



**Kabugu & Kabugu (Suing as the Administrators of the Estate of Hillary Kabugu Muguku, Deceased) v Attorney General (Being Sued as the Legal Representative of the Permanent Secretary, Ministry of Lands) (Environment and Land Case Civil Suit 353 of 2014) [2025] KEELC 3637 (KLR) (8 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3637 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT AND LAND CASE CIVIL SUIT 353 OF 2014**

**JO OLOLA, J**

**MAY 8, 2025**

**BETWEEN**

**JENNIFER WANJIRU KABUGU AND ANDREW WAMBUGU KABUGU,  
(SUING AS THE ADMINISTRATORS OF THE ESTATE OF HILLARY KABUGU  
MUGUKU, DECEASED) ..... PLAINTIFF**

**AND**

**THE HONOURABLE ATTORNEY GENERAL (BEING SUED AS THE LEGAL  
REPRESENTATIVE OF THE PERMANENT SECRETARY, MINISTRY OF  
LANDS) ..... DEFENDANT**

**JUDGMENT**

1. This suit was initially filed in the High Court at Nairobi as Nairobi HCCC No. 230 of 2008. It was transferred to this court and given its current reference on 26<sup>th</sup> November, 2014.
2. By a Plaint dated 15<sup>th</sup> May, 2008 as amended on 13<sup>th</sup> October, 2017, Jennifer Wanjiru Kabugu and Andrew Wambugu Kabugu suing as the Administrators of the Estate of Hilary Kabugu Muguku (the Plaintiffs) pray for judgment against the Defendant for:
  - a. A declaration that Nyeri District Land Surveyor's action of fencing the Plaintiffs' (parcel of) land number Nyeri/Municipality Block 1/1XX2 is unlawful and amounts to trespass;
  - b. An order that the Defendant removes his fence within 30 days of service of the decree in default of which the plaintiffs to remove it at the Defendant's cost;
  - c. General damages for trespass and loss of use of the said land;
  - d. Costs of the suit;



- e. Interest on (c) and (b) above at Court rates; and
  - f. Any other or further relief that this Honourable Court may deem fit and just to grant.
3. It is the Plaintiffs' case that the deceased was the registered owner of the said Plot No. Nyeri Municipality Block 1/1XX2 measuring 0.1297 Ha (the suit property) under a Certificate of Lease issued on 26<sup>th</sup> September, 2000.
  4. The Plaintiffs avers that in June 2007, the District Land Surveyor Nyeri entered into the suit property and erected a fence around it thereby interfering with the deceased's quiet possession thereof. It is their case that the said action was unlawful, unjustified and amounted to trespass.
  5. The Attorney General sued on behalf of the Permanent Secretary Ministry of Lands (the Defendant) is opposed to the grant of the orders sought. In his statement of Defence dated 7<sup>th</sup> July, 2008, the Defendant avers that the suit property was unlawfully and irregularly excised from Government Plot No. Nyeri/Hou/Blg/X6 in clear breach of express provisions of the Government Lands Act, Cap 280 of the Laws of Kenya.
  6. The Defendant further avers that in an attempt to secure the suit land from unlawful acquisition, it embarked on an exercise to survey the suit property with a view to ascertain the extent of boundaries of the Government Plot No. Nyeri/Hou/Blg/X6. The Defendant avers that its entry into the land and the subsequent fencing of the suit property was lawful and in accordance with powers conferred to it under Section 23 of the Survey Act, Cap 299 of the Laws of Kenya.
  7. At the trial herein both the Plaintiffs and the Defendant called one witness each to testify in support of their respective cases.

#### **Analysis and Determination.**

8. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Counsels representing the parties herein.
9. This suit was commenced at the High Court on 15<sup>th</sup> May, 2008 by Hilary Kabugu Muguku (now deceased). It was the Plaintiff's case that he was the registered proprietor of the suit property measuring some 0.1297 Ha. The Plaintiff pleaded that he was issued with a Certificate of Lease for the parcel of land on 26<sup>th</sup> September, 2000 and that he had since then been in quiet possession of the same and paying land rent to the Ministry of Lands of the Republic of Kenya as by law required.
10. It was the Plaintiff's case that sometime in June 2007, the District Land Surveyor Nyeri, an officer under the control and/or direction of the Permanent Secretary Ministry of Lands and Housing (the Defendant) entered onto the suit property and erected a fence around the same thereby interfering with the Plaintiff's rights and quiet possession over the property.
11. The Plaintiff avers that the acts of the District Land Surveyor were unlawful, unjustified and that the same amounted to trespass. Accordingly, the Plaintiff asserts that the Defendant should be held liable for the acts so committed. In that respect, the Plaintiff claims damages for trespass and urges the court to direct the Defendant to forthwith remove the fences erected around the suit property.
12. On its part, the Defendant holds that the suit property is Government Land and that the same was unlawfully excised from a Government plot known as Nyeri/HOU/BLG/X6 in breach of the Government Lands Act, Cap 280 of the Laws of Kenya (now repealed). The Defendant further



asserted that the fencing of the property was within its mandate and that the same was aimed at avoiding further encroachment of Government property.

13. As it turned out the Plaintiff passed away on 22<sup>nd</sup> April, 2016 before the commencement of the trial. He was thereafter substituted by Jennifer Wanjiru Kabugu and Andrew Wambugu Kabugu who are his legal representatives and the Administrators of his estate.
14. In support of their case Jennifer Wanjiru Kabugu (PW1), the widow of the deceased told the court that she got to know about the land when her husband bought the same from one Kinoti in the year 1997 at a consideration of Kshs. 250,000/= . She testified that her husband was issued with a title in his name in the year 2000. It was her case that they had intended to build a residential house on the land but just when they were about to do so, the Defendant fenced off the land.
15. On their part, the Defence called Thomas Gikonyo Mundia an Architect and the Nyeri County Director of Housing (DW1). Relying on a statement recorded earlier by his predecessor, one Ezekiel Muiruri, DW1 told the court that the suit property was not available for allocation as there was no Part Development Plan(PDP) which was approved in their records. He further told the court he was not sure whether the Commissioner of Lands had power to allocate the land.
16. From the material placed before the court, there was no dispute that the suit property was at some point in time un-alienated Government Land. From the Plaintiffs own documents as produced before the court, it was apparent that Hillary Kabugu Muguku had purchased the suit property from one G.K.K. Kinoti through a Sale Agreement dated 24<sup>th</sup> February 1997. Those documents further reveal that the said Kinoti had acquired the land through a Letter of Allotment dated 29<sup>th</sup> May, 1995.
17. At Paragraph 2 of the Sale Agreement dated 24<sup>th</sup> February 1997 aforesaid, the parties state as follows as to the documents the vendor gave to the purchaser:

“Also handed over is Provincial Allocation Commissioner’s approval, Commissioner of Lands (sic), Permanent Secretary and Minister’s Approval letters, the PDP Plans, beacon (sic) Certificate and application for the Consent to the Lands Office.”
18. It is notable that while it is purported in the Agreement that the vendor handed over, among other documents, the PDP Plans for the suit property, the PDP Plan is not among the documents produced by the Plaintiffs. As was stated in Nelson Kazungu Chai & 9 Others –vs- Pwani University (2014) eKLR:

“...It is trite law that under the repealed Government Lands Act, a Part Development Plan must be drawn and approved by the Commissioner of Lands or the Minister for Lands before any un- alienated Government land could be allocated. After a Part Development Plan (PDP) has been drawn, a letter of allotment based on the approved PDP is then issued to the allottees.”
19. In the matter herein, the Defence contended that the suit property had already been allocated to the State Department of Housing and that the same was not available for allocation as the Commissioner of Lands had not drawn and/or approved any part Development Plan for the same. That being a requirement in law, it was then incumbent upon the Plaintiffs to prove that indeed such a Part Development Plan had been drawn and approved to permit the alienation of the suit property.
20. In the absence of any such approved Part Development Plan, this court cannot assume that the suit property was available for allocation to the Plaintiffs and/or their deceased predecessor in title. In the circumstances herein, there was no evidence that the vendor of the suit property had acquired any



proper title which he could pass to the Plaintiffs and the Certificate of Lease issued to the Plaintiffs cannot thereby acquire the protection of the law.

21. It follows that I was not persuaded that the Plaintiffs had proved their case to the required standards. The suit lacks merit and is hereby dismissed.

22. Each party shall bear their own costs.

**JUDGEMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 8<sup>TH</sup> DAY OF MAY, 2025**

**J.O. OLOLA**

**JUDGE**

