



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT THIKA

ELC CASE NO. E126 OF 2021

ROSE WAMBUI WANYOIKE..
.....PLAINTIFF

=VERSUS=

MWEA MWATHE
DEFENDANT 1ST

SASIDA MUTHONI.....
DEFENDANT 2ND

JUDGMENT

Introduction

- 1. Rose Wambui Wanyoike** [the plaintiff] initiated this suit through a plaint dated 28/10/2021. Among other reliefs, she sought a declaration that she was the absolute registered owner of land parcel number **Kakuzi/Kirimiri Block 9/740** [hereinafter referred to as the "suit land"]. In response to her claim, the two defendants filed a defence and counterclaim dated 11/3/2022. Among other reliefs, they sought an order cancelling the registration of the plaintiff as proprietor of the suit land. Some of the key

issues to be determined in the cause are: (i) Who between the plaintiff on one part, and the 1st defendant and the late **Joyce Wanja Mwaura** on the other part, is /are the legitimate allottees of land parcel number **Kakuzi/Kirimiri Block 9/740**; and (ii) Whether registration of the said land in the name of the plaintiff in April 2002 was procured fraudulently. Before I analyse and dispose all the issues that fall for determination, I will briefly summarize the parties' respective cases and evidence.

Plaintiff's Case

2. The plaintiff's case is contained in the plaint dated 28/10/2021. In summary, her case is that she is the sole and absolute registered proprietor of the suit land. She acquired the suit land in 1990 through a balloting exercise in which she participated as a member of the **Kakuzi East Settlement Scheme**. She was subsequently issued with a title deed on 10/4/2002.
3. The plaintiff further states that in the year 2000, the defendants trespassed onto the suit land and started carrying out illegal activities on the land. She reported the matter to the District Officer but no action was taken. She subsequently lodged a claim at the Kakuzi Land Disputes Tribunal vide **Kakuzi LTD Case No. 67 of 2011**. Upon hearing the parties, the Tribunal rendered a decision awarding the defendants the suit land. Aggrieved by the award of the Tribunal, she filed **Thika ELC Judicial Review Application No. 15 of 2017** through which she challenged the jurisdiction of the Tribunal. This court [**Gacheru J**] rendered a judgment dated 5/4/2019 in the

case, through which it quashed the proceedings and the award of the Tribunal.

4. It is the case of the plaintiff that despite the foregoing, the defendants have remained on the suit land. She adds that the 1st defendant has built a permanent home on the suit land and resides on the suit land with his family. She contends that the defendants' entry, continued stay and other activities on the suit land amount to trespass and are illegal and an affront to her absolute proprietary rights over the suit land.
5. The plaintiff prays for the following reliefs: (i) a declaration that the plaintiff is the absolute registered owner of all that parcel of land known as TITLE NO. KAKUZI/KIRIMIRI BLOCK 9/740 measuring approximately 1.62 Hectares; (ii) an order directing the defendants to vacate the suit property and remove all structures they have erected thereon within such a period as the court may deem just; (iii) in the event of non-compliance with order (b) above, an order of eviction do issue against the defendants to be carried out by an auctioneer of the plaintiff's choice with police assistance by the OCS of the nearest Police Station; (iv) a permanent injunction restraining the defendants from claiming, encroaching, trespassing, or in any manner interfering with plaintiff's ownership, occupation and use of the suit property; (v) mesne profits; (vi) costs of this sui; and (vii) any other or further relief this Honourable Court may deem fit to grant in the circumstances of the case.

Defendants' Case

6. In answer to the suit, the two defendants filed statement of defence and counterclaim dated 11/3/2022. Their case is that the management of Kakuzi Ltd allocated to the 1st defendant and to the late **Joyce Wanja Mwaura** the suit land and pointed out the land to them way back in 1989. *[The 1st defendant and the late Joyce Wanja Mwaura will be referred to in this judgement jointly as “the duo”]*. The duo settled on the land and have resided on it since then.
7. The defendants contend that the registration of the plaintiff as proprietor of the suit land in April 2002 was procured fraudulently, pointing out that at the time of the said registration, the duo had long been allocated the suit land by Kakuzi Ltd through balloting and they had settled on the land. They aver that registration of the plaintiff as proprietor of the suit land was fraudulent and did not, in the circumstances, confer upon her proprietary rights over the suit land. They add that the defendants are on the suit land as of right.
8. The defendants add that several arbitration sessions were conducted by the Management of Kakuzi Ltd and by the Area District Officer and the respective verdicts were that the suit land belonged to the 1st defendant and the late Joyce Wanja Mwaura.
9. By way of counterclaim, they fault the plaintiff for procuring and obtaining title to the suit land while aware that the suit land did not belong to her and that the duo had settled on it. They pray for the following reliefs: (i) an order annulling

the entry dated 10/4/2022; (ii) an order decreeing issuance of a title to them; and (iii) an order awarding them costs of the suit.

Plaintiff's Evidence

- 10.** The plaintiff testified as **PW1** and closed her case. She adopted her witness statement dated 28/1/2021. She produced the six (6) documents that were contained in her list and bundle of documents dated 28/10/2021. In summary, her evidence in chief was that she was the absolute registered proprietor of the suit land, having been so registered on 10/4/2002. She acquired the suit land in 1990 through a balloting process in which she participated as one of the members of Kakuzi East Settlement Scheme. Upon following all the due processes and upon making all the necessary payments, she was registered as proprietor and issued with a title deed on 10/4/2002.
- 11.** She added that in 2000, without any colour of right, the defendants entered the suit land and started carrying out illegal activities on the land. Upon learning about the defendants' activities, she reported the matter to the Area District Officer but no action was taken against the defendants. She subsequently initiated **Kakuzi LDT Case No. 67 of 2011** at the **Kakuzi Land Disputes Tribunal**. The Tribunal heard the dispute and rendered a verdict awarding the defendants the suit land. Dissatisfied with the decision of the Tribunal, she filed **Thika ELC Judicial Review Application Case No. 15 of 2017** in which she challenged the jurisdiction of the Tribunal. She obtained an

ex-parte judgement quashing the proceedings and the award of the Tribunal on account of lack of jurisdiction.

- 12.** Observing that the two defendants remained on the suit land inspite of the judgement, and that the 1st defendant had constructed a permanent home on the suit land in which he lived with his family, she termed the defendant's entry, continued stay and other activities on the suit land as trespass and urged the court to grant her the reliefs sought in the primary suit.
- 13.** In her testimony during cross-examination, she testified that at the time of procuring the registration in 2002, the defendants had settled on the suit land and were living on it. She added that at that time, she had had formal communication with Kakuzi Ltd and the said company had formally informed her that the suit land did not belong to her. She confirmed that she wrote to Kakuzi Ltd on 7/7/1999 and that Kakuzi Ltd replied to her on 22/7/1999, stating that the land which was allocated to her was **parcel number 884**. She was, however, unable to locate parcel number 884.
- 14.** It was the plaintiff's evidence that the suit land fell within a subdivision scheme that was owned by Kakuzi Ltd and that Kakuzi Ltd were the ones who held records relating to the identities of the land allottees in the scheme. She stated that her registration as proprietor of the suit land was a culmination of investigations which were conducted and which established that her "correct parcel was 740". She added that she did not have a copy of the investigation

report. She further testified that she did not have a ballot relating to the suit land.

- 15.** In re-examination, she stated that she wrote to Kakuzi Ltd in July 1999 asking them to identify her rightful plot. Kakuzi Ltd wrote back to her stating that the land allocated to her was parcel number 884. When she made a follow-up on parcel number 884, she established that the said parcel had been allocated to one **Kabere**. She further stated that investigations by the Njonjo Land Commission subsequently revealed that her parcel was number 740. She added that she had not been issued with any allocation or balloting documents relating to parcel number 740. It was her evidence that the Management of Kakuzi Ltd was responsible for the allocation of land in the scheme.

Defendants' Evidence

- 16.** The defendants led evidence by **John Mwea Mwathe** [1st defendant] who testified as **DW1** and **Simon Odhiambo** [Executive Head - Corporate Affairs, Kakuzi PLC] who testified as **DW2**. Mr. Mwathe (DW1) adopted his written witness statement dated 11/3/2022. He produced the 7 documents contained in a list and bundle of documents dated 11/3/2022. In summary, his evidence was that he worked at Kakuzi Ltd. Due to the large number of squatters working in the company, the company hived 1,012 plots that formed Kakuzi East Settlement Scheme and allocated them to the squatters through balloting. He got plot number 740 jointly with the late Joyce Wanja Mwaura [mother to the 2nd defendant]. The said land was

pointed out to them by the Management of Kakuzi Ltd and they took possession and settled on it.

- 17.** About 10 years later, the plaintiff emerged and laid claim to the land. The plaintiff wrote to Kakuzi Ltd and Kakuzi Ltd wrote back to her advising her that her land was parcel number 884. While aware that parcel number 740 belonged to the duo and the duo had settled and established homes on it, the plaintiff went ahead to process and procure a title to the land in her name. He urged the court to annul the said registration and the said title and to decree issuance of a title to them. He added that they had lived on the suit land for 33 years as at the time of testifying.
- 18.** In his testimony during cross-examination, DW1 stated that he worked as a sisal cutter at Kakuzi Ltd, adding that he balloted for the suit land and the suit land was allocated to him jointly with the late Joyce Wanja Mwaura in 1989. He added that the plaintiff started laying claim to the suit land in 1992. He testified that the plaintiff first reported the dispute to the Area Chief. The dispute was escalated to the District Officer and eventually to the Provincial Commissioner.
- 19. DW1** stated that the plaintiff processed a title to the suit land while the dispute was alive, adding that he first saw the plaintiff's title when this suit was initiated and the suit papers served on him.
- 20. Simon Odhiambo** testified as **DW2**. At the time of giving his testimony, he worked as the Executive Head of Corporate Affairs at Kakuzi PLC. His role entailed

stakeholder engagements and land issues at the company, among others. By consent of the parties, he produced 20 exhibits constituting Kakuzi PLC's records relating to parcel number 740 and 884.

- 21.** His evidence was that, in 1980s, Kakuzi Ltd decided to set aside 1012 plots on which to settle some of its employees and some landless people who were residing on its land. Each beneficiary was required to pay Kshs 15,000 as a nominal consideration. Some beneficiaries could not raise the sum and were allowed to partner with sponsors.
- 22. DW2** testified that the plaintiff was a beneficiary of land in the scheme, adding that the plaintiff was allocated parcel number 884. He testified that the suit land [parcel number 740] was allocated to John Mwathe [1st defendant] and Joyce Wanja Mwaura. He emphasized that parcel number 884, which was allocated to the plaintiff, existed and still exists to date.
- 23.** In cross-examination, DW2 stated that the plaintiff was a beneficiary of land in the scheme, adding that she duly paid the requisite sum of Kshs 15,000 to Kakuzi Ltd and she was allocated parcel number 884. He stated that after allocating the plots to the beneficiaries, the company forwarded the list of allottees to the Government. The list was in form of a register bearing the plot number and the corresponding allottee. He emphasized that Kakuzi Ltd was responsible for identifying the beneficiaries, adding that parcel number 740 was allocated to the 1st defendant and the late Joyce Wanja Mwaura jointly.

24. DW2 stated that the parcels were allocated in 1990 and the register/list was forwarded to the Government in the same year. He added that the plaintiff's name was on the list as the lawful allottee of parcel number 884. Lastly, DW2 stated in re-examination that as early as 1999, the plaintiff had lodged a dispute with the company and the company had made it clear to her that her land was parcel number 884. He emphasized that as far as Kakuzi PLC was concerned, parcel number 740 belonged to John Mwathe and Joyce Wanja Mwaura.

Analysis and Determination

25. The court has considered the pleadings, evidence and submissions tendered in this suit. The key issues that fall for determination in the suit are: (i) Who between the plaintiff on one part, and the 1st defendant and the late Joyce Wanja Mwaura on the other part, is/are the legitimate allottees of land parcel number Kakuzi/Kirimiri Block 9/740?; (ii) Whether registration of the said land in the name of the plaintiff in April 2002 was procured fraudulently; (iii) Whether the plaintiff is entitled to the reliefs sought in the plaint; (iv) Whether the defendants are entitled to the reliefs sought in the counter claim; and (v) What orders should be made with regard to costs of the primary suit and the counter claim.

26. Who between the plaintiff on one part, and the 1st defendant and the late Joyce Wanja Mwaura on the other part, is/are the legitimate allottees of the suit land? The suit land is a sub division within a subdivision scheme that was

created by Kakuzi Ltd (now known as Kakuzi PLC) for the purpose of settling its landless employees and squatters who were residing on its land. Through its Executive Head of Corporate Affairs [Mr Simon Odhiambo - DW2], the said company tendered relevant evidence relating to the creation of the scheme, survey, and identities of beneficiaries of the respective surveyed parcels in the scheme. As owner of the scheme, the company [through DW2] tendered evidence and was categorical that the suit land was allocated to the 1st defendant and the late Joyce Wanja Mwaura jointly. DW2 testified that the plaintiff was a beneficiary of a parcel in the scheme and identified the plaintiff's parcel as number **Kakuzi/Kirimiri Block 9/884**.

- 27.** DW2's oral evidence was supported by the documentary evidence tendered by the said witness. In a letter dated 30/8/1990 from the Makuyu District Officer to the plaintiff [through the District Commissioner, Muranga], the plaintiff was informed as follows"

"The General Manager Kakuzi Ltd and myself visited the settlement scheme yesterday. As regards your shamba, it was resolved you get plot number eight hundred and eighty four (884).

Get in touch with General Manager Kakuzi Ltd so as to be shown the plot.

You are advised to process your documents immediately for complete ownership. By copy of this

letter, the Muranga District Land Registrar is hereby informed for necessary assistance and action.

SIGNED

KENNEDY KANYI

DISTRICT OFFICER I/C

MAKUYU DIVISION

CC:

The General Manager

Kakuzi Ltd

Makuyu

The District Land Registrar

Muranga District

Muranga”.

- 28.** In all the exhibited formal communications from M/s Kakuzi Ltd to the plaintiff, the company, which was the allocating authority, remained firm that the suit land was allocated to the 1st defendant and the late Joyce Wanja Mwaura. The company also remained categorical that the plaintiff was the lawful allottee of parcel number 884.
- 29.** Given the above evidence by the land allocating company through its responsible representative, it is clear that the legitimate allottees of parcel number Kakuzi/Kirimiri Block 9/740 were John Mwea Mwathe [the 1st defendant] and the late Joyce Wanja Mwaura. This is the finding of the court on the first issue.
- 30.** Was the registration of the suit land in the name of the plaintiff in 2002 procured fraudulently? The plaintiff is waving a title showing that the land register relating to the

suit land was opened on 7/6/1996. The land was subsequently transferred to the plaintiff and registered in her name on 10/4/2002. A title was allegedly issued to the plaintiff on the same day.

- 31.** All the formal communications which were produced as exhibits, relating to the period between 1990 and 10/4/2002, indicate that Kakuzi Ltd firmly and formally told the plaintiff that the 1st defendant and the late Joyce Wanja Mwaura were the legitimate allottees of the suit land. Who then transferred the already registered land to the plaintiff on 10/4/2002? The suit land having been registered on 7/6/1996, the court expected the plaintiff to tender evidence showing that the scheme owner/land owner (Kakuzi Ltd) executed a transfer conveying the suit land to her and the transfer culminated in her registration as proprietor of the suit land on 10/4/2002. She did not do that. That is not all
- 32.** The plaintiff was aware that the allocating company had allocated the suit land to the 1st defendant and the late Joyce Wanja [*the duo*]. She was aware that the 1st defendant had built a permanent house on the suit land and had established a home on the land and settled his family on it. She was aware that the scheme owner had taken a firm position that the suit land belonged to the duo and that her lawful land was parcel number 884. If she did not agree with the land allocating company, the recourse available to her was to seek redress in court. She decided to procure an unexplained transfer of the suit land which at the time existed as a registered parcel. During trial, she

was unable to explain how she procured the registration which inevitably required a transfer by the owner of the scheme.

- 33.** Our courts have umpteen times emphasized that it is not enough for the holder of a sufficiently impugned title to wave the impugned title as evidence of legitimate ownership. Not too long ago, the Court of Appeal made the following observation in **Munyu Maina 920130 eKLR**:-

“We state that when a registered proprietor’s root of title is under a challenge it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

- 34.** Regrettably, the plaintiff waved her title but failed to tell the court who transferred the title to her on 10/4/2002 given that the land had been registered on 7/6/1996 and the land owner/scheme owner had told her throughout that the allottees of the land were the 1st defendant and the late Joyce Wanja Mwaura.
- 35.** For the above reasons, the court finds that the registration of the suit land in the name of the plaintiff on 10/4/2002 was procured fraudulently.

- 36.** In light of the court's findings on the first and second issues, it follows that the reliefs sought in the plaint by the plaintiff are not available. It also follows that the reliefs sought in the counterclaim by the 1st defendant and the personal representative of the late Joyce Wanja Mwaura are merited.
- 37.** On costs, the general principle in Section 27 of the Civil Procedure Act is that costs follows the event. Consequently, the plaintiff, Rose Wambui Wanyoike shall bear costs of both the original suit and the counterclaim.

Disposal Orders

- 38.** In the end, the original suit and the counterclaim are disposed as follows: -
- (a) The original suit by Rose Wambui Wanyoike is dismissed for lack of merit.**
 - (b) The defendants' counter claim is allowed in the following terms:**
 - (i) The entry made on 10/4/2002 registering Rose Wambui Wanyoike as proprietor of land parcel number Kakuzi/Kirimiri Block 9/740 is hereby cancelled.**
 - (ii) The relevant Land Registrar shall register the suit land in the names of John Mwea Mwathe and Joyce Wanja Mwaura and a title shall be issued in the said names and released**

to John Mwea Mwathe to hold it in trust for himself and for the estate of Joyce Wanja Mwaura.

(c) The plaintiff, Rose Wambui Wanyoike, shall bear costs of both the original suit and the counterclaim

DATED SIGNED AND DELIVERED VIRTUALLY THIS 19TH DAY OF JANUARY, 2026.

**B M EBOSO
ELC JUDGE**

In the presence of

Court Assistant - Tupet

Ms Waithira Mwangi for the Defendants.