

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC NO. E051 OF 2022

TERESIAH MWIHAKI KUNGU.....
PLAINTIFF

VERSUS

LAND REGISTRAR RUIRU.....1ST
DEFENDANT
HON. ATTORNEY GENERAL 2ND DEFENDANT
DAVID WANYOIKE GACHOGU 3RD DEFENDANT

JUDGMENT

1. At the centre of this dispute is land parcel No. RUIRU EAST BLOCK 1/61 to which both the Plaintiff and the 3rd Defendant lay claim. Whereas they both concede that the suit property was originally owned by Githunguri Constituency Ranching Company Limited, the point of departure is whom the company allocated the land to. In order to stake her claim, the Plaintiff filed suit against the defendants vide a Plaint dated 4th May 2022 and amended on 13th October 2023 seeking the following reliefs:

- a) *A declaration that title number RUIRU EAST BLOCK 1/61 legally belongs to Teresiah Mwihaki Kungu.*
- b) *An order to the Land Registrar, Ruiru Lands Registry to lift any restrictions, inhibitions or administrative actions*

and reinstate absolute ownership of land title number RUIRU EAST BLOCK 1/61 to the registered owner Teresiah Mwihaki Kungu.

- c) That any previous entries on the register of the suit parcel RUIRU EAST BLOCK 1/61 prejudicial to the proprietary interest and rights of the Plaintiff be cancelled forthwith by the Ruiru Land Registrar.*
- d) A rectification of the register with regard to the property as title number RUIRU EAST BLOCK 1/61 by directing the Land Registrar, Ruiru to ensure that the entry made therein on 30th January 2004 to Julius Murigi Gachogu of ID No. 514718 and 16th February, 2011 to David Wanyoike Gachogu of ID No. 5378737 and any subsequent entries are cancelled and the proprietorship section of the suit property reverts back to the name of Teresiah Mwihaki Kungu forthwith.*
- e) All sub-divisions emanating from the parcel of land known as title number RUIRU EAST BLOCK 1/61 i.e RUIRU EAST BLOCK 1/3205, 3206, 3207,3208,3209,3210,3211, 3212, 3213 and 3214 be hereby cancelled.*
- f) The transfer of title number RUIRU EAST BLOCK 1/61 to the 3rd defendant David Wanyoike Gachogu be hereby cancelled forthwith.*
- g) Any such order as the court may deem fit to grant.*
- h) Costs of the suit.*

2. In response to the original suit, the 1st and 2nd defendants filed a Statement of Defence dated 18th July 2022 in which they denied that the Plaintiff was the registered owner of the suit property. They

however admitted that David Wanyoike Gachogu filed a Judicial Review application vide Nairobi HC JR No. 64 of 2008 seeking an order of mandamus for purposes of having the Land Registrar, Thika District compelled to approve and register the sub-divisions against the suit property once the Applicant fulfilled all the requirements necessary to effect sub-division.

3. The 1st and 2nd Defendants further averred that on 24th November 2010, the court allowed the said application and thus compelled the Land Registrar Thika to approve and register the resultant sub-divisions in relation to the suit property.
4. They added that the subsequent order of dismissal of the suit for want of prosecution did not direct them to remove any inhibition registered on the suit property.
5. On his part the 3rd Defendant who was added to the suit after the plaint was amended filed a Defence dated 23rd November 2023 denying the Plaintiff's claim. He averred that he purchased the suit property on or about 16th July 2007 and he was subsequently issued with a title deed.
6. He further stated that he did not serve the Plaintiff with the proceedings in ELC JR No. 64 of 2008 as he was not aware of the details of other alleged proprietors of the suit property and he was only informed that the property had a duplicate register and thus registration for the sub-division could not proceed.

7. The 3rd Defendant averred that the plaintiff's application to be joined in JR No. 64 of 2008 was never brought to his attention and by the time the said application was made, the 3rd Defendant had been issued with the orders of mandamus five years earlier and he was of the view that the matter had been concluded.
8. He states the Plaintiff's actions in failing to serve him with the application for joinder and having the orders of mandamus lifted was done in bad faith and was meant to deprive the 3rd Defendant of his interest in the suit property. He prayed that the Plaintiff's suit be dismissed with costs.
9. After the pleadings closed and parties complied with pre-trials, the suit was set down for hearing when each of the parties testified and closed their case.

Plaintiff's Case

10. Teresiah Mwhaki Kungu, the Plaintiff testified as PW1. She adopted her witness statement dated 4.5.22 and produced the 5 documents in her List of documents of even date. She also produced 11 additional documents at page 86-94 of the Plaintiff's trial bundle. The said documents were marked as Plaintiff' exhibits 1-18.
11. It was her testimony that she bought the suit property from one Beth Wanjiru Kahungi vide a sale agreement dated 17.5.1988. The land was transferred to her in the same year and she was issued with a

title deed. She later learnt that her land had been partitioned without her consent and that is why she had instituted this case.

12. Upon being cross-examined, she stated that Beth Kahungi who sold her the land was a member of Githunguri Constituency Ranching Company and she had a title deed. She was aware that the 3rd Defendant had obtained a court order dated 11.1.2011 vide HC JR No. 64 of 2008, directing the Land Registrar to approve the subdivision of the suit property. She applied to be joined to the suit and the said suit was subsequently dismissed for want of prosecution together with all consequential orders on 2.9.2019.
13. On being shown the register of members of Githunguri Constituency Ranching Company Limited, she admitted that the name in the register was Wanjiru Kahugi Geta of ID No. 6253352/69 while the vendor is Beth Wanjiru Kahugi of ID No. 6253852/69 and that these are two different persons.
14. John Maina Mburu, the Chairman, Githunguri Constituency Ranching Company Limited who was summoned by the court at the plaintiff's request testified as PW2. He relied on his witness statement dated 5.5.2022. He produced 10 exhibits as Plaintiff's exhibits 19-29.
15. He told the court that according to the records held by Githunguri Constituency Ranching Co. Ltd, the suit property was allocated to Wanjiru Kahugi Beth in 1983 and she appears in the company's member's register as number 61.

16. It was his further testimony that all owners of land in Ruiru East Block 1 were issued with titles at a public ceremony by the late President Moi in 1983 and it was not possible for one who was not a member of the company to be issued with a title.
17. He stated that he had written the letter dated 15.5.2019 to the DCIO, Ruiru indicating that the letter dated 9.8.2007 purported to have been written by Francis Kairianja was a forgery as the signature of the author was not similar to the known signature of Mr.Kairianja.
18. Upon cross-examination he stated that before he became the Chairman in 2009, he had interacted with Francis Kairianja and he was conversant with his signature. He maintained that Plot No. 61 was issued to Wanjiru Kahugi Beth of ID No. 6253852/69. He stated that in the letter to the DCIO dated 15.5.2019, he had indicated the ID number for Wanjiru Kahugi Geta as 6253352/69 but he later corrected it to read 6253852/69. He admitted that the name in the register was Wanjiru Kahugi Geta. He told the court that he did not know that Wanjiru Kahugi Beth had transferred the suit property to Teresia Mwihaki Kungu.
19. PW2 denied that they had allocated the suit property to more than one person. He stated that they did not have a member known as Julius Murigi Gichohi in their records. He clarified that they do not issue titles to their members but they issue ballots, share certificates

and clearance certificates to enable their members process their title deeds.

Defendants' Case

- 20.** Robert Mugendi Mbuba, the Land Registrar, Ruiru testified as DW1. He relied on his witness statement dated 22.3.23. He produced the documents in the 1st Defendant's List of documents as 1st Defendant's Exhibits 1-12.
- 21.** He informed the court that the Plaintiff had applied for reconstruction of the green card in respect of the suit property but he declined to reconstruct the same as the case was in court.
- 22.** He stated that the documents in the parcel file support Julius Murigi Gichohi and David Wanyoike Gachogu. It was his testimony that the green card for land parcel number Ruiru East Block 1/61 was missing but the green cards for the resultant parcels being Ruiru East Block 1/3206-3214 were in the parcel file.
- 23.** He explained that the sub-division was done on 16.11.2011 pursuant to a court order issued in HC JR No. 64 of 2008 compelling the Land Registrar to approve the sub-divisions once David Wanyoike Gachogu fulfilled all the requirements necessary to effect the sub-division.
- 24.** Upon cross-examination, he told the court that he was aware that the suit property was originally owned by Githunguri Constituency

Ranching Co. Ltd but he did not know who was the first allottee from the said company.

- 25.** He confirmed that the first title in respect of the suit property was issued on 28.7.1983 while the title deed in the name of Julius Murigi Gichohi was issued on 30.1.2004. He pointed out that the indent on Julius Murigi Gichohi's title has the date August 2006 while the title was issued in 2004. On the other hand, the indent on the title issued on 28.7.1983 has a date of July 1984. He explained that the indent indicates the date when the title was printed by the Government Printers and a title can only be issued after it has been printed.
- 26.** He told the court that the green cards for both titles were missing.
- 27.** It was his testimony that the suit property has since been subdivided into 10 parcels pursuant to an order of mandamus.
- 28.** David Wanyoike Gachogu, the 3rd Defendant testified as DW2. He adopted his witness statement dated 11.1.24 as his evidence and produced the documents in his two lists of documents as 3rd Defendant's Exhibits 1-23.
- 29.** He informed the court that the suit property is next to Zetech University, off the Thika Superhighway. After buying it from Julius Murigi Gichohi in 2007, he cleared the bush then fenced it. When he lodged his documents for sub-division with the Land Registrar, Thika he was informed that the sub-division could not be effected as the

land was also registered in the names of other persons. However, the Land Registrar did not furnish him with the names of the alleged persons, forcing him to apply for an order of mandamus. He later sub-divided the suit property after obtaining the order of mandamus in HC JR No. 64 of 2008.

30. With that evidence, the Defendant's closed their case after which the parties were directed to file their submissions.

Plaintiff's Submissions

31. Learned counsel for the Plaintiff summarized the evidence on record and

submitted that the Plaintiff had proved that she was the lawful owner of the suit property. On the other hand, the defendants had fraudulently interfered with the correspondence file and obtained a fraudulent title in order to impeach the plaintiff's title. He maintained that the plaintiff was the first registered owner of the suit property having acquired her title in 1988 and therefore her right to own property was protected under Article 40 of the constitution of Kenya.

32. He urged the court to invoke its powers under section 80 of the Land Registration Act and rectify the register by cancelling the 3rd defendant's title which he alleged was acquired fraudulently. He relied on the case of **Arthi Highway Developers Limited v West End Butchery Limited & 6 Others (2015) eKLR** where the court

held that an innocent holder of legal title to land cannot be dispossessed of that interest by a fraudster. He further relied on the case of **Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others (2015) eKLR** for the proposition that a fraudulent title is impeachable under the provisions of section 26 (1) (a) of the Land Registration Act.

3rd Defendant's Submissions

33. Learned counsel for the 3rd Defendant identified 3 issues for determination;

- i) *Whether the parties obtained indefeasible title to the suit property;*
- ii) *Whether the Plaintiff has proved her case and whether she is entitled to the reliefs sought and finally iii) whether the plaintiff's suit is res judicata.*

34. Counsel relied on section 26 of the Land Registration Act which provides as follows:

Section 26. "The certificate of title issued by the Registrar upon registration or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate and the title of that proprietor shall not be subject to challenge, except;

a) On the grounds of fraud or misrepresentation to which the person is proved to be a party;

b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

35. Counsel relied on the case of **Munyu Maina v Hiram Gathiha Maina (2013) eKLR** for the proposition that where the sanctity of title is put to question, it is not sufficient to dangle the impugned title as proof of ownership.
36. He submitted that the Plaintiff had failed to prove that she paid the purchase price for the suit property. Further the vendor, Beth Wanjiru Kahungi of ID No. 6253852/69 is different from Wanjiru Kahugi Geta of ID No. 6253352/69 who was allocated the suit property by Githunguri Constituency Ranching Co. Ltd.
37. It was counsel's submission that the plaintiff did not establish the nexus between the vendor and the person who was allocated the suit property by Githunguri Constituency Ranching Company Ltd as she did not tender any allotment letter or document from the company to prove that she bought the suit property from the original allottee.
38. Counsel faulted that plaintiff for failing to ascertain the location of the suit property despite her claim that she had been in possession thereof since 1988. He also criticized PW2 for admitting that Githunguri constituency Ranching Company Ltd routinely corrected

errors in their records without following due process even when such corrections affected cases that were pending in court.

39. He questioned the Plaintiff's motive in failing to join the 3rd Defendant to the suit even though she was aware that he had earlier on filed Judicial Review proceedings over the same subject matter.
40. It was counsel's submission that the plaintiff's title, though obtained in 1988 was undermined by multiple inconsistencies and procedural flaws thus rendering it defective.

ANALYSIS AND DETERMINATION

41. Having considered the pleadings, evidence on record and the parties submissions, the main issues for determination are:
 - i. Who is the lawful owner of the suit property.
 - ii. Whether the plaintiff is entitled to the reliefs sought
 - iii. Who should bear the costs of this suit.
42. As mentioned earlier in this judgment both the Plaintiff and the 3rd defendant lay claim to the suit property and each of them has a title deed. The court must therefore determine whether either of them holds an indefeasible title.
43. Section 7 of the Evidence Act Cap 80 provides as follows:

(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the

existence of facts which he asserts must prove that those facts exist.

(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person”

44. Further section 109 and 112 of the Evidence Act states as follows:

S.109

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in the existence, unless it is provided by any law that the proof of that fact shall lie on any particular person”

S. 112

“In civil Proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him”.

45. The Plaintiff claims to have purchased the suit property from Beth Wanjiru Kahugi of National ID No. 6253852/69 vide a sale agreement dated 17th May 1988 after which she was issued with a title deed dated 20th September 1988. She produced a copy of the sale agreement indicating that she purchased land parcel number Ruiru East Block 1 /61 measuring 1.25 acres.

46. It was her testimony that the said Wanjiru Kahugi Beth was a member of Githunguri Constituency Ranching Company. She stated

that at the time she sold the land, Beth had a title deed. However, apart from the excerpt of the register of Githunguri Constituency Ranching Company which shows that Beth Wanjiru Geta is a member of the said company, the plaintiff did not produce any ballot card or share certificate issued to Beth by the Company to enable her process her title deed.

47. Upon cross-examination the Plaintiff conceded that the names Beth Wanjiru Kahugi and Wanjiru Kahugi Geta whose name appears in the register for Githunguri Constituency Ranching Company refer to two different people. It is noteworthy that the ID number for Wanjiru Kahugi Geta is 6253352/69 while the one for Beth Wanjiru Kahungi is 6253852/69.
48. John Maina Mburu, the current chairman of Githunguri Constituency Ranching Company who testified as PW2 after being summoned by the court. He contradicted the Plaintiff by stating that Wanjiru Kahugi Beth and Wanjiru Kahugi Geta were one and the same person. In an attempt to explain the discrepancy in the ID numbers he stated that there was a typographical error in the ID number which he sought to correct through his letter to the DCI dated 15th May 2019. On the said date, he wrote two letters to the DCIO. In one letter the ID number for Wanjiru Kahugi Geta is indicated as 6253352/69 while in the second letter attached to his witness statement the ID number for Wanjiru Kahugi Geta is indicated as

6253852/69. He maintained that it was his role to correct any errors in their register.

49. It is clear that the Chairman was at pains to prove that the Wanjiru Kahugi Geta who was allocated the land by Githunguri Constituency Ranching Company was the same person who sold the suit property to the plaintiff yet it is obvious from the ID numbers that these are two different people as admitted by the plaintiff. I must point out that he did not strike me as a truthful witness.
50. The contradictions in the evidence relating to the person from whom Plaintiff acquired her title casts a doubt on the sanctity of Plaintiff's title to the suit property.
51. Furthermore, DW1 informed the court that the green card for the suit property was missing from their records and that he had rejected that Plaintiff's request to reconstruct the same while the case was pending in court. This shows that the Plaintiff was aware that the documents in her possession were inadequate to prove the root of her title.
52. On his part, the 3rd Defendant testified that he purchased the suit property from Julius Murigi Gichohi on 16.7.2007 at a consideration of Kshs. 2 million. Before entering into the sale agreement, he conducted an official search which confirmed that the land was registered in the name of Julius Gichohi. He subsequently paid the purchase price, obtained the consent of the Land Control Board and

had the suit property transferred to him. He then applied to sub-divide the land into 10 portions. The Land Registrar however declined to register the sub-division on the grounds that the suit property was also registered in the name of another person. This is what prompted the 3rd Defendant to file suit by way of Judicial Review for an order of mandamus compel the Land Registrar to register the sub-divisions.

53. An examination of the 3rd Defendant's root of title would lead to the conclusion that the said title is not indefeasible as there is no nexus between Julius Gichohi and Githunguri Constituency Ranching Company.
54. Similarly, just like the case of the Plaintiff's title, there is no green card for the 3rd Defendant's title. This is a serious indictment on the officers at Lands Registry led by the Land Registrar who was unable to explain the absence of the green cards for the suit property.
55. Be that as it may, the burden of proof lay on the plaintiff to prove that she has an indefeasible title but she failed to discharge that burden. As was held in the case of **Njoroge v Karuku, [2024]KECA 553** and **Funzi Development Ltd v County Council of Kwale [2014] eKLR** the sanctity of title is contingent upon lawful acquisition and the Plaintiff did not acquire an indefeasible title.

56. In light of the above analysis ,it is my finding that the Plaintiff has failed to prove her case on a balance of probabilities and she is therefore not entitled to the reliefs sought in her Plaint. Accordingly, the Plaintiff's suit is dismissed with costs to the Defendants.

Dated signed and delivered virtually at Thika this 17th day of November 2025.

.....
J. M ONYANGO
JUDGE

In the presence of:

Mr. Mbabu for the 3rd Defendant

Mr Kimathi for the Plaintiff

No appearance for the 1st & 2nd Defendants

Mr Lumwachi for the Plaintiff