

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT
EMBU
ELC APPEAL NO. E025 OF 2023

MARIGU NJIRU.....1ST

APPELLANT

SACINDA KAVIRI.....2ND

APPELLANT

KARIUKI NJIRU.....3RD

APPELLANT

VERSUS

REUBEN NJAGI NJOROJGE.....

RESPONDENT

JUDGMENT

1. This appeal was lodged against the decision of Hon. J. W. Gichimu, Senior Principal Magistrate, delivered on 9/11/2023 in **Runyenjes SPM ELC Case No. 51 of 2018**, which the Respondent filed on 30/9/2006 seeking the eviction of the Appellants, on the allegation that they had trespassed on his land known as Gaturi/Nembure/2963 (the suit land). His claim was that Njiru Rundia was registered as the owner of the suit land on 12/5/1978 but when he sued him in **Criminal Case No. 66 of 1987**, he was awarded the land and issued a title. The Appellants denied trespassing on the land and asserted

that the suit land belonged to the 1st Appellant's husband, who was the 3rd Appellant's father.

2. The 1st Appellant averred that she was the legal representative of the estate of Njiru Rundia and that the suit land formed part of his estate. She claimed that together with her husband, she took possession of the suit land in 1963 and that they had lived on it and constructed permanent homes. It was her contention that her late husband's name was illegally and irregularly cancelled from the land register.
3. After hearing the parties' evidence, the Learned Magistrate found that on 12/8/1988 the court made an order in Criminal Case No. 66 of 1987 to the effect that the title deed issued to Njiru Rundia would be cancelled and a title over the suit land was to be issued to Njoroge Rukiria. The Learned Magistrate noted that that court order was effected and the register over the suit land was rectified and a title deed issued to Njoroge Rukiria on 25/4/1989.
4. Further, that Njiru Rundia neither appealed against that court order nor did the Appellants challenge the registration of Njoroge Rukira as the proprietor of the suit land until the present suit was filed. The Learned Magistrate held that the Appellants could not challenge the order emanating from the criminal court before him because he was exercising concurrent jurisdiction with the court which issued that order.
5. The Learned Magistrate added that the fact that the Appellant had lived on the suit land all their lives did not change anything since there was no prayer for adverse possession. The court concluded that there was no evidence to prove that

Njoroge Rukiria was illegally registered as the owner of the suit land while noting that the registration was effected following an order of the court, which had not been set aside. The court found that the Respondent was entitled to possession of the suit land and directed that the Appellants were to be evicted from the suit land.

6. Aggrieved by that determination, the Appellants lodged this appeal. The grounds of appeal set out in the memorandum of appeal dated 7/12/2023 are that the trial court misdirected itself by assuming that the Respondent proved his case on a balance of probabilities and failing to consider the evidence adduced by the Appellant. Further, the trial court was faulted for relying on and believing that there was a criminal case that was heard and determined without the production of crucial documents such as the charge sheet and the proceedings in court. The Appellants sought to have the order made on 9/11/2023 set aside or reviewed.
7. The appeal was canvassed through written submissions, which the court considered. The Appellants submitted that Criminal Case No. 66 of 1987, which the Respondent relied on, was a misdirection by the Learned Magistrate. They posed the questions as to who the accused person was in Criminal Case No. 66 of 1987, what the charges were and which judicial officer handled the matter.
8. Further, they contended that this appeal rested on the jurisdictional competence of the magistrates' court to cancel or revoke a title deed to land when exercising criminal jurisdiction. The Appellants emphasized that jurisdiction was

everything and without it a court must down its tools and that where a court exercised jurisdiction which it did not possess, its decision amounted to nothing. On this point they relied on **Owners of the Motor Vessel "Lilian S" v Caltex Kenya Limited [1989] KLR**

9. The Appellants submitted that pursuant to Article 162(2) (b) of the Constitution, the Environment and Land Court (ELC) had exclusive original and appellate jurisdiction over matters relating to land. They were emphatic that the only thing the Respondent was relying on was the illegal entry on the green card without evidence of the proceedings in the criminal case. In any event, they urged that the Learned Magistrate arrogated itself powers which it did not have when it purported to determine the legality of a title deed in Criminal Case No. 66 of 1987.
10. They emphasised that no civil proceedings were commenced to challenge the title and that there was no charge sheet or record of proceedings to authenticate the outcome of that criminal case. They urged that it was legally untenable for a criminal court to purport to revoke a title or determine proprietorship of land in the absence of a civil suit seeking cancellation of title. They urged that cancellation of a title by a criminal court was null and that any subsequent civil judgment that affirmed such irregularity must similarly collapse. They emphasized that the judgment and decree of the trial court stood on a void foundation and should be set aside accordingly. They urged the court to allow the appeal.

11. The Respondent submitted that the appeal lacked merit and that the grounds of appeal related to a misdirection on issues of fact and law. He submitted that this appeal was directed at delaying his enjoyment of the fruits of his judgment. He added that the Appellants provided scanty evidence before the trial court to justify their continued and illegal occupation of the suit land registered in the name of the Respondent's late father following the judgment in Criminal Case No. 66 of 1987 in which an order was issued for the cancellation of the registration of the Appellant's father as proprietor and reinstatement of the original proprietor, Njoroge Rukiria. He added that the court order was registered and another title was reissued to his father in 1989.
12. The Respondent urged that the trial court did not err when it believed that there was a criminal case in which the Appellant's father was charged, tried, found guilty and convicted and that the Respondent furnished documentary evidence of these before the trial court.
13. The issue for determination is whether the court should allow the appeal. The court notes that this suit was initially filed as Embu HCCC No. 96 of 2006 - Njoroge Rukiria v Mariku Njiru, Nyambura Njiru, Sacinda Kavira and Kariuki Njiru, and sought the eviction of the Appellants from the suit land. The suit was transferred from the High Court to the ELC on 16/2/2015. Thereafter, it was transferred from the ELC to Runyenjes Magistrates Courts for trial and disposal vide the order made by Angima, J on 17/5/2018. It was heard and determined at the Runyenjes Magistrates Court and led to this appeal.

14. The Appellants lodged a counterclaim on 24/5/2019 in which they sought to have the Respondent's case dismissed and for the land registrar to cancel the name of Njoroge Rukira from the register of the suit land and instead register Njiru Rundia as the proprietor of the land. The court notes the Appellants filed two Amended Defence and Counterclaim dated 6/2/2019 and 24/5/2019. The prayers sought in the two counterclaims are identical. It is not clear from the proceedings why this is so, especially since the matter has been in court for many years. Nevertheless, the trial court referred to the counterclaim dated 8/2/2029 in its judgment.
15. The court record shows that Njoroge Rukiria testified on 13/2/2008 before the late Khaminwa J. He told the court he was registered as the owner of the suit land on 17/10/1961 but Njiru Rubia was registered as proprietor on 12/5/1978. He stated that Njiru stole the land. That when he reported him to the police, Njiru was taken to court and he was awarded the land. Mr. Rukiria told the court that he did not take possession of the land because when he went to cultivate the land, he found Njiru had already built on it and they chased him away. Mr. Rukiria explained that he was working in Nairobi from 1961 to 1987 when he sued Njiru. He confirmed that Njiru's family occupied the suit land and that he lived on a different parcel of land. He conceded that he did not take out civil proceedings. A title deed was issued to Njoroge Rukiria on 25/4/1989.
16. One of the documents which the Respondent relied on is titled **Embu SRM Court Criminal Case No. 66 of 1987** and bears

the name F.P. Wanjiku, Acting RM, vide which the prosecution applied to have the title deed held by the accused, who is indicated in the title of the proceedings as Njiru Rundia, cancelled because he had obtained it unlawfully. It would seem that he was found guilty and convicted following which the prosecution requested the criminal court to order that the title was to be issued to Njoroge Rukira as the rightful owner. The order made by the court in those criminal proceedings was that the title deed in the name of the accused, Njiru Rundia would be cancelled and a land certificate in respect of Gaturi/Nembure/2963 was to be issued to Njoroge Rukiria.

17. Any challenge to the conviction of Njiru Rundia in the criminal case should have been taken up through an appeal to the High Court within the timelines prescribed in the Criminal Procedure Code. It is evident that no appeal was lodged. It is difficult to ascertain whether Njiru Rundia participated in the criminal proceedings based on the scant documents presented before the trial court.
18. Under Section 24 of the Penal Code, the kinds of punishments prescribed for criminal matters are death, imprisonment, community service, detention, fine, forfeiture, compensation, security to keep the peace and be of good behaviour and any other punishment prescribed by that Act or any other law. From this, it is clear that the Magistrates Court erred in **Criminal Case No. 66 of 1987** when it purported to award the suit land to Njoroge Rukira following which a title was issued to him. That is the basis upon which the Respondent lays claim to the suit land.

19. The Learned Magistrate cannot be faulted for arriving at the conclusion that he could not set aside the orders made in the criminal case because the orders were made by a court of concurrent jurisdiction.
20. The crux of the dispute is ownership of the suit land, and revolves around the land register for the suit land. Entry number 1 dated 17/10/1961 reflects Njoroge Rukiria as the owner of the land. The entry was crossed out. Entry number 2 dated 12/5/1978 shows Njiru Rundia as the proprietor with the remarks against it reading “correction of name”, was also crossed out. Entry number 3 dated 6/6/78 shows that a land certificate was issued. Entry number 4 dated 24/4/1989, which is crossed out, shows that a title deed was entered by error. Another entry number 4 dated 24/4/1989 reflects Njoroge Rukira as the proprietor and refers to RM Criminal Case No. 66 of 1987. Entry number 5 shows that a title deed was issued on 25/4/89.
21. From the scanty information provided by the parties, it is difficult to establish how the suit land was originally allocated and by whom. No evidence was led on how Njoroge Rukira got registered as the owner of the suit land in 1961 and how his name was deleted and replaced by Njiru Rundia in 1978. Njoroge Rukira’s reason for not taking possession of the suit land was that he was working in Nairobi from 1961 to 1987, which was when he reported to the police that Njiru had stolen his land and Njiru was charged in Magistrates Court erred in **Criminal Case No. 66 of 1987.**

22. Njoroge Rukiria filed Embu HCCC No. 96 of 2006 seeking the eviction of the Appellants from the suit land. Njoroge confirmed in his testimony before court that Njiru's family occupied the suit land and that he lived on a different parcel of land. Njiru died in 2004. Njoroge did not take steps to gain possession of the suit land from 1961 until 2006 when he filed this suit against the Appellants claiming that they had trespassed on his land. He was guilty of laches in enforcing his rights over the suit land.
23. The court notes that the certificate of confirmation of grant issued in **Embu Succession Cause No. 268 of 2014** for the Estate of Njiru Rundia listed Gaturi/Nembure/2963 as part of the assets of his estate. From the evidence of the parties it is apparent that the Appellants reside on the suit land but title is registered in the name of Respondent's late father.
24. The appeal is allowed. The order made by the trial court on 9/11/2023 is set aside. The Land Registrar is directed to cancel Njoroge Rukira's name from the register for the suit land and reinstate Njiru Rundia's name as proprietor of the suit land.
25. Due to the length of time that it has taken for this land dispute to be determine, it is just that each party bears its costs for the suit and the appeal.

Delivered virtually at Bungoma this 3rd day of February 2026.

K. BOR
JUDGE

In the presence of: -

Ms. Joy Mbwiria dor the Respondent

No appearance for the Appellants

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