

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NYERI
ELC. NO. 298 OF 2015
(FORMERLY HCCC NO. 41 OF 1990)

RUARE RANCH LIMITED PLAINTIFF
VERSUS

DAVID MUCHIRI KABUGI DEFENDANT
AND

1. MOSES KIUMU MUCHIRI

2. CECILIA WACHUKA MUCHIRI (*Administrator of the Estate of
DAVID MUCHIRI KABUGI*) **SUBSTITUTED DEFENDANTS**

TITLE BY THE COUNTER-CLAIM

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MOSES KIUMU MUCHIRI 1ST PLAINTIFF

CECILIA WACHUKA MUCHIRI 2ND PLAINTIFF
(*Administrator of the Estate of DAVID MUCHIRI KABUGI*)

VERSUS

RUARE RANCH LIMITED PLAINTIFF

JUDGMENT

Background

1. This suit was initially instituted at the High Court at Nyeri in the year 1990 and designated as Nyeri HCCC No. 41 of 1990.

It was transferred to this Court in the year 2015 and given its current reference.

2. By a Plaint dated 12th April 1990 as amended on 17th March 2023, Ruare Ranch Limited (the Plaintiff) prays for judgment against the Defendants to the effect that:

(aa) The Substituted Defendants do transfer the late David Muchiri Kabugi's interest title (sic) to the Plaintiff Company in LR. 2308/3 to the extent which he was (so) registered in the said plot;

(bb) Alternatively this Honourable Court do order the Registrar of Titles through the National Land Commission to rectify the register of LR. 2308/3 by deleting the name of David Muchiri Kabugi's from the title deed pertaining this his interest and replacing it with the Plaintiff Company;

(c) Costs of this suit; and

(d) Any other or better relief this Honourable Court may deem fit to grant.

3. Those prayers arise from the Plaintiff's contention that on or about 31st December 1979, the Plaintiff Company which was seized of LR No. 3308/3 situated South of Rumuruti Town, Laikipia District transferred the said land to one Newton Kiai Gathigira and David Muchiri Kabugi (now deceased) for a consideration of Kshs. 40,000/= to hold the same as tenants in common in equal shares.
4. It is the Plaintiff's case that the said parcel of land measuring 176.2 Ha was transferred to the deceased by mistake and upon the reasonable belief by the Plaintiff Company that the deceased was its member and shareholder and that he had purchased shares from other existing members to the extent which would have enabled him to be registered as a shareholder and qualify for the transfer of the said land.
5. The Plaintiff asserts that the deceased Defendant has never been put in possession of the said parcel of land, has never occupied it or paid any consideration therefor. It is further the Plaintiff's case that it has now sub-divided and demarcated the land for purposes of distribution to its members and hence the prayers made herein.

6. David Muchiri Kabugi (the Defendant) is opposed to the Plaintiff's claim. In his Statement of Defence and Counterclaim dated 28th May 1990 as amended on 21st July 2023, the Defendant denies that the Plaintiff is an incorporated Company and asserts that pursuant to its own voluntary resolution at a meeting held on 6th August 1978, the Plaintiff Company resolved to be dissolved noting it had ceased to function since 1971.
7. The Defendant admits the fact that on 31st December 1979, the Plaintiff transferred the suit property to himself and one Newton Kiai Gathigira and avers that the transfer was lawfully done for the consideration of Kshs. 40,000/= . The Defendant denies that it was not a member of the Plaintiff Company and asserts that he had lawfully held a share certificate issued under the seal of the Plaintiff on 30th May 1972 in respect of 6 fully paid up ordinary shares. The Defendant further avers that he had subsequently acquired other shares which stood at 51 shares as at 31st December 1978.

8. The Defendant states that in any event his registration as a proprietor of the suit premises which was done under the provisions of the Registration of Titles Act, Cap 281 of the Laws of Kenya is good and indefeasible under the provisions of the said Act and the same cannot be challenged by the Plaintiff or any other person.
9. The Defendant further avers that the Plaintiff's suit herein is not only unmerited but that the same is res judicata under the provisions of Section 7 of the Civil Procedure Act in that the subject matter of the suit was heard and determined in previous suits between the same parties, the same being Nakuru HCCC No. 143 of 1980, Nairobi HCCC No. 2516 of 1981 and Nakuru HCCC No. 89 of 1988.
10. By way of the Counterclaim the Defendant avers that the Plaintiff is a non-existent body comprised of unknown persons in law and with no capacity to sustain the instant suit. He further avers that an unlawful set of persons comprising the Plaintiff have since entered upon the suit property and started erecting temporary and permanent

structures thereon in blatant disregard of the Defendant's proprietary rights and interests over the same.

11. Accordingly, the Defendant prays for judgment to be entered against the Plaintiff on the following terms:

a) A declaration that the Defendant is the legal owner of a 50% share in all that property described as LR. No. 3308/3 (original No. 3308/2/1) as delineated on Land Survey Plan Number 105571 and situate South of Rumuruti town in the Laikipia District and containing by measurement 176.2 Ha;

b) An order of permanent injunction restraining the Plaintiff whether by itself or its agents, servants, employees, representatives, or anyone claiming under it from entering upon, trespassing upon, taking over, excavating, damaging, constructing on, developing, marketing, offering for sale, selling, transferring, alienating, charging, disposing or in any other manner howsoever from dealing or otherwise interfering with the Defendant's quiet enjoyment, possession and proprietorship rights of that property described as LR. No. 3308/3 (original No. 3308/2/1) as delineated on Land Survey Plan

Number 105571 and situate South of Rumuruti town in the Laikipia district containing by measurement 176.2 Ha;

c) Damages for trespass against the Plaintiff;

d) Costs of the suit and the Counterclaim and interest thereon at Court rates from the date of judgment until payment in full; and

e) Any other relief that this Honorable Court may deem fit and just to grant in the circumstances of this case.

12. The Original Defendant – David Muchiri Kabugi passed away on 14th May 1996. He was subsequently substituted herein by Moses Kiumu Muchiri and Cecilia Wachuka Muchiri as the administrators of his estate.
13. At the trial herein the Plaintiff Company called one (1) witness in support of their case. The defence equally called one (1) witness.
14. I have carefully perused and considered the pleadings filed herein, the testimonies of the two witnesses as well as the evidence adduced at the trial. I have similarly perused and

considered the rival submissions and authorities placed before me by the Learned Advocates representing the parties.

15. By their suit as initially filed in the High Court in the year 1990, the Plaintiff had sought to have the Defendant - David Muchiri Kabugi to transfer his interest in LR. No. 2308/33 said to be situated South of Rumuruti town in Laikipia District, to the Plaintiff. In the alternative, the Plaintiffs had sought an order for the rectification of the register of the said parcel of land by deleting the name of the Defendant therefrom.
16. Those prayers were the result of the Plaintiff's contention that on or about 31st December 1979, while seized of the said LR No. 3308/33, it did erroneously transfer the said parcel of land to one Newton Kiai Gathigira and the Defendant for a consideration of Kshs. 40,000/= to hold the same as tenants in common in equal shares.
17. It was the Plaintiff's case that the said parcel of land measuring some 176.2 Ha was transferred to the two gentlemen on the mistaken belief that the Defendant was a

member and shareholder of the Plaintiff Company and that he had purchased shares from other existing members to the extent that would enable him to be registered as a shareholder and qualify for the transfer of the said land.

18. On his part, the Defendant did not deny that the suit property was transferred by the Plaintiff to himself and the said Newton Kiai Gathigira on 31st December 1979. Contrary to the Plaintiff's assertions however, the Defendant avers that the transfer was lawfully done for a consideration of Kshs. 40,000/= and that he had then held a share certificate properly issued to him under the seal of the Plaintiff on 30th May 1972.
19. It was the Defendant's case that the Plaintiff was no longer capable of bringing the suit as it had done herein as the Plaintiff had at a meeting held on 6th August 1978 resolved to dissolve itself and hence it was no longer in existence as an incorporated body. According to the Defendant, a group of individuals masquerading as the Plaintiff Company had since entered the suit property and had started erecting temporary and permanent structures thereon in blatant

disregard of his proprietary rights and interests over the same.

20. As a result, and by way of the Counterclaim lodged herein, the Defendant prays for a declaration that he is the legal owner of a 50% share in the suit property. In addition, the Defendant has sought for an order of injunction restraining the Plaintiff whether by itself, its agents and/or representatives from entering upon or dealing in any manner whatsoever with the suit property. The Defendant also prays for damages and costs.
21. As fate would have it, the Defendant passed away on 14th May 1996 some six (6) years after the suit was filed and he was substituted herein by Moses Kiumu Muchiri and Cecilia Wachuka Muchiri, the Administrators of his estate. The pleadings were amended accordingly in the year 2023 to reflect the changes that had taken place some 30 years after the suit was filed.
22. In support of their case, the Plaintiff called as the sole witness Andrew Mwarari Matu (PW1) who described himself as the current Chairman of the Plaintiff. PW1 told the Court

that the Plaintiff is a private Company limited by shares and that the same was incorporated in 1969. PW1 further told the Court that the Company was founded by some ten (10) individuals including his father one Lucas Muriithi Matu who had held 6 ordinary shares in the Company.

23. According to PW1, the main objective in forming this Company was to enable them buy land for its members. He told the Court the Company had bought LR No. 3308/2/1 which they sub-divided into two parcels. One parcel measuring 700 acres was sold but the Company retained the other parcel measuring 440 acres in its name.
24. PW1 testified that the parcel retained in the Company's name was given the number LR. 3308/3 and that it was to be shared by the members of the Company. Instead of sharing the land as intended, PW1 told the court that the land was fraudulently transferred to the Defendant and the Company's then Chairman, one Newton Kiai Gathigira. According to PW1, the Defendant was not entitled to any assets of the Company because he was a stranger in the Company. PW1 testified that the Defendant had joined the

Company as an agent of some three (3) founders of the Company but he had ended up being the largest shareholder.

25. On the other hand, the Defendant called one David Felix Muchiri (DW1) who told the Court he was the son to Cecilia Wachuka Muchiri. Cecilia was one of the substituted Defendants. According to DW1 the two substituted Defendants were of advanced age, incapacitated and unable to attend Court to give evidence.
26. Relying on his recorded statement dated 24th September 2024, DW1 told the Court that he was aware that his grandfather David Muchiri Kabugi had acquired 51 shares from the Company's members and that he was issued with a share certificate dated 30th May 1972. According to DW1, one of those who had sold their shares to his grandfather was Lucas Muriithi Matu who, in a letter dated 15th May 1972 had confirmed that he had sold his entire shares in the Plaintiff Company for a cash consideration of Kshs. 8,000/=.
27. DW1 further told the Court that his grandfather had been an active shareholder and participant in the general meetings of

the Plaintiff Company in which he served as a director and secretary. DW1 testified that his grandfather and the Company's then Chairman Newton Kiai Gathigira had regularly acquired the suit property measuring 176.2 Ha which was registered in their joint names on 18th January 1980.

28. According to DW1, the Company ceased to exist around the year 1980 following a resolution made for its dissolution. He told the Court that pursuant to the resolution, a notice was published in the Kenya Gazette on 24th November 1979 confirming that the Company would be struck off the Register of Companies and consequently be dissolved within 3 months of the notice.
29. As it turned out, the Plaintiff did not deny that a resolution to dissolve the Company had been made and that the Registrar of Companies had published the said Gazette Notice. According to the Plaintiffs, the Gazette Notice was only notifying members of the public of the Registrar's intentions but no conclusive action was ever taken to dissolve the Company.

30. From the material paced before the Court, the Gazette Notice resulted from a letter addressed to the Registrar of Companies signed by the deceased Defendant and the Company's Chairman, the said Newton Kiai Gathigira. The letter produced by the Defendant and dated 19th September 1979 read in the relevant portion as follows:

“RE: WINDING UP/DISSOLUTION (SIC) OF RUARE RANCH COMPANY LIMITED (PRIVATE) P.O. BOX 252 NYAHURURU

We hereby wish to apply for the cancellation of our Ruare Ranch Limited - a private Company of 8 members which ceased to operate since 1971.

In this support, we enclose the minute dated 6th August, 1978 with MIN/3/78 Para 2 (b) which shows it was unanimously resolved to desolve (sic) the Company.

Other evidence in this support are the enclosed:

- 1. Two copies of Letter issued by the Commissioner of Lands.**

2. The Copy of the letter issued by the Laikipia Land Control Board.

All indicating that the farm is being sub-divided to individual members and no longer a Company's property.

We the undersigned and the only two Directors confirm that our Company has no other assets for devinded (sic) in the form of money or property but the sub-division of the land in accordance with the paid up ordinary shares.

Please gazette and cancel forthwith.”

31. Upon receipt of the said letter, the Registrar of Companies vide a Gazette Notice No. 3529 published on 7th December 1979 gave notice to the public as follows:-

THE COMPANIES ACT

(Cap 486)

Pursuant to Section 339, Sub-Section (3) of the above Act, it is hereby notified that at the expiration of three months from the date hereof, the names of the undermentioned Companies will, unless cause be shown to the contrary, be

struck off the Register of Companies and the Companies will be dissolved.....”

32. A perusal of the list reveals that Ruare Ranch Limited whose registration number is given as 8192 was one of the Companies listed thereunder. That being the case, the argument by the Plaintiffs that the notice was only notifying members of the public of the Registrar’s intentions and that no conclusive action was taken thereafter was rather interesting. Having published the Gazette Notice, the Registrar of Companies was not required to do anything else. Instead, those who had an objection were required to show cause to the Registrar why the Company ought not to be struck out. The Plaintiffs have not stated that they took any such action nor have they presented any evidence of any action they took following the Gazette Notice published on 7th December 1979.

33. In support of their contention that the Company remained in existence, PW1 produced a purported copy of the Company’s Register - Form CR 12. Among those listed as directors therein are people described as the Estate of the late Kiai

Newton Gathingira whose nationality is given as Ugandan, Estate of the late Karunga John Wamahiu also listed as a Ugandan, Estate of the late Wachira Kiama (Ugandan), Estate of the late Kimani Harry Chege (Ugandan) Estate of the late Manegwa James Mathenge (Ugandan) and the Estate of the late Benson Mathenge Leonard Mwatha (Ugandan).

34. It was unclear to me how the estates of the deceased and not the administrators thereof came to be registered as directors and/or shareholders of the said Company. Questioned about the said document in cross-examination, PW1 confirmed that all the directors and shareholders of the Company were Kenyan and that the document had errors. He further told the Court the names of those who appointed him Chairman of the Company were not in the document.
35. It was further telling that while the Plaintiffs claim that the suit property was fraudulently transferred to the Defendant and their then Chairman Newton Kiai Gathigira, no suit or claim has been made against the said Chairman. While the Plaintiffs purport that the Defendant was not their member, the Defendant has provided a Certificate for 51 Ordinary

Shares issued to him by Ruare Ranch Company Ltd on 30th May 1972. In addition, the Defendant has produced a letter dated 15th May, 1972 copied to the Company wherein Colonel Lucas Muriithi Matu (PW1's father) informs the Company as follows:

I Lucas Muriithi Matu have today sold to Mr. David Muchiri Kabugi my shares in the Ruare Ranch for Kshs. Seven Thousand plus Kshs. One Thousand Interest making a total of Kshs. Eight Thousand (Kshs. 8,000.00) paid cash.

It is agreed that the cost of transfer e.t.c. will be borne by Mr. Kabugi. As far as I am concerned Mr. Kabugi takes over all my assets and liabilities, except my goats which are in the farm and which I will take in due course."

36. Asked about the above letter in cross examination, PW1 confirmed that the letter was signed by his father and that it indicates that his father sold his shares in the land for Kshs. 8,000/= to the Defendant. Having confirmed that his father had sold his shares in the Company to the Defendant, PW1

cannot be allowed to turn around and purport that the Defendant had no shares in the Company and that the Defendant's Share Certificate was not authentic. One even wonders given that his father sold all his shares where PW1 derives the interests he is pursuing herein.

37. In the premises, it was clear to me that this suit was instituted by a non-existent body comprised of the likes of PW1 and other persons with no capacity in law to sustain the suit. From the material placed before the Court, it was clear that those persons purporting to be the genuine members of the Plaintiff company have since entered the suit property and commenced the erection of temporary and permanent structures thereon in blatant disregard of the Defendant's proprietary rights and interests over the suit property.

38. The Defendant having been registered as the proprietor of the suit property under the Registration of Titles Act (Cap 281 now repealed) has a good and indefeasible title in law and the same cannot be challenged by the Plaintiff in the manner purported herein.

39. It follows that I was not persuaded that there was any merit in the Plaintiff's suit. On the other hand, this court is persuaded that the Defendant had proved his counterclaim on a balance of probabilities.

40. Accordingly, I hereby enter judgment for the Defendant and make orders as follows:

(a) The Plaintiff's suit is hereby dismissed with costs.

(b) A declaration is hereby made that the Defendant is the legal owner of a 50% shares in all that property described as LR No. 3308/3 (Original No. 3308/2/1) as delineated on Land Survey Plan No. 105571 and situate South of Rumuruti town in the Laikipia District containing by measurement 176.2 hectares.

(c) An order of a permanent injunction is hereby issued restraining the Plaintiff whether by itself or its agents, servants, employees, representatives, or anyone claiming under it from entering upon, trespassing upon, taking over, excavating, damaging, constructing on, developing, marketing, alienating, charging, disposing or in any other manner howsoever from

dealing or otherwise interfering with the Defendant's quiet enjoyment, possession, and proprietorship rights over that property described as LR No. 3308/03 (Original No. 3308/2/1) as delineated on Land Survey Plan No. 105571 and situate South of Rumuruti town in the Laikipia District containing by measurement 176.2 hectares.

(d) The Plaintiff shall also bear the costs of the Counterclaim.

41. It is so ordered.

Judgment dated, signed and delivered in open court and virtually at Mombasa this 24th day of March, 2026.

.....
J.O. OLOLA
JUDGE

In the presence of:

- a) Ms. Firdaus Court Assistant.
- b) Mr. Kebuka Wachira Advocate for the Plaintiffs
- c) No Appearance for the Defendants