



**Nyamu v Marungo (Environment & Land Case 19 of 2018)
[2024] KEELC 832 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 832 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 19 OF 2018
JM MUTUNGI, J
FEBRUARY 22, 2024**

BETWEEN

JULIUS NJIRAINI NYAMU PLAINTIFF

AND

HENRY MBURU MARUNGO DEFENDANT

RULING

1. The Court on 21st March 2023 delivered a Judgment in the instant matter and made the following final orders:-
 1. A declaration that the subdivision of land parcel Number Inoi/Kamondo/1886 and subsequent transfers of all the resulting numbers in favour of the Defendant is fraudulent, illegal and the same is hereby cancelled.
 2. An order directing the Land Registrar, Kirinyaga County to rectify the Register by cancelling all resultant titles from the subdivision and transfer of land parcel Inoi/Kamondo/1943, 1944, 1945 & 1946 and all subsequent subdivisions and transfers being land parcel Inoi/Kamondo/2081, Inoi/Kamondo/2171, Inoi/Kamondo/2172, Inoi/Kamondo/3070, Inoi/Kamondo/3071, Inoi/Kamondo/3072, Inoi/Kamondo/3073, Inoi/Kamondo/3042 Inoi/Kamondo/4255, Inoi/Kamondo/3110 and Inoi/Kamondo/3111
3. The Land Registrar Kirinyaga County to issue a new title deed in favour of Nyamu Kiura, the original registered proprietor(deceased) to be dealt with in accordance with the *Law of Succession Act*.



4. An order of eviction is hereby issued against the Defendant either by himself, his agents, servants or any other persons claiming through him from land parcel No. Inoi/Kamondo/1886.
 5. A permanent injunction be and is hereby issued restraining the Defendant by himself, his agents, servants, employees, invitees and or workmen from entering and/or interfering with land parcel No. Inoi/Kamondo/1886.
 6. The Defendant shall bear the costs of this suit plus interest at Court rates.
2. The Defendant being dissatisfied and aggrieved by the Judgment filed a Notice of Appeal dated 3rd April 2023 signifying his intention to lodge an appeal against the Judgment in the Court of Appeal.
 3. The Defendant further vide a Notice of Motion application dated 12th April 2023 expressed to be made under Order 45 Rule 1, Order 46 Rule 6 and Section 80 Civil Procedure Act and Sections 1A, 1B and 3A of the Civil Procedure Act sought orders of stay of execution pending the hearing and determination of the appeal and/or review of the Judgment on the grounds set out on the face of the application and the Affidavit sworn in support of the application by the Defendant.
 4. The Plaintiff opposed the application for stay and/or review by the Defendant/Applicant by way of a Replying Affidavit sworn by the Applicant on 18th April 2023. The Court considered the application by the Defendant and given that the Defendant had been granted stay of execution of the Judgment for a period of 30 days, the Court on 19th April 2023 gave directions extending the stay for a further 30 days to enable the Defendant/Applicant make the application for stay before the Court of Appeal.
 5. The Judgment by the Court further provoked a multiplicity of applications by alleged interested parties who held titles to various parcels of land that apparently were subdivisions from the land parcel that the Court ordered to be reverted to the Plaintiff or further subdivisions from the initial subdivisions of the suit land. The intended proposed party Applicants claimed they were not parties to the suit that resulted in the impugned judgment. The Applicants averred they were bonafide holders of the various titles; were not parties to the suit; were directly affected by the Judgment, and were condemned without being afforded the opportunity of being heard which was contrary to the cardinal rules of natural justice. The Applicants sought review and/or setting aside of the Judgment and joinder in the proceedings as Interested parties.
 6. The following applications have been made by Interested Parties:-
 1. Notice of Motion dated 16/5/2023 Applicant – John Waweru Githandika claiming ownership of Title No. Inoi/Kamondo/3073.
 2. Notice of Motion dated 30th May 2023.
Applicant:- Benson Gichohi Mutahi claiming ownership of Title Nos. Inoi/Kamondo/3071 & 3072
 3. Notice of Motion dated 2nd June 2023.
Applicant: Mwangi Nduma Gichuru claiming ownership of title No. Inoi/Kamondo/1944 (subdivided into parcels 7059 to 7065).
 4. Notice of Motion dated 9th June 2023.
Claimant:- Peter Njagi Mathangu claiming ownership of Title Nos. Inoi/Kamondo/4255 a subdivision from land parcel 3070.
 5. Notice of Motion dated 24th May 2023.



Applicant: Stephen Mugo Toto claiming ownership of title No. Inoi/Kamondo/3111 a subdivision from land parcel 1946.

7. In the suit commenced by way of Plaint dated 20th March 2018 the Plaintiff claimed the Defendant obtained the registration and subsequent registration of land parcel Inoi/Kamondo/1943 fraudulently. The Plaintiff thus sought a declaration that the subdivision of land parcel Inoi/Kamondo/1943 and subsequent transfers were fraudulent and illegal and ought to be revoked. The Plaintiff further prayed for the eviction of the Defendant, his agents and any other person claiming through him and the issuance of a permanent injunction against all persons as pertains to land parcel No. Inoi/Kamondo/1943 and all subdivisions emanating therefrom. Together with the Plaint, the Plaintiff filed a bundle of documents that included abstracts of title (green cards for land parcels Nos. Inoi/Kamondo/1886,1943,2081,2082,2171.
8. The Defendant filed a statement of defence dated 21st May 2018 where he inter alia pleaded that in 1997 he purchased a half acre portion out of land parcel Inoi/Kamondo/1943 and that with the agreement of the Plaintiff, the land parcel was subdivided into two parcels Inoi/Kamondo/2081 and 2082 and he was issued with a title for parcel 2082 for half acre. The Defendant further averred he purchased a portion of land parcel 2081 from the Plaintiff and his mother precipitating the subdivision of the parcel into parcels 2171 and 2172 where he was issued with a title to the latter. Amongst the bundle of documents, the Defendant filed were copies of agreements and certificates of official searches relating to subdivisions resulting from land parcels 1886 and 1943.
9. I have made reference to the initial pleadings of the Plaintiff and the Defendant to contextualise the applications brought by the intended Interested parties. What is clear and apparent from the documents exhibited by the Plaintiff in his bundle of documents filed simultaneously with the Plaint is that the original land parcel Inoi/Kamondo/1886 measuring 2.10 Hectares was subdivided on 7/1/1997 to create land parcels Inoi/Kamondo/1943,1944,1945 and 1946 as per the exhibited copy of green card.
10. The common thread by the Applicants who wish to be joined as Interested Parties and to have the Judgment set aside so that they can be afforded an opportunity to be heard is that they held titles to their respective parcels of land and yet by the Judgment given on 30th May 2023 their titles have been annulled and ordered to be cancelled yet they were not party to the case between the Plaintiff and the Defendant. The Applicants aver they had acquired their land parcels lawfully and were bonafide purchasers for value without any notice of any defect in the titles. They aver their titles deserve protection of the Law and that in the event of any challenge, they deserve to be heard in defence of their titles.
11. It is not disputed that all the Applicants whose applications I highlighted earlier in this Ruling hold titles to the respective titles that they individually lay claim to. The titles they hold are all traceable to the subdivision of the original land parcel Inoi/Kamondo/1886 which was subdivided to create land parcels 1943 to 1946. Land parcel 1943 was subdivided to create parcels Inoi/Kamondo/2081 and 2082. Land parcel Inoi/Kamondo/1944 as pleaded by Mwangi Nduma Gichuru (Intended Interested Party) was subdivided to create land parcels 7059 to 7065. Land parcel Inoi/Kamondo/1944 as per the title abstract exhibited by the Plaintiff was transferred to Mwangi Nduma Gichuru on 28/7/2000 and thus the Plaintiff had knowledge that this Intended Interested Party was registered as the owner as he obtained the abstract of title on 7/7/2017 before he filed the suit.
12. The Applicants in my view were persons who had genuine legal interest in the matter that was the subject of litigation between the Plaintiff and the Defendant. The Applicants were registered owners of parcels of land and the titles they held were clearly under challenge as the Plaintiff sought



to have the titles which he claimed were as a result of unlawful and fraudulent subdivision of the original title cancelled. Indeed, the Court in its Judgment declared the subdivision of land parcel Inoi/Kamondo/1886 to have been fraudulent and illegal and annulled the same. The Court further ordered the resultant titles which included those held by the Applicants to be cancelled. The net effect was that notwithstanding that the Applicants had not been joined to the suit as parties, their titles were nonetheless ordered to be cancelled.

13. The Applicants have all submitted that their right to be heard before an adverse order was made against them was violated as was their right to own property and to have such property protected. The Constitution under Articles 48 and 50(1) provides for access to justice and fair hearing for all citizens while Article 47 of the Constitution provides for fair administrative action whenever a person's fundamental rights are likely to be affected adversely by any administrative action by a body mandated to take such action. The right to be afforded an opportunity to be heard is cardinal. Protection of property rights is a fundamental right and thus one's property cannot be taken away without such person being given an opportunity to be heard.

Articles 48 and 50(1) of the Constitution provides as follows:-

48" The State shall ensure access to justice for all persons and if any fee is required, it shall be reasonable and shall not impede access to justice."

50(1)" Every person has the right to have any dispute that can be resolved by the application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial Tribunal or body."

14. In the instant matter once the Applicants got registered as proprietors of their respective parcels of land and were issued titles, prima facie they were vested with ownership rights in terms of Article 40 of the Constitution and Section 24, 25 and 26 of the Land Registration Act 2012 and their titles were absolute and indefeasible and could only be challenged as provided under the Law. As at the time the Plaintiff instituted the present suit he had knowledge and/or ought to have had knowledge that land parcel Inoi/Kamondo/1886 had been subdivided and further subdivisions out of the subdivisions had been effected and Third Parties such as the Applicants had acquired titles to some of the subdivided portions. It remains unclear why the Plaintiffs chose not to join all the persons who had acquired titles to some of the affected parcels. The titles acquired by the Third Parties in my view could only be annulled and/or cancelled by following due process where the affected persons are afforded an opportunity to defend their titles.

Section 26(1) (a) and (b) of the Land Registration Act 2012 provides as follows:-

26. (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—

- (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
- (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

15. My understanding of the above provision is that once a proprietor is registered and issued a title to a parcel of land, there are limited grounds upon which such title can be challenged; either on grounds of fraud and misrepresentation to which the proprietor is proved or shown to be a party or if it is proved that the title was acquired unprocedurally, through corruption or illegally. The implication therefore



is that a title holder must be accorded an opportunity of being heard before his title can be cancelled and/or annulled.

16. It does appear that the Plaintiff, deep into the proceedings realised that he had made a mistake in not joining the Applicants as parties to the suit as he vide an application by way of Notice of Motion dated 24th June 2021 applied to have the Applicants joined as Defendants to the suit but the application was declined by the Court on 10/12/2021 for having been made too late in the day. The Applicants had not been served with the said application.
17. I am for the reasons that I have advanced in this Ruling satisfied that indeed the Applicants were necessary and appropriate parties who needed to have been joined to the proceedings to the extent that authenticity of the titles they held was in question. They needed to be made parties so that all issues and questions arising in the suit could be fully and finally adjudicated by the Court. The Judgment dated 30th May 2023 to the extent that it annulled and ordered the cancellation of their titles cannot be allowed to stand as it would mean the Applicants were condemned without being heard which offends the rules of natural justice. The Applicants have stake in the proceedings and need to be heard before the Court gives its final decision in the matter. It should not matter that the Court may reach the same decision but it is more about serving justice to all parties who appear to have a stake in the proceedings. Each of those persons should be accorded an opportunity to be heard and/or to ventilate their interest in the matter.
18. I find the various applications by the Applicants/Intended Interested Parties to have merit. I accordingly set aside the Judgment delivered by the Court on 30th May 2023 together with all the consequential orders thereof. The Applicants namely; John Waweru Githandika, Benson Gichohi Mutahi, Mwangi Nduma Gichuru, Peter Njagi Mathagu and Stephen Mugo Toto are ordered to be joined as the 1st, 2nd, 3rd, 4th and 5th Interested Parties respectively. The Interested Parties have leave within Twenty-one days from the date of the Ruling to file their pleadings and documents. The Plaintiff will have leave of 21 days from the expiry of the first period to file any response to the pleadings filed by the Interested Parties. The matter is fixed for mention for directions on 8th May 2024. The parties will bear their own costs of the applications.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY VIA VIDEO LINK THIS 22ND DAY OF FEBRUARY 2024.

J. M. MUTUNGI

ELC - JUDGE

