



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANG'A
E.L.C CASE NO. 110 OF 2017

SAMUEL KAMANDE MUGO

PLAINTIFF

VS

ANN KABURU NJAU

1ST DEFENDANT

LAND REGISTRAR MURANG'A

2ND DEFENDANT

JUDGMENT

1. On the 2nd March, 2016 the Plaintiff filed a suit against the 1st and 2nd defendants seeking orders;-
 - (a). An order cancelling the registration of Ann Kabura Njau in the register of the Land Parcel Number Makuyu/Kariaini Block 111/58 and substituting the same with the plaintiff as administrator of the estate of Mugo Njoroge.
 - (b). Costs of the suit
2. The Plaintiff's case is that he is the administrator of the Estate of Njoroge Mugo and his wife Grace Wairimu Mugo, his deceased parents. That his late father was a member of the Marema Farmers Co-operative Society Limited. During the winding up of the society, he was allocated two parcels of land Makuyu/Kariaini Block 2/58 and Makuyu/Kariaini Block 3/58. Titles were issued for the two properties on the 5th December 1989 and 2nd February 1990 respectively. That both properties are in their possession and occupation of the family with Makuyu/Kariaini Block 2/58 being utilized for subsistence and fodder farming while Makuyu/Kariaini Block 3/58 is under coffee. That the coffee is sold to the nearby factory under the name of his brother, Gitau Mbogo.
3. That on the death of his father, his mother succeeded him and vide the certificate of confirmation of grant dated 6th November 2006, the entire estate of his late father was devolved to his late mother Grace Wairimu Mugo, one of properties was Makuyu/Kariaini Block 3/58.
4. That sometime in 2005, his late mother noticed that Makuyu/Kariaini Block 3/58 had been registered in the name of the 1st defendant and she caused a letter to be sent to the 2nd defendant through her advocates to have the matter resolved. What followed thereafter was the lodging of transfer of documents RL 17 and RL 19 vide day book No.s 289/07/07 and 290/07/07 seeking to transfer the properties to her name pursuant to the confirmation of grant of administration of the estate.
5. The same was not completed before his mother died and subsequently the plaintiff avers that he was appointed the administrator of the estate of his late parents and brought this suit to court. That on following up on the registration of the documents presented by his late mother to the land registry, he was

advised that a Court order was needed before any rectification of a title could be made.

6. It is the plaintiff's case that no one has laid claim on the suit land and have been in occupation and possession since it was acquired by his late father from the society where he was a member and shareholder.

7. The 1st and 2nd defendants were served with summons to enter appearance but failed to do so within the stipulated time, or at all, prompting the Plaintiff to apply to court for leave to effect service of summons to enter appearance on the 1st Defendant by way of advertisement through the Daily Nation Newspaper. Despite the 1st Defendant being served by substituted services through an order on the Daily Nation on 17th May, 2016 the Defendant did not enter appearance or file a defence. An affidavit of service dated the 23rd September 2016 is on record. On the 23rd September, 2016 the Plaintiff requested for Judgment in default of appearance against the 1st and 2nd Defendant who despite service of summons failed to enter appearance. The Plaintiff then fixed the case for the hearing of the formal proof.

8. On the 9th March, 2017 the Plaintiff, being the Sole witness in this case gave evidence as follows;-

“That he is the Administrator of the estate of the Late MUGO NJOROGE and GRACE W. NJOROGE their parents. He produced the certificate of confirmation of grant to support his averment. He testified that his father the late MUGO NJOROGE owned land Makuyu/Kariaini Block 3/58 which he acquired as a member of the Co-operative Society. He produced a Register of members of the Marema Cooperative society Limited in support of the averments.

That on his death, his mother GRACE W NJOROGE was appointed the administrator of his late father's estate. He produced a certificate of grant of administration dated the 6th November 2006 which devolved the entire estate of his father to his late mother. That in the process of registration of the Makuyu/Kariaini Block 3/58 in her name, she lodged the transfer documents on the 12th April 2007 together with the title under day book numbers 289 and 290 of 2007, copies of which were attached.

That when she experienced delay in getting the transfer registered in her name, she wrote a letter through her lawyer protesting the delay and non-registration of her documents. It would appear that the plot had been registered in the name of the 1st Defendant and on 2nd February, 1990. A copy of the official search was produced. She again wrote a protest letter to the 2nd defendant on the 22nd May 2008 which elicited no response.

That the said 1st Defendant is unknown to him and neither has she claimed the land nor challenged their occupation and possession of the suit land. That the Plaintiff has possession of the property practising crop farming and has a worker who lives on the land.”

9. The issue for determination is whether the plaintiff is entitled to be registered as the owner of the suit land.

10. From the evidence on record the Plaintiff has proved that his late father through membership of Marema Cooperative Society Limited owned the land and upon winding up of the society he was registered as owner of two parcels of land; Makuyu/Kariaini Block 2/58 and Makuyu/Kariaini Block 3/58 on the 5th December 1989 and 2nd February 1990 respectively. Later it was discovered that the parcel number Makuyu/Kariaini Block 3/58 was registered in the name of the 1st defendant. The name of the 1st defendant does not appear in the register of members of Marema Cooperative Society Limited. It is not clear how she acquired interest in the suit property. It is the plaintiffs case that the registration of the 1st defendant can be presumed to be an error or otherwise. It must be noted that the 1st defendant notwithstanding service through the Daily Nation did not defend or challenge the claim in the suit and thus it is undefended.

Though the green card discloses the registered owner of the suit land is the 1st defendant, no material has been presented to the Court to explain how the 1st defendant obtained title of the suit land. Neither the 1st nor the 2nd defendant did file any defences. It is on record that the original title issued to the plaintiff's father which in all respects is similar to that of the 1st defendant except for the names of the proprietors, was misplaced at the Lands Registry and the 2nd defendant has neither returned the same nor offer an explanation of the same. It would then appear that two persons were issued title for the same piece of land.

11. Notwithstanding the title being registered in the name of the 1st defendant, it is on record that the plaintiff has been in occupation and possession of the suit land and no claim has been raised on the same, list of all the plaintiff since 1990 when she was allegedly registered the owner of the suit land. **In Mwangi & Another –v – Mwangi, (1986) KLR 328**, it was held that the rights of a person in possession or occupation of land are equitable rights which are binding on the land. Even if the 1st defendant had rights binding on the land, which I have not found, the plaintiff's possessory rights are overriding on the suit land.

12. In the absence of any defence by the 1st defendant to the plaintiffs claim, based on the register of plaintiffs father membership on the register of the society and in the interest of justice and given the material presented before me, I am satisfied that the Plaintiff has proved his claim on a balance of probability and I proceed to enter Judgment as follows;-

(i) The District Land Registrar, Muranga be and is hereby ordered and directed to cancel the title in the name of ANN KABURA NJAU and issue the same to the Plaintiff as the administrator of the estate of MUGO NJOROGI.

(ii) Costs of the case to the plaintiff.

DELIVERED, DATED AND SIGNED AT MURANG'A THIS 20TH JULY, 2017.

J. G. KEMEI

JUDGE