



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MURANG'A

ELC NO. 385 OF 2017

JULIUS MACHARIA THUO

NANCY WANGUI MUGWE(Suing as personal representatives and

Administrators of the estate of the late **APHAXARD THUO MUGWE** alias

ALPHAXARD THUO MUGWE).....**PLAINTIFFS**

VS

PENTECOSTAL EVANGELISTIC FELLOWSHIP OF KENYA.....**1ST DEFENDANT**

GRACE NYOKABI THUO.....**2ND DEFENDANT**

SAMUEL MBUTHIA KAMAU.....**3RD DEFENDANT**

THE LAND REGISTRAR MURANG'A DISTRICT.....**4TH DEFENDANT**

JUDGMENT

1. By a Plaint dated 2/4/13 the Plaintiffs as administrators to the estate of their father, the late Aphaxard Thuo Mugwe alias Alphaxard Thuo Mugwe lays claim to 3 pieces of land namely;-

- a) Loc 5/Githunguri/19
- b) Makuyu/Kimorori/Block III/906
- c) Makuyu/Kimorori/Block 3/2236 (suit land).

2. The backbone of the Plaintiffs' claim against the Defendants is that transfers and/or acquisition of the suit lands from their deceased father was effected without the necessary grant of representation in the estate of their late father. The Plaintiffs obtained the grant of representation on 26/9/12. The Plaintiffs also alleged fraud against the Defendants jointly and severally particulars of fraud have been itemized.

3. The 1st and 4th Defendants did not defend the case of the Plaintiffs.

4. The 2nd and 3rd Defendants separately filed their statements of defence. On the main, the 2nd Defendant asserts that she is the lawful owner of the suit lands namely No. Makuyu/Kimorori/Block 3/2236, it having been transferred to her by her mother the late Sophia Wanjiku Mugwe during her life time. Whereas the 3rd Defendant asserts that he is now the registered owner of the said land as bonafide purchaser for value from the 2nd Defendant without notice.

5. The 3rd Defendant in his defence further separately stated that the Plaintiff's claim is bared by Limitation of Actions Act because the actions complained of by the Plaintiffs occurred in the years 1995 and 1996.

6. The 1st Plaintiff gave evidence on his behalf and that of the 2nd Plaintiff while the 2nd and 3rd Defendants gave their own evidence. In the evidence of the parties the green cards relating to the suit lands were produced. It is evident in the green cards that;

- a) On 1/7/88 Alphaxard Thuo Mugwe was registered as owner of Makuyu/Kimorori/Block III/906.

b) On 7/7/88 the said Alphaxard Thuo Mugwe became registered as owner of Makuyu/Kimorori/Block 3/2236.

c) On 30/11/90 he became registered owner of Fort Hall Loc.5/Githunguri/19.

d) On 6/9/95 Sophia Wanjiku Thuo was registered as owner of Fort Hall Loc.5/Githunguri/19.

e) On 14/11/96 Sophia Wanjiku Thuo was registered as owner of Makuyu/Kimorori/Block 3/2236.

f) On 14/11/96 Pentecostal Evangelistic Fellowship of Kenya was registered as owner Makuyu/Kimorori/Block III/906.

7. The record indicates that the registration on accounts of d-f above were in consideration of a purchase price of Kshs. 100,000/=, Kshs. 3000/= and Kshs. 30,000/= in respect to LR Nos Loc.5/Githunguri/19, Makuyu/Kimorori/Block 3/2236 & Makuyu/Kimorori/Block III/906 respectively.

8. Further in respect Makuyu/Kimorori/Block 3/2236 it is indicated that on 9/4/18 the 2nd Defendant became registered owner and on 13/3/12 Samuel Mbuthia Kamau become registered owner in consideration of Kshs. 200,000/=. There is no consideration indicated on account of the registration of the land in the name of 2nd Defendant. The 2nd and 3rd Defendants are named in the suit as 2nd and 3rd Defendants respectively.

9. Except in the case of 3rd Defendant there were no transfer documents or evidencing transfer in all the dealings in the suit lands commencing with Aphaxard Thuo Mugwe resting with the 2nd Defendant.

10. After hearing of the case and taking evidence of the witnesses the parties agreed and the Court so directed that the case be prosecuted further by way of written submissions.

11. The Plaintiffs, 2nd and 3rd Defendants filed their written submissions on 30/11/17, 1/12/17 & 30/5/18 respectively.

12. The Court has read and considered the pleadings, the evidence given by parties and the submissions filed. The parties did not submit any issues for determination. Nevertheless, from the proceedings and pleadings of the parties the following issues would fall for determination, namely;

A: Whether the claim of the Plaintiffs is barred by Limitations of Actions Act.

B: Whether the titles issued to the Defendants are void and ought to be cancelled.

C: Whether the 3rd Defendant is a bonafide purchaser for value without notice.

D: Costs

13. Incidentally the finding in issue No. 1 above may be effectively dispose of the suit herein. I say so because a challenge based on limitation goes to the Jurisdiction of the Court to deal with the claim of the Plaintiffs. The Court will proceed to deal with issue No. 1 and depending on the finding may proceed to determine the rest of the issues.

A: Whether the claim of the Plaintiffs is barred by limitations of actions.

14. The Plaintiffs as administrators of the estate of their late father, namely Aphaxard Thuo Mugwe are in law claiming ownership of the suit land under their late father. Limitation having been placed in the defence of the Plaintiffs suit calls upon the Court to determine the date of the cause of action. Such date would properly be the date when the suit lands were registered in the name of another person from the Plaintiffs late father. It is the date that effectively the administration of the estate of the Plaintiffs father and any person including the Plaintiffs were affected adversely by such action. The Court has itemized in Para 6 the dates on which each of the suit lands were registered in the name of another person than the Plaintiffs late father as follows;

a) On 6/9/95 Sophia Wanjiku Thuo was registered as owner of Loc.5/Githunguri/19.

b) On 14/11/96 Sophia Wanjiku Thuo was registered as owner of Makuyu/Kimorori/Block 3/2236.

c) On 14/11/96 Pentecostal Evangelistic Fellowship of Kenya was registered as owner Makuyu/Kimorori/Block III/906.

15. The section 7 of Limitation of Actions Act in so far is relevant to the Plaintiffs claim states as follows;

“An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

Considering the suit lands separately Limitations of Actions would affect the Plaintiffs on the date shown item-wise below;-

a) No Loc. 5/Loc.5/Githunguri/19 registered in the name of Sophia Wanjiku Thuo on 6/9/95.

b) No. Makuyu/Kimorori/Block III/2236 registered in the name of Wanjiku Thuo Sophia on 14/11/96.

c) No. Makuyu/Kimorori/Block III/906 registered in the name of 1st Defendant on 14/11/96.

Limitation date would then be 12 years after the dates shown above of registration that is to say the year 2008, 2007 and 2007 respectively.

16. Going by the analysis above therefore the claim of the Plaintiffs became stale in the years 2008, 2007 & 2007 respectively by the reason of the suit having been filed on 3/4/13.

17. In view of the conclusion in Para 13 above it is, therefore, not necessary to continue with analysis and finding on the remainder of the issues set out above for determination.

18. The Court finds that the Plaintiffs claim is defeated by reason of Limitation of Actions Act and is hereby dismissed.

19. The parties shall bear their own costs of the suit.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 31ST DAY OF JULY 2018.

J G KEMEI

JUDGE

Judgment read in open Court in the presence of;

Mr. Kinuthia HB for Mr Njiraini for the Plaintiffs.

1st Defendant – Absent

2nd Defendant – Present in Person

Ms Kilonzo HB for Mr. Tumu for the 3rd Defendant

4th Defendant – Absent

Ms.Irene and Ms Njeri, Court Assistants.