

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

E.L.C. CASE NUMBER 6 OF 2016

MURINGI WILLY.....1st

PLAINTIFF

THOMAS WAMBUGU NJOGU.....2ND

PLAINTIFF

VERSUS

MERCY MUTHONI.....1ST

DEFENDANT

NJOGU KARITU.....2ND

DEFENDANT

JUDGMENT

1. The Plaintiffs instituted the instant suit vide a Plaint dated 10th January 2016 which was subsequently Amended on 14th October 2019. By the Amended Plaint the Plaintiffs prayed for orders:-

- a)An order for the Defendants, her agents or Servants or employees or anybody claiming under her to vacate and remove their**

properties from L.R No. Mutira/Kaguyu/4433 and in default thereof they be forcefully evicted from the land at their own costs.

b) General damages for trespass.

c) Cost of the suit.

2. The Plaintiffs averred that during the year 2015 they and the 2nd Defendant who was the 1st Defendant's husband entered into an arrangement where they agreed to exchange their respective parcels of land. By the arrangement, the Plaintiffs were to transfer their parcel of land **Mwerua/Gitaku/1388** to the 2nd Defendant and the 2nd Defendant in turn was to transfer land parcel **Mutira/Kaguyu/4433** to the Plaintiffs. The exchange arrangement was effected and the Plaintiffs were registered as the proprietors of land parcel **Mutira/Kaguyu/4433** and the 2nd Defendant was registered as the proprietor of land parcel **Mwerua/Gitaku/1388**.

3. The Plaintiffs aver that following the exchange, the 2nd Respondent relocated to land parcel Mwerua/Gitaku/1388

but his wife, the 1st Defendant, refused and/or neglected to relocate from land parcel Mutira/Kaguyu/4433 which had been registered in the Plaintiffs names consequent to the exchange arrangement. The Plaintiffs thus seek an order for the eviction of the 1st Defendant, her servants and/or agents from the suit land and damages for trespass.

4. The 1st Defendant, Mercy Muthoni Njogu, through the Firm of J. Ndana & Company Advocates filed a statement of defence dated 26th July 2017 where she denied the Plaintiffs averments in the Plaint. She contended that land parcel Mutira/Kaguyu/4433 belonged to her husband and was the family home and that if any transfer of the same had been effected such transfer was fraudulent as her consent as spouse was not obtained. The 1st Defendant contended she had been resident on the land with her six children for over 20 years she prayed for the dismissal of the suit.

5. The suit was heard before me and the 1st Plaintiff testified as PW1 and called one Sarah Wanjiru Njogu who testified as PW2 in support of the Plaintiffs case. The Plaintiff in his evidence relied on his witness statement and the bundle of documents that he had filed which included an abstract of title for land parcel Mwerua/Gitaku/1388, copies of search certificates for parcels 1388 and 4433, copies of consent of the Land Control Board and Land Board Consent.

6. The 1st Plaintiff testified that they exchanged land parcel Mwerua/Gitaku/1388 with the Defendants land parcel Mutira/Kaguyu/4433. The Plaintiff explained that he moved out of his land parcel and the Defendants moved to his (Plaintiffs) land parcel and started utilizing the same. He stated he moved onto the Defendants land for a while but the 1st Defendant after sometime had him forced out of the land and that is when he came to Court to seek assistance.

7. PW1 cross examined by the 1st Defendant stated that at the time of exchange the Defendants had leased out their land. He stated that he only dealt with the 2nd Defendant (1st Defendant's) husband as he was the one who was registered as owner. The witness stated the 1st Defendant and her co-wife were aware of the exchange arrangement. He affirmed there was a house at the time of exchange on land parcel 4433.

8. PW2 in her evidence stated the 1st Defendant was a co-wife and the 2nd Defendant was their husband. She stated at the time of her marriage, the 1st Defendant was not living with the 2nd Defendant. She stated her 1st born with the 2nd Defendant was aged 17 years. She explained that their husband informed them of the exchange arrangement with the Plaintiffs and that when the arrangement was effected, her and the 1st Defendant moved to the Plaintiffs land and were each shown our respective portions on the ground. She explained before the exchange arrangement, she had been with the 2nd Defendant for 10 years. She affirmed the 1st Defendant

was aware of the exchange arrangement and that they in fact attended the Land Control Board together.

9. DW1 Mercy Muthoni Njogu in her evidence adopted her witness statement as her evidence. It was her evidence that the 2nd Defendant was her husband and that she had been with him since 1997. She stated land parcel Mutira/Kaguyu/4433 belonged to her husband and that he had inherited the same from his mother. DW1 stated that she was not aware of any exchange of the land and had no knowledge of land parcel Mwerua/Gitaku/1388. She stated she wanted the land parcel Mwerua/Kaguyu/4433 reverted to her and her children.

10. DW2 Samuel Gatimu Gatuma testified that he is a neighbour to the 1st Defendant having bought land in the neighbourhood. He stated the 2nd Defendant was his step brother. He said he served as a Chief in the area and that the 2nd Defendant had inherited the land from his parents. He stated the 1st Defendant had a house on the suit land where she resided. He said he was not aware of the

exchange arrangement of the land with the Plaintiffs land parcel Mwerua/Gitaku/1388 involving the 1st Defendants husband Njogu.

11. In Cross examination the witness stated he was not aware the 2nd Defendant had another wife. He said he was not aware who was registered owner of land parcels 1388 and 4433 presently.

12. DW3 Beatrice Nyaguthii testified that the 1st Defendant was her neighbour. She stated she did not know where the 1st Defendant's husband disappeared to as he was not staying with the 1st Defendant on the suit land. She was unaware whether there was an exchange arrangement involving the land.

13. The parties filed written submissions after closure of the trial. The Plaintiffs submissions were dated 14th April 2024 and those of the 1st Defendant were dated on 20th May 2025. The 2nd Defendant did not participate in the proceedings and did not make any submissions.

14. I have considered the pleadings and the evidence and have equally considered the submissions filed by the parties. The issues that arise for determination are as follows:-

(i) Whether there was a valid arrangement for the exchange of land parcel Mwerua/Gitaku/1388 and land parcel Mutira/Kaguyu/4433 and whether the exchange was effected?

(ii) Whether the transfer of land parcel Mutira/Kaguyu/4433 from the 2nd Defendant to the Plaintiffs was fraudulent?

(iii) Whether the Plaintiffs are entitled to the reliefs sought?

15. It is common ground that before the alleged agreement of exchange, the Plaintiffs were the registered proprietors of land parcel Mwerua/Gitaku/1388 and the 2nd Defendant was the registered proprietor of land parcel Mutira/Kaguyu/4433. The Plaintiffs as part of their documentary evidence exhibited a copy of an abstract of

title (green card) for land parcel Mwerua/Gitaku/1388. Under Entry No. 3 dated 29.5.2015, the abstract of Title shows the Plaintiffs were registered as joint owners of the land and issued with a title deed. Under Entry No. 5 dated 11.8.2015 the abstract of title indicates Njogu Karitu (2nd Defendant) was registered as proprietor and that the consideration was **“Exchange Mutira/Kaguyu/4433”**. A title Deed was issued to the 2nd Defendant on 28th July 2016. The abstract of Title further shows under Entry No. 7 that on 18.1.2017 the property was transferred to Njogu Karitu jointly with others for the consideration of **“Gift”** and a title issued. Amongst the documents also exhibited by the Plaintiffs is a copy of certificate of search in respect of land parcel Mutira/Kaguyu/4433 issued on 1st December, 2015 that affirms Muringi Willy and Thomas Wambugu Njogu (the Plaintiffs herein) were the registered proprietors of the parcel of land.

16. On the basis of the foregoing evidence it is evident that land parcel Mwerua/Gitaku/1388 was prior to 11.8.2015, when it was transferred to the 2nd Defendant,

registered in the name of the Plaintiffs. The consideration for the transfer was exchange with land parcel Mutira/Kaguyu/4433 which then was registered in the 2nd Defendant's name. The 1st Defendant has challenged the exchange alleging it was fraudulent ostensibly because, as the 2nd Defendant's wife, she had not been involved. This assertion is not supported by the evidence. PW2 Sarah Wanjiru Njogu, a Co-wife of the 1st Defendant testified and stated that their husband, the 2nd Defendant informed them of the exchange arrangement and that her and the 1st Defendant were physically shown the portions of land parcel 1388 that they were each to occupy. The witness further in her evidence stated both her and the 1st Defendant attended before the Land Control Board for the consent of the Land Board in regard to the exchange. When PW2 testified, she was candid and composed and she appeared truthful and I saw no reason to disbelieve her. It is therefore my determination that the 1st Defendant was aware of the exchange arrangement between her husband and the Plaintiffs and for reasons

that are not clear, she has chosen to claim she was unaware of the exchange arrangement.

17. The consideration for the exchange was that the 2nd Defendant would have land parcel Mwerua/Gitaku/1388 transferred to him which the Plaintiffs duly did. The Plaintiff equally had land parcel Mutira/Kaguyu/4433 transferred to them in completion of the exchange arrangement. Upon registration as the proprietors of land parcel Mutira/Kaguyu/4433 the Plaintiffs were vested with ownership rights conferred under **Section 24 and 25 of the Land Registration Act 2012** and were entitled to have exclusive possession and use of the land. The 1st Defendant has no right to remain on the Plaintiffs land and ought to vacate from the land.

18. The exchange arrangement between the Plaintiffs and the 2nd Defendant was lawfully carried out and due process was adhered to including seeking and obtaining the appropriate consent of the Land Control Board. Though there is no legal requirement that the consent of

the 1st Defendant should have been obtained for the exchange arrangement to be effected, it is my determination that the 1st Defendant was indeed aware of the transaction and she is only reneging on what she and her husband had agreed to do. The 1st Defendant's occupation of the suit land is unlawful. The allegations of fraud by the 1st Defendant against the Plaintiffs have not been proved by any evidence and remain mere allegations.

19. I am upon evaluation of the evidence satisfied that the Plaintiffs have proved their case on a balance of probabilities. However, as the 1st Defendant was in occupation and possession of the suit land at the time of the exchange her occupation was lawful and I find no basis to assess and award damages as sought by the Plaintiffs. I will make no award for damages. I enter Judgment for the Plaintiffs in the following terms.

(i) That the Plaintiffs are declared to be the lawful owners of LR. No. Mutira/Kaguyu/4433.

(ii) The 1st Defendant, her agents or servants and/or anybody claiming under her is ordered to vacate land parcel LR. No. Mutira/Kaguyu/4433 within 30 days from the date of this Judgment failing which an eviction order to issue on application.

(iii) Each party to bear their own costs of the suit.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY
AT KERUGOYA THIS 2ND DAY OF OCTOBER 2025.**

J. M. MUTUNGI

ELC - JUDGE