



**Wahindi & another v Attorney General & 3 others (Environment & Land
Case 11 of 2020) [2024] KEELC 862 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 862 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 11 OF 2020
A OMBWAYO, J
FEBRUARY 22, 2024**

BETWEEN

HANNAH NJOKI WAHINDI 1ST PLAINTIFF

RUFUS MWANGI 2ND PLAINTIFF

AND

THE ATTORNEY GENERAL 1ST DEFENDANT

JANET NDUTA 2ND DEFENDANT

GRACE WAMBUI 3RD DEFENDANT

CHRISTINE MUTHONI 4TH DEFENDANT

JUDGMENT

Introduction

1. The Plaintiffs commenced this suit vide an Amended Plaint on 4th February, 2022 against the Defendants seeking the following orders:
 - a. A mandatory injunction restraining the Defendants by their servants, agents or appointees from entering, interfering or collecting rent or in any way interfering with plot No. 805 Matindiri Settlement Scheme now Nyandarua/Matindiri/152.
 - b. A declaration that plot No. 805 Matindiri Settlement Scheme now Nyandarua/Matindiri/152 belongs to the Plaintiffs.
 - c. An order to the Land Registrar Nyandarua for cancellation of title number plot No. 805 Matindiri Settlement Scheme now Nyandarua/Matindiri/152 and an amendment to the register to reflect the 1st Plaintiff and Rufus Mwangi as the Legal owners of the said title.



- d. Costs of suit and interest thereon.
2. The 2nd, 3rd and 4th Defendants filed their Amended Defence and Counter claim on 13th July, 2023. It sought for the following orders in its counter claim:
- a. That a declaratory order be made that land parcel No Nyandarua Matindiri/152 belongs to Gutheria Women Group and that the Plaintiffs have no personal proprietary or even possessory rights to this land and all its buildings and structures.
 - b. That the Plaintiffs be ordered to render a true and accurate account of all the mesne profits they have wrongfully/illegally reaped and obtained in terms or rent at the rate of Kshs. 11,500/ = per month from 30th September 2002 to the date the court shall deem appropriate.
 - c. An order that the 1st and 2nd Plaintiffs jointly and severally pay to Gutheria Women Group all the mesne profits received and accounted (as prayed for in (b) above) from 30th September 2002 to the date of full payment.
 - d. That an eviction order be issued against the 1st and 2nd Plaintiffs, their servants, their agents and their employees to remove them through auctioneers from land parcel No. Nyandarua Matindiri/152 and from all the buildings and structures thereon.
 - e. That a perpetual injunction be issued restraining the 1 and 2nd Plaintiffs, their agents, their servants and their employees from entering, dealing with, leasing out, occupying and or interfering with land parcel No. Nyandarua Matindiri/152, and all the buildings and structures thereon.
 - f. Costs of this counter-claim be borne by the 1st and 2nd Plaintiffs.

Plaintiffs' Case

3. Matoke Nyamweya testified as PW1 that he was employed at the Ministry of Co-operative Development, Nyandarua District where he worked as a liquidator and dealt with various settlement schemes including Matindiri Settlement Scheme. He was to sell the assets and pay off the debt and the balance to be refunded to the shareholders. He further testified that he dealt with plot no. 804 and 805 Matindiri Farmers' Cooperative Society. It was his testimony that he received an application dated 18th January, 1995 by Gutheria Women's Group who sought to purchase the suit property. He produced the application as Exhibit P1. PW1 testified that they purchased plot No. 804 at a consideration of Kshs. 300,000. He produced the receipts as follows:
1. Receipt dated 16/2/1995 for Kshs.50,000- Exhibit P2(a)
 2. Receipt dated 23/3/1995 for Kshs. 21,000- Exhibit P2(b)
 3. Receipt dated 5/9/1995 for Kshs. 5,000- Exhibit P2(c)
 4. Receipt dated 5/9/1995 for Kshs. 72,000- Exhibit P2(d)
 5. Receipt dated 2/10/1996 for Kshs. 7,000- Exhibit P2(e)
4. It was his evidence that he never received any other monies from the women group. He added that the suit property plot No. 805 was bought by Hannah Njoki and Hellen Wanjiru (now deceased) where they paid Kshs. 100,000. He testified that he issued the receipts dated 16/2/1995 to them. He was familiar with the dispute between the Plaintiffs and the women group. He further testified that he received a letter dated 21/6/2002 that sought clarification of the ownership of the two plots. He added



that he wrote to the Commissioner of Lands and Settlement vide the letter dated 11/8/2000 regarding the said dispute.

5. He went on to testify that in the said letter he stated that the Farmers Society was under liquidation. He added that plot no. 804 had been acquired by Gutheria Women Group while plot no. 805 had been acquired by Hannah Njoki and Hellen Wanjiru (deceased). PW1 testified that the Women Group had put up a posho mill on plot no. 804. He also testified that when he wrote the letter dated 11/8/2000, the Women Group had not paid the purchase price for the said plot while Hannah and Helen (deceased) had already cleared their purchase price. He stated that he was the only liquidator and added that the 1st Plaintiff is the lawful owner of the suit property.
6. On cross examination by Karanja for the Defendants, he confirmed that plot no. 804 belonged to Gutheria Women Group. He further confirmed that he had met with Hannah Njeri and Hellen Wanjiru (deceased) in their personal capacity with respect to purchase of plot 805. He admitted that they did not make a formal application as it was not necessary. He further admitted that their verbal request to purchase the suit property was made at the same time with the request by the group. He admitted that there was nothing that showed the agreed price of Kshs. 100,000. He stated that the only evidence was the receipts of Kshs. 30,000 and Kshs. 70,000. He admitted that the said receipts were not government of Kenya official receipts.
7. PW1 stated that the money had been credited to the liquidator account opened by himself as empowered by the appointing authority. He stated that he had the power to operate the account in his own name. He further stated that receipt 2(a) was initially for plot no. 804 but it was cancelled and replaced with the suit property without it having been countersigned. He admitted that he could not recall when the suit property had been entered on the receipt document. He confirmed that the suit property had been acquired by the Plaintiffs after part payment. He also clarified that he did not refer to a full payment made in 1995. He stated that he wrote the letter dated 12/2/1997 which was marked as "DMFI 1". He confirmed that the said letter was in respect of plot numbers 804 and 805. He also confirmed that the same was in response to the queries on ownership of the two plots. He admitted that the contents of the said letter stating that the two plots had been sold to Gutheria Women Group was erroneous. He added that he wrote to the director for correction. He stated that he did not have the said letter.
8. He confirmed that the later dated 18/01/2002 "DMFI 2" stated that the suit property belonged to Gutheria Women's Group. He denied that from the letter dated 26/07/2000 "DMFI 3" the money paid by the two ladies was for the group. He stated that the tenant in plot no. 804 was Gutheria Women Group while plot 805 had been occupied by third parties who were paying rent. He stated that he wrote the letter dated 15/09/1999 "DMFI 4" where he notified the tenants to vacate the buildings of Matindiri which belonged to Gutheria Women Group.
9. Upon reexamination, he stated that no one had ever questioned the authenticity of the said receipts.
10. Hannah Njoki Wahindi testified as PW2 where she testified that she knew the 1st Defendant as she was the chairlady of Gutheria Women Group which she had previously chaired. She testified that she was the chairperson in 1981. She further testified that plot 804 had been bought from the Cooperative Development for a consideration of Kshs. 300,000. She also testified that the group had in its account Kshs. 50,000. She confirmed that she was illiterate and stated that she personally paid Kshs. 50,000 to the Cooperative Officer Mr. Nyamweya. She added that they subsequently paid whatever money they would have made from their business.
11. PW2 testified that valuation was done and they decided not to make any further payments. She testified that she could not confirm how much they had paid up until the time valuation had been done. She



further testified that they developed the plot with residential buildings with 12 rooms in total that had been occupied by tenants. She testified that the suit property belonged to her and Hellen Wanjiru. It was her testimony that together with Hellen they each contributed Kshs. 35,000 in 1995. She added that they also paid Kshs. 30,000 separately. She further testified that she made the application for plot 804 through the assistance of a third party.

12. This marked the close of the Plaintiff's case.

Defendant's Case

13. Janet Nduta testified as DW1. She testified that she is the chairlady of Gutheria Women Group and added that she is illiterate. She testified that she was present in court with her secretary, Magdaline Muthoni, treasurer, Grace Wambui. She testified that she was elected the chairlady and produced the Certificate of registration "DEX1". She testified that the 1st Plaintiff was the chairlady before her while the 2nd Plaintiff was the secretary. She stated on oath that the 2nd Plaintiff was husband to Hellen Wanjiru Karai (deceased). She testified that the 2nd Plaintiff never did succession and added that the suit land belonged to Gutheria Women Group. It was her testimony that the suit land is registered in the name of the 2nd, 3rd and 4th Defendants who are officials of the group. She testified that the land was bought by the group and that they had borrowed from the society.
14. She further testified that the plot belonged to Matindiri Co-operative Society. She produced letters dated 20/1/1995 "DEX 2", 26/5/2000 "DEX 3" and 12/2/1997 "DEX 4". She testified that the plots on sale were 804 and 805. She stated that the 1st Plaintiff was the chairlady.
15. She also produced letters dated 28/2/2001 "DEX 5" which showed the location of members and a letter dated 6/12/2001 which showed the election of members "DEX 6". DW1 also produced a letter dated 26/7/2000 "DEX7" and a discharge of charge "DEX8".
16. She testified the letter for transfer was dated 11/3/2003. She further testified that they were issued with titles and that the land has a hotel in place. It was her evidence that money was being paid to the Plaintiffs. She added that they used to pay the officials who later refused to accept the money of Kshs. 11,500 per month. She urged the court to order that they be paid the money the Plaintiffs' have been receiving and that the 2nd Plaintiff be evicted from the suit land. She testified that her claim against the 1st Plaintiff is that she has been running a bar, shop, hotel and small stalls where she has been collecting rent of about Kshs.14,000 per month. She stated that the money belonged to Gutheria Women Group.
17. Upon cross examination by Njoroge, she confirmed that the 1st Plaintiff was the former chairlady of the group. She also confirmed that she could not recall the amount the plots costed. She added that they were not purchasing the plots as they had already put up structures they were using including a posho mill for Gutheria Women Group. She denied that the 1st Plaintiff Hellen (deceased) bought the suit land. DW1 stated that the 1st Plaintiff collects 14,000. She confirmed that the bar belonged to the 1st Plaintiff and leased to a third party. She further confirmed that the hotel owner never told her how much is paid as rent. She added that they had never agreed that the 1st Plaintiff should purchase the plot.
18. On reexamination, she denied that we were unable to buy the suit land. She stated that the 1st Plaintiff and Hellen Wanjiru were the officials who took money to the seller. She denied having seen the receipts and added that as group, they deposited money in the bank. She confirmed that she could not recall the amount of money they paid or the name of the liquidator of Matunduri. She stated that Nyamweya was a participant during the competition.
19. She further stated that they obtained the title but admitted that she didn't know the date. She also stated that immediately they had purchased land, Gutheria were also purchasing one plot. DW1 stated



that they bought the entire plot as a group measuring 1.5 acres. She stated that they did their own subdivision into two plots being 804 and 805. We have been sued but subdivision was done into two. She confirmed that she could not recall many things. She stated that the 1st Plaintiff and Hellen allegedly fraudulently subdivided the plots.

20. She stated that the suit property belonged to Gutheria Women Group to which they paid the purchase price.
21. That marked the close of the Defendants' case.

Submissions

22. The Plaintiffs filed their submissions dated 9th February, 2024 on the following day. They submitted that they produced two receipts dated 16/2/1995 and 7/12/1995 which was evidence that they bought the suit property. They submitted that the women group paid a sum of Kshs. 107,500 for plot 804 while the 1st Plaintiff and Hellen Wanjiru paid Kshs. 100,000 for the suit property. The Plaintiffs submitted that the Director of Land and Settlement vide a letter dated 1/07/1993 confirmed that plots 804 and 805 were available for allocation. They further submitted that they paid for the women group Kshs. 107,500 and Kshs. 100,000 for the suit property. They submitted that the District Commissioner's letter which indicated that the funds used to purchase the two plots belonged to the women group contradicted the receipts issued by the liquidator. The Plaintiffs argued that the evidence of the two receipts which showed that the 1st Plaintiff and Hellen Wanjiru (deceased) personally bought the suit property remained uncontroverted. They argued that the Defendants fraudulently obtained title to the suit property through the assistance of the District Commissioner.
23. The Plaintiffs relied on Section 26 of the *Land Registration Act* and submitted that the Defendants acquired the suit title through fraud and misrepresentation as they had no receipts of purchase. They submitted that the Defendants failed to show the connection between the title they hold for plot 805 and now Nyandarua/Matindiri/152 to their ownership. The Plaintiffs relied on the cases of Munyu Maina V Hiram Gathiha Maina, Civil Appeal No. 239 of 2009 and Teresia Wanagari Mbugua V Jane Njeri Nduati & Another [2020] eKLR. They also cited Section 107 of the *Evidence Act* and submitted that they have demonstrated both factual and the legal nexus to the suit land which the Defendants failed so as to redeem their title.
24. The Plaintiffs urged the court to exercise its discretion under section 80 of the *Land Registration Act* and cancel the impugned title registered in favour of the Defendants herein.
25. The 2nd, 3rd and 4th Defendants on the other hand filed their submissions on 17th January, 2024. They gave a brief summary of the case and submitted that they produced different exhibits that showed the process in which their officials the 1st Plaintiff and Hellen Wanjiru (deceased) obtained the suit property on behalf of Gutheria Women Group. They argued that the 1st Plaintiff and Hellen Wanjiru (deceased) intended to jointly register the suit property in their names but the process was objected since the funds used for purchase was obtained from the group.
26. The Defendants submitted that the 1st Plaintiff and the deceased were always communicated to as officials of the group. They relied on Section 97 (1) of the *Evidence Act* and submitted that the 1st Plaintiff does not have rights to the suit property as it was purchased by Gutheria Women Group. They added that the 2nd Plaintiff had not presented before this court letters of administration to prove that he has the locus standi in this suit. They cited the case of Isaya Masira Momanyi V Daniel Omwoyo & Another [2017] eKLR.



27. They submitted that the Plaintiffs did not produce any evidence to prove that the Defendants approached the District Commissioner in 2000 or misled her in to believing that the suit property belonged to the women group. They relied on the Court of Appeal case in Mombasa Civil Appeal No. 312 of 2012 Emfil Limited V Registrar of Titles Mombasa & 2 Others [2014] eKLR and submitted that the Plaintiffs intend to punish the women group members for trusting in them by taking their property.
28. The Defendants relied on Section 24(a) of the [Land Registration Act](#) and submitted that they are the holders of the suit property as trustees for the group. They submitted that the Plaintiffs took possession of the suit land and leased out the group building which resulted in the group suffering losses of Kshs. 115,000 per month. They cited Section 2 of the [Civil Procedure Act](#) and the case of Pius Kipchirchir Kogo V Frank Kimeli Tenai [2018] eKLR.
29. The Defendants urged the court to find that there was no fraud in their acquisition of the suit property and upholds the validity of the suit property.

Analysis and Determination

30. I have considered the pleadings and the evidence on record and I am of the view that the following issues need to be determined:
 - a. Whether the suit property was purchased by the group or the 1st Plaintiff.
 - b. Whether the Plaintiff is entitled to the orders sought.
 - c. Whether the 2nd – 4th Defendants are entitled to the orders sought in the Counterclaim.
31. It is not in dispute that the 1st Plaintiff was an official of Guthera Women Group. The Plaintiff called PW1 who testified that the suit plot had been bought by the 1st Plaintiff and Helen Wanjiru (deceased) where they paid Kshs. 100,000. He also confirmed that he issued them with the receipts. On cross examination he confirmed that plot no. 804 had been acquired by Guthera Women Group while plot no. 805 had been acquired by the 1st Plaintiff and Hellen Wanjiru (deceased) in their personal capacity. PW1 admitted that the receipts issued were not government of Kenya official receipts and added that the money had been credited to the liquidator's account which had been opened by himself as empowered by the appointing authority. The witness confirmed that he had the power to operate the account in his own name. He also stated that receipt 2(a) had been initially for plot no. 804 but it was cancelled and replaced with the suit property without it having been countersigned.
32. PW2 testified that she was the chairperson in 1981 and that plot 804 had been bought from the Cooperative Development for a consideration of Kshs. 300,000. She also testified that the group had in its account Kshs. 50,000 which she personally paid Kshs. 50,000 to the Cooperative Officer Mr. Nyamweya for the said plot.
33. DW2 on the other hand testified that she was the current elected chairlady of Guthera Women Group. She produced the Certificate of registration "DEX1" and testified that the 1st Plaintiff was the chairlady before her while the 2nd Plaintiff was the secretary. They submitted that the suit land was registered in the name of the 2nd, 3rd and 4th Defendants who are officials and trustees of the group. She also testified that the land had been bought by the group through money borrowed from the society.
34. It is not in dispute that the 1st Plaintiff and Hellen Wanjiru (deceased) were officials of the women group before the 2nd and 3rd Defendants took over on 6th December, 2000. This court has carefully looked at the receipts issued to the 1st Plaintiff and Hellen Wanjiru (deceased) for the purchase of the



suit property and dated 16th February, 1995 and 7th December, 1995. The two receipts were for Kshs. 70,000 and Kshs. 30,000 respectively. It is also not in dispute that at the time of purchase of the suit plot, the 1st Plaintiff and Hellen Wanjiru (deceased) were the officials of Gutheria Women Group. It was also DW1's evidence which the Plaintiffs did not rebut, that the officials of the group would receive, manage and run the finances of the women group.

35. In light of the above, it is this court's view that the 1st Plaintiff and Hellen Wanjiru (deceased) were in fact acting on behalf of the women group when they purchased the suit plot. It is clear that they had the power to withdraw and deposit monies for the group account by virtue of being the officials. This is evidenced by PW2's testimony who confirmed that at the time she was the chairperson of the group, she paid from the group account Kshs. 50,000 which she personally paid to the Cooperative officer for purchase of plot 804. The Plaintiffs further produced receipt dated 12th March, 2002 being conveyancing fee for the suit property. It is clear that the same was received from Gutheria Women Group.
36. In addition, the letters dated 20th January, 1995 (DEX2) and 26th May, 2000 (DEX3) imputes that the 1st Plaintiff and Hellen Wanjiru (deceased) managed the affairs of the said plots on behalf of the Gutheria Women Group. Furthermore, the letter dated 12th February, 1997 (DEX4) confirms that plot no. 804 and as well as the suit property had been sold to the women group. This court has also carefully considered the letter dated 11th August, 2000 by the District Cooperative officer addressed to the District land and Settlement officer. It without a doubt that there is some information that has been intentionally marked out on the last sentence which creates doubt to the said letter.
37. It is important to note that while the Plaintiffs have claimed both in evidence and submissions that the Defendants fraudulently transferred the suit property to themselves, no single allegation of fraud against the Defendants was pleaded in the amended plaint. Thus, this court finds that fraud is not an issue in this case.
38. In view of the foregoing, this court in determining the first issue, finds that the suit property had been purchased by the 1st Plaintiff and Hellen Wanjiru (deceased) on behalf of Gutheria Women Group.
39. On the second issue, having established that the 1st Plaintiff and Hellen Wanjiru (deceased) bought the suit plot on behalf of the women group, it therefore meant that the suit property belonged to the said Gutheria Women Group. The Plaintiffs are therefore not entitled to the orders sought in their plaint.
40. Going to the third issue, it is clear that this court having already established that the suit property belongs to the women group, the same is being held in trust by its current officials the 2nd to 4th Defendants herein. In the upshot, their counterclaim is thus merited.
41. The Court of Appeal in the case of Peter Mwangi Mbuthia & another v Samow Edin Osman [2014] eKLR held that:

We agree with counsel for the appellants that it was incumbent upon the respondent to place material before the court demonstrating how the amount that was claimed for mesne profits was arrived at. Absent that, the learned judge erred in awarding an amount that was neither substantiated nor established.”

42. DW1 testified that 1st Plaintiff has been running a bar, shop, hotel and small stalls where she has been collecting rent of about Kshs.14,000 per month. She also testified that the 1st Plaintiff has been collecting Kshs. 11,500. It is clear that the Defendants were not certain of the exact amount received as rent and that they did not avail any evidence to prove the same. This court finds that it was incumbent



upon the Defendants to place before the court evidence upon which an order of mesne profits could be made.

43. Consequently, this court grants judgment to the 2nd-4th Defendants in the following terms:
- a. A declaration that land parcel No Nyandarua Matindiri/152 belongs to Gutheria Women Group.
 - b. The plaintiff to vacate the suit property within 90 days failure of which an eviction order is hereby issued against the 1st and 2nd Plaintiffs, their servants, their agents and their employees from land parcel No. Nyandarua Matindiri/152 and from all the buildings and structures thereon.
 - c. A permanent injunction is hereby issued restraining the 1st and 2nd Plaintiffs, their agents, their servants and their employees from entering, dealing with, leasing out, occupying and or interfering with land parcel No. Nyandarua Matindiri/152, and all the buildings and structures thereon.
 - d. Costs of the counterclaim shall be borne by the 1st and 2nd Plaintiffs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22ND DAY OF FEBRUARY 2024.

A.O.OMBWAYO

JUDGE

