



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

E.L.C NO 136 OF 2011

TIMOTHY GITUMA NKABO.....PLAINTIFF

VS

ESTHER NCHOGA IKUNYUA.....1ST DEFENDANT

MUSA MWENDA IKUNYUA.....2ND DEFENDANT

GICHUNGE IKUNYUA.....3RD DEFENDANT

JUDGMENT

1. By a Plaint dated 23/9/11 the Plaintiff states that he bought land Ref. No.Nkuene/Kathera/2025 (suit land) from Godfrey Samson Murithi who had become registered owner pursuant to an order of the Court in Meru High Court Succession Cause 87 of 2008.
2. Upon the Plaintiff becoming owner, the Defendants between May and July 2011 removed the boundary marks and encroached on the suit land.
3. In the Plaint the Plaintiff prays for the following orders:
 - a) A permanent injunction restraining the Defendants by themselves, their heirs, assigns, servants, legal representatives or anyone else whomsoever from encroaching, into cultivating, wasting, erecting any structure in the suit land or in any other manner interfering with the Plaintiff's occupation, possession and use of the suit Land No. NKUENE/KATHERA/2025.
 - b) An order of Temporary Injunction restraining the Defendants from interfering with the Plaintiff's occupation, possession and use of the suit Land until the hearing and determination of the suit.
 - c) Mesne profits.
 - d) Costs of the suit and interest at Court rates.
 - e) Any further or better relief as the Court may deem fit and just to grant to meet the ends of justice.
4. The Defendants denied the Plaintiff's claim by a statement of defence dated 9/12/11 and asserted that Godfrey Samson Murithi is a stranger to Succession Cause No. 87 of 2008 and that the Plaintiff did not buy the suit land from Godfrey Samson Murithi.
5. The Defendants further deny any subdivision of LR No. KUENE/KATHERA/880 so as to create the suit land. The Defendants further allege that the Plaintiff obtained the suit land fraudulently through Enid Joy Murithi and set forth the grounds of fraud in Para 5 of the defence. In addition, the Defendants deny that the Plaintiff issued a notice of intention to sue to them and expressly denied jurisdiction of the Court.
6. The case proceeded to hearing where the Plaintiff and the 3rd Defendant gave oral evidence on 29/6/17 and 13/3/18 respectively. The 1st Defendant is deceased and the 2nd Defendant did not lead any evidence. The 3rd Defendant adopted the statement of the 1st Defendant. The said statement and evidence of the 3rd Defendant basically explains the denials and admissions in the statement of defence.
7. In the evidence of the Plaintiff he stated that he bought the suit land from Godfrey Samson Murithi who got the land through an order of the Court issued in Succession Cause No 87/2008- Meru and that prior to the purchase he had ascertained that the said Godfrey Samson Murithi was the registered owner of the land free from any encumbrances.

8. In his further evidence the Plaintiff produced the agreement for sale of the suit land duly signed by the Plaintiff and Enid Joy Murithi who is a spouse to Godfrey Samson Murithi and the title deed to the suit land. The said Godfrey Samson Murithi now deceased. In the title to the suit land it is evident that the suit land is curved or is a subdivision of Land parcel No. NKUENE/KATHERA/880.

9. After close of the hearing of the case on 13/3/18 the parties agreed to file written submissions on or before 17/4/18.

10. Pursuant to the said directions the Plaintiff filed his written submissions on 17/4/18. The Defendants filed their written submissions on 11/5/18. It is worthy to note that the Plaintiff purported to comply with the order of the Court in the very last day and that the Defendant filed their submissions outside agreed and set time by the Court. The Court disapproves this conduct by Counsels who are officers of the Court.

11. The Court has read and considered the submissions by the Learned Counsels for the Plaintiff and the Defendants. Both parties have in their submissions filed issues for determination.

12. The Plaintiff has identified 2 issues while the Defendants did state 4 issues for determination. The issues by the parties may be crystalized as under:

A; Whether Godfrey Samson Murithi had a good title to the suit land?

B; Whether the Plaintiff was a bonafide purchaser for value without notice of the suit land?

C; Costs.

13. Though the Defendants in their defence alleged fraud on the part of the Plaintiff on acquisition of the suit land and denied jurisdiction they did not pursue such claims and denials in evidence or in their submissions. In the circumstances it is presumed that the denial of jurisdiction and the allegations of fraud were abandoned.

14. At the instance of the Plaintiff, upon which the Court so directed, Meru HCCC SUCC No. 87/2008 file was placed in the records of this case. The Court has duly perused and considered the matters in the file which relate to the dispute between the parties.

15. The Court will now in turn proceed to answer the issues identified.

A; Whether Godfrey Samson Murithi had a good title to the suit land

16. The application for letters of administration to the estate of M'Ikunyua M'Murithi was filed in Meru High Court by Julius Mwebia M'Ikunya. The application is supported by the affidavit of the said Julius M'Ikunyua and lists among others the 1st, 2nd & 3rd Defendants as beneficiaries of the estate and states Land Parcel NO. NKUENE/KATHERA/880 as the property of the deceased M'Ikunyua N'Murithi in respect of which Succession is sought. The Defendants have all signed the necessary consents to the making of a grant of administration intestate to be issued to the said Julius Mwebia M'Ikunyua.

17. On 31/10/08 the High Court in the said Meru Succession Cause No. 37/2008 issued letters of grant of administration intestate in respect to the estate of M'Ikunyua N'Murithi to Julius Mwebia M'IKunyua. Incidentally the said Julius Mwebia M'Ikunyua is a son to the deceased namely M'Ikunyua M'Murithi.

18. On 30/4/09 the said Julius Mwebia M'Ikunyua as the administrator of the estate of M'IKunyua M'Murithi applied for confirmation of the grant of letters of administration issued to him on 14/10/08. The 1st 2nd and 3rd Defendants duly signed the necessary consents to the confirmation of the grants. In the affidavit filed in support for the confirmation of the said grant the 1st, 2nd and 3rd Defendants are listed as beneficiaries among others and Godfrey Samson Murithi is also listed as a beneficiary pursuant to purchase. Land parcel No. NKUENE/KATHERA/880 is stated to be 5.0 acres to be shared as follows;

a) Godfrey Samson Murithi – 2 Acres

The balance of three (3) acres to be divided equally amongst;

a) James Kimathi M'Ikunyua

b) Gichunge M'Ikunyua

c) Esther Nchoga M'Ikunyua

d) Musa Mwenda M'Ikunyua

19. The grant of representation issued to the said Julius Mwebia M'Ikunyua was confirmed by the Court on 8/10/09 where the Court gave the following directions:

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Godfrey Samson Murithi – 2 acres.

- a. James Kimathi M'Ikunyua
- b. Gichunge M'Ikunyua to share balance equally
- c. Esther Nchoga M'Ikunyua
- d. Musa Mwenda M'Ikunyua

The order confirming the grant of representation has not been stayed varied or set aside.

20. It is evident from the analysis above that Godfrey Samson Murithi is identified as an heir pursuant to purchase in the estate of M'IKunyua M'Murithi in relation to Land Parcel No. NKUENE/KATHERA/880. The direct consequences of confirmation of grant of aforesaid is that Godfrey Samson Murithi is entitled to 2 acres of LR No. NKUENE/KATHERA/880 which is equivalent to the description of the suit land. In the circumstances registration of the suit land carved out LR No. NKUENE/KATHERA/880 pursuant to confirmed grant of representation aforesaid is valid and the said Godfrey Samson Murithi held a good title to the suit land which he could transfer to the Plaintiff or another person as may be agreed.

B; Whether the Plaintiff was bonafide purchaser for value without notice of the suit land?

21. The suit land was sold to the Plaintiff by Godfrey Samson Murithi the then registered owner, now deceased. The agreement for sale is signed by Enid Murithi who is the spouse to the said Godfrey Samson Murithi. There is no evidence on record that Godfrey Samson Murithi prior to his death disowned the sale of the suit land or signing of the agreement for sale by his wife. The Court does not find anything much turning on the 1st, 2nd & 3rd Defendants' argument in respect to the suit land by the Plaintiff.

22. There is no evidence on record that the Plaintiff was at any time aware of any dispute between the Defendants and the said Godfrey Samson Murithi prior to and at the time of purchasing the suit land or becoming the registered owner. In any event the Defendants have not challenged issuance of the title in respect to the suit land to the said Godfrey Samson Murithi. It is the Courts finding that the Plaintiff is a bonafide purchaser for value without notice.

23. In respect to mesne profits the Plaintiff did not lead any evidence in respect to the same. It is presumed the Plaintiff abandoned his claim under this heading.

C; Who meets the costs of the suit?

24. Costs follow the event. The Plaintiff has succeeded in his claim and I see no reason to deny him costs.

25. In the upshot the Court makes the following orders:

- a) That the Defendants jointly and severally by themselves their heirs, servants, legal representatives be and are hereby restrained from encroaching into, cultivating wasting or erecting any structure in the suit land or in any manner interfering with the Plaintiff's possession and use of the suit Land Parcel No. NKUENE/KATHERA/2025.
- b) The Defendants shall pay the Plaintiff the costs of the suit.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MERU THIS 28TH DAY OF JUNE, 2018.

J.G. KEMEI

JUDGE

In the presence of:

C/A Mutua

Mbaabu for Plaintiff

N/A for 1st to 3rd Defendants