st Defendant denies that he was occupying and utilising the Plaintiff's portion of the land as a tenant paying rent. On the contrary, the 1st Defendant avers that he was occupying the said portion out of the love of the Plaintiff and for taking care of the Plaintiff's welfare.
7. It is the 1st Defendant's case that it was the Plaintiff's wish to transfer the said portion of land to the 1st Defendant as a gift and that the 1st Defendant financed the whole land transaction by providing funds to the Plaintiff. The 1st Defendant avers that after the Plaintiff was registered as the proprietor of LR. No. Thegenge/Kihora/7X1, the Plaintiff applied to transfer the same to the 1st Defendant and consent was granted for the said transaction. The 1st Defendant thus denies that he committed any fraud as particularised at paragraph 7 of the Plaintiff.
8. On her part, Joyce Wanjira Nduhiu (the 2nd Defendant) maintains that LR. No. Thegenge/Kihora/1X8 was sub-divided pursuant to proceedings in Nyeri CM. Award Case No. 101 of 2000. The 2nd Defendant denies allegations of fraud against her and avers that this suit is an abuse of the court process and that the same is re judicata having been the subject in the said Nyeri CM Award Case No. 101 of 2000.
9. The original Plaintiff – Muchemi Mutune passed away on 17th October, 2013 and was substituted herein by Joseph Nderitu Thuita (PW1). The said Joseph Nderitu Thuita testified as the sole witness in the Plaintiff's case.
10. The 1st Defendant equally testified as the sole witness in support of his case at the trial. The 2nd Defendant neither testified nor called any witness during the trial.

Analysis and Determination.

11. I have carefully perused and considered the pleadings filed herein, the testimonies of the two witnesses as well as the evidence adduced before the court. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Advocates representing both the Plaintiff and Defendants.
12. The original plaintiff herein Muchemi Mutune (now deceased) brought this suit against the two Defendants seeking for the cancellation of land parcel numbers Thegenge/Kihora/7X1 and Thegenge/Kihora/7X2 and for the same to revert to its prior position as LR. No. Thegenge/Kihora/1X8 which was registered in the names of the Plaintiff and the 2nd Defendants as joint owners. The Plaintiff also prays for a declaration that the Land Disputes Tribunal had no jurisdiction to entertain a matter touching on issues of a title deed.
13. It was the Plaintiff's case that the 1st Defendant had been a tenant on his portion of the land paying an annual rent of Kshs. 1,000/= . The Plaintiff told the court that sometime in September, 2010, it came to his notice that the 1st Defendant had started preparing a building site on the Plaintiff's portion of the land. He told the court that when he confronted the 1st Defendant and demanded to know why he



was doing so, the 1st Defendant retorted that the said portion was registered in his own name as LR. No. Thegenge/Kihora/7X1.

14. The Plaintiff asserts that he has been occupying his portion of the land since the year 1958 and that the registration of the 1st Defendant was fraudulently done in collusion with the 2nd Defendant.
15. The 1st Defendant does not deny that he had started preparing a building site as stated by the Plaintiff. It is the 1st Defendant's case that it was the Plaintiff himself who had transferred that portion of land to himself as a gift out of the Plaintiff's own love and affection for the 1st Defendant.
16. The 1st Defendant further asserted that LR. No. Thegenge/ Kihora/1X8 was sub divided pursuant to proceedings in Nyeri Chief Magistrate Court Award Case No. 101 of 2000.
17. It was not very clear to me why both sides of the dispute continuously made reference to the proceedings in the said Nyeri Chief Magistrates Court Award Case No. 101 of 2000. From the material placed before the court, the deceased Plaintiff had on an unclear date in the year 2010 instituted Tetu Land Dispute Tribunal Case No. 3 of 2010 against the 1st Defendant herein over the parcel of land known as LR. No. Thegenge/Kihora/7X1.
18. It was the Plaintiff's case that he was the registered owner of the land and that the Defendant who he stated was not related to him, had moved onto his land and started preparing a site to construct a house. On his part, the 1st Defendant insisted that the Plaintiff was his distant relative being that the 1st Defendant's grandmother and the Plaintiff were siblings. The 1st Defendant told the Tribunal that the Plaintiff had gifted him the land in the 1990s out of his own love as the 1st Defendant was taking care of the Plaintiff's welfare.
19. Having heard the dispute and in a decision rendered on 10th February 2011, the Tribunal ordered as follows:

“Award.

1. In view of the aforesaid, this tribunal court has ordered that Title No. Thegenge/Kihora/7X1 to be jointly registered in the names of Bernard Kimathi Gitonga and Muchemi Mutune;
 2. This tribunal court orders Bernard Kimathi Gitonga to henceforth start taking care of Muchemi Mutune as they had previously agreed;
 3. That Muchemi Mutune to be settled in this parcel of land Thegenge/ Kihora/7X1 with immediate effect; and
 4. That each party to meet its own costs.”
20. That Award having been issued on 10th February, 2011 could not by all means be the Award that was adopted in the Nyeri Chief Magistrates Award Case No. 101 of 2000. A simple perusal of the Defendant's List of Documents reveals the said Award related to a matter filed by the deceased Muchemi Mutune against the 2nd Defendant and not the 1st Defendant herein. A further perusal of that list of Documents reveals that the Award the subject matter of Nyeri Chief Magistrate Award Case No. 101 of 2000 was adopted in court on 5th January, 2001 as follows:

“It Is Hereby Ordered:

1. That land parcel No. Thegenge/Kihora/1X8 be partitioned between the Plaintiff/Applicant and the Defendant/ Respondent in equal shares;



2. That the defendant should surrender the old title deed to facilitate the issuance of two new title deeds respectively to Muchemi Mutune and Joyce Wanjira Nduhiu;
 3. That item No. 5 in the Green Card that is the restriction placed by the defendant be removed henceforth; and
 4. That each party do bear its own costs even during the partition of the land.”
21. Arising from the foregoing, it was again clear that the sub-division of the original parcel No. Thegenge/ Kihora/1X8 that was initially registered in the name of both the deceased Plaintiff and the 2nd Defendant herein was again the culmination of a decision issued by the Tetu District Land Disputes Tribunal.
22. Considering the issue of the jurisdiction of the Land Disputes Tribunal in Joseph Malakwen Lelei & Another –vs- Rift Valley Land Dispute Appeals Committee and 2 others (2014) eKLR; the Court of Appeal held as follows:
- “On the issue of jurisdiction, we note that the law on this issue is settled and we do not need to belabour it. Section 3 of the Land Disputes Tribunal Act (repealed) gives jurisdiction to the Land Disputes Tribunal to handle claims in the following matters only:
- “3(1) Subject to this Act, all cases of a civil nature involving a dispute as to:-
- (a) The division of, or the determination of boundaries to land, including land held in common,
 - (b) A claim to occupy, or work land; or
 - (c) Trespass to land.”
- Evidently the above provision does not include jurisdiction to deal with issues of determination of title to or ownership of registered land... Having found that the Tribunal and the Appeals Committee lacked jurisdiction to arbitrate on the matter before them, then all other grounds become moot. We say so because it is trite that where a court or tribunal takes upon itself to exercise a jurisdiction which it does not possess, its proceedings and decisions are null and void. It then follows that every other proceeding, decision, or award that results from such a process must be construed as a nullity....
23. In my considered view the dispute that led to the Nyeri Chief Magistrate Award Case No. 101 of 2000 and the one referred to as Tetu Land Disputes Tribunal Case No. 3 of 2010 did not fall under the jurisdiction of the Tribunal. The Tribunal had clearly overreached itself in ordering the sub-division of registered land and thereafter proceedings to award the 1st Defendant a portion of registered land on the basis that the same had been gifted to the 1st Defendant. The person who had allegedly given the gift was right before them denying that he had given the gift and it was not clear to me on what basis the Tribunal had proceeded to make the award.
24. In the premises, I am persuaded that the Plaintiff has proved his claim on a balance of probabilities and I hereby allow the same in terms of prayers ‘a’ and ‘b’ of the Plaint dated 11th January, 2011.
25. There shall be no order as to costs.

JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 15TH DAY OF MAY, 2025



J.O. OLOLA
JUDGE

