



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT CHUKA
CHUKA ELC CASE NO. 112 OF 2017
FORMERLY MERU ELC. 147 OF 2009

ROYFORD RIUNGU KUURA.....1ST PLAINTIFF

WASHINGTON KIRIMI KUURA.....2ND PLAINTIFF

CHARLES NYAGA KUURA.....3RD PLAINTIFF

VERSUS

M.KUURA M'RIRIA.....1ST DEFENDANT

TURA KARINGURI.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. This suit has been in court for close to ten years.
2. When this matter came up for hearing on 19.2.2018, Mr. Manyara, the plaintiff's advocate told the court that he was ready to proceed.
3. Advocate Mungai Wainaina holding brief for advocate Kibiti for the defendants told the court that the defendants wanted the hearing adjourned because they had not complied with order 11, CPR.
4. At least two times in the past, that is on 23rd October, 2017 and on 29th November, 2017, the defendants were ordered to fully comply with order 11 of the Civil Procedure Rules. Nonchalantly, the defendants have ignored this court's orders issued on 29th November, 2017. The order issued on 29th November, 2017, reads as follows:

“2. Defendants allowed to fully comply with order 11, CPR, within 30 days of today failing which hearing of the suit will proceed nevertheless”.

5. It is pellucid and borders on the mischievous that the defendants want this suit to be adjourned because they have failed to obey the orders of this court. This is akin to the hackneyed example of that child who killed his parents and asked a court of law not to punish him because he was an orphan.

6. A court of law cannot countenance this sort of conduct. It invites this court's deprecation and I am inclined to invoke powers granted to this court by Order 12 of the Civil Procedure Rules.

7. The names of the defendants were called on outside court as is required by Order 12 Rule 2 of the Civil Procedure Rules. The court confirmed that the defendants had not come to court to participate in the apposite hearing proceedings. The court was satisfied that the notice of hearing had been duly served. The presence of an advocate who held brief for the defendants' advocate was veritable proof that hearing notice had been duly served.

8. Consequently, hearing of the suit proceeded ex-parte.

9. This suit is a consolidation of Meru HC Miscellaneous Application No. 147 of 2009 and Meru HCCC No. 33 of 2009.

10. PW1, the 3rd plaintiff, Charles Nyaga Kuura, told the court that he wished to rely on his witness statement dated 9th June, 2014 as his evidence in this suit. He asked the court to adopt the witness statement as his evidence in this suit. He asked the court to grant the prayers the plaintiff had craved for in their originating summons.

11. His witness takes the following form:

STATEMENT OF CHARLES NYAGA KUURA

I am an adult of sound mind residing at Thika Town within Kiambu county. I am a businessman.

I am one of the Administrators of the Estate of Kuura Mbae duly authorized to make this statement on my own and on their behalf.

Our father was the original owner of parcel number 132 which later changed to parcel No. 860 and subsequently to parcel No. 1266. The subject land is situate at Gatua sub-location Muthambi location, Tharaka Nithi County.

That during the land adjudication in 1966 the subject land was given No. 132 which was registered as parcel No. 1266 in the name of KUURA MBAE our late father.

On 18.3.1983, the Land Adjudication Officer, Chuka unilaterally cancelled the name of my father Kuura Mbae and replaced (sic) with that of Kuura Riria, the 1st defendant. He rectified the register without according my father a hearing and/or notification. My father moved to the High Court at Nairobi and filed Misc. Application No. 257 of 1983 seeking orders of certiorari and the High Court granted the same quashing the said decision.

That the defendant later in the year 1985 made an application seeking to set aside the said order of Justice Brar. On 12th July, 1985, Lady Justice Joyce Alouch granted the orders setting aside the said order of Justice Brar.

On 18th October, 1990, a two judge bench sitting in Nairobi overturned the orders of Justice Joyce Alouch and reinstated the orders of Justice Brar. That the effect of the said judgment was to restore the status quo before 1983.

After the said orders of the two judge bench, the office of the Attorney General misadvised and/or misdirected the director of Land Adjudication Chuka and asked him not to follow the two judge bench orders.

That sometimes on 4th November, 1997, we made a Chamber Summons application seeking interpretation of the two Judge Bench orders. The matter was heard before Hon. Mr. Justice Mbiti

as he then was, and he reserved the Ruling. The court file went missing and after seeking assistance from the office of the Chief Justice, we reconstructed the skeleton court file and to-date the original court file has never been traced.

Taking advantage of the said circumstances, the 1st defendant, together with the office of the Attorney General and land officials, Chuka proceeded and issued a title deed to the defendants sometimes in 1997.

The 1st defendant has now settled his family on the disputed land.

The land officials, Chuka proceeded further in 1997 to excise a portion of land from parcel number 140 and gave the new portion as parcel number 1941.

That parcel number 140, has never had any dispute at any time before. The purported changes were done under the supervision of the provincial administration. The land officials in the process of changing the parcel numbers from 132 to 860 and subsequently to 1266, they fraudulently created parcel number 503 from the original parcel number 132. The said parcel number 503 was registered in the name of Thura Karinguri a relative of the 1st defendant. The first defendant has now built a permanent house in parcel number 503, a clear indication that the 1st defendant was behind the entire fraudulent transactions.

I and my co-administrators are desirous in having the entire parcels of land restored back to the estate of my father and all the actions of the defendants jointly and severally be declared null and void and further the resultant titles issued be cancelled, general damages and order of eviction and costs of the suit.

That is all.

Signed by the said

CHARLES NYAGA KUURA

This 9th day of June, 2014

12. PW1 gave a conspectus of the evidence contained in his witness statement. He was cross-examined by advocate Mungai Wainaina who held brief for advocate Kibiti for the 1st and 2nd defendants. I find that the cross-examination did not materially ruffle PW1's evidence.

13. PW1, told the court that the plaintiffs wanted the court to restore back to the estate of his father all the suit parcels of land. He also said that the plaintiffs wanted all actions by the defendants jointly and severally to be declared null and void AND all resultant parcels to be cancelled.

14. PW1 asked the court to grant eviction orders and to award costs as prayed.

15. I frame the issue for determination as if or if not the plaintiffs deserve the orders they have prayed for.

16. I have perused the plaint dated 1st March, 2006 and it has the following prayers:

a) A declaration that the subdivision by the 3rd defendant's agents of the Original Land Reference Number Muthambi/Gatua/1266 and subsequent changes in the Land Register/Record – Chuka is null and void.

b) An order directing the District Land Registrar – Chuka to cancel the titles issued to the 1st and 2nd defendants.

c) An order directing the Land Registrar – Chuka to restore the Land Register/Records pursuant to an order made in H.C Miscellaneous Application No. 257 of 1983.

d) General damages

e) Costs of the suit

f) Interest on (d) and (e) above.

17. It is pellucid that the plaintiffs never prayed for an order for eviction which was only orally prayed for by PW1 during the hearing of the suit. Nevertheless, section 3A of the Civil Procedure Act grants courts power to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. I opine that the order for eviction sought orally by PW1 falls within the purview of the provisions of this provision of the law.

18. Regarding general damages, I am only able to grant nominal damages as the plaintiffs, during the hearing, did not indicate the extent, the level and how they had suffered any damages.

19. Judgment is entered for the plaintiffs against the defendants in the following terms:

a) It is declared that the subdivision by the 3rd defendant's agents of the original Land Reference Number Muthambi/Gatua/1266 and subsequent changes in the Land Register/ Record at Chuka are null and void.

b) An order is hereby issued directing the Land Registrar – Chuka to restore the Land Register /Record pursuant to an order made in H.C Miscellaneous Application No. 257 of 1983.

c) The District Land Registrar – Chuka is ordered to cancel titles issued to the 1st and 2nd Defendants.

d) Nominal General Damages in the sum of Kshs. 200,000/= are awarded to the plaintiffs.

e) An order is issued directing that the defendants be evicted by the apposite legal entities with the assistance of the Officer Commanding Police Station (OCS) who is in charge of the area where the apposite land is situated.

f) Costs of this suit are awarded to the plaintiffs.

g) Interest on (d) and (f) is awarded to the plaintiffs with effect from the date of delivery of this judgment.

h) Suits which were consolidated with this suit through an order issued by **this Court on 20th February, 2014 are deemed heard and determined.**

Delivered in open court at Chuka this 19th day of March, 2018 in the presence of:

CA: Ndegwa

Rayford Riungu Kiura – 1st plaintiff

P. M. NJOROGE,

JUDGE.