



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC CASE NO. 216 OF 2007

(FORMERLY HCCC NO. 76 OF 2000)

JOHN KIMUHU NJURUMBA.....PLAINTIFF

VERSUS

DISTRICT LAND REGISTRAR, THIKA.....1ST DEFENDANT

WAIRIMU WAIGANJO.....2ND DEFENDANT

JUDGEMENT

1. This dispute relates to the ownership of the land known as Ruiru/Ruiru East Block 2/5383, which both the Plaintiff and the 2nd Defendant lay claim to and over which they both hold title. The land was previously owned by Nyakinyua Investments Limited. In the Originating Summons filed on 18/1/2000 as **Nairobi High Court Civil Suit No. 76 of 2000 (O.S.)**, the Plaintiff sought to have the court determine whether the registration of the Suit Property in the 2nd Defendant's name is legal and if it is not, whether it should be cancelled and the Plaintiff registered as proprietor of the Suit Property. The supporting affidavit was sworn by the Plaintiff who deponed that the dispute over the Suit Property was also the subject matter of **Thika CMCCC No. 236 of 1995** which the 2nd Defendant filed against him and Nyakinyua Investments Limited. The Plaintiff deponed that he learnt that a second title had been issued over the Suit Property when persons unknown to him went to uproot his fence claiming that the land belonged to somebody else. When he carried out a search at the land's office, he discovered that it was registered in the 2nd Defendant's name.

2. The Plaintiff's wife, Anne Gathoni Karanu also swore an affidavit in support of originating summons which was filed on 18/1/2000. She deponed that she was a member of Nyakinyua Investments Limited, which was incorporated for purposes of purchasing land and then subdividing it amongst its shareholders. She stated that after acquiring shares in that company, she balloted and was allocated a plot on Ruiru/Ruiru East/Block 2 which came to be known as Ruiru/ Ruiru East/ Block 2/5383 after titles were processed. She requested Nyakinyua Investments Limited to process the title in her husband's name. A title over the Suit Property was issued to her husband.

3. The 2nd Defendant in her replying affidavit filed in court on 17/2/2000 stated that she was a paid up member of Nyakinyua Investments Limited vide share certificate number 02951 issued on 27/11/1978. She claimed that she balloted and got ballot number 443 in 1983 entitling her to the Suit Property. She also claimed that she paid survey fees in the sum of Kshs. 600/= on 20/7/1983 and that a title over this land was issued to her on 26/8/1988.

4. This suit was first heard by Lady Justice Gitumbi on 23/7/2014. The Plaintiff testified and produced the original title deed issued to him over the Suit Property on 15/11/1994. He stated that his wife Anne Gathoni bought shares in Nyakinyua Investments Company and produced receipts bearing the name of Dorothy Wamunyu Muchiri, who he claimed transferred the share to his wife. He produced a copy of share certificate number 558. He stated that he went to the offices of Nyakinyua Investments Limited with his wife and obtained ballot number 449. They paid Kshs. 600/= for the processing of the title on 28/2/1994. His wife authorised Nyakinyua Investments Limited to process and issue the title in his name, which was done in December 1994. He stated that he conducted a search at the time which confirmed that he was the registered proprietor. He moved into the land and started preparing it for cultivation. Somebody went and threatened him and he reported the matter to the Shauri Moyo Police Post in Gatundu. He was summoned to the Thika Law Courts because the Defendant had filed a case in the Principal Magistrate's Court in Thika being Civil Suit number 236 of 1995, which suit had not been determined by the time he testified.

5. He was told in the Thika lands office that his green card was missing and wrote a letter dated 9/6/1999 to the Land Registrar, Kiambu seeking to know if there had been any transactions on the Suit Property. The Land Registrar confirmed that no transactions had been registered against the land. He claimed that the 2nd Defendant's brother went to the Suit Property in 1995 and destroyed his crops. He reported the matter to the police who asked the Defendant to keep off the land until the suit in Thika law courts was concluded. The Plaintiff claimed that he had been in occupation of the Suit Property, was cultivating it and had planted Napier grass, beans and maize on it. He stated

that he was summoned with the 2nd Defendant to the Land Registrar's Office. He maintained that he was the rightful owner of the Suit Property and urged the court to cancel the 2nd Defendant's title over this land. He stated that his wife bought shares from Dorothy Wamunyua Muchiri and that he was given his title by the Registrar of Lands through Nyakinyua Investments Limited.

6. His wife, Anne Gathoni Karanu, also gave evidence. She produced copies of the receipts issued by Nyakinyua Investments Limited on 1/9/1976 and 21/12/1983 to Dorothy Muchiri together with copies of dividends from Nyakinyua Investments giving notice of her dividends for 1992 and 1994. She produced a copy of share certificate number 5558 issued by Nyakinyua Investments Limited to her on 5/7/1993 together with the copy of ballot number 449. She also produced copies of the receipts issued by Nyakinyua Investments Limited to her on 29/6/1994 on payment of fees for the title deed. She also produced a copy of the clearance letter dated 27/9/2002 given to her by Nyakinyua Investments Limited confirming that the Suit Property belonged to her. She stated that she was taken to the land after the transfer had been effected and that there was no one on the land at that time.

7. Nduta Ndirangu Chege, the Chairlady of Nyakinyua Investments Limited gave evidence for the Plaintiff. She stated that as far as Nyakinyua Investments Limited was concerned, the Plaintiff was the owner of the Suit Property which was transferred to him by his wife, who was a shareholder in Nyakinyua Investments Limited. She produced a copy of the letter dated 24/5/2010 from the Registrar of Companies confirming that she was a director of Nyakinyua Investments Limited. She acknowledged that she signed the clearance letter dated 27/9/2002 issued to the Plaintiff. She produced a copy of the register of Nyakinyua Investments Limited which showed that plot number 5383 belonged to Anne Gathoni Karanu.

8. She confirmed that Nyakinyua Investments Limited gave consent to the Lands Registrar to process and issue titles to its shareholders. She acknowledged that there was a problem in the leadership of Nyakinyua Investments Limited and that there was a split group led by Isaac Meshack Nderitu. She further stated that they removed the previous directors from office in 1998. Further, that the shareholders resolved that titles issued previously would be cancelled and members were therefore asked to return the titles to the company. Some shareholders refused to return their titles. In 1991 members resolved that those who had refused to return titles would not have a right to claim land. She stated that Nyakinyua Investments Company disowned the titles issued in 1988.

9. Bernard Leitich, who was the Land Registrar in Thika gave evidence on behalf of the 1st Defendant. He stated that according to the records held in their office, the Suit Property was first registered on 26/8/1998 under the Government of Kenya. It was transferred on 26/8/1998 and a title was issued to the 2nd Defendant on that day. An inhibition order was registered against the land on 8/5/2000 restraining dealings with the land until the court gave further orders in **Nairobi High Court Civil Suit Number 76 of 2000**. He stated that according to a copy of the members' register provided by Nyakinyua Investments Limited, the Suit Property was allotted to Anne Gathoni Karanu holder of identity card number 3007812166 through share certificate number 5588.

10. He confirmed that the titles held by both the Plaintiff and the 2nd Defendant over the Suit Property were issued by the Kiambu Land Registry. The Thika Land Registry was opened in 1996 and prior to this, the dispute land fell under the Kiambu Lands Registry. He denied the particulars of fraud given by the Plaintiff's against him. He surmised that since both the Plaintiff and the 2nd Defendant lay claim to the Suit Property by virtue of having been shareholders of Nyakinyua Investments Limited, then this company was in a better position to establish who between the Plaintiff and the 2nd Defendant was the genuine allottee of the Suit Property. He produced a copy of the green card showing that a title deed was issued to the 2nd Defendant over the Suit Property on 26/8/1988 and an inhibition order was registered against the land on 8/5/2000. He also produced a copy of the register of Nyakinyua Investments Limited showing that Anne Gathoni Karanu was allocated plot number 5383 by Nyakinyua Investments Limited. He confirmed that they did not have another register of members of Nyakinyua Investment Limited at the lands office. He conceded that the members' register was the primary source of information which the lands officers would rely on. He stated that if there was duplication of the titles over the Suit Property then the company register should prevail. He added that the directors of Nyakinyua Investments Limited who brought about the confusion should have been sued.

11. The 2nd Defendant gave evidence. She stated that she was a member of Nyakinyua Investments Limited under share certificate number 02951 issued on 27/11/1978. She stated that she balloted through ballot number 443 and was allocated the Suit Property for which she paid survey fees. She stated that a title deed was issued and forwarded to her late mother Njeri Waiganjo. She claimed that sometime in 1995, the Plaintiff trespassed on her land and she filed a suit against him. She produced a copy of share certificate number 02951 issued by Nyakinyua Investments Limited to Mrs. Wairimu Waiganjo dated 27/11/1978. She also produced a receipt issued by Nyakinyua Investments Limited to Mrs. Wairimu Waiganjo on 1/12/1976 for payment of Kshs. 2,100/=. She produced a copy of ballot number 443 and a receipt issued by Nyakinyua Investments Limited on 20/7/1983 to Mrs. Wairimu Waiganjo for payment of survey fees. The list bearing shareholders which she produced shows Wairimu Waiganjo had share certificate number 2951, with her name indicated against item number 4998. She also produced a copy of the title deed issued to Wairimu Waiganjo of identity card number 1348188/70 on 26/8/1988. She produced copies of maps for the area.

12. On cross-examination, she stated that she was also known as Mrs. Gicheha and that her identity card number was 11348188. Her full name as it appears on her national identity card is Milka Wairimu Waiganjo. She was born on 9/4/1970. She confirmed that she obtained a national identity card in 1998. On the issue of the documents relating to the Suit Property having been issued before she was 18, she claimed that her father made the payments. She thought the name Mrs. Waiganjo appearing in the receipts and share certificates issued by Nyakinyua Investment Limited was an error. On the issue of her current identity card number bearing 8 digits yet the one on title deed has 7 digits, she claimed that she changed to a new identity card. She sued the Plaintiff because she wanted him to issue a title to her in 1995 because her mother died in 1992 before giving her the title. She stated that she did not know she had a title but found out later that there was a title. She stated that after making payment she was shown the physical location of the land by representatives of Nyakinyua Investments Limited. She claimed that she took possession in the 1980's and was cultivating the land. She claimed that she never got any information requiring her to return the certificate to Nyakinyua Investments Limited. She confirmed that the suit in Thika had not been determined.

13. The issue for determination is who between the Plaintiff and the 2nd Defendant has a superior title to the Suit Property. Parties filed submissions which the court has considered. The suit land was previously owned by Nyakinyua Investments Limited. This company's chairlady confirmed that the Plaintiff's wife was allotted the Suit Property and on her instructions the title was prepared in the Plaintiff's name. The Land Registrar confirmed that the company's register was the one to prevail if there was double allocation when he produced a

copy of the company's register bearing the Plaintiff's wife's name, Ann Gathoni Karanu. If indeed the 2nd Defendant's title was issued in 1988, then it would not have been possible for the Land Registrar to issue the Plaintiff's title over the same piece of land in 1994.

14. The 2nd Defendant was born in 1970. It is highly improbable that she could have bought shares from Nyakinyua Investments Limited in 1976 when she was six years old. A six-year-old girl is far from likely to be bothered about buying shares at that age when she should be starting school and using her spare time to play and learn new things. The receipt dated 1/12/1976 together with the share certificate dated 27/11/1978 and the receipt dated 20/7/1983 were all issued to Mrs. Wairimu Waiganjo who would most certainly be someone else. If indeed her father made the payments for the plot as the 2nd Defendant claimed, then he would most likely have registered the title in his own name or the 2nd Defendant's mother who died in 1992. She did not call her father to give evidence and confirm that he indeed made the payments to Nyakinyua Investments Limited on her behalf. There is also the discrepancy in the 2nd Defendant's national identity numbers and details. The title deed that the 2nd Defendant submitted was issued to Wairimu Waiganjo while her full name as it appears on her identity card is Milcah Wairimu Waiganjo. She also confirmed that she is Mrs. Gicheha.

15. On a balance of probabilities, the Plaintiff has a better claim to the Suit Property than the 2nd Defendant. The Land Registrar is directed to cancel the registration of the 2nd Defendant as the proprietor of Ruiru/Ruiru East Block 2/5383 and reinstate the Plaintiff as the proprietor of this piece of land. The Plaintiff will have the costs of the suit to be borne by the 2nd Defendant.

Dated and delivered at Nairobi this 18th day of July 2019.

K. BOR

JUDGE

In the presence of: -

Mr. F.J.G. Kimani for the Plaintiff

Ms. Fatma Ali holding brief for Mr. F. Kubai for the 1st Defendant

Ms. Chepngeno holding brief for Mr. F.N. Kimani for the 2nd Defendant

Mr. V. Owuor- Court Assistant