



**Ngigi (Suing as the Legal Representative of the Estate of the Late Dickson Ngigi Ngugi) v Thuo
(Environment & Land Case 3 of 2024) [2024] KEELC 866 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 866 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 3 OF 2024
A OMBWAYO, J
FEBRUARY 22, 2024**

BETWEEN

**SUSAN NYAMBURA NGIGI (SUING AS THE LEGAL REPRESENTATIVE OF
THE ESTATE OF THE LATE DICKSON NGIGI NGUGI) PLAINTIFF**

AND

JOHN THUO DEFENDANT

RULING

1. Susan Nyambura Ngingi suing as the Legal representative of the estate of the late Dickson Ngigi Ngugi has come to this court in her capacity as the legal representative of the estate of the deceased claiming that at all material times relevant to this suit the plaintiff is the registered owner of all that parcel LR NO. 519/353 Njoro Township situated within Njoro and measuring approximately Hectares (herein after referred as the suit property).
2. The late Dickson Ngigi Ngugi acquired the suit land as the legal allottee from the Commissioner of Lands having complied with all the preset conditions for granting of the same and has been enjoying quite possession, use and title to the suit land since the year 1986 until the defendant and his agents encroached on part of the same sometimes in the year 2020.
3. On or around the year 2020 the defendant illegally encroached on the suit property, caused damages/ destruction of temporary structures thereon, commenced tilling the suit land and purported to sub lease the same to unsuspecting third parties.
4. The defendant has been trespassing and laying illegal claims over the suit property without any colour of right whatsoever.
5. The plaintiff is apprehensive that the defendant is in the process of inciting unsuspecting members of public to forcefully occupy the suit property in order to defeat the plaintiff's claim unless restrained by this honorable Court.



6. That the plaintiff claim against the defendant is for a declaration that they are the legally registered owners of the suit property and an order of perpetual injunction to permanently restrain the defendant from interfering with the plaintiffs' quite use and possession of the suit property.
7. Despite repeated demands and notices of intention to sue the defendant have adamantly refused, neglected and or ignored to make good the plaintiffs claim rendering the instant suit inevitable.
8. The plaintiff aver that there is no suit pending and there has been no previous proceedings in any court between them and the defendant herein over the same subject. The cause of action arose within the jurisdiction of this Honorable Court.
9. The plaintiff prays for a declaration that the plaintiffs are the rightful legally registered owners of all that property known as LR NO.519/353 Njoro Township.
10. She further prays for a permanent injunction (pending the hearing and determination of this suit a temporary injunction) restraining the defendant either by himself, servants or agents from trespassing, interfering, alienating, disposing, occupying, tilling, subletting, constructing and or dealing in any other way whatsoever with all that Property Known as LR NO.S19/3S3 Njoro Township. Lastly, she prays for .. General damages for trespass and Costs and interest of this suit.
11. The defendant has filed a preliminary objective on grounds that under Sections 3A, 6 and 7 of the Civil Procedure Act, this matter is *res judicata* and the court has no jurisdiction to entertain this suit as the matter herein has already been adjudicated and dispensed with by the Judgment of Hon. Justice A. O Ombwayo delivered on 5th October 2023 in
12. Nakuru ELCC/E086/2021 John Mwaura Thuo Vs Dickson Ngigi Ngugi And Cresswell, Mann And Dod & 1 Other. (Hereinafter "the First/Former suit")
13. The Court in the First/Former Suit had jurisdiction over the subject matter and the parties therein. The suit property, L.R. NO. 519/353 Njoro Township Airstrip, whose ownership was in dispute in the First/Former Suit is exactly the same as the suit property that is in dispute in the current suit.
14. The parties in the First Former Suit are identical as those in the current suit.
15. The Judgment delivered on 5th October 2023 in the First/Former Suit was final as it was delivered by a competent court.
16. I have considered the evidence and submissions on record and do find that the plaintiff deceased father was sued by the defendant herein in Nakuru ELC No.E86 of 2021. The defendant was the plaintiff on the former suit wherein he prayed for a declaration that he is the owner of the property having paid the agreed Purchase price in full. He further prayed for an order for the Specific performance of the contract by the Defendant by compelling him to execute a fresh set transfer documents in compliance with the 2012 Land Laws and furnishing the plaintiff with all required completion documents in his possession.
17. In the alternative, in the event that the Defendant fails to execute the documents within thirty days (30) of the judgment, the Registrar of Lands/ the Lands office do execute the transfer in favour of the plaintiff.
18. The firm of Cresswell, Mann and Dod Advocates transfer in favour of the Plaintiff, Advocates and Mohamed and Kinyanjui Advocates be released from their respective professional undertakings and be compelled to release the documents in their possession to the Plaintiff or his order.



19. The court heard both the plaintiff and the defendant in ELC E086 OF 2021 and made a decision in favour of the plaintiff. This court issued a decree from the judgment whose gist was that the plaintiff (John Mwaura Thuo) was the legal owner of the suit property land ref 519/353. Moreover, the court issued an order of specific performance compelling the defendant to transfer the suit property to the plaintiff failure of which County Land Registrar to do so. The defendant appears to have died on 23rd June 2023 without the knowledge of the court. Now, his legal representative has come up with a fresh suit.

Section 7 o the Civil Procedure Act Cap 21 Laws of Kenya provides: -

7. Res judicata

No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.

1. Explanation. — (1) The expression "former suit" means a suit which has been decided before the suit in question whether or not it was instituted before it.
2. Explanation. — (2) For the purposes of this section, the competence of a court shall be determined irrespective of any provision as to right of appeal from the decision of that court.
3. Explanation. — (3) The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
4. Explanation. — (4) Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.
5. Explanation. — (5) Any relief claimed in a suit, which is not expressly granted by the decree shall, for the purposes of this section, be deemed to have been refused.
6. Explanation. — (6) Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

20. I do find that the parties in the new suit are the same as the parties in ELC E086 of 2021. I do find that the issues before the court in the suits are the same. The court is the same and had jurisdiction to hear and determine the former suit. The judge is the same. The decision in E086 of 2021 was determined on merit.

21. The upshot of the above is that the preliminary objection succeeds and the suit is hereby found to be res- judicata and is struck out with costs to the defendant.

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

A O OMBWAYO

JUDGE

