

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ELCLC NO. 54 OF 2023
(Formerly Nyahururu No. ELC 10 of 2017)

MARGARET WAMBUI

MUNGAI.....PLAINTIFF

VERSUS

STEPHEN NJUGUNA AND 4

OTHERS.....DEFENDANT

JUDGMENT:

In the Complaint first dated 1/11/2012 and later amended on 13/12/2012 where leave to file suit out of time against the 2nd to 5th Defendants was granted on 29/11/2012 in the High Court at Nakuru in Civil Suit No. 307 of 2012, the Plaintiff prayed for the following.

- a. A Declaration that L.R No. NYANDARUA/ORAIMUTIA/58 measuring approximately 27.5 Hectares belonged to MUNGAI WAWERU (deceased) absolutely.
- b. A Declaration that the sub-division authorized by the Settlement Funds Trustee as L.R No. NYANDARUA/ORAIMUTIA/58 vide mutation dated 27/6/1997 was fraudulent and for the cancellation of the same.
- c. An order for the cancellation of Title Deeds for L.R No. NYANDARUA/ORAIMUTIA/642, 643,644,645 and 646 issued to

the Defendants and for the same to be transferred to the Plaintiff.

- d. An order of Permanent Injunction do issue restraining the Defendants by themselves, their agents, servants and/or employees from entering, remaining, cutting trees, destroying crops and vegetation or in any other way interfering with the Plaintiffs quiet occupation on L.R No. NYANDARUA/ORAIMUTIA/642,643,644,645 and 646.

And in the alternative,

- e. A Declaration that the Plaintiff has acquired Title by adverse possession over L.R No. NYANDARUA/ORAIMUTIA registered in the names of the Plaintiff forthwith.
- f. Costs of the suit plus interest.
- g. Any other or further relief that this Honorable Court may deem fit and just to grant.

The Plaintiff describes himself as the legal representative of the estate of MUNGAI WAWERU, the lawful owner of L.R No. NYANDARUIA/ ORAIMUTIA/58 measuring approximately 27.5 Hectares where the Plaintiff and her children have been residing since 1966 when the same was allotted to the Deceased by the Settlement Fund Trustees and they have been farming thereon to date. The Plaintiff avers that on 15/11/2012 the 1st Defendant in the company of Administration officers descended on the suit land and started destroying the Plaintiff's crops and vegetation and also subdividing the land amongst themselves. The Plaintiff conducted a search at the Lands Registry, Nyandarua only to find that the land

had been sub-divided fraudulently by the 5th Defendant in 1997 into the following Titles.

1. L.R NO. NYANDARUA/ORAIMUTIA/641 to MUNGAI WAWERU.
2. L.R NO. NYANDARUA/ORAIMUTIA/642 to SIMON GATHIRIGA NJUGUNA
3. L.R NO. NYANDARUA/ORAIMUTIA/643 to PAULINE WAMBUI NJUGUNA.
4. L.R NO. NYANDARUA/ORAIMUTIA/644 to KIYO KANGUI SELF-HELP GROUP.
5. L.R NO. NYANDARUA/ORAIMUTIA/645 to SETTLEMT FUND TRUSTEES
6. L.R NO. NYANDARUA/ORAIMUTIA/646 to ZACHARIA FRANCIS KIMANI KAGIA.
7. L.R NO. NYANDARUA/ORAIMUTIA/647 to JEREMIAH GITHINJI NDIRANGU.

She gave the following as the particulars of fraud.

- a. Sub-dividing the Plaintiff's land without the Plaintiff's authority.
- b. Failing to issue a discharge of charge to the Plaintiff and instead reallocating the suit land to third parties.
- c. Issuing Title Deeds to third parties without taking into consideration the Plaintiff's indefeasible interest in the suit land.

She further averred that the 1st Defendant is not a legal entity and cannot therefore be registered as a proprietor of land in its own name and the Titles issued to it and therefore ought to be

cancelled. She has also pleaded for Title by way of Adverse possession.

In the 1st Defendant's Statement of Defence and Counterclaim dated 10/1/2013, Kiyo Kangui Self Help Group averred that the Plaintiff's other family occupy L.R NO. NYANDARUA/ORAIMUTIA/641 which is a sub-division of what was originally L.R NYANDARUA/ORAIMUTIA / 58 owned by one MUNORU NJUGUNA who was allocated alternative plot No. 337 LARIAK SETTLEMENT SCHEME by the Settlement Fund Trustees. They also deny having descended on the Plaintiff's land and that they are entitled to L.R NO. NYANDARUA/ORAIMUTIA/644 which is registered in the name of the Group.

In the Counterclaim, the 1st Defendant averred that in the years 2011 and 2012 the Plaintiff trespassed upon L.R NO. NYANDARUA/ORAIMUTIA/644 and uprooted boundary beacons, felled trees and erected a temporary building structure thereon with a view to staking claim of ownership thereof without any colour of right or lawful authority. She therefore prays for a mandatory injunction compelling the Plaintiff to restore the uprooted boundary beacons and remove the building structures erected on L.R No. NYANDARUA/ ORAIMUTIA/ 644. Failure to which the 1st Defendant to do so at the Plaintiff's cost. The 1st Defendant therefore prayed for the dismissal of the Plaintiff's suit and by way of Counter-claim for: -

- a. A mandatory injunction compelling the Plaintiff to restore the uprooted boundary beacons and remove the building structures erected on L.R No. NYANDARUA /ORAIMUTIA/644

failing which the 1st Defendant be at liberty to remove the same at the Plaintiff's costs.

- b. Costs of the suit and those of the Counter-claim plus interest at court rates.
- c. Any other or better relief deemed fit by the Court.

The 5th Defendant filed her Statement of Defence dated 24/4/2014 on

29/4/2014 where she says that L.R No. NYANDARUA/ ORAIMUTIA/ 58 was allocated to Waweru Njuguna in the year 1965. Waweru Njuguna was also allocated another plot No. 337 with the same Settlement Scheme having failed to disclose that he had been allocated the suit land.

She also avers that the suit land was unlawfully transferred to the Deceased as a gift and that there are no documents to show that Mungai Waweru was the owner of the suit land at the District Settlement Office.

The 5th Defendant also pleaded that in a meeting between the S.F.T, Munoru Njuguna and Mungai Waweru, a decision was reached to re-plan and re-allocate the suit land to Mungai Waweru and other deserving individuals and the 2 never raised any objection. She says she was the proprietor of plot No. 58. She prayed that the suit be dismissed with costs. In the Statement of Defence of the 2nd, 3rd and 4th Defendants dated 21/2/2013, the said Defendants said that the land parcel occupied by the Plaintiff and her family L.R. No. NYANDARUA/ORAIMUTIA/641, a sub-division L.R. No, NYANDARUA /ORAIMUTIA/58 owned by Munoru Njuguna which was

allocated to him. They repeated the contents of the 1st Defendant's Defence dated 10/1/2013.

The Plaintiff framed the issues for determination as follows:

1. Whether the Plaintiff is the legal representative of the estate of **Mungai Waweru**.
2. Whether **Mungai Waweru** (deceased) was the legal allottee of **L.R NO. NYANDARUA/ORAIMUTIA/58** by the 5th Defendant.
3. Whether the 5th Defendant fraudulently subdivided **L.R NO. NYANDARUA/ORAIMUTIA/58** in the year 1997 to create **L.R NO. NYANDARUA/ORAIMUTIA/641 - 647**.
4. Whether the said subdivisions were fraudulently and unlawfully transferred to the 1st - 5th Defendants.
5. Whether the Defendant's Title Deeds ought to be cancelled and registered in the name of **Mungai Waweru**.
6. Whether the Plaintiff has acquired Title by adverse possession over **L.R NO. NYANDARUA/ORAIMUTIA/642 - 646**.
7. Who should bear the costs of the suit.

PW1, Margaret Wambui Mungai testified on 21/1/2020 and said that Mungai Waweru was her husband and that he was passed on on 23/10/2020. She said that she acquired the suit land with him when it was Plot No. 58 Oraitutia Scheme when she was a small girl. The Government gave them the land. Her husband paid Kshs. 5,000/= all in one instalment. It is Munoru who paid the money but it had come from Mungai. By then Mungai was living in a forest in Eldoret and he could not get permission from his employer to go home.

Munoru, a cousin to Mungai, gave them the documents for the land. The land has remained in Munoru Munoru's name but it is Mungai who has been making the payments for it. The land was then registered in Munoru's name. She entered the suit land and was given 4 cows and 30 sheep by the S.F.T and she later planted pyrethrum. The produce from the cows, sheep and pyrethrum were used to pay the loan. The land measured 68 Acres. She produced the following documents to buff up

her case: -

- a. Letter of offer dated 25/4/1966.
- b. Certificate of acceptance dated 25/4/1966.
- c. Receipt for Kshs. 30,000/= dated 24/8/1987.
- d. Land Control Board Consent.
- e. Letter of Consent from the L.C.B dated 13/10/1986.
- f. Letter of transfer dated 25/11/1987.
- g. Mutation form dated 27/6/1999.
- h. Green cards.
- i. Death Certificate for Mungai.
- j. Undated letter.
- k. Grant of letters of Administration.
- l. Demand Notice.
- m. Order dated 29/11/2012 from Nakuru High Court Civil Suit No. 307 of 2012.
- n. Receipts for payment to the Government.
- o. Oraimutia Farmers Co-operative Society Ltd. Members Record Card.

p. Pleadings and order issued on 29/11/2012 in Nakuru High Court Civil Suit No. 307 of 2012 (O.S).

She said that before the Society was disbanded, she had paid part of the loan and the balance after the Society, Oraithutia Farmers Co-operative Society was dissolved. She said that after paying the entire loan, Munoru and Mungai went to the Ol-joro-orok Land Control Board for Consent. She testified that her late husband never sub-divided the land and that the Defendants and other people got into the land when

she was sick and that Munoru was given another parcel of land.

On cross-examination by Mr. Gakuhi Chege for the 4th Defendant, the witness said she could not remember the year her husband died. But later said he died on 23/10/2020. She said that Munoru had 2 parcels of land in Oraithutia Scheme. She said she was present when Munoru was given money to go and pay by her husband for the suit land - plot No. 58. She admitted that they used to pay all monies in respect to the land and even delivered produces in the name of Munoru. She said that her late husband died as she was processing the transfer. She also said she was sick and that is why she was not able to file the suit in good time but that she applied for leave to file it out of time. There were other receipts other than the one for Kshs. 30,000 but the same were stored by the 5th Defendant somewhere and got torn. Mr. Munoru was given land in Ng'arua in lieu of the suit land.

When cross-examined by the 2nd Defendant, the Plaintiff said that the 4th Defendant came and stayed on the land without permission

when the Plaintiff was sick and that he has lived there for over 20 years. She was not in a position to go to Court as her husband was equally sick. Her children were also unable to keep the 4th Defendant off the land.

The Plaintiff further testified that she was sick when the 2nd Defendant built on her land and that she did not sell any land to him. A Mr. Waithaka from SFT is the one who carved out land to her.

On cross-examination by Mr. Ondieki for the 5th Defendant, the witness said that her husband had no other land and that she did not allow the 2nd and 4th Defendants to live on her parcel of land.

After the recall of PW1 she produced the receipts for the allotment of the land to the Government.

On re-examination by Mr. Waichungo, the witness said that the parcels the Defendants are occupying were excised from plot No. 58 by Waithaka of SFT and that she was not involved in the subdivision process.

DW1, Stephen Kariuki Njuguna, chairman of the 1st Defendant, testified by first adopting his statement dated 10/1/2013. He said that the 1st Defendant has a Title Deed for the suit land issued in 2011 and that they did not even know the Plaintiff. The Society comprises of 25 members. He claimed that in 2006 the Society purchased the parcel of land L.R No. NYANDARUA/ORAIMUTIA/644 from Michael Gitahi at a consideration of Kshs. 200,000/= and for which they paid to Gakista General Commercial Agencies who were the Agents of Michael Gitahi, the allottee of the land from the S.F.T.

on 14/12/2010, they obtained consent of the land Control Board for transfer and Michael Gitahi transferred the land to them on 22/12/2010. The SFT gave the Discharge of Charge on 17/2/2011. The Title Deed was issued on 29/4/2011 and they took possession of the land in 2007 after being shown the boundary beacons by the surveyor.

On 21/8/2012, the 1st Defendant obtained consent for sub-division of the land into 24 parts for the members from Ol-joro-orok Land control Board. She then produced the following documents to support the 1st Defendant's case: -

1. Certificate of Registration of Kiyo Kangui Self Help Group and list of members.
2. Land Control Board Consent for transfer of L.R No. NYANDARUA/ORAIMUTIA/644 to Kiyo Kangui self Help Group and application thereof.
3. Transfer of land instrument dated 22nd December, 2010 by Settlement Fund Trustees, from Michael Gitahi to Kiyo Kangui Self Help Group.
4. Transfer of land in Settlement Scheme Instrument by Settlement Fund Trustees to Kiyo Kangui Self Help Group and discharge of charge.
5. Title Deed for L.R No. NYANDARUA/ORAIMUTIA/644.
6. Certificate of official search for L.R No. NYANDARUA/ORAIMUTIA/644.

7. Letter dated 27th January, 1997 to Mr Munoru Njuguna & Mungai Waweru by Director of Land Adjudication & Settlement.
8. Letter dated 7th November, 2012 to Waichungo Martin & Co Advocates by Director of Land Adjudication & Settlement.
9. Certificate of official search for L.R No. NYANDARUA/ORAIMUTIA/641.
10. Relevant Registry Index Map of Oraimutia Settlement Scheme.

DW2, Lawrence Karungi Ndun'gu, a land Adjudication officer Nyandarua North, adopted his statement dated 15/8/2023 as his evidence in chief. He said that plot No. 58 Oraimutia, 68 Acres was originally allocated to Munoru Njuguna vide allotment of 1966. He was later allocated Lariak Settlement Scheme in 1969 and because no one was supposed to have 2 allotments in the Settlement Scheme, Plot No. 58 was repossessed as he failed to disclose that another land had been allocated to him. The letter of withdrawal is dated 1/10/1970. Reference No. L.O/205/58/12. It is then that Mr. Munoru and in order to prevent any intended re-allocation he hurriedly transferred the suit land Plot No. 58 to his brother Mungai Wambugu disguising it as a gift. The Land Control Board innocently issued consent for the transfer as an absolute gift and at the same time for a consideration of Kshs. 450,000/= which is contradictory and illegal .

The correct acreage of the plot is 68 Acres. Mungai was not issued with an allotment letter but was later allocated 30 Acres on plot No. 58 on humanitarian grounds. Plot No. 58 was to be re-planned and re-allocated to Mungai and other deserving Kenyans. The plot was then sub-divided into plots NOs. 641 to 647. Mungai's was 641 which took into consideration the developed portion.

He was given a Title deed for the same in spite of objection from his wife who laid a claim over the entire plot No. 58.

He then produced the following documents as per the list of documents dated 14/11/2017: -

1. Allotment letter for Munoru Njuguna issued in 1966.
2. Letter of Application to the Land Control Board by Munoru Njuguna dated 1987.
3. Consent of the Land Control Board dated 25/8/1987.
4. Mutation form for plot No. 58 Oraimutia.
5. Certificate of official search for plot No. 641, Oraimutia.
6. Letter from the Director of Settlement Munoru Njuguna and Waweru Mungai dated 27/1/1991.
7. Letter from the Director of Settlement to Waichungo Martin & Co Advocates dated 7/11/2012.

On cross-examination by Mr. Waichungo, the witness said what was in Court was a reconstructed file and that the original was in the archives. There was no letter of allotment in the file but that Mr. Munoru Njuguna was allocated land in Laikipia on the authority of the president of Kenya. The offer of plot No. 58 was withdrawn by the Director vide a letter dated 1/10/1970 but that he did not have

the letter with him nor had he even seen a copy. He admitted that there was consent of the Land Control Board granted for the sole purpose of transferring the suit Plot No. 58 from Munoru Njuguna to Mungai Waweru and the value of property was shown to be Kshs. 450,000/=.

The letter dated 27/1/1997 stated that Mungai had developed 30 Acres of the land. he was to be given 30 Acres while the rest was to be re-allocated. He said he did not have Applications for allocation of land or the 6 plots.

The witness said that the Society has 26 members. They came to know about the land from an agent and bought it from Michael Gitahi and not from the SFT. They bought the land in 2004 for Kshs. 150,000/-. The Vendor had no Title Deed at the time of the sale. It belonged to Michael Gitahi as shown by a search. It was vacant and bushy and was a grazing field. It was not fenced and there was no house thereon. It was about 7 Acres and the Plaintiff's homestead was some distance away. The land was shown to them by an agent. When the purchasers went to the land, the Plaintiff claimed to have been beaten by the Agent. The transfer shows that the purchase price was Kshs. 300,000/=. The transfer form is not signed. As at 5/12/2008, the owner of the land was SFT. He also said that they have never cultivated the land.

The witness said that by 1987 plot No. 58 was still in the name of SFT.

On cross-examination by Ms. Chepkirui, Mr. Ndun'gu said Munoru

Njuguna was the transferee. He said that the land was repossessed because Munoru was allocated land in another Scheme.

On re-examination by Mr. Gakuhi Chege, the witness said that the total purchase price was Kshs. 300,000/= which was paid by 2 installments of Kshs. 150,000/= each.

On answering questions from the Court, the witness said that in case of non-compliance, a repossession Notice is usually served but he did not have any such Notice with him in Court and that the original file was not brought to Court but kept in the Archives. He also did not have a field status report for plot No. 58 to show that it was occupied by Munoru at the material time.

To enable me find a proper solution to this matter, it is important to get to where plot No. 58 came from and how it arrived at the subdivisions L.R No. NYANDARUA/ORAIMUTIA/642, 643,644,645 and 646. I will also delve into finding out whether the said sub-divisions were legal.

The Plaintiff produced an allotment letter for plot No. 58 Oraimutia addressed to and in favour of one Munoru Njuguna. The same is from Settlement Fund Trustees and is dated 25/4/1966. It indicates that the said Mr. Njuguna had already deposited with the Trustees Kshs. 4,030/= as working capital although the same is not titled allotment letter. The wording of the same sums as an allotment letter.

“.....in consideration of you having this day deposited with the Settlement Fund Trustees the sum of Kshs. 4,030/=

asin connection with the allocation to you of the above numbered plot in Oraimutia Settlement Scheme.....”.

The Plaintiff also produced a letter dated 26/11/1987 from the District Settlement officer forwarding to the Director of Land Adjudication and Settlement, the following directions in respect to plot No. 58 Oraimutia Scheme, viz:

- a. Application for Consent of the Land Control Board Appendix “A” Ref. No. DS QI NYANDARUA/5206/205/58/35 with Munoru Njuguna of ID No. 1019614/64 of P.O BOX 61 N’garua as the present Allottee and transferor of Mungai Waweru Id.No. 4905753/87 as the Transferor. Application addressed to Ol-joro-orok Land County Board.
- b. Transfer documents Appendix “E”.
- c. Letter of consent dated 13/10/1987 original.

The letter is also copied to Mungai Waweru. The above documents are also attached to the letter. The letter of consent shows that consent was given by the Ol-joro-orok Land Control Board for NYANDARUA/ ORAIMUTIA/58 to Munoru Njuguna to transfer the same to Mungai Waweru. There is also a receipt of Kshs. 31,500/= from Munoru Njuguna paid on 24/2/1987 though the same does not indicate what the money was meant for. This evidence above is in tandem with the Plaintiff’s evidence that although all the documents initially showed the property was in the name of Munoru Njuguna, he was holding it in trust for his late cousin, Mungai

Waweru who was working far away from home in a forest in Eldoret as a forest guard employed by the government.

The letter dated 25/4/1966 has provision for acceptance of the conditions attached to the offer and the same is signed by Mr. Njuguna on the same date of the letter. The Plaintiff also said that her husband was called Mungai Waweru who died on 23/10/2000 and she produced a Death Certificate to that effect and a Grant of letters of Administration intestate in her favour. The same were granted by the Principal Magistrate's Court at Nyahururu.

The Plaintiff explained that Munoru Njuguna was her husband's cousin.

DW2 Nyandarua North Land Adjudication Officer's (Mr. Lawrence Karanja's) testimony that Munoru Njuguna was expected to surrender NYANDARUA/ORAIMUTIA/58 to the Settlement Fund Trustees is not supported by any document. The letter dated 27/1/1997 purportedly addressed to Messrs. Munoru Njuguna and Mungai Waweru signed by a Mr. Tomno, Director of Land Adjudication & Settlement is not signed. The alleged communication to Mr. Njuguna by the then Thompson Falls Senior Settlement Officer in October 1970 was not attached or produced as an exhibit in this case. the letter does not make sense. It claims that Njuguna had another land in Laikipia viz. plot No. 337 at Lariak and that is why he could not be given another land. But Njuguna is on record as saying that Plot No. 58 was registered in his name on behalf of Mungai Waweru who was away in Eldoret. The letter says that

“.....plot No. 58 Oraithutia together with others was to be re-allocated to deserving Applicants upon receipt of some technical details from the field officer.....”.

Was Mr. Waweru not a deserving Applicant? And why did it have to wait until Mr. Waweru fell sick for the land to be given to the deserving Applicants? Mr. Waweru did not have any other land.

The purported letter claims that Mr. Njuguna walked into the Settlement Office for a Settlement Plot. Although Tomno, being the Director of Land Adjudication and Settlement should have known how, from whom and for how much Mr. Njuguna bought the land, he should also tell us what action he took against the sellers who were no doubt his juniors and if they were his seniors, to whom did he report and what follow up did he make. He further says that,

“in an apparent attempt to legalize an irregularity and in connivance with some field officers, the matter was placed before the Ol-joro-orok Land Control Board which innocently consented to a transfer.....”

Again, having realized that there were some field officers (of course under him) who irregularly and in connivance with Mr. Munoru caused the land to be transferred to Mr. Waweru, what action did he take? Who are these field officers?” what are their names and were they still alive on 27/1/1997? He proceeds to say

“.....And the relevant documents (of course transfer documents) were forwarded to this office on 26/11/1987 by a

clerical officer, Mr. P.M Gachigi.....”

and that his office refused to sanction such a transfer.

The Director said that Mr. Waweru was allowed to retain only 30 Acres on humanitarian grounds, why humanitarian grounds? Although that was during the old constitutional dispensation, all land in Kenya has always belonged to the people of Kenya and some Kenyans such as those who were given NYANDARUA/ORAIMUTIA/642 - 646 were rightly and legally given and others like Mr. Mungai Waweru were given on humanitarian grounds. This kind of language is not found anywhere in law. It is only in the mind of A.K Tomno assuming the letter is genuine and was signed by him.

A copy of this Judgment needs to be brought to the attention of the Director of Land Adjudication & Settlement for the Directorate to help us understand which beneficiaries belong to the category of getting land from the Directorate of Settlement as of right and those who should get land on humanitarian grounds i.e. at the mercies of the Director of Land Adjudication & Settlement and National Land Commission or anybody else in Ardhi house.

But more importantly, the letter is not signed unlike the letter of allotment to Mr. Njuguna. When asked by Mr. Waichungo for the Plaintiff about the documents he produced in Court, Mr. Karonge said that what he produced in Court was a reconstructed file and that he obtained copies from Nairobi. He said that the original file was in the archives. He could not explain why he did come to Court with a reconstructed file which did not contain all the documents.

And he was sincere that the original file is not lost but kept in the archives and that the person who decides which copies should be kept in the reconstructed file and which ones should be left out is the officer in-charge.

This smells some sinister schemes. But among the documents he produced, there was some payment made by Mr. Munoru but the file did not contain a copy of the letter of allotment to Mr. Munoru Njuguna yet Mr. Njuguna had produced one in Court. This means that the one in the file was deliberately left in the original file so that it could seem that the land was never allocated to Mr. Munoru. He said that he got some information from other documents from the Director of Land Adjudication. What was so difficult in producing these primary documents? What was the witness trying to hide? Any relevant documents were meant to help the Court arrive at an informed Decision instead of leaving the matter to conjecture.

He says he did not see the letter of allotment to Mr. Njuguna. Where did the one produced in Court originate from? Mr. Karongi and the office of Director of Land Adjudication and Settlement must have brought documents to Court selectively. Supposing the Plaintiff had not kept the letter of allotment safe in her custody for these almost 60 years, the witness could have told us that there was no such a letter. Otherwise, how else is the Court expected to interpret his testimony.

“.....I did not see any allotment letter at the time of recording my witness Statement.....”.

He further said that the offer of Plot No. 58 was withdrawn by the Director vide letter dated 1/10/1990 and that,

“.....I do not have a copy of the letter.....”

Again, this very crucial letter was not produced in Court. Quite interesting. The purported withdrawal by the Director is by way of a purportedly unsigned letter dated 27/1/1997. The witness told the Court that the transfer was irregular because it spoke of a gift and a consideration of Kshs. 450,000/= and that 450,000 was the value of the land. Certainly, there is provision for the consideration in the standard consent letter forms which was indicated as Kshs. 450,000/= and in the Application for consent, the same reads as follows: -

6(a) Estimated value of the land (if a gift).

Under this provision, what is indicated is not what the parties indicate as consideration. The parties only indicate the value of the land. It is the Board which inserted the adjective “consideration” in the standard form letter of consent.

This can therefore not be blamed on the Plaintiff or Mr. Munoru Njuguna. The witness also failed to produce the minutes of 30/10/1996 where Mr. Munoru, Mr. Mungai Waweru and the office of the Director of Land Adjudication & Settlement held a meeting and agreed that the parcel of land Plot No. NYANDARUA/ORAIMUTIA/58 should be re-possessed. He says he got the information from the Director’s letter dated November, 2012 again which was not produced in Court. Likewise, no minutes tabled before the Court.

Mr. Ndung'u keeps saying Mr. Mungai was considered a squatter with a letter of allotment to Mr. Munoru and with no letter of re-possession and with a subsequent transfer to Mr. Mungai. It is offensive to call Mr. Mungai or his family squatters. They never went beyond the boundaries that the letter of allotment specifies. Secondly, what has been given through a letter of allotment cannot be re-possessed without following a proper procedure. At least not under my watch. On this point, I have had the opportunity to pronounce myself in Nyandarua ELC Civil Appeal case No. E018 of 2024, Stephen Njenga Mwangi and another -vs- Hezekiah Muhia Njoroge. Mr. Ndun'gu further says that there was no field report to show how the allottees were given letters of offer. In fact, these letters of offer are also absent. And finally, he says he did not know whether Mr. Munoru was refunded the money he had paid for plot No. 58.

In answer to questions from the Court, Mr. Ndung'u testified that for a proper repossession to take place, a repossession Notice is usually served and the witness did not have such a letter or Notice or Repossession in his file. He further told the Court that he did not have a field status Report for plot No. 58 to show that it was not occupied by Munoru at the material time.

He finally told the Court that since he did not have the original file and all he brought were the documents selected by the officer in charge, he could not tell what happened after the transfer of plot No. 58 from Mr. Munoru to Mr. Mungai and whether the transfer was accepted by the Settlement Fund Trustees or rejected. The Court

cannot guess as on this. The Defendants were given an opportunity to clarify on this point and the Settlement office had all the documents but decided to bring to the Court documents selectively, denying the Court the benefit of all the material in her possession.

As to the 1st Defendant's evidence that they bought the land for Kshs. 150,000/= from Mr. Michael Gitahi, and that an official search showed that the land belonged to the said Michael Gitahi and that he did not have a Title Deed for the same at the time of the purchase, the land was bushy at the time and was a grazing field. It is an Agent who showed them the land. It was 7 Acres and that the Plaintiff's homestead was some distance away. Was there anything to show that where the homestead was was a distinct land from the grazing field or that the same was the same land? I am also disturbed by the fact that the Agent, Mackenzie was holed in the Settlement Fund Trustees offices. Doing what?

It is the same Agent who took them to the Land Control Board. The witness admitted they have never utilized the land. Among the documents produced by the 1st, 2nd and 3rd Defendants is a Discharge of Charge of plot No. NYANDARUA/ORAIMUTIA/644 dated 13/ 5/ 2009 not showing in favour of who it is.

The transfer is dated 17/2/2011 in favour of Kiyo Kangui Self Help Group and a further transfer from Michael Gitahi to Kiyo Kangui Self Help Group who appeared before the Settlement Officer on 22/12/2010. The letter of consent dated 14/2/2010 shows the transfer is from Michael Gitahi to Kiyo Kangui Self Help Group from

Ol-joro-orok Land Control Board. The Title Deed dated 29/4/2011 is in the name of Kiyo Kangui Self Help Group. It defeats me to learn that NYANDARUA/ORAIMUTIA/644 was from a Discharge of Charge by the Settlement Fund Trustees to the Trustees of Kiyo Kangui Self Help Group directly on 17/2/2011 and a Title Deed issued on 29/4/2011. But earlier on 14/12/2010 there was a letter of consent from Ol-joro-orok to transfer the same land from Michael Gitahi to the Self-Help Group - 1st Defendant. Where did Michael Gitahi emerge from? But most importantly, there is no letter of re-allotment to either the 1st Defendant or to Michael Gitahi making the whole thing a debacle. This cannot be explained by any other term other than fraud. If the land was truly re-allocated to Kiyo Kangui Self Help Group, how then does Michael Gitahi come in? This was not explained. Whereas it is shown that Mr. Njuguna had paid Kshs. 31,500/= to Settlement Fund Trustees, it is not shown that the same was ever refunded to him nor is it shown that the subsequent beneficiaries of the land ever paid anything for the allotment.

The Plaintiff has also raised the issue of Kiyo Kangui Self Help Group as having no capacity to own land since it is not an entity known in law. The Certificate of registration shows that it is registered by the Department of Social Services under the Ministry of Gender, Sports, Culture and Social Services. It is therefore not a body Corporate. If it buys any property, the same should be held in trust by its registered Trustees and even the initial Discharge kept clear of stating the name of the Group but had its Office bearers sign on the part of Transferee. How the Title Deed was issued in the name of the Group is also suspicious. The same can only own land after

registering with the Community Land Registrar and obtain a Certificate of Title or lease in the name of the Community. The Registration should be under the Community Groups Registration Act No. 30 of 2022. For Community Land Ownership, the group would have to register with the Registrar of Community Land under the Community Land Act, 2016. But not under the Department of Social Services.

In essence, while registration offers some operational benefits and formal recognition, a self-help group in Kenya does not possess the full legal attributes of a body corporate.

Justice Munyao in *Kipsiwo Community Self Help Group V Attorney General & 6 others* [2013] e KLR. said:

“.....Kipsiwo Self Help Group had no capacity to institute action in its own name. A person recognized in law had to sue on behalf of members of Kipsiwo Self Help Group and such members had to be named and identified with precision. The person bringing action has to demonstrate that he has permission to bring the action on behalf of the members of the Group, or on behalf of the people he seeks to represent if it is a representative suit. The importance of this is so as to recognize the persons who seek legal redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the court does not know who the litigants are, then it becomes impossible for the court to enforce its own

orders, for it will be clear, who the beneficiary of the order was, or who had obligation to obey or enforce such order.....”.

Justice Munyao went on to say:

“It is clear that Self Help Groups are not incorporated bodies. In fact, I know of no law that recognizes them or incorporates them. They are probably the brain - child of administrators who at times had to come with a look to identify specific groups of people that needed assistance or needed to undertake projects together. They seem to have helped harness resources at community level. The only problem is that the government has not put in place any legal framework under which they can be registered and managed. Such groups, in the absence of a legal framework, indeed stand the risk of being declared unlawful societies as held in the case of Dennis Olooihero.....Self Help Groups having no legal personality, cannot therefore institute proceedings in their own name”.

Other cases where courts have addressed this issue are: Free Pentecostal Fellowship in Kenya Vs Kenya Commercial Bank (1992) KLR 354 and St. Mary School, Nairobi Vs Josphat Gitonga Kabugi Nairobi Milimanni HCCC No. 65 of 2004.

The Appellant’s argument about justice being done without adherence to the law does not hold any water. It is an open fact

that the appellant could not file the suit in its own name. I therefore agree with the trial court that the appellant had no capacity to file the suit.

I do not need to go into adverse possession because on a balance of probabilities, the Plaintiff has convinced this Court that he has proved his case and I need to say one more thing. There is no doubt from the evidence in Court that the Defendants together with their Agent, Mackenzie took advantage of the Plaintiff's and her husband's sickness and with Mackenzie's influence at the Settlement office they were able to get the land from the sick couple and later the widow, which is very unfortunate and immoral. As I have said before in other Judgments, those working in Lands offices countrywide and more particularly the Directorate of Land Adjudication and Settlement ought to be very careful and cautious and unlike was in this case, get to the land and conduct a field Report as to whether there is anybody on the suit land and if not where the allottee is before deciding to repossess and re-allocate the land in question. Here, it is not clear whether Mackenzie was an employee of the Ministry of Lands or what he was doing at the Lands Office - of Land Adjudication and Settlement, and why he had to accompany the Defendants to the Office of the Land Control Board, Ol-joro-orok for consent when there was already somebody occupying the suit land.

It has not escaped my attention to observe that it is unfortunate to describe a widow who through her husband's cousin applied for

land, who could not be registered proprietor because she had no ID, whose husband was away to be registered and one who gave enough money

for the land a stranger, one who does not deserve the land other than on humanitarian ground and a squatter on land properly and legally given to her.

What then is the procedure of land allocation by the Settlement Fund Trustees?

The procedure for land allocation by the Settlement Fund Trustees (SFT) involves a structured process of identifying landless Kenyans, planning and surveying the land, and eventually transferring ownership upon fulfillment of specific conditions, including loan repayment.

The Procedure of Land Allocation is as follows:

1. Identification and Acquisition of Land: The process begins with the identification of public land for a settlement scheme by the national or county government. If public land is not available, the SFT Board may acquire private or community land for the purpose.

2.Planning and Survey: The SFT Board requests the relevant

survey authority to prepare a base map. The land is then planned, surveyed, geo-referenced, and serviced into individual parcels.

3.Establishment of Selection Committee: A sub-county selection committee is appointed by the Cabinet Secretary for Lands to identify and verify potential beneficiaries.

4.Identification and Verification of Beneficiaries: The committee vets applicants (e.g., squatters, displaced persons, the poor and landless) to ensure they meet specific eligibility criteria, such as not owning land elsewhere or not having benefited from a previous settlement program.

5.Preparation of Beneficiary List: The committee prepares a list of proposed beneficiaries and submits it, along with meeting minutes, to the SFT Board for approval.

6.Determination of Land Cost: Upon approval of the beneficiary list, the Board determines the cost of the land, which may include the purchase price, administrative costs,

and other associated fees. The Board may charge a nominal fee.

7.Allocation of Land: The actual allocation of specific parcels can be done through a public drawing of lots (balloting) or direct allocation based on the verified list, in the presence of relevant authorities.

8.Issuance of Offer Letters: Successful beneficiaries are issued an official offer letter that outlines the terms and conditions of the allocation, including the total cost and repayment schedule (often in half-yearly installments over a period such as 28 years).

9.Loan Repayment: The parcel remains under the charge of the SFT until the full loan amount and any associated costs are repaid by the settler.

10.Issuance of Title Deed:

- Upon the full payment of all monies due, the SFT prepares and issues a **Discharge of Charge** certificate and land transfer documents.

- The beneficiary then takes these documents to the relevant District Land Registry, pays stamp duty and registration fees, and is finally issued with a **title deed**.
- If the settler completes repayment before the scheme is fully registered, the SFT issues a certificate of outright purchase as an interim document.

It is not shown how the Defendants were identified and verified as potential beneficiaries to ensure they met specific eligibility criteria, such as not owning land elsewhere or not having benefited from a previous settlement program. The total cost and repayment schedule was not shown. How was the **Discharge of Charge** certificate and land transfer documents handed over to the Defendants or Kihika before the full payment of all monies due in order to be given land already allocated to the Plaintiff's husband.

In the premises, the Plaintiff succeeds in this case. I enter Judgment in his favour and against the Defendants jointly and severally for:-

- a. A Declaration be and is hereby issued to the effect that **L.R. NO. NYANDARUA/ORAIMUTIA/58** measuring approximately 27.5 Hectares belonged to **MUNGAI WAWERU** (Deceased) absolutely.

- b. A Declaration be and is hereby issued that the subdivision authorized by the Settlement Fund Trustee on L.R No. NYANDARUA/ORAIMUTIA/58 vide a mutation dated 27/6/1997 was fraudulent and the same shall be cancelled forthwith.
- c. An order is hereby made for the cancellation of Title Deeds for L.R. Nos. NYANDARUA/ORAIMUTIA/642, 643,644,645 and 646 issued to the Defendants and that the same be transferred to the Plaintiff without delay.
- d. An order of Permanent Injunction do issue restraining the Defendants by themselves, their agents, servants and/or employees from entering, remaining, cutting trees, destroying crops and vegetation or in any other way interfering with the Plaintiff's quiet occupation on L.R No. NYANDARUA/ ORAIMUTIA/642,643,644,645 and 646.
- e. The costs of this Suit shall be borne by the Defendants jointly and severally.

Before I pen off, I must commend all the Counsel who participated in this very ancient case for a job well done.

Judgment dated, signed and delivered at Nyandarua this 4th Day of December 2025.

**MUGO KAMAU
JUDGE**

In the presence of: -

Court Assistant – Samson.

Mr. Waichungo for the Plaintiff.

Mr. Gakuhi Chege for the Defendant.