



**Kamangara v General & another (Environment & Land Case
320 of 2014) [2024] KEELC 21 (KLR) (19 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 21 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 320 OF 2014
JO OLOLA, J
JANUARY 19, 2024**

BETWEEN

STEPHEN KIIRU KAMANGARA PLAINTIFF

AND

ATTORNEY GENERAL 1ST DEFENDANT

TERESIAH WAIRIMU MATHAI 2ND DEFENDANT

JUDGMENT

Background

1. This suit was initially lodged in the High Court of Kenya at Nyeri on 5th April 2012 being Nyeri HCCC No. 79 of 2012. It was later in the year 2014 transferred to this court and given its current reference.
2. By his Complaint dated 2nd April 2012 as amended on 25th January 2022, Michael Mwangi Kiiru (the Plaintiff) prays for Judgment against the 1st Defendant for:-
 - a). An order that the Plaintiff is the legal allottee/owner of Plot No. 72 in Kalalu Scheme Number 530 in Laikipia District having paid the full consideration for the said plot;
 - b). An order directed to the Commissioner of Lands to issue the Plaintiff with the title deed (for) Plot No. 72 in Kalalu Scheme Number 530 in Laikipia District;
 - c). Costs (of) this suit; and
 - d). Any other relief that this Honourable Court may deem fit and just to grant.
3. Those prayers arise from the Plaintiff's contention that on or about 26th October 1982, the Settlement Fund Trustees (SFT) offered to allocate to his father the late Kiiru Kamangara five (5) acres out of Plot No. 72 Kalalu Settlement Scheme No. 530 in Laikipia District at a consideration of Kshs. 6,100/= . It



is the Plaintiff's case that his father accepted the offer by executing a formal acceptance form and paying a deposit of Kshs. 625/= as required.

4. The Plaintiff avers that the late Kiiru Kamangara subsequently executed a charge document in favour of the Settlement Fund Trustees (SFT) for Kshs. 6,100/= which amount was to be paid in 56 consecutive half year instalments. The Plaintiff's father therefore took up possession of the suit property and has been in occupation thereof to date.
5. It is the Plaintiff's case that despite his father's compliance with the terms of the offer and charge documents, the Commissioner of Lands has refused, failed and /or neglected to issue title documents for the suit property in their name.
6. The Honourable the Attorney General (the 1st Defendant), initially sued as the sole Defendant herein is opposed to the grant of the orders sought. In his Statement of Defence dated 6th June 2012, the 1st Defendant avers that he is a stranger to the allegations that the Plaintiff was offered the suit property by the Settlement Fund Trustees (SFT) and/or that the Plaintiff executed a charge over the same and paid the consideration required therefor.
7. By an application dated 24th October 2018, Teresia Wairimu Mathai (the 2nd Defendant) sought to be enjoined as an interested party in the suit on account that she was entitled to be registered as the proprietor of the property having exchanged her parcel of land known as Nyeri/Ngarengiro/387 with the Plaintiff's father. That application was allowed by the court on 12th March 2020 and the Applicant was enjoined as the 2nd Defendant in this suit and was directed to file her pleadings.
8. Subsequently, by her Statement of Defence and Counterclaim dated 3rd March 2022, the 2nd Defendant prays for the following reliefs:-
 - a). The Plaintiff's claim be dismissed with costs;
 - b). A declaration that the 2nd Defendant is the rightful owner of half of Plot No. 72 Kalalu Settlement Scheme;
 - c). An order directing the Honourable Court's Deputy Registrar to execute all documents on behalf of the Plaintiff in order to transfer half of Plot No. 72 Kalalu Settlement Scheme to the 2nd Defendant;
 - d). An order of provision of security by the Officer Commanding Nanyuki Police Station in the implementation of the Court Order; and
 - e). Costs of the suit and (the) Counterclaim.

The Plaintiff's Case.

9. The Plaintiff (PW1) testified as the sole witness in his case. Relying on his statement dated 25th January 2022, PW1 told the court he is the Administrator of the Estate of the late Stephen Kiiru Kamangara who was the owner of Plot No. 72 situated in Kalalu Scheme in Laikipia District. PW1 told the court that upon being allocated the 5 acres plot by the Settlement Fund Trustees (SFT), the deceased paid a deposit and conveyancing charges amounting to Kshs. 625/=.
10. PW1 testified that on 26th October 1982, his deceased father executed a charge document with the Settlement Fund Trustees (SFT) in consideration of a loan granted to him to purchase the land in the tune of Kshs. 6,100/=. PW1 further testified that at the time of paying the deposit, the 2nd Defendant whom his father had never met before approached his father and requested if it was possible to exchange her Nyeri Plot with that given to the Plaintiff's father since she hailed from Nanyuki.



11. PW1 further testified that the 2nd Defendant again renewed the request around 1989 when she visited the Plaintiff's father. This time round, the Plaintiff's father agreed to the request to exchange the plots. The two then attended the Kieni West Land Control Board meeting on 21st February 1990 but their request was declined for lack of "proper representation." The Plaintiff's father then told the 2nd Defendant to forget about the exchange and continued making payments to the Settlement Fund Trustees (SFT).
12. PW1 testified that on 1st April 2000, the deceased received a demand notice from the Ministry of Lands asking him to pay loan arrears which then stood at Kshs. 10,000/=. PW1's father paid the sum demanded and was issued with a receipt. Upon finalizing payment, PW1's father visited the office of the Director of Land Adjudication and Settlement in order to be issued with his title but it is then he discovered his file was missing. Instead there was a file in the name of the 2nd Defendant, which had been opened on 15th July 2001.
13. PW1 testified that the purported exchange of plots never took place and that no consideration passed to his father. The family have continued to live on the suit property to date and has extensively developed the same.
14. On cross –examination, PW1 told the court he was unaware that the 2nd Defendant exchanged his suit Plot No. 372 Ngarengiro with his father. He conceded they had not joined the 2nd Defendant as a party in the suit but denied trying to mislead the court by so doing.

The Defendant's Case.

15. The 1st Defendant did not call any witness at the trial. On her part, the 2nd Defendant testified through her daughter Lucy Mbuchi Theuri (DW1). DW1 told the court her mother was too old and was unable to attend court.
16. Relying on her witness statement dated 8th July 2022, DW1 told the court that on 14th December 1982, the 2nd Defendant was allocated Plot No. 387 Ngarengiro Settlement scheme within Nyeri District by the Ministry of Lands and Settlement. She executed a charge to that effect with the Settlement Fund Trustees (SFT) on 14th December 1989. DW1 told the court even though her mother started paying for the loan, she was unable to utilize it properly as the land was located in Nyeri while she resided in Nanyuki.
17. DW1 testified that her mother knew the Plaintiff's father and was aware he had been allocated Plot No. 72 at Kalalu Settlement Scheme in Laikipia. The Plaintiff's father resided in Nyeri and the two discussed and agreed to exchange their respective plots to enable ease of access due to proximity from their respective residences. The late Kiiru Kamangara was to transfer Plot No. 72 Kalalu Scheme to the 2nd Defendant while the 2nd Defendant would transfer Plot No. 387 Ngarengiro Scheme to him.
18. DW1 further testified that her mother applied for the necessary Land Control Board consent and executed a transfer for her plot in favour of the Plaintiff's father whereupon the 2nd Defendant settled on the Plot No. 72 Kalalu Scheme. Sometime in the year 2001 however, the Plaintiff's father started a dispute over Plot No. 72 Kalalu Scheme. He claimed to be the owner and accused the Defendant of occupying the same illegally. Investigations were done by the Ministry of Lands and Settlement and it was confirmed that the 2nd Defendant had fenced the whole plot and was using it for various activities.
19. DW1 testified further that her mother remained on the land until one day when the Plaintiff's father forcefully evicted her and settled the Plaintiff therein. The dispute was escalated to the Director of Land Adjudication and Settlement. On 28th March 2003 after hearing the parties, the Director made



a decision that Plot No. 72 Kalalu Scheme should be shared between the Plaintiff's father and the 2nd Defendant in equal shares.

20. DW1 told the court that sometimes in October 2018, the 2nd Defendant came to learn that the Plaintiff's father had instituted this suit against the Attorney General seeking to be issued with a title deed for the suit property. It is then the 2nd Defendant applied to be enjoined in this suit.
21. On cross-examination, DW1 told the court that the understanding to exchange the two parcels was not reduced in writing. They just proceeded to the Land Control Board (LCB) for consent to exchange. While they got consent for the Ngarengiro Plot, they did not get any for the Kalalu Plot.

Analysis and Determination

22. I have carefully perused and considered the pleadings filed herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the written submissions and authorities placed before me by the Learned Advocates representing the parties herein.
23. The Original Plaintiff herein one Stephen Kiiru Kamangara initially instituted this suit in the year 2012 solely against the Honourable the Attorney General seeking to be declared the rightful owner of the parcel of land known as Plot No. 72 situated at Kalalu Scheme in Laikipia and for an order directing that he be issued with a title deed for the said parcel of land.
24. As fate would have it, the said Stephen Kiiru Kamangara passed away on 17th February 2015. His place was subsequently taken by the current Plaintiff- Michael Mwangi Kiiru who is his son and one of the Administrators of his estate.
25. Some three years after the death of the Original Plaintiff, the 2nd Defendant herein- Teresia Wairimu Mathai sought to be enjoined in these proceeding as an interested party. She was on 12th March 2020, enjoined as the 2nd Defendant herein subsequent to which she filed her Statement of Defence and Counterclaim wherein she asserted that she was entitled to one half of the property known as Plot No. 72 Kalalu Settlement Scheme in Laikipia.
26. It was the 2nd Defendant's case that sometimes in the year 1994, she had transferred her parcel of land known as Plot No. 387 Ngarengiro Settlement Scheme in Nyeri to the late Stephen Kiiru Kamangara. In exchange for the said land, the late Stephen Kiiru had transferred his interests in Plot No. 72 Kalalu Settlement Scheme to herself.
27. In response to the counterclaim, the Plaintiff while acknowledging that the 2nd Defendant did approach his deceased father for the exchange of the plots asserted that the two had abandoned those intentions after they failed to obtain the requisite Land Control Board consent and that thence the property known as Plot No. 72 Kalalu Scheme remained under the ownership and occupation of the Plaintiff's family.
28. From the material placed before the court, it was apparent that the confusion surrounding the proper ownership of Plot No. 72 Kalalu Settlement Scheme was the main reason why the Plaintiff had not been issued with a title deed thereto. As it were, there was no dispute that the 5-acres plot had in 1982, been allocated to the Plaintiff's deceased father by the Settlement Fund Trustees (SFT). There was equally no dispute that the same Settlement Fund Trustee had in 1984 allocated Plot No. 387 Ngarengiro Scheme in Nyeri to the 2nd Defendant.
29. As it turned out, the 2nd Defendant resided in Nanyuki while the land she was allocated was in Nyeri. Similarly, the land the Plaintiff's father was allocated was near Nanyuki while the Plaintiff's family resided in Nyeri. According to the 2nd Defendant, it was on that account that she had a discussion with



the Plaintiff's father and the two agreed to exchange their respective plots to enable ease of access due to the proximity from their respective residences.

30. While there was no documentary evidence to support the exchange agreement, there was no dispute that the parties had such an intention. At page 2 of his recorded statement, the Plaintiff acknowledges this arrangement and states as follows:-

“The late Kiiru Kamangara and the 2nd Defendant later attended Kieni West Land Board on 12/2/1990 but the request to exchange the plots was denied on ground of lack of proper representation. Kiiru Kamangara subsequently told the 2nd Defendant to forget the exchange and he continued to pay the Settlement Fund Trustees the loan they had granted him as per the charge document and to farm the plot.”

31. There was however very little evidence to support the contention that the parties forgot about the exchange agreement and that the Plaintiff's father continued to pay for the land. From the Plaintiff's own exhibits, it was apparent that after the sum of Kshs. 2,380/= was paid to the Settlement Fund Trustees (SFT) on 20th December 1989, the next payment was made on 28th January 2000. That would coincide with the period that the 2nd Defendant accuses the Plaintiff's father of starting a dispute over the property.

32. According to the 2nd Defendant, after she executed a transfer form in favour of the late Kiiru Kamangara in regard to Plot No. 387 Ngarengiro, she moved and settled on Plot No. 72 Kalalu Scheme and she believed that the late Kiiru Kamangara also took possession of Plot No. 387 Ngarengiro Scheme. It was her case that she continued to occupy the land until sometime in the year 2001 when the Plaintiff's father started claiming that the land belonged to him and that the 2nd defendant was occupying the same illegally.

33. The fact that the 2nd Defendant continued to occupy the land for a considerable period of time in reliance on the exchange agreement was confirmed by a letter dated 13th August 2002 written by the Laikipia District Land Adjudication & Settlement Officer addressed to the Director Land Adjudication & Settlement (Dexh 8) in regard to the issue. The letter written following a ground visit on the land concludes as follows:-

“After a visit to the plot in question, the following was established;

1. The whole plot is fenced by Teresia Wairimu.
2. There is a small timber house (2 rooms).
3. The plot is partly cultivated (about ½ an acre). The rest is pastoral grass.
4. There are goats which Teresia Wairimu has employed someone to look after. Thus she is in full occupation of the plot. Enclosed please find the official search from the Land Registry.”

34. Asked in re-examination by his counsel on record if the 2nd Defendant had ever occupied the suit property, the Plaintiff answered in the affirmative stating that she had planted wheat on the land and that they (the Plaintiffs) went and removed her from the land.

35. As it were the parties escalated their dispute to the Director of Land Adjudication and Settlement who in a determination made on 28th March, 2003 directed that the suit property be shared in equal shares between the Plaintiff's father and the 2nd Defendant herein. From a perusal of that determination, it



is discernible why the Plaintiff's father went back to resume payment and to claim the suit property after some 10 years.

36. The said determination reveals that after the parties exchanged their parcels of land, no payment was made towards the Settlement Fund Trustees (SFT) loan in regard to Plot No. 387 Ngarengiro Scheme and that the same was repossessed by the Settlement Fund Trustee (SFT) and was thereafter disposed of to another person.

37. Given the circumstance herein, it was my considered view that the determination made by the Director Land Adjudication and Settlement was fair to both parties. The jurisdiction of the Land Adjudication Officer is set out under Section 10 of the [Land Adjudication Act](#), which provides thus:

“The adjudication officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connection with such claims.”

38. As it were, the [Land Adjudication Act](#) confers the adjudication process the same status as a judicial process. Section 12(1) of the [Act](#) provides thus:

“In the hearing of any objection or petition made in writing, the adjudication officer shall make or cause to be made a record of the proceedings, and shall, so far as practical, follow the procedure directed to be observed in the hearing of Civil cases, save that in his absolute discretion he may admit evidence which would not be admissible in a court of law, or may use evidence adduced in another claim or contained in any official record, and may call evidence of his own accord.”

39. Arising from the circumstances herein, it was clear to me that the decision by the plaintiff to solely sue the Honourable the Attorney General to have him compelled to issue a title deed to the Plaintiff without enjoining the 2nd Defendant was meant to mislead the court and was clearly misguided.

40. Accordingly, I hereby dismiss the Plaintiff's suit as the same is lacking in merit. Judgment is hereby entered for the 2nd Defendant as against the Plaintiff in terms of prayers a, b and c of the counter claim.

41. The 2nd Defendant shall have the costs of the counter claim.

DATED, SIGNED AND DELIVERED AT NYERI THIS 19TH DAY OF JANUARY, 2024.

J. O. OLOLA

JUDGE

In the presence of:

Ms. Matu for the Plaintiff.

Ms. Lucy Mwai for the 2nd Defendant.

Court Assistant: Kendi

