

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ELC CASE NO E008 OF 2024

PETER NJUKI MURIUKI alias NJUKI MURIUKI.....1ST
PLAINTIFF

STEPHEN NTHIA TEBETA alias STEPHEN NTHIA.....2ND
PLAINTIFF

BENSON MWANIKI NTHIA alias MWANIKI STEPHEN...3RD
PLAINTIFF

VERSUS

NDATHI MBITI.....
DEFENDANT

JUDGMENT

1. The Plaintiffs instituted this suit through the plaint dated 8/4/2024 seeking a declaration that the registration of the Defendant as proprietor of the parcels of land known as Nthawa/Gitiburi/1715 and Nthawa/Gitiburi/1860 was wrongful, unlawful and fraudulent and should be cancelled. They sought reinstatement of title over Nthawa/Gitiburi/1715 to the 1st Plaintiff and Nthawa/Gitiburi/1860 to the 2nd and 3rd Plaintiffs.
2. The Plaintiffs claim that together with the Defendant, they belong to the Mbuya Clan, Mung'au House and that they are beneficiaries of a block of land that was referred to as Mung'au Land before the land was adjudicated. That when the

adjudication process in Gitiburi Adjudication Section was finalised, the 1st Plaintiff together with the Defendant's son, Njeru Ndathi and Jafeth Mathagu Kareko and Ngari Njue, who have died, were allocated part of the Mung'au land registered as Nthawa/Gitiburi/1715 measuring 5.6 hectares (ha) in common in equal shares. They averred that the 2nd and 3rd Plaintiffs who are father and son respectively, were allocated Nthawa/Gitiburi/1860 measuring 2 ha in common in equal shares.

3. The Plaintiffs averred that they were registered as proprietors of the two parcels of land on 19/10/1994 and have been in possession to date. On or about 2020, they were surprised to discover that the Defendant was registered as the proprietor of the land based on claims that he had paid consideration of Kshs. 700,000/= for Nthawa/Gitiburi/1715 and Kshs. 350,000/= for Nthawa/Gitiburi/1860. They denied transacting with the Defendant over the land and maintained that those transactions, which were carried out without their knowledge were fraudulent and unlawful. They set out the particulars of fraud against the Defendant.
4. The Defendant filed a defence in which he averred that he was registered as proprietor of the land legally through an order issued in **High Court Civil Case No. 79 of 2005** and that he did not purchase the suit land as the Plaintiffs claimed. He denied the particulars of fraud pleaded against him and stated that the Plaintiffs obtained registration of the land fraudulently and that their registration was reversed by the court. He added

that the Plaintiffs attempted to set aside and appeal against the decree issued in **High Court Civil Case No. 79 of 2005** without success and that this case is an attempt to alter the said decree. He urged the court to dismiss the suit with costs.

5. During the hearing, the 1st Plaintiff testified and stated that the Mung'au land was the subject of land adjudication cases with other clans including the Gachuga Clan in or about 1973, and that they were represented by Muthakie Ngariama in the cases. Their clan was awarded the land and upon determination of the cases, the Defendant was appointed by the clan members to distribute the land among the clan beneficiaries.
6. He claimed that the Defendant distributed the land to members of other clans who were not entitled to the land. Consequently, Njoka Rugiri appealed to the Minister vide Appeal Case No. 102 of 1980 complaining about the wrongful distribution of the land by the Defendant. Muthakie Ngariama filed Minister's Appeal Case No. 101 of 1980 seeking to be reinstated as the clan Chairman in the Defendant's place. The appeals were heard together and it was ordered that Njoka Rugiri should redistribute the land to the rightful beneficiaries of the Mung'au House. Njoka Rugiri died before completing the redistribution process but his brother, Kirengo Rugiri alias Ngari Rugiri took over the distribution process. He explained that the land had been subdivided into 55 portions. The subdivisions were not cancelled, but that their names replaced the names of the third parties who had been wrongfully allocated the land. That they were awarded

the suit land and the 1st Plaintiff got Nthawa/Gitiburi/1715 while the 2nd and 3rd Plaintiffs got Nthawa/Gitiburi/1860.

7. He told the court that they were in possession of their respective portions of land. They could not deal with the suit land in 2014, because the Defendant had restricted them. They met in the Chief's office and the Defendant demanded two million shillings from him saying that it was compensation for the money he spent in the disputes involving the land. He urged that that was an unreasonable demand because the disputes which the Defendant was involved in were appeals to the Minister touching on the chairmanship of the clan. He maintained that he did not transfer his share of the land to the Defendant.
8. On cross examination, he stated that he does not live on the suit land and that he was not aware of High Court Civil Case 79 of 2005 and was not a party in the case. He maintained that he was given his share of the land by John Ngari and produced the green cards and official searches for Nthawa/Gitiburi/1715 and Nthawa/Gitiburi/1860. He also adduced consents from the land control board (LCB) to partition Nthawa/Gitiburi/1860 dated 8/1/1997 and the LCB consent to correct the name Stephen Nthia to read Stephen Nthia Tebeta dated 8/1/1997. He also tendered a copy of the application for correction of name from Benson Mwaniki to Benson Mwaniki Stephen dated 24/12/1996 and letters dated 24/9/1986 and 9/10/2020 from the Director of Land Adjudication and Settlement.

9. The 2nd Plaintiff testified and supported the 1st Plaintiff's claim. He was not aware of the High Court case and maintained that Nthawa/Gitiburi/1860 belonged to him, and that it was given to him by the clan leaders. He told the court that he ploughs the land and wishes to bequeath it to his children.
10. The Defendant gave evidence and stated that he is the registered proprietor of the two parcels of land, and explained that he was registered pursuant to a court order issued in **High Court Civil Case No. 75 of 2009** and pursuant to the award through the adjudication process as a member of the Mbuya Clan, Mung'au House. He argued that the Plaintiffs do not belong to Mung'au House and that they have no claim over the suit land nor were they awarded the land by any court.
11. He added that the Defendants in **High Court Civil Case No. 75 of 2009** appealed to the Court of Appeal in Nyeri but the appeal was dismissed. He denied that the Plaintiffs occupied the suit land. He expressed the view that the Plaintiff's should have included the Land Registrar in the suit if their claim was genuine to explain why their land was transferred without their authority.
12. The Defendant produced copies of the decree issued in **High Court Civil Suit No. 75 of 2005**; order dated 9/12/2009 issued in **High Court Civil Suit No. 79 of 2005**; ruling dated 1/2/2012 in the High Court case and the ruling dated 31/3/2014 made in **Nyeri Civil Application No. 35 of 2013**. He also produced copies of the transfer and receipts for the suit land, letter dated 28/7/2004 from the Ministry of Lands, receipt for

title numbers Nthawa/Gitiburi/2425, 1702 to 1706, 1708 to 1709, 1710 and 1715 and an objection against the Adjudication Register.

13. The court directed parties to file and exchange written submissions, which it has considered. The Plaintiffs submitted that their registration as proprietors was protected by Section 24(a) of the Land Registration Act and that their proprietorship could not have been cancelled lawfully without due process. They added that their titles would not have been cancelled without their involvement and without a proper order being registered against the suit land. They pointed out that the green cards indicated that the Defendant acquired the suit land for valuable consideration yet on being cross-examined, the Defendant admitted that he did not buy the suit land from the Plaintiffs. They urged that the inconsistency in the Defendant's evidence demonstrated fraud.
14. The Plaintiffs argued that the order in **High Court Civil Case No. 75 of 2009** through which the Defendant claims to have obtained the suit land was not registered at the lands registry contrary to Section 45 (1) of the Land registration Act which provides that no instrument affecting any disposition of interest in land shall be registered unless it has been presented in accordance with that Act. They contended that the failure to register the order meant that it had no effect on their titles.
15. The Plaintiffs submitted that the Minister determined the disputes over the clan land and expressly directed that the land

be shared by members of the committee and excluded the Defendant for exhibiting bias in the land allocation. That the Defendant could not revisit or override those decisions indirectly through fabricated transfers and that his actions which were contrary to the Minister's decision were unlawful.

16. The Defendant submitted that the Plaintiffs bore the burden of proving fraud against him. That in answer to the allegations of fraud, he had produced copies of the application for registration and consent to transfer issued by the LCB in Siakago which the Plaintiffs did not challenge. He added that the Plaintiffs did not deny the existence of the order made in High Court Civil case No. 79 of 2009 and that he informed the court that he obtained the transfer of the suit land through the order and decree issued in this case. He maintained that the Plaintiffs failed to prove how the fraud was implemented and urged the court to dismiss the suit.
17. The issue for determination is whether the court should grant the reliefs sought by the Plaintiffs. The Plaintiffs' claim is that they are the rightful owners of the suit land which originally belonged to the Mung'au House of the Mbuya Clan and which was allocated to them by the clan. They contended that upon finalization of the land adjudication process, Nthawa/Gitiburi/1715 was awarded to the 1st Plaintiff, the late Njeru Ndathi, the late Jafeth Mathagu, and the late Ngari Njue, while Nthawa/Gitiburi/1860 was awarded to the 2nd and 3rd Plaintiffs.

18. The Defendant on the other hand, claims that the suit land were awarded to him pursuant to an order issued in **High Court Civil Case No. 79 of 2005**. The Plaintiffs produced green cards for the two parcels of land, which show that they were registered as proprietors on 19/10/1994. The green cards show that subsequently, the Defendant was registered as proprietor on 24/11/2014, with the entries showing that he paid Kshs. 700,000/= and Kshs. 350,000/= as consideration Nthawa/Gitiburi/1715 and Nthawa/Gitiburi/1860 respectively.
19. The Defendant stated in evidence that he did not purchase the suit land and contended that his registration was effected pursuant to the decree and order issued in High Court Civil Case No. 79 of 2005. The court has examined the decree and orders and notes that the decree directed that the allocations made over the parcels in that suit, which included the suit land, were to be revoked and the land would revert to the Plaintiff in that case (the present Defendant) for re-allocation. The order also authorized the Executive Officer to execute the requisite documents to give effect to the decree.
20. The court notes certain peculiarities in the circumstances of this land dispute. It is not clear which specific allocations were revoked by the High Court decree and whether the Plaintiffs were among the parties affected by that order. Secondly, the green cards for Nthawa/Gitiburi/1715 and Nthawa/Gitiburi/1860 do not reflect that the Defendant's registration was pursuant to a court order. Instead, they show that the registration was done

based on a sale for valuable consideration. Thirdly, the order of the High Court directed that the land was to revert to the Defendant for purposes of re-allocation, but not as the absolute proprietor of the land.

21. The court has looked at the letter produced by the Plaintiffs from the Chief, Gitiburi Location dated 9/10/2020 addressing the restriction placed over Nthawa/Gitiburi/1715. In that letter, the Defendant is recorded as having stated that he was not aware of the sum of Kshs. 700,000/= but that he knew that he had spent approximately Kshs. 754,000/= in various transactions that he undertook on behalf of the Mbuya Clan during his tenure as Chairman. The Defendant asserted that he would not issue any land to anyone unless he was paid a sum of Kshs. 2,000,000/=.
22. Under section 24(a) of the Land Registration Act, the registration of a person as the proprietor of land vests in that person absolute ownership of that land together with all rights and privileges appurtenant to the registration. Section 26(1) of the Act provides that such title can only be challenged on grounds of fraud or misrepresentation to which the person is proved to be a party, or where the title has been acquired illegally, unprocedurally, or through a corrupt scheme.
23. The evidence tendered by the Plaintiffs demonstrates that the Plaintiffs were registered as proprietors in 1994 and that their titles were later cancelled and registered in the Defendant's name in 2014 pursuant to an alleged purchase which the Defendant has denied.

24. The Defendant asserted that he acquired title over the suit land pursuant to a High Court order but in that order, the Defendant was not granted absolute ownership of the suit land but the order was for reallocation of the land to the rightful beneficiaries from the clan. The Defendant did not demonstrate that the Plaintiffs were not among the rightful beneficiaries of the clan.
25. On a balance of probabilities, the inconsistencies in the manner in which the Defendant was registered as proprietor of the suit land support the Plaintiffs' claim that the alteration of the register was done illegally and unprocedurally and is liable to challenge under Section 26 of the Land Registration Act.
26. The court allows the Plaintiffs' claim and grants prayers (a) and (b) of the plaint dated 8/4/2024. The Plaintiffs are awarded the costs of the suit.

Delivered virtually at Embu this 12th day of November 2025.

**K. BOR
JUDGE**

In the presence of: -

Ms. M. Ndeke holding brief for Ms. R. Njeru for the Plaintiffs

Mr. Fundi Kimanzi for the Defendant

Court Assistant- Diana Kemboi

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