



**M’ringera v Kimathi (Environment & Land Case E020 of 2023)
[2024] KEMC 110 (KLR) (28 June 2024) (Judgment)**

Neutral citation: [2024] KEMC 110 (KLR)

**REPUBLIC OF KENYA
IN THE GITHONGO LAW COURTS
ENVIRONMENT & LAND CASE E020 OF 2023
AT SITATI, SPM
JUNE 28, 2024**

BETWEEN

DANIEL MURIUKI M’RINGERA PLAINTIFF

AND

NATHAN KIMATHI DEFENDANT

JUDGMENT

1. By a plaint dated 12th June, 2023 verified by an affidavit of similar date, the plaintiff prayed for:
 - a. An order of eviction from land parcel Abothuguchi/Katheri/5738.
 - b. An order of permanent injunction restraining the defendant, his family members, agents or anyone else claiming under his behest from trespassing or occupying the plaintiff’s land parcel LR Abothuguchi/Katheri/5738
 - c. Costs of the suit.
 - d. Any other relief the Honourable Court may deem fit and just to grant.
2. Accompanying the plaint were:Written witness statement of the plaintiffDocuments to be called as exhibits:Official search certificate for LR Abothuguchi/Katheri/5738.Copy of the demand notice dated 15th April, 2023.

The Plaintiff’s Case

3. By the witness statement dated 12th June, 2023 which was duly adopted as his testimony, the plaintiff told the court that he was the absolute registered owner of the LR Abothuguchi/Katheri/5738. He added that without any colour of right or justification whatsoever, the defendant trespassed onto the subject parcel of land. He affirmed that he had never had any transactions with the defendant to warrant



such trespass and interference. In support of his case, he produced the aforementioned documents as exhibits in the case.

4. In cross-examination, the following came to light: The plaintiff had a son named Kithinji who had constructed a house on the subject parcel. He denied knowledge of any sale agreement between the said son and the defendant/counterclaimant herein.

The Defence Case

5. By a statement of defence and counterclaim dated 17th July, 2023 the defendant opposed the suit. He prayed for a dismissal of the suit with costs by the defence and counterclaimed for the following reliefs in the Counterclaim:
 - a. An order of injunction be granted restraining the defendant from harassing, trespassing or in any way interfering with the plaintiff peaceful occupation and utility of the leased portion of 50 feet by 80 feet from parcel number Abothuguchi/Katheri/5738 until his term expires or alternatively the defendant do compensate the plaintiff for all the developments effected by the plaintiff.
 - b. Costs of the suit and counterclaim.
6. Accompanying the defence and counterclaim were: Agreement dated 17th July, 2023 Case summary dated 17th July, 2023. Issues for determination dated 17th July, 2023. List and bundle of witnesses' statements of the defendant, Peter Murithi John Manyara, Glory Gakii and John Matumbi.
7. In the defence hearing, he adopted his witness statement as his testimony and produced the above-listed documents in exhibits. Upon cross-examination, the following came to light: It was true that the plaintiff was the registered owner of 5738. He admitted receipt of a vacation notice. He admitted that the plaintiff was not a party to the lease agreement between the defendant and the plaintiff's son.
8. On his part, when cross-examined Peter Murithi John as DW2 told the court that the plaintiff did not record any document with the defendant to permit the defendant to utilize the plaintiff's parcel number 5738.
9. At that stage the defendant closed his case.

Issue For Determination

10. It is the duty of this Honourable Court to determine whether or not the Plaintiff and the counterclaimant have proved their respective cases.

Determination

11. On the material placed before the court, it is clear that the plaintiff is the sole registered and absolute owner of the suit land. He never transacted with the defendant/counterclaimant at any stage and so he has proved the case on a balance of probabilities and judgement is hereby entered in his favour.
12. On the other part, the counterclaimant's agreement with the deceased son did not bind the plaintiff herein for lack of privity of contract and so his claim fails and is dismissed with costs to the plaintiff. Privity of contract was well explained in the authority of Mark Otanga Otiende –v- Dennis Oduor Aduol (2022)eKLR (R.E. ABURILI J.):

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“60. In its classical adaptation, the doctrine of privity of contract hypothesizes that a contract cannot confer rights or impose obligations on any person other than the parties to the contract. Accordingly, a contract cannot be enforced either by or against a third party, except in certain cases only. In *Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd* [1915] AC 847, Lord Haldane, LC rendered the principle thus:

“My Lords, in the law of England certain principles are fundamental. One is that only a person who is a party to a contract can sue on it.”

61. In the *Agricultural Finance Corporation v Lengetia Ltd* (supra), quoting with approval from Halsbury’s *Laws of England*, 3rd Edition, Volume 8, paragraph 110, Hancox, JA, reiterated that:

“As a general rule a contract affects only the parties to it, it cannot be enforced by or against a person who is not a party, even if the contract is made for his benefit and purports to give him the right to sue or to make him liable upon it.

The fact that a person who is a stranger to the consideration of a contract stands in such near relationship to the party from whom the consideration proceeds that he may be considered a party to the consideration does not entitle him to sue upon the contract.”

62. Over time, some exceptions to the doctrine of privity of contract have been recognized and accepted. Among these exceptions is where a contract between two parties is accompanied by a collateral contract between one of them and a third party relating to the same subject matter.

In *Shanklin Pier V Detel Products Ltd* [1951] 2 KB 854, for example, the plaintiff owned a pier, which it wished to be repainted. After the defendant represented to the plaintiff that some particular paint was fit for the purpose, the plaintiff directed its contractor to use that paint.

The contractor purchased the paint from the defendant, which proved unfit for the purpose. Upon a suit by the plaintiff against the defendant, the court found for the plaintiff notwithstanding the fact that there was no privity of contract between the plaintiff and the defendant, as far as the contract for the sale of the paint was concerned.”

15. Eviction orders to issue against the defendant/counterclaimant and shall be executed in compliance with the provisions of sections 152A to 152I of the [Land Act](#). Right of appeal is 30 days.

DATED, READ AND SIGNED AT GITHONGO LAW COURTS THIS 28TH DAY OF JUNE, 2024

HON. T.A. SITATI

SENIOR PRINCIPAL MAGISTRATE

GITHONGO LAW COURTS

Present

Mr.kithinji Kirigiah Adv For The Plaintiff



Defendant Counterclaimant

Ronny Court Assistant

Mr. Kithinji Kirigiah Adv For The Plaintiff

Defendant/counterclaimant

