

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ELCLC NO 49 OF 2023

PATRICK MWANGI WAWERU.....1ST

PLAINTIFF

CECILIA WANJIKU KARIITHI.....2ND

PLAINTIFF

PETER MBOCHOI WAWERU.....3RD

DEFENDANT

TERESIA MUGURE WAWERU.....4TH

PLAINTIFF

VERSUS

WILLIAM NJIHIA

KIMANI.....DEFENDANT

JUDGMENT:

In the Amended Plaint dated 16/3/2018 at Nyahururu, the Plaintiffs averred that they are the registered proprietors of L.R No. NYANDARUA/OLARAGWA/1694 and 7866. They further said that on 27/4/2017 and 3/5/2017, the Defendant forcibly entered onto the Plaintiffs' parcels of land with their employees and ploughed the land and uprooted the Plaintiffs' boundary which covered 13 Acres of the land and thereon planted potatoes

instead. The Defendant has continued trespassing onto the said parcels of land. the Plaintiffs therefore pray for Judgment for: -

- a. An order of injunction restraining the Defendant himself, his agents, employees, servants or independent contractors from trespassing onto the Plaintiffs' parcels of land viz. L.R. Nos. NYANDARUA/OLARAGWA/1964 and 7866 or from interfering with the Plaintiffs' ownership, possession and use thereof until this suit is heard and determined.
- b. Aggravated/exemplary damages for trespass.
- c. Costs of this suit.

The Plaintiffs averred that in Nairobi HCCC No. 2761 of 1994 and also in Nairobi HCCC No. 323 of 2016 the Court ruled that the Defendant files a suit in Court if he had any claim over the said parcel of land but which he has never.

In Nairobi HCC No. 2761 of 1994 the High Court ordered in a Ruling on 22/12/2010 that the Land Registrar, Nyahururu do rectify the land register in respect of L.R. No. NYAHURURU.OLARAGWAI/1693 and 1694 by cancelling the Title Deed issued in the name of William Njihia Kimani, the Defendant herein, and reinstate the suit property back to its original position before the transfer to William Njihia Kimani. William Njihia Kimani appealed to the Court of Appeal when he was already outside the prescribed time allowed by law and on 11/6/2019 he applied for extension of time to file and serve the Notice and Record of Appeal against the Ruling aforesaid. By a Ruling of a single Judge

Nambuye J.A was not convinced that a delay of 8 years 6 months and 19 days had been sufficiently explained and dismissed the Application with costs. The Applicant still moved the Court by way of Reference under Rule 55 (1) of the Court of Appeal Rules, inviting the Court to interfere with the exercise bestowed on a single Judge under Rule 4 of the Court of Appeal Rules. The same was dismissed by a 3-Judge bench on 7/8/2020.

Undeterred, William sought to proceed to the Supreme Court to challenge the Ruling of the Court declining his Application to file Appeal out of time for he thought that the intended Appeal to the Supreme Court raised questions of general public importance. He therefore moved the Court of Appeal for leave to proceed to the Supreme Court.

On 4/2/2022, noting that it matters not whether the intended Appeal relates to simple trespass, misdemeanors or felonies in criminal appeals, or violation of constitutional rights as claimed by the Applicant dismissed the Application for being devoid of merit. Still in the Chief Magistrate's Court at Nyahururu ELC case No 212 of 2018 where the Defendant was an interested party in a case pitting James Nguru Gatune (Plaintiff) against Wainaina Macharia as Defendant, William Njihia Kimani was ordered to surrender the Title Deed in respect of NYANDARUA/OL RAGWAI/1694 to the Land Registrar, Nyandarua within 30 days from the date of the Judgment delivered on 19/11/2021.

On 8/6/2023, the Plaintiff filed a suit against the 2nd Plaintiff herein among 4 other Defendants in the Chief Magistrate's Court at Engineer, ELC No. 027 of 2023 seeking for prohibitory orders be issued concerning L.R No. NYANDARUA/OL RAGWAI/8301, 8302,8303,7867 and 7868 and that the said Defendants be ordered not to interfere with the farming activities going on in the block farm until the final determination of the suit. He also prayed for the cancellation of the issued and illegally transferred Titles. He prayed also for orders that the sub-divisions of L.R NYANDARUA/OL RAGWAI/1093 be re-transferred back to him forthwith (by the Land Registrar).

These were among several prayers he sought therein. In the suit he claimed to be the owner of L.R NYANDARUA/OL RAGWAI/1693 and 1694 which he had bought from Francis Waweru Mbochi of Murungaru sub-location which he averred that the said Mbochi had sub-divided without his knowledge between 2015 and 2018 after selling it to the Plaintiff in the suit - William Njihia Kimani.

In the Statement of Defence and counterclaim dated 28/3/2018, the Defendant averred that by an agreement dated 29/4/1986 he did purchase 20 Acres of land to be excised from L.R. No. NYANDARUA/OL RAGWAI/77 at Kshs. 300,000 from Francis Waweru Mbochi who was father to the Plaintiffs and took immediate vacant possession in 1986 which land was subdivided into NYANDARUA/OL RAGWAI/1693 and 1694 and consent to so sub-divide obtained. He said that in Nairobi HCCC No. 276 of 1994 a Decree was issued on 22/11/1994 which ordered the transfer of

the said parcels of land to himself by the Deputy Registrar of the Court and the same was enforced and he was issued with Title Deeds on 23/12/1994. He claimed to have been on the suit land continuously and in uninterrupted occupation since 1986. The Plaintiffs' father registered L.R No NYANDARUA/OL RAGWAI/1694 in the names of the Plaintiffs and NYANDARUA/OL RAGWAI/1693 was sub-divided into 7866 in the Plaintiffs' name as well, 7867 in the name of James Nguru Gatura, 7868 and 7869 in the name of Francis Waweru Mbochi.

But the sub-divisions were never effected on the ground. He further claimed that Francis Waweru Mbochi filed Engineer PMCC ELC No. 4 of 2018 on 13/2/2018 which is similar to this one and which is still pending for hearing and determination.

In the Counter-claim, the Defendant claimed to have acquired NYANDARUA/OL RAGWAI/1694 AND 7866 by way of adverse possession. He prayed for a permanent injunction restraining the Plaintiffs by themselves, their agents, servants and/or employees from entering, demolishing structures, farming, planting and/or in any other way interfering with the Defendant's quiet possession.

In the Reply to Defence and Defence to Counter-claim, the Plaintiffs averred that the sale agreement in favour of the Defendant dated 29/4/1986 is not enforceable in law as the transaction did not obtain the Land Control Board consent and that the Title Deeds in respect of NYANDARUA/OL RAGWAI/1693 and 1694 were cancelled by the High Court of Kenya in HCCC No.

2761 of 1994 on 22/12/2010. They further said that the Defendant had not lived on L.R. No. NYANDARUA/OL RAGWAI/1693 or 7866 for an aggregate 12 years from 1986 - 1994 and has therefore not attained the statutory period required to obtain Title by adverse possession.

They further said that the sale agreement, consent of the Land Control Board, the Decree and Title Deeds for L.R. No. NYANDARUA/OL ARAGWAI/ 1693 and 1694 were forgeries and were declared so by the criminal investigations Department.

The firm of Waichungo and Co. Advocates having ceased to act for the Defendant who was served with a hearing Notice for 5/3/2026 but who failed to turn up for the hearing, the Plaintiffs brought one witness, Patrick Mwangi Waweru the 1st Plaintiff who introduced himself as son to the late Francis Waweru Mbochi. He adopted his statement of 14/11/2023. He said that NYANDARUA/OL RAGWAI/1694 and 7866 were registered in the Plaintiffs' joint names. He said the 2 parcels were sub-divisions of NYANDARUA/OL RAGWAI/77. He testified that the Defendant's claim that he bought 20 Acres out of the said land was a subject matter of Nairobi HCC ELC No. 2761 OF 1994 between William Njihia Kimani and Francis Waweru Mbochi and the same were ordered to be rectified by the Land Registrar and to revert back to Francis Waweru Mbochi. The order was executed and the land NYANDARUA/OL RAGWAI/1693 sub-divided into NYANDARUA/OL RAGWAI/7866,7867,7868 and 7869. And the Defendant herein tried his luck in the Court of Appeal and lost. His Application for

leave to proceed to the supreme Court was also unsuccessful. The witness finally said that the issues raised in the Defendant's Defence are res judicata. He then produced the following to buff up the Plaintiffs' case.

- i. Letter of consent dated 30/5/1988.
- ii. Letter dated 10/7/1986.
- iii. Letter dated 5/11/1986.
- iv. Letter dated 8/8/1994.
- v. Plaint in Nairobi HCCC No. 2761 OF 1994.
- vi. Judgement in Nairobi HCCC No. 1704/1998.
- vii. Decree dated 5/11/1980 in Nairobi HCCC No. 1704/1998.
- viii. Notice of Withdrawal of Counter claim dated 15/5/2002.
- ix. Order dated 15/5/2018 in Nairobi HCCC No. 2761/1994
- x. Proceedings in Milimani ELC No. 323 of 2016.
- xi. Order issued on 3/1/2017 in Milimani ELC No. 323 of 2016.
- xii. Order issued on 20/1/2017 in Milimani ELC No. 323 of 2016
- xiii. Order issued on 3/2/2017 in Milimani ELC No. 323 of 2016
- xiv. Village elders' verdict dated 14/6/2014.
- xv. Photograph dated 17/9/2018.
- xvi. Letter dated 7/7/2015.
- xvii. Valuation Report dated 28/12/2016.
- xviii. Letter dated 20/2/2017.
- xix. Valuation Report dated 5/11/2018.
- xx. Letter dated 30/10/2018.

He finally said that the Defendant does not use any part of the suit land. He prayed that the subsequent trespass by the Defendant and cautions against the land be removed.

The issue of ownership in this case has been litigated upon and re-litigated. Ownership of the suit land is therefore not an issue any more. I even feel the suit is res judicata because the cause of action for trespass was before different Courts.

The prayer for aggravated/exemplary damages for trespass also ought to have been raised in the previous suits.

On the issue of the removal of cautions, the same is not among the prayers in the Amended Plaintiff of 16/3/2018 and the same cannot be granted. The prayers in the Counter-claim are equally res judicata. This suit is therefore disallowed just as the counter claim with no orders as to costs. Each party shall meet his own costs.

Judgment read and delivered at Nyandarua this 14th Day of May 2026.

MUGO KAMAU
JUDGE

In the Presence of: -

Court Assistant: Samson.

Plaintiffs' Counsel: Mr. Wang'ondu.

Defendant's Counsel: N/A.

