



**Njora v Kingi & 2 others (Environment and Land Case Civil Suit
759 of 2014) [2024] KEELC 345 (KLR) (25 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 345 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 759 OF 2014
LN MBUGUA, J
JANUARY 25, 2024**

BETWEEN

DANIEL WAIHAKA NJORA PLAINTIFF

AND

JACINTA NYAWIRA KINGI 1ST DEFENDANT

ROYSAMBU HOUSING CO-OPERATIVE SOCIETY LTD 2ND DEFENDANT

COMMISSIONER OF LANDS 3RD DEFENDANT

JUDGMENT

1. Litigation relating to the dispute herein commenced way back in year 2002 when the plaintiff filed a suit before the Magistrate's court No. CMCC 7365 of 2002 against the initial 1st defendant one Titus Kinyua Nyawira & 2 others. The said case appears to have been struck out on account of jurisdiction triggering the filing of this suit vide a plaint dated 6.4.2005 (amended on 29.6.2010) in HCCC No. 392 of 2005. The said suit was given the current case No.759 of 2014 when it transitioned to the Environment and Land Court.
2. The plaintiff claims to have purchased the suit property as plot No. 272 phase 111 B in 1980 from Hannah Wanjiru Raingwa, who in turn had been allocated the land by the 2nd defendant. That the plaintiff was subsequently issued with an allotment letter, and a lease to that effect was prepared in his favour. However, the said lease was not registered as it emerged that another lease had been granted to Titus Kinyua, the initial 1st defendant.
3. The plaintiff contends that the lease of the 1st defendant was issued fraudulently and prays for the following orders;
 - a. A declaration that the Plaintiff is the sole and bona fide, beneficial and lawful owner of the suit land to the exclusion of all others or in the alternative to (a).



- b. That the Defendant's jointly and severally compensate the Plaintiff for the value of the subject plot at the current market rate and 2nd and 3rd Defendants to refund the Plaintiff Kshs. 16,000/- and Kshs. 24,978/- being legal fees and land rent and other expenses respectively with interest at court rates.
 - c. A permanent injunction restraining all the Defendants from trespassing, digging, building, alienating, wasting or in any other way interfering with the Plaintiff's land parcel No. Nairobi/Block 116/969.
 - d. General damages.
 - e. Costs of this suit.
4. The 1st defendant filed his statement of defence dated 22.2.2005 where he contends that he bought the suit parcel in year 2001 from one Daniel Macharia Nguitui who was the 1st registered owner of the said land. He then proceeded to develop that land by putting up a commercial and residential building. The 1st defendant died on 26.1.2008 and was substituted with his legal representative and mother, one Jacinta Nyawira Kingi, who lodged an amended defence dated 9.12.2010.
 5. The 2nd defendant was on and off represented in these proceedings, but it did not file a defence or tender any evidence. The same scenario was played out in respect of the 3rd defendant.
 6. On 25.7.2023, the plaint was amended by consent whereby, the 3rd defendant, the Commissioner of Lands was replaced by the Chief Land Registrar as the 3rd defendant.
 7. During the trial, the case of the plaintiff was advanced by himself and a valuer. PW1, Daniel Waithaka Njora adopted his witness statement dated 15.7.2011 as his evidence. He also produced the 16 documents in his first list dated 9.7.2008 as well as those in his second list dated 15.7.2011 (excluding document nos. 18 and 19) as plaintiff exhibits 1-33.
 8. Pw1's evidence is that he bought the suit parcel in 1980 from the original allottee, Hanah Wanjiru Raingwa. That the suit land was part of parcel 8345/6 which was owned by the 2nd defendant who effected transfer on 26.10.1990 and he was issued with a share certificate no. 000391.
 9. That on 14.9.1992, the Commissioner of Lands allotted to him the suit land as Nairobi Block 116/969 vide a letter Ref No. 34479/1V, and the same was collected by Maosa and company advocates, but was only forwarded to him on 14.1.2002. He immediately confirmed acceptance, paid all the requisite costs and a lease was prepared in his favour dated 8.3.2002.
 10. However, a title deed was not issued in his favour because one Daniel Macharia Nguitui had been issued with a lease on 4.6.2001, and he had subsequently transferred the land to the 1st defendant.
 11. PW1 had then reported the matter to the Director of Criminal Investigations (CID), as well as to the Anti Corruption Unit. He avers that the ensuing investigations revealed that a purported transfer of the suit property to Daniel Macharia Nguitui was a fraud, as PW1's counterfeit Identity card was used.
 12. Upon cross examination by counsel for the 1st defendant, PW1 reiterated that he could not be issued with a title even though his lease had been prepared because another title had already been issued. He learnt of the other lease when he made payments in the year 2002. He averred that his name was used to transfer the land but using an identity card of one Diana Okello.
 13. He further stated that when he bought the land in 1980, the titles were under the 2nd defendant.



14. On cross examination by counsel for the 3rd defendant, PW1 again reiterated that a lease was prepared in his favour dated 9.4.2002, but was not registered because the lands office discovered that another tile had already been registered.
15. In re-examination, PW1 stated that he could not have complied with the terms of the allotment letter in its absence. He was requested to collect the letter by Maosa advocates on 14.1.2002. He then made the requisite payments which were accepted by the Commissioner of Lands.
16. PW2, one David Njoroge Muiru introduced himself as a valuer. He prepared the report dated 25.5.2016 and produced the same as an exhibit. The same pegs the value of the land and loss of rent for 173 months at Ksh. 16 571 381.
17. The 1st defendant Jacinat Nyawira Kingi advanced her own case, testifying as DW1. She adopted her witness statement dated 29.9.2014 as her evidence. She also produced the 8 items in her list dated 15.9.2014 as her exhibits.
18. DW1 identified herself as the mother of Titus Kinyua, the original 1st defendant. Her case is that the suit was registered to Daniel Macharia Nguitui on 4.6.2001, and he transferred the said land to Titus on 9.7.2001. She contends that they developed the property with Ksh.20 000 000.
19. In cross examination DW1 stated that she is the one who bought the suit parcel and she then gave it to her son. She however cannot recall who the seller was.
20. The submissions of the plaintiff are dated 25.8.2023 where it was argued that the protection of right to property under Article 40 of the [Constitution](#) does not extend to property which was unlawfully acquired. To this end, it was submitted that the 1st defendant did not prove the root of his tile, and there was no evidence of purchase thereof, hence the 1st defendant is not a bonafide purchaser. To buttress this point, the cases of [Dina Management Limited v County Government of Mombasa & Others](#) (Petition 8 (E010 OF 2021) (2023) KESC 30 (KLR) (21 April 2023) (Judgment), [Samuel Kamere v Lands Registrar](#) (Kajiado Civil Appeal No. 28 of 2005 (2015) eKLR, and [Munyu Maina v Hiram Gathiba Maina](#) (2013) eKLR were proffered.
21. It was further argued that the 1st defendant did not have a letter of allotment, and was not a member of the 2nd defendant, hence there was no basis of having the land registered in his name. Thus the 1st defendant was aware of this fraud.
22. The plaintiff blames the 2nd defendant for not disclosing to the 3rd defendant that the plaintiff was the purchaser of the subject plot. He also blames the 2nd defendant for receiving and withholding the plaintiff's letter of allotment from 14.9.1992 to 14.1.2002. He blames the 3rd defendant for re-allocating the plot to someone else knowing well that the land had been allocated to the plaintiff.
23. In support of the above arguments, the plaintiff cited the following cases; [Ethics and Anti-Corruption Commission v Simon Thuo Muchiri](#) (2022) eKLR, [Arthi Highway Developers Limited v West End Butchery Limited & 6 others](#) (2015) eKLR, [Mary Ngonyo Kiume v Charles Muisyo David & 2 others; Exams Housing Co-operative Society Limited \(Interested Party\)](#) 2022 eKLR and [Mukulu Mbavu v Hastings Kiala Ngave & Another](#) (2020) eKLR.
24. It was also argued that plaintiff is the rightful owner of the suit parcel as he had a share certificate from the 2nd defendant issued on 26.9.1990, and that he was subsequently issued with an allotment letter. On this point the case of [Republic v City Council of Nairobi & 3 others](#) (2014) eKLR was proffered.
25. On 25.7.2023, the defendants were granted upto 25.9.2023 to file and serve their submissions. The 1st defendant did not comply and on 11.10.2023, the court granted them an extension upto 27.10.2023,



but again there was no compliance. On 30.10.2023 the court again indulged the 1st defendant to file and serve submissions by 25.11.2023. Still there was no compliance!

26. The submissions of the 3rd defendant are dated 29.9.2023, where it was argued that plaintiff's claim is premised on a letter of allotment, yet such a letter is not a title to property. On this point, the cases of *Torino Enterprises Limited v The AG* SCOK Case Petition (EOO6 of 2022), *Dr. Joseph N.K Arap Ngo'k v Justice Moiyo Ole Keiyua & 4 Others* CA 60 of 1997 and *Gladys Wanjiru Ngacha v Teresia Chepsaat & 4 Others* H.X Civil Case No. 182 of 1992 (2008) eKLR were proffered.
27. It was further argued that by the time the initial defendant was issued with a transfer and a certificate of lease, the plaintiff had not complied with the conditions set out in the letter of allotment. It was therefore submitted that the 1st defendant had acquired his title legally. That in the event of any compensation, the same should be sought from the 2nd defendant as they are the ones who delayed in giving the letter of allotment to the plaintiff.

Determination

28. The current status of the suit property is that the same is registered in the name of the 1st defendant. The parcel is fully developed with a high rise 7 storied building going by the valuation report availed by PW2.
29. The plaintiff is tracing his claim through purchase in 1980, while the 1st defendant equally claims the property through a purchase of year 2001. The plaintiff has no title. Under these circumstances, I proceed to frame the issues for determination as follows; Whether the suit property belongs to the plaintiff, whether the 1st defendant lawfully obtained the title to the said land, what relief is available in the circumstances.
30. The provisions of Section 107 of the *Evidence Act* stipulate that he who alleges must prove his or her case; See - *Susan Kanini Mwangangi & another v Patrick Mbiti Kavita* [2019] eKLR.
31. In *Samson S. Maitai & another v African Safari Club Limited & another* [2010] eKLR, the court stated thus.

“Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of proof lies on the party who asserts the truth of the issue in dispute.”
32. The plaintiff instituted this suit claiming that he is the one entitled to the suit property. He traces the roots of his claim to the purchase of 1980 from one Hannah Wanjiru who was the original allottee of the parcel. He avers that initially, the suit land was part of a large parcel of land LR No. 8345/6 owned by the 2nd defendant, a land buying company. That the transfer was effected in his favour on 26.10.1990 and he was then issued with a share certificate No.000391. That share certificate can be seen in plaintiff's bundle. It follows that the letter of allotment issued to the plaintiff on 1.12.1992 derived its roots from the land of the 2nd defendant. This far, the plaintiff has been able to give a plausible account of the root of his claim.
33. Has the 1st defendant surmounted a defence capable of dislodging the claim of the plaintiff?. The 1st defendant has a title to the suit land. However, as rightly submitted by the plaintiff the provisions of Article 40 of the *Constitution* of Kenya which guarantees a right to acquire and own property excludes property which has been acquired unlawfully.



34. In the case of *Munyua Maina v Hiram Gatbiha Maina*, Court of Appeal Civil Appeal No. 239 of 2009 (unreported), the court stated that,
- “We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove how he acquire the title and show that the acquisition was legal.....”
35. In the case at hand, the 1st defendant has merely been dangling a title. During cross examination, Dw1 stated that she is the one who bought the land and gave it to her son but she doesn’t know who the seller was.
36. Her documents indicate that the suit land was registered in the name of one Daniel Macharia Nguitui on 4.6.2001. And in less than one month on 1.7.2001, the said Macharia was transferring that land to Titus Kinyua Nyawira. The speed at which Daniel set out to dispose off the land as soon as he became the registered owner is in itself a red flag.
37. Further, there is not the slightest evidence as to how Daniel Macharia got the land. There is no connection of the title owned by the first defendant to the original parcel and its owner, the land buying company who is the 2nd defendant. It is also not lost to this court that one of the documents availed by the 1st defendant is a rent clearance Certificate dated 2.5.2001 in the name of the plaintiff for the suit parcel. This is a pointer to the fact that the beneficial interests in the suit property were vested in the plaintiff.
38. This appears to be a scenario where the 1st defendant simply acquired a title and started developing the land. However, in matters land, it behooves a prospective buyer of the land to undertake due diligence and establish the root of the title.
39. In the case of *John Mburu Kiarie v William Kimani Njuguna & 3 others* [2019] eKLR, I stated thus;
- “It is admirable and remarkable to have expeditious delivery of crucial services. It is something that people in Kenya have yearned for in various sectors. However, when it comes to Land transactions, keeping in mind the insatiable thirst that Kenyans have to own a piece of land, perhaps it would be prudent to let things move at a moderate and reasonable speed to give room for conduct of due diligence. And perhaps this due diligence should be taken a notch higher by getting to know the root of the title and the ground status of the land”.
40. This far, I am satisfied that the plaintiff has proved his entitlement to the suit property. That being the case, what relief is available to him, and who should bear blame for the mess?
41. As pronounced earlier, the 1st defendant has no evidence of the root of his title which was registered to him less than a month from the time the previous owner (Nguitui) was so registered. The 1st defendant is hence not a bonafide purchaser of the said land.
42. As for the 2nd defendant, it has emerged that this was the entity which was responsible for initiating the actual registration of the suit property as they owned the mother parcel. PW1 has explained that the 2nd defendant is the entity which kept his allotment letter dated 14.9.1992, and only gave him the same on 14.1.2002, that was immediately after the land had gone into the hands of Nguitui. The 2nd defendant was aware of these proceedings as their erstwhile advocate, Maosa and Company kept on appearing in court now and then. They were however shifty, of which at some point, on 9.6.2022, Mr.



Maosa undertook to give evidence as a friend of the court. He never did so. I am inclined to believe that the 2nd defendant had a hand in perpetuating the unlawful transfer of pw1's land.

43. Similarly, the 3rd defendant doesn't appear to be without blemish. For they have not given any explanation as to the circumstances under which one Nguitui was registered as the owner of the land without a letter of allotment and or clearance certificate. After all the clearance certificate availed by the 1st defendant is in the name of the plaintiff.

44. In the case of *Esther Ndegi Njiru & another v Leonard Gatei* [2014] eKLR, the court discussed the place of the Share Certificate v a vis a Title in relation to land claims in land buying companies in the following words;

“The clearance certificate used by the 2nd Defendant to process the title was fake and/or forged. The resultant title was of no consequence and therefore the plaintiffs title cannot supersede the share certificate of the true owner of the parcel of land. The Land Registrar could only properly process a title against a validly issued clearance certificate by Githunguri Constituency Ranching Company and once it is proved that no proper clearance was tendered for issue of a title, such a title in my view would have been unlawfully and unprocedurally procured and therefore voidable”.

45. I come to the conclusion that the 3rd defendant too is to blame for the issuance of the unlawful title to one Nguitui and then the 1st defendant.

46. The court is conscious of the fact that the land in question has been in the hands of the 1st defendant for a long time. The plaintiff has not given any plausible account as to the steps he took to secure his interests in the land from 1980 to year 2002. Perhaps being aware of this situation, the plaintiff has sought compensation to the tune of Ksh.16,000,000. It is crystal clear that for decades, the plaintiff was denied what was rightfully his, hence he is entitled to compensation.

47. In *Dodd Properties (Kent) Limited and Another v Canterbury City Council and others* [1980] 1 All ER 928 cited in *Miarabo Limited v Synohydro Corporation Limited* [2019] eKLR the court stated that:

“The general object underlying the rules for the assessment of damages is, so far as possible by means of monetary award, to place the plaintiff in the position which he would have occupied if he had not suffered the wrong complained of be that wrong a tort or a breach of contract....”.

48. Taking into account all the circumstances of this dispute including the passage of time, I proceed to give an award of ksh.15 million to the plaintiff as compensation for loss of his land. The aforementioned award is to be paid by the defendants as follows:

- i. 1st defendant to pay ksh. 10 million.
- ii. 2nd defendant ksh.3.5 million.
- iii. 3rd defendant ksh. 1.5 million.
- iv. The defendants are jointly and severally condemned to pay costs of the suit and interest at court's rates to the plaintiff from the time the suit was filed.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 25TH DAY OF JANUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA



JUDGE

In the presence of:-

Gachoka for Plaintiff

Muriithi for 1st Defendant

M/s Kubai for 3rd Defendant

Court Assistant: Eddel

