



**Nyoike v Chief Land Registrar & 4 others (Land Case E197 of 2023)
[2025] KEELC 325 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 325 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
LAND CASE E197 OF 2023
MD MWANGI, J
JANUARY 31, 2025**

BETWEEN

COSMUS KUSU NYOIKE PLAINTIFF

AND

CHIEF LAND REGISTRAR 1ST DEFENDANT

OCS GIGIRI POLICE STATION 2ND DEFENDANT

DIRECTOR OF CRIMINAL INVESTIGATIONS 3RD DEFENDANT

ATTORNEY GENERAL 4TH DEFENDANT

MARY NJERI MUNJOGU 5TH DEFENDANT

JUDGMENT

Brief History

1. The Plaintiff initiated this suit by way of a plaint dated 30th November 2023 seeking amongst other orders a declaration that he is the rightful owner of property known as L.R. No. 12672/186 situated in Runda Gardens Estate along Blue Berry Drive. The plaint was filed alongside the Notice of Motion application dated 30th November 2023 seeking a variety of interim orders which the court granted on 19th December 2023. The application was unchallenged at the time.
2. The 5th Defendant upon learning about the orders issued in favour of the Plaintiff moved the court under certificate of urgency through the Notice of Motion dated 23rd January 2024. The 5th Defendant sought to be joined into the suit as a 5th Defendant and further the vacation and or discharge of the orders issued in favour of the Plaintiff, on 19th December 2023.



3. The 5th Defendant upon being joined into the suit filed a statement of defence and a counter-claim against the Plaintiff dated 19th January 2024. In the counter-claim, the 5th Defendant prays inter-alia for;
 - a. A declaration that L.R. No. 12672/186 is registered in the name of the late Fredrick Gacanja Munjogu whose estate is the bona fide owner of the suit property and that the said property was not available for alienation to the 1st Defendant under the provisions of the Lands Act, 2012 and the *Land Registration Act*, 2012, the Certificate of Title having inter alia been issued over the suit property to the deceased on 7th August 2002 and there having been no subsequent transfer to any third party to date; and
 - b. An order directed at the 2nd Respondent to cancel, remove and rectify the register and any other fraudulently created records, if any, in respect of the suit property in the name of the 1st Defendant and all previous transfers to Chege Richard Mwangi and John Macharia Njoroge.
 - c. An order of injunction permanently restraining the 1st Defendant in the counter-claim (read Plaintiff) whether by himself, his agents, servants, and or anyone acting at his behest or otherwise howsoever from taking possession, trespassing onto, alienating, transferring and or in any other manner occupying or undertaking any construction on the suit property known as L.R No. 12672/186 and or dealing with the suit property in any manner likely to adversely affect the Plaintiff's interest thereto.
 - d. An order directed at the 2nd Respondent (read Chief Land Registrar) to cancel, remove and rectify the register and any other fraudulently created records, if any, in the name of the 1st Defendant by counter-claim (read Plaintiff) and all the previous transfers to Chege Richard Mwangi and John Maina Njoroge.
 - e. Costs of the suit and counter-claim.
4. On 14th May 2024, this court allowed the 5th Defendant's application dated 23rd January 2023. It discharged the interim orders granted earlier in favour of the Plaintiff. The court further granted the 5th Defendant an order of interlocutory injunction restraining the Plaintiff by himself, his agents, servants, and or anyone acting at his behest or otherwise howsoever from taking possession, trespassing or in any manner occupying or undertaking any construction on the suit property and or dealing with the suit property in any manner likely to adversely affect the 5th Defendant's interest thereto pending the hearing and determination of the suit.
5. On 28th October 2024, M/S. Mabango Advocate who was holding brief for Mr. Kimathi for the Plaintiff informed the court that after reviewing the ruling of 14th May 2024, her client had decided to withdraw the entire suit in its entirety with no orders as to costs. She told the court that her client had been defrauded suffering a huge financial loss of Kshs. 25 million. She therefore prayed that the costs of the suit be waived.
6. Mr. Kabaiku, Advocate for the 5th Defendant however, insisted on costs being granted to his client since she had defended the suit by filing a statement of Defence. He too reminded the court that the 5th Defendant had filed a counterclaim which was a suit on its own and that was unaffected by the Plaintiff's withdrawal of his own suit. He prayed that it be allowed as prayed.
7. Mr. Allan Kamau, Senior State Counsel, who was representing the 1st to the 4th Defendants had no objection to the withdrawal of the Plaintiff's suit with no orders as to costs. He was in agreement that the 5th Defendant's counterclaim be allowed since it was undefended.



8. The Plaintiff sought time to try and agree with the 5th Defendant on the issue of costs and on the fate of the counter-claim. The 1st-4th Defendants had no objection to the withdrawal of the Plaintiff's suit with no orders as to costs.
9. The Plaintiff and the 5th Defendant were unable to agree on the issue of costs and on the fate of the counter-claim. They then agreed to canvass the counter-claim by way of written submissions and submit on the issue of costs in respect to the Plaintiff's withdrawn suit and the costs of the counter-claim.
10. Mr. Allan Kamau on behalf of the 1st-4th Defendants informed the court that the claim of title by the 5th Defendant was confirmed by the government. He had filed affidavits by the Land Registrar producing the evidence in support of the claim by the 5th Defendant.

Court's direction.

11. The court directed parties to file submissions on the issue of costs and the counter-claim, which was to be treated as an undefended cause. Parties agreed by consent that the documents attached to the various affidavits filed by the parties in this matter be adopted as exhibits for purposes of the counter-claim.
12. The Plaintiff and the 5th Defendant filed their respective submissions which now form part of this court's record. The court has had an opportunity to peruse and consider the submissions in writing this judgment.

Issues for determination.

13. The issues for determination in this matter are rather straightforward. In the court's opinion, the issues are;
 - a. Whether the 5th Defendant's counter-claim against the Plaintiff is merited.
 - b. Who should bear the costs of the Plaintiff's suit and the 5th Defendant's counter-claim.

Analysis and determination

14. The 1st, 2nd, 3rd and 4th Defendants filed 3 replying affidavits. One was by Charles Kipkurui Ngetich, a Deputy Chief Land Registrar. The 2nd replying affidavit filed on behalf of the 2nd and 3rd Defendants was deposed by Corporal Francis Mwenda, an investigator with the Directorate of Criminal Investigations (DCI) whereas the 3rd affidavit was by Wilfred Muchae, an Assistant Director of Surveys.
15. The evidence of the Deputy Chief Land Registrar, the custodian of titles and all documents pertaining to titles to land under Section 9 of the *Land Registration Act*, confirms on oath that from the records under his custody, the registered owner of Title No. L.R 89480 in respect of L.R No. 12672/186 is Fredrick Gachanja Munjogu. There are no further entries in the certificate of title.
16. The Plaintiff in his affidavit of 6th February 2024 had indeed rightfully deposed that only the Chief Land Registrar is legally mandated to confirm the validity or otherwise of title documents. That is why he had sought orders to compel the Chief Land Registrar to file a status quo report confirming the status of ownership of the suit property.
17. The Chief Land Registrar complied upon being served with the pleadings and the order of this court and filed the evidence under oath. Besides confirming Fredrick Gachanja Munjogu as the registered owner of the suit property, the Chief Land Registrar through his deputy further categorically asserted



that the purported entries produced by the Plaintiff have no supporting records in the Ministry of Lands, Public Works, Housing and Urban Development. He termed them as fraudulent. The purported day book No. 1659 relied on as the basis of his presentation relates to registration of leases in respect of a different parcel of land. The purported searches too were forgeries.

18. The 5th Defendant is the administrator of the estate of Fredrick Gacanja Munjogu –deceased, by virtue of letters of grant of administration intestate dated 27th October 2022 and confirmed on 12th June 2023 in Naivasha High Court Succession Cause No. E012 of 2022 (in the matter of the Estate of Fredrick Gacanja Munjogu – deceased).
19. The above evidence is uncontroverted. Indeed, the Plaintiff through his lawyer told the court that he had since realized that he had been defrauded.
20. From the foregoing, there is overwhelming evidence in support of the 5th Defendant’s counter-claim. The 5th Defendant has proved her counterclaim against the Plaintiff as by law required. Accordingly, the counterclaim is allowed as prayed.

Who should bear the costs of the suit and the 5th Defendant’s counter-claim.

21. Both parties in their submissions have submitted that the court has the discretion to award costs guided by the provisions of Section 27 of the *Civil Procedure Act*, provided that costs of any action, cause or other matter or issue shall follow the event unless the court or judge shall for good reason otherwise order.
22. The Plaintiff cited the Halsbury’s Laws of England, 5th Edition which provides that;

“The court has discretion as to whether costs are payable by one party to another, the amounts of those costs and when they are to be paid. Where costs are in the discretion of the court, a party has no right to costs unless and until the court awards them to him, and the court has an absolute and unfettered discretion to award or not to award them. This discretion must be exercised judicially; it must not be exercised arbitrarily but in accordance with reason and justice.”
23. The Plaintiff too made reference to ‘Judicial Hints on Civil Procedure’ by Retired Justice Kuloba, 2nd Edition at page 94 to the effect that;

“Costs are the unfettered discretion of the court, subject to such conditions and limitations as may be prescribed and to the provisions of any law for the time being in force, but they must follow the event, unless the court has good reasons to do otherwise.”
24. The Court of Appeal in the case of *Mayfair Holdings Ltd -vs- Ahmed* (1990) eKLR, cited with approval the holding by the court in the English case of *Ritter -vs- Godfrey* (1920) 2KG 47 (Lord Sterndale M.R), where the court stated that;

“There is such a settled practice that in the absence of special circumstances, a successful litigant should receive his costs, that it is necessary to show some ground for exercising discretion by refusing an order which would give them to him. The discretion must be judicially exercised, and therefore there must be some grounds for its exercise, for a discretion exercised on no grounds cannot be judicial.”



25. In this case, I find no good reason or special circumstances to justify a deviation from the general rule that costs follow the event. Consequently, I award the costs of the suit and the counter-claim to the 5th Defendant against the Plaintiff to be assessed in the usual way.
26. In summary, the court issues the following orders;-
- I. A declaration be and is hereby issued that L.R. No. 12672/186 is registered in the name of the late Fredrick Gacanja Munjogu whose estate is the bona fide owner of the suit property and that the said property was not available for alienation to the Plaintiff under the provisions of the Lands Act, 2012 and the Land Registration Act, 2012, the Certificate of Title having inter alia been issued over the suit property to the deceased on 7th August 2002 and there having been no subsequent transfer to any third party to date.
 - II. An order be and is hereby issued directed at the Chief Land Registrar to cancel, remove and rectify the register and any other fraudulently created records, if any, in respect of the suit property in the name of the 1st Defendant and all previous transfers to Chege Richard Mwangi and John Macharia Njoroge.
 - III. An order of injunction be and is hereby issued permanently restraining the the Plaintiff whether by himself, his agents, servants, and or anyone acting at his behest or otherwise howsoever from taking possession, trespassing onto, alienating, transferring and or in any other manner occupying or undertaking any construction on the suit property known as L.R No. 12672/186 and or dealing with the suit property in any manner likely to adversely affect the Plaintiff's interest thereto.
 - IV. The costs of the suit and counter-claim are awarded to the 5th Defendant against the Plaintiff.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31ST DAY OF JANUARY 2025.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ngugi h/b for Mr. Kabaiku for the 5th Defendant

N/A for the Plaintiff and the 1st - 4th Defendants

Court Assistant: Mpoye

