



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC CASE NO. E005 OF 2023

WAITHIRA NJUGUNA NGOTHO.....
PLAINTIFF

VERUS

PETER NJOROGE.....1ST
DEFENDANT

JOYCE WANJAH.....2ND
DEFENDANT

JACINTA MUGURE.....3RD
DEFENDANT

MAINA MACHARIA.....4TH
DEFENDANT

JUDGMENT

1) The Plaintiff brought this suit to Court by filing a Plaint dated 12/01/2023 seeking Judgment against the Defendants asking the Court for the following orders:

- a) **A permanent injunction order against the Defendants from trespassing on the suit land NDARUGU/GATHAITE 727 and/or laying false claims or in any manner disturbing Plaintiff's quiet enjoyment.**

b) That the orders be enforced by the DCIO Gatundu and OCS Kamwangi Police Station.

c) Costs of this suit.

d) Any other order this Honorable Court may deem fit to grant.

2) Vide a Statement of Defence and Counter-Claim dated 31/05/2023 and filed by Counsel **Kiarie Njuguna** on behalf of all the Defendants. The Defendants denied all the averments in the Plaint. According to the Defendants they lay claim on NDARUGU/GATHAITE 727 (hereinafter '**suit property**') as beneficial owners as the same was meant to be subdivided in favour of all the children of the late Njuguna Ngotho.

Counter-Claim

3) In the Counter-Claim the Defendants reiterate the contents of paragraphs 1-11 of the Defence and state that the Plaintiff is a sibling to the 2nd and 3rd Defendant's, children of the late Njuguna Ngotho. That the suit property was to be divided among the four daughters and one nephew (1st Defendant) of the late Njuguna Ngotho. That the said property was registered in the name of Peter Njoroge Njuguna to hold in trust for the children of Nyawira - to be subdivided in favor of all the four (4) daughters.

4) That in 2018 despite having been continuously farming on their allocated parts of the suit property, the Plaintiff barred

all the Defendants from accessing the property and informed them that it is her land.

5) According to the Defendants the Plaintiff was always aware that she was only allowed to use her sisters' portions for farming purposes only and that the whole property was to be subdivided amongst the four.

6) That the Plaintiff fraudulently caused the suit property to be transferred in her favor and ignored the rest of the family and further caused subdivision of the property in favour of unknown people.

7) At paragraph 21 the particulars of fraud and misrepresentation are listed as:

1. Falsely causing the title to NDARUGU/GATHAITE 727 to be registered in her name;

2. Falsely causing the subdivision of NDARUGU/GATHAITE 727 in her name without the consent of all the beneficiaries;

3. Falsely misrepresenting to the late Peter Njoroge that she intended to subdivide the property in favour of all her siblings;

4. Falsely representing herself as the sole beneficiary and owner of NDARUGU/GATHAITE 727.

8) Therefore, the Defendants seek to have the Judgment to be entered against the Plaintiff for the Defendants for:

- i. An order to the Plaintiff compelling her to release the current titles emanating from land parcel NDARUGU/GATHAITE 727 to the Land Registrar.**
 - ii. An order to the Land Registrar Gatundu Registry to issue titles to all the proper beneficiaries of the suit property NDARUGU/GATHAITE 727.**
 - iii. An order to the Plaintiff restricting her and/or her agents from disposing land parcel NDARUGU/GATHAITE 727 to any 3rd parties.**
 - iv. An order declaring that the Defendants are all legal and proper co-owners of land parcel NDARUGU/GATHAITE 727 together with the Plaintiff.**
 - v. Cost of the suit.**
 - vi. Interest at Court rates.**
- 9) The Plaintiff filed a reply to the Defence and Counter-claim dated 12/01/2023 in which she denied all the averments by the Defendants and put them to strict proof. In the end she asked the Court to dismiss the Defendants' Counter-claim and enter Judgment against the Defendants and to be awarded costs with interest at Court rates.

Plaintiff's Case

- 10) **PW1 - Waithira Njuguna** testified that she is a farmer staying at Kamwangi and she adopted her witness statement and produced her List of Documents dated 12/07/2023.
- 11) Upon cross-examination, she told the Court that she is the daughter and second-born of Mr Ngotho and that she never got married. She told the Court that the father allowed the suit property to be transferred to her and that her father was alive in 1976. She referred to a copy of the search which is at page 11 of her trial bundle. She also referred to a copy of the Green Card which is at page 12 and copy of Certificate of Death at page 14 plus a copy of the Title Deed for Ndarugu/Gathaite/2577 dated 29/03/2005.
- 12) She testified having been given the parcel of land by her father and that the land was a gift from Peter Njuguna. She told the Court that her mother stayed with her on the suit property. That her siblings stay in Gituamba, Gathaite and other places not on the suit property. According to her she testified that her siblings started asking for a portion of her parcel after the death of her mother.
- 13) On further cross-examination she told the Court that there was no meeting that was called to tell her siblings that she had been given the parcel of land she is laying claim to. She also said that she was summoned by the Chief so that she gives the land to her siblings but she declined because the parcel of land belongs to her.

- 14) She told the Court that the parcel of land measures ten (10) acres and that she is the one occupying and that her mother was buried on the said parcel. Her father was buried at Engineer.
- 15) On re-examination she clarified to the Court that by the time her father passed on, the parcel had already been transferred to her, although she had not filed any document showing consent for transfer to her. At the same time, she testified that there is no document to the contrary either.
- 16) She told the Court that the Green Card for **Ndarugu/Gathaite 169** confirm that the land was transferred to her and that all properties to her father were registered in the name of Peter Njoroge Njuguna who was instructed to transfer **Ndarugu/Gathaite 169** to her. She stated that she did not benefit from the property that remained under Peter Njoroge.
- 17) It was her case that her siblings have never farmed on her land also that she has lived on the land with only her son and that her siblings do not stay on the suit property. That she is 95 years old. According to her none of her siblings claimed the suit property when her father was alive or when Peter Njoroge was alive. That when the suit property was transferred it was not for her to hold in trust and that the property is hers.
- 18) **PW 2 - Anthony Waweru Njuguna**, testified that he stays in Gatundu North and that he is a teacher. He adopted

his witness statement dated 20/05/2024. It was his testimony that he stays on the suit property which was subdivided in 2005. He told the Court that his mother was never married and that he was born on the suit property in 1972.

19) He testified that his grandfather through his uncle gave his mother the suit property in 1976 and that his uncles and aunties have never farmed on the land. According to him, he only heard in 2022 that the siblings were claiming the land. That the only documents that he is relying on are the ones already filed in Court. He also testified that he is not aware of any meeting held transferring the land to his mother. Yet he stated that there has been no claim from his uncles and aunties and already the land has been subdivided among his siblings in eight portions.

20) When PW-2 was re-examined, he told the Court that the Green Card shows the subdivision and that there is no document to show the contrary information to what is on the Green Card.

21) With that the Plaintiff closed her case.

Defense Case

22) **DW - 1 Wanjahi Kimani** testified as the 1st defence witness and told the Court that he was the 2nd born and that he had filed a Statement of Defence and Counter-claim. He adopted his witness statement as his evidence in chief and produced a List of Documents as exhibits.

- 23) When he was cross-examined, he testified that his step-brother, the late Peter Njoroge Njuguna was told to hold the suit property in trust for DW-1's mother and her four daughters. He however told the Court that he had no document produced in Court to prove that claim. He further stated that the suit property was a big chunk of land which was subdivided into two portions and that it belonged to his dad.
- 24) According to him the Plaintiff was not given any piece of land and that no one knows how she registered the suit property to herself because she used to farm three (3) acres. It is her testimony that Peter Njuguna held the suit property for all of the children and that they all tiled it.
- 25) He told the Court that he has claimed the transfer to the Plaintiff was fraudulent although he has not filed any papers to support this claim. Although according to him from the transfer done in 1976, he has never laid a claim to the suit property and that he does not reside on the suit property but the Plaintiff - Waithira resides on the suit property.
- 26) DW-1 testified that since they reported to the DCI about the suit property there has been no report filed by DCI and that on his part, he has not pursued the Estate of Peter Njoroge nor Estate of his grandfather to claim his share. Neither does he remember when his father died nor when Peter Njoroge died.

- 27) On re-examination, he confirmed that the land was registered in the name of Peter Njoroge on behalf of his mother and her daughters and that he has lived and cultivated the suit property for 60 years.
- 28) To DW-1, Waithira could not have been given the suit property except for the 3 acres since the girls including the married ones cultivated the suit property, **Ndarugu/Gathaite/727**. He told the Court that he had not seen any document signed between Waithira and their father. Further that he only learnt about the transfer of the suit property to Waithira when he did a Search. That there is also no Succession done for his dad or his late step-brother.
- 29) **DW-2 Jacinta Mugure Ngata** testified that she is the 3rd Defendant in the suit and she adopted her witness statement. Upon cross-examination, she told the Court that the suit parcel **Ndarugu/Gathaite/727** is not the original parcel since it was subdivided into two portions and the second portion was given to her step mother. That the Plaintiff has not benefited from any other portion except the suit parcel **Ndarugu/Gathaite/727**. It was her evidence that she did not know if there is any document stating that the Plaintiff should not inherit the suit property nor any showing that her inheriting the suit property is illegal.
- 30) She testified that she never claimed the suit property during the life-time of her father and also, she was unaware about a DCI report since they never heard from the DCI after

making a report and so she has no document to show whether Plaintiff was given the land or not.

31) Upon re-examination, she stated that whereas she claimed a portion of land from her father he never identified one for her. She also claims to have never utilized the suit property but she stated that she visits it since it is her home.

32) According to her the sub-division did not present any challenge to her and she did not know if Waithira is a beneficiary of the remainder portion to which she lays no claim.

33) **DW-3 Peter Njoroge** testified and told the Court that he is the 1st Defendant and that he filed his Defence and Counter-claim and he adopted his witness statement and produced his List of Documents.

34) When he was cross-examined, he told the Court that the suit property was a sub-division of a portion that he has not disclosed in Court and he has also not stated that the Plaintiff benefitted from the undisclosed portion. He also told the Court that he had not produced any report in Court, nor a Green Card to support his testimony.

35) According to DW-3, the Plaintiff received the suit property as a gift and that he had not presented any contra-information. It was his testimony that he had not stated that he lived on the suit property. At the same time, he testified that he has never done administration of the Estate of Peter Njoroge or his grandfather. That the suit property was

divided during the life time of Peter Njoroge Njuguna and his grandfather and it was at the same time transferred.

- 36) On re-examination, it was his evidence that he did not know when transfers were done since he was not shown any documents supporting the transfer. He also testified not having stayed on the suit property although stated that he used to visit the property to get grass for the cows.
- 37) He stated that they never received a report from DCI and that instead they were asked to attend Court. He told the Court that the other portion is for the second wife but that according to him, the daughters of his grandfather are supposed to benefit from the suit property. He concluded by stating that he had not seen any document to show how the Plaintiff got the suit property.
- 38) With that the Defendants closed their case.
- 39) The Court directed the parties to file their written submissions which the Court has considered.

Analysis and Determination

- 40) The Court has considered the pleadings, evidence presented before it, submissions made as well as the authorities relied upon by the parties. The issues for determination are:
- a) Who is the lawful proprietor of the land parcel known as **L.R No. Ndarugu/Gathaite/727?**
 - b) Whether there was fraud in the acquisition of the suit parcel by either the Plaintiff or the Defendant;

- c) Whether the Defendants have proved their case and thus entitled to the prayers sought in the Counter Claim;
- d) Who bears the cost of the suit and the Counter-claim?
- 41) The Land Registration Act is very clear on issues of ownership of land and Section 24(a) of the Land Registration Act provides as follows;

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

- 42) Section 26 (1) of the Land Registration Act states as follows;

“The Certificate of Title issued by the Registrar upon registration ... 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... and the title of that proprietor shall not be subject to challenge except -

- a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or***
- b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

- 43) This is a case where both the Plaintiff and the Defendants lay claim to suit property alleging that it is owned by late Njuguna Ngotho who had given it to one Peter Njoroge Njuguna who has since passed on but the Defendants claim that he was holding said parcel in trust for the four daughters of the late Nyawira. Each party has narrated how the suit parcel was held by one Peter Njoroge and was supposed to be shared among the four daughters.
- 44) On her part the Plaintiff claimed that she acquired the suit land through allocation by the late Peter Njoroge in 1976 after her father the late Njuguna Ngotho intervened. That she requested to be allocated a portion of the land since she was staying on the suit property with her late mother Nyawira and she was unmarried.
- 45) Her claim was supported by the evidence of PW2. In fact and surprisingly, the testimony of DW-3 Jacinta Mugure seemed to lend credence to the Plaintiff's claim. At the same time the Plaintiff produced copies of the Green Card which show the history of the land since 1976 and indeed her name is entered as a beneficiary under the consideration of a gift.
- 46) Whereas the Defendants alleged fraud on the part of the Plaintiff they were not able to prove it. Infact they testified that their report to the DCI did not elicit any response and there was no report to support their claim. The Defendants did not produce any other copy of the Green

Card to the contrary they instead produced the same Green Card produced by the Plaintiff.

47) It is trite that a Title Deed should be a true reflection of the Green Card which is the primary document where the title derives its data. The title held by the Plaintiff is a true reflection of what is contained in the Green Card and the evidence that was adduced by the Plaintiff was not challenged by anyone showing contrary entries. The Plaintiff was able to trace the root of her title from one Peter Njuguna Ngotho to herself and then to her subdivisions.

48) In the case of **Hebert L Martin & 2 Others v Margaret J Kamar & 5 Others {2016}** the Court held:

“A Court when faced with a case of two or more titles over the same land has to make an investigation so that it can be discovered which of the two titles should be upheld. This investigation must start at the root of the title and follow all processes and procedures that brought forth the two titles at hand. It follows that the title that is to be upheld is that which conformed to procedure and can properly trace its root without a break in the chain. The parties to such litigation must always bear in mind that their title is under scrutiny and they need to demonstrate how they got their title starting with its root. No party should take it for granted

that simply because they have a title deed or Certificate of Lease, then they have a right over the property. The other party also has a similar document and there is therefore no advantage in hinging one's case solely on the title document that they hold. Every party must show that their title has a good foundation and passed properly to the current title holder."

49) The Defendants tried to impeach the Plaintiff's title but fell short of the evidence required to prove that Peter Njuguna Ngotho was holding the suit property in trust for the Defendants. The copy of the Green Card produced by the Plaintiff clearly show the original parcel LR Ndarugu/Gathaite/169 subdivision to LR Ndarugu/Gathaite/726 and 727. The later parcel was registered to the Plaintiff as a gift on 30/11/1976 and title issued on 18/01/1977. No evidence has been presented by the Defendants to contradict this record of events that led to the ownership of the suit property by the Plaintiff neither to prove fraud.

50) In the case of **Kinyanjui Kamau v George Kamau Njoroge [2015] eKLR** the Court reiterated that:

"It is trite law that any allegations of fraud must be pleaded and strictly proved. See Ndolo v Ndolo [2008] 1 KLR (G&F) 742 wherein the Court stated that: "...We start by saying that it was the

Respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the Respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities; but the burden of proof on the Respondent was certainly not one beyond a reasonable doubt as in criminal cases...”

- 51) In a case where a party alleges fraud, it is not enough to merely list the particulars of fraud, such a party must prove that the alleged party committed or engaged in the fraud.
- 52) For good reasons, this Court must limit itself to the evidence of the parties in this case and pronounce Judgment despite the conundrum that surrounds the transfer of the main parcel of land which led to two parcels one of which is owned by the Plaintiff. That may be fodder for another piece of litigation in future if it arises. To resolve the instant dispute between the present parties, this Court satisfies itself by referring to the provisions of Section 26 of the Land Registration Act which provides as follows:

“... 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 ground 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.”**

53) Section 107 of the Evidence Act, Cap 80, states:

“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.” Further, Section 108 of the Act states:

“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

54) It is this Court’s view that the onus was on the Defendants to support their claim to the land in their Counter-claim at the same time the Plaintiff was required to prove that she was indeed gifted the suit property.

55) I have keenly perused the Court records and it is not in contention that the alleged gift to the Plaintiff was granted by Peter Njuguna Ngotho on 30/11/1976 and subsequently Land Certificate issued on 18/01/1977. It is my view that the Defendants' evidence greatly focused into the issue of the property being held in trust but did not produce any documents to support the claim.

56) In the case of **Ogwara V Mangera & 4 Others (Civil Appeal 18 of 2017) [2021] KECA 117 (KLR)** the Court held that:

“It is trite law that for gifts inter vivos, the requirements of law are that the said gift may be granted by deed, an instrument in writing or by delivery, by way of a declaration of trust by the donor, or by way of resulting trusts. Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing.” [Emphasis Mine]

57) Further, in the case of **Gathumbi V Sheikh & 4 Others [2023] KEELC 17022 (KLR)** the Court held as follows:

“The Plaintiff’s claim herein is in the genre of gifts inter vivos; these are gifts made between living persons. Gift inter vivos may be granted by deed, an instrument in writing or by delivery, by

way of a declaration of trust by the donor or by way of resulting trusts. Gifts of land must be by way of registered transfer, or if the land is not registered it must be in writing or by a declaration of trust in writing. Gifts inter vivos must be complete in order to be valid. It is not, however, necessary for the donee to give express acceptance, and acceptance of a gift is presumed until or unless dissent or disclaimer is signified by the donee.” [Emphasis Mine]

- 58) It is a fact that from my perusal of the Green Card, Peter Njuguna Ngotho (deceased) gifted the Plaintiff parcel number **Ndarugu/Gathaite/727**. It is also a fact that the Plaintiff’s title for the said suit property was issued on 18/01/1977. I have also taken the liberty to peruse the Green Card (PEX1) and it is not in dispute that under entry number 4, the title for the said suit property was indeed issued to the Plaintiff.
- 59) Section 24(a) of the Land Registration Act provides that:
“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
- 60) Section 26(1) (a) and (b) on the other hand provides that such title as issued under Section 24(a) of the Land

Registration Act can only be cancelled in case there is fraud, misrepresentation, illegality, and corruption. None of these were proved by the Defendants against the Plaintiff.

61) The Court is persuaded that the Plaintiff has proved her case on a balance of probability. The Court also finds that the Defendants have failed to prove their Counterclaim and the same is dismissed with costs.

Disposal Orders

62) I therefore issue the following specific orders:

a) A permanent injunction order is hereby issued against the Defendants from trespassing on the suit land NDARUGU/GATHAITE 727 and/or laying false claims or in any manner disturbing Plaintiff's quiet enjoyment.

b) That the Orders issued in (a) above to be enforced by the DCIO Gatundu and OCS Kamwangi Police Station.

c) Each party to bear their own cost of the suit since they are related.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 22ND DAY OF JANUARY, 2026 VIA MICROSOFT TEAMS.

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MOGENI J

JUDGE

In the presence of:

Ms. Thuo holding brief for Mr. Kiarie for the Plaintiff

Ms. Kiarie for 1st, 2nd, 3rd and 4th Defendants

Mr. Melita - Court Assistant

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MOGENI J
JUDGE

ORIGINAL