



**Thuranira v Kariuki & 8 others (Environment & Land Case
E004 of 2022) [2024] KEELC 1723 (KLR) (20 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1723 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E004 OF 2022**

CK NZILI, J

MARCH 20, 2024

BETWEEN

JOSEPH KILEMI THURANIRA PLAINTIFF

AND

DOUGLAS GITONGA KARIUKI 1ST DEFENDANT

PETER KIBAKI MUTINDA 2ND DEFENDANT

MUSA MUROKI M'MAUTA 3RD DEFENDANT

KANINI M'MUNORU 4TH DEFENDANT

PETER NKUNJA M'MWIRICHIA 5TH DEFENDANT

MELECK KIRIMI 6TH DEFENDANT

ANDREW MWENDA NTIKA 7TH DEFENDANT

MARY KARIO 8TH DEFENDANT

JOSEPH KINYUA KABERIA 9TH DEFENDANT

JUDGMENT

1. The plaintiff, who is the registered owner of LR No. Lower Athiru Gaiti "A"/2688 has sued the defendants, claiming that during the adjudication process, they jointly and fraudulently used corrupt means to subdivide and register his land in their name to resultant subdivisions LR No Lower Athiru Gaiti "A"/3288, 3358, 3915, 3768, 3543, 3477, 3820, 3506 and 3767 respectively. He sought the cancellation of the subdivisions above and their titles.
2. The defendants opposed the claim through a joint statement dated 27.6.2022, putting the plaintiff to strict proof of every allegation contained in his plaint.



3. At the trial, Joseph Kilemi Thurania testified as PW 1, adopting his witness statement dated 15.7.2022 as his evidence in chief. He told the court that he gathered his land in 1987 after the adjudication section was established alongside other persons who were being supervised by their clan committee members within Lakathi, Athiru Gaiti, after which he was allocated parcel No. 184 with distinct boundaries as per a boundary certificate issued to him. He said that when the land demarcation started in the section in 1990 new folio demarcation numbers were issued, and his ten acres of land were allocated Parcel LR No.2688 bordering parcels No's.2218, 2212, 2014, and 2213.
4. PW 1 said that after the demarcation of his parcel on 19.6.1991, he installed piped water on his land. PW1 said a committee member gained access to the adjudication records in 2013, illegally made alterations thereon, and allocated some of his friends nine out of his ten acres. PW1 said that he became aware of the new numbers in 2014 and filed unsuccessful objections. Eventually, he filed a minister appeal. PW 1 blamed the 1st defendant for secretly, illegally, and fraudulently colluding to subdivide and share out his land among the rest of the defendants, yet all of them save the 1st defendant were not his clan members. He produced the minister's proceedings as P. Exh No. 1.
5. In cross-examination PW 1 told the court he has been working on his LR No. 2688 since only some portions of it were taken away by the defendants. PW 1 testified that the 1st defendant was a land committee member during the adjudication process. He said he was not familiar with the 2nd – 9th defendants and only came to know them after he was supplied with their names as claimants to his land by the Land Adjudication Office.
6. PW 1 said that interference with his land started in 2013, following which he unsuccessfully filed objection proceedings against the defendants, leading to the minister's appeal. PW 1 said he lost his appeal on 30.12.2020. They said there was a delay in obtaining the proceedings and the minister's decision from the Director of the Land Adjudication Nairobi, hence the reason he came directly to court. PW 1 said he was aware title deed for the area may have been issued to some of the defendants whose portions were fraudulently created out of his land.
7. Douglas Gitonga Kariuki, the 1st defendant, testified as DW 1 and adopted the witness statement dated 17.7.2022 as his evidence in chief. He told the court that he came to know the plaintiff after he filed an objection against his parcel LR no. 3768 in 2014. DW. 1 told the court that his co-defendants were issued parcels LR No 3288, 3358, 3915, 3768, 3543, 3477, 3820, 3506, and 3767 by Bwethau clan in the 1980s, which they have been utilizing throughout that period until the plaintiff sued them. DW 1 said all the objections brought by the plaintiff were dismissed by the land adjudication officer except one against Charles Mutethia Ngare. He said the plaintiff unsuccessfully filed the minister appeals against them, which were also dismissed. To support his defense, DW 1 produced the A/R proceedings as D. Exh No. (1), appeals No. 72/2016 and proceedings as D. Exh No. (2) Adjudication record for parcel LR No. 3820, 3768, 3543, 1724, 3506, 3288, 3358 in favor of the 3rd, 1st, 5th, 6th, and 8th defendants as D. Exh No. 3-9 respectively, an application for the land control board consents for LR No. 3479 as D. Exh No. (10), copy of I.D. card for Zacharia Gichumbi Mburu as D. Exh no. (11) transfer for LR No. 3479 as P. Exh No. 12, sale agreement dated 28.6.2019 over LR No. 3479 as D. Exh No. (13), copy of the title deed for LR No. Igembe/Lower Athiru Gaiti "A"/1 3479 as D. Exh No. (14), an official search for LR Igembe/Lower Athiru Giati "A"/3479 as D. Exh No. (15) application for registration of instruments at the land office for LR No. Igembe/Athiru gaiti "A"/3479 dated 5.9.2019 as D. Exh No. (16), Letter of consent for LR No. Igembe/Lower Gaiti "A"/3479 dated 28.6.2019 as D. Exh No. (17) copy of the certificate of title for LR No. 3479 as D. Exh No. (18) and a sketch map for the suit land as D. Exh No. 19 (a) & (b).



8. DW 1 said that the defendants were the ones who unanimously authorized him to swear and plead for them as per consent dated 17.7.2023. DW1 denied that he was a committee member. Further, he said the plaintiff has never been in occupation of the suit land since it was the defendants who have been occupying the parcels.
9. In cross-examination DW 1 said he was the one who represented the defendants during the A/R proceedings. He said the land was given to them through their clan to which the plaintiff did not belong and had never gathered any land in the vicinity to the tune of ten acres. DW 1 said the plaintiff only came to the scene during the A/R proceedings and was not even sure where the claimed land was situated. In re-examination, DW 1 said he acquired the land from the Bwethua clan while the plaintiff hails from the Muthara area, unlike the rest of them who hailed from the Maua area.
10. Meleck Kiriimi, Mary Kario, Musa Muroki, Peter Nkunja, and Kanini N'Munoru testified as DW 2 – 6, and all adopted their witness statements dated 17.7.2022 as their evidence in chief. They all associated their evidence with that of DW 1 and urged the court to dismiss the suit with costs.
11. With the close of the defence case parties were directed to put in written submissions by 29.2.2024. The plaintiff, by written submissions dated 2.2.2024, submitted a title to land that can be challenged under Section 26 of the *Land Registration Act*. In this case, the plaintiff had pleaded two grounds of appeal, namely, the subdivision of the parcel without his knowledge and the transfer to themselves. The second ground raised by the plaintiff is that the scheme or regime that undertook the adjudication process was corrupt.
12. It was submitted that the plaintiff testified that it was the 1st defendant who corrupted the committee adjudicating the land to remove his name from the register and replace it with those of the defendants. The plaintiff submitted that the defendants were unable to rebut those allegations. Therefore, the court should uphold the allegations as the defendants generally made a denial of those facts without explaining how they obtained their parcels of land.
13. The plaintiff submitted that what raised eyebrows was that the 2nd – 9th defendants had, throughout the adjudication process, appointed the 1st defendant to agitate their case, for they could not do it on their own. The plaintiff submitted that was because it was the 1st defendant who sold them their respective portions and they did not have an idea of where the land came from.
14. The defendants relied on written submissions dated 5.2.2024. It is submitted that the plaintiff's case hinges on fraud over the alleged subdivision and transfers arising out of the plaintiff's parcel LR No. lower Athiru Gaiti "A"/2688.
15. The defendants submitted that the plaintiff did not produce documents to show that he was the owner of the said parcel, whether it exists on the ground and its relation with the subdivisions, the subject matter of this suit. The defendants submitted that they have shown through evidence to have been the original owners of the parcels of land out of allocations by their clan. In their testimony, the defendants submitted that they were able to demonstrate the root of their respective titles or parcels of land and their occupation therein.
16. Relying on Section 107 (1) of the *Evidence Act*, the defendant submitted that the burden of proof was upon the plaintiff to prove ownership and fraud, more so given there were objection proceedings leading to a minister's appeal and now a third trial before this court, which lacks merits. The defendants relying on *Kinyanjui Kamau v George Kamau Njoroge* (2015) eKLR submitted it was not enough for the plaintiff to input fraud on them with evidence linking the parcels of land to him and leave it at that. The defendants submitted that it was not for this court to fix loopholes in the plaintiff's case.



The defendants submitted that no matter how the case of the plaintiff is looked at, he has failed to lay any basis upon which the court can make a finding on fraud against the defendants and grant him the orders sought.

17. The issues calling for my determination are:
 - i. If the court has jurisdiction to hear and determine the suit.
 - ii. If the plaintiff has proved ownership of parcel LR No.2688 and its subdivisions in favor of the defendants.
 - iii. If the plaintiff has pleaded and proved fraud, collusion, and illegality against the defendants.
 - iv. If the plaintiff is entitled to the reliefs sought.
18. The plaintiff's claim is based on an alleged fraud and subdivisions of LR No. Lower Athiru Gaiti "A"/2688 into LR No. 3288, 3358, 3915, 3768, 3543, 3477, 3820, 3506 and 3767. The plaintiff told the court that he gathered his land in 1990 and was demarcated as parcel LR No. 2688 on 19.6.1991 and that the late Gitonga Kariuki became a committee member, gained access to the adjudication records in 2013, and abused his position in altering the records and allocating nine acres of his land to the defendants. The plaintiff told the court that he filed A/R No. 718, 719, 720, 721, 722, 723, 724, 725, and 726 regarding the defendant's parcels of land D. Exh No. (1) which were dismissed on 1.12.2014.
19. The plaintiff further told the court that he filed ministers Appeal No. 72/2016 as P. Exh No. (1) and also D. exh No. 2, which was determined on 30.12.2020. Asked in cross-examination if he challenged the outcome of the appeal, PW 1 told the court that there was a delay in obtaining the proceedings and the decision at the office of the Director of Land Adjudication.
20. A party aggrieved by a minister's appeal is required to apply by way of a judicial review within 6months from the date of the decision to challenge the decision. He may also file a constitutional petition.
21. In this suit, the plaintiff is alleging that there was fraud or illegalities committed during the land adjudication process. He now seeks for the subdivisions and the title deeds held by the defendants to be canceled and the land to revert to him.
22. In the case of *Amaranath (suing on behalf of the estate of the late Amarnath Gupta v Kazungu & 2 others* (civil appeal E033 of 2021 (2023) KECA (1280) (KLR) (27th October 2023) (Judgment), the appellant had through a plaint sought to set aside the appeal committee and the minister's decision ousting his ownership of land and was seeking, the land registrar Kilifi to issue him with a title deed. The 1st respondent had raised a preliminary objection that the ELC court lacked jurisdiction to entertain the suit under Sections 27 & 28 of the *Land Adjudication Act*. Yano J upheld the preliminary objection on jurisdiction and struck out the suit. On appeal, the court of appeal said that once the minister makes a determination, his order is final, and the decision cannot be appealed against, whether under the Act or in court, and the option for the appellant was to pursue a judicial review process under Article 47 of *the Constitution* and the *Fair Administrative Action Act* 2015.
23. The court said the appellant could not re-open the case and challenge the minister's decision in any other manner except through a judicial review. The court cited *Julia Kaburia v Kabeera & 5 others* 2007 (eKLR) that Section 30 of the *Land Adjudication Act* provides an exclusive and exhaustive procedure for ascertaining and recording land rights in an adjudication section. Further, the court cited *Tobias Ochola Osindi & others v Cypriunus Otieno Ogola & others* (2013) eKLR that the role of the court is supervisory under Cap 284 to ensure that the process is carried out in accordance with the law and



- also to interpret and determine any point or issue of law that may arise in the course of an adjudication process.
24. In this suit, the plaintiff raises the issue of fraud that allegedly occurred in 2014. From the A/R objection and the minister's appeal, it is evident that the issue of irregularity, manipulation, hiving off the parcel, subdivisions and the transfers in 2013 was the central theme. Under Section 29 (3) of the [Land Adjudication Act](#), once the minister makes a decision, the register becomes final in all aspects and is not subject to any appeal. In [John Masiantent Saeni v Daniel Aramat Lolungiro and others](#) (2017), eKLR, Mutungi J held a petition filed after 13 years to challenge a minister's decision was tantamount to seeking to appeal the decision through a back door and have a second bite of the cherry. The court termed the petition as misconceived and an abuse of the court process.
 25. In [Dume Deri Mumbo & 19 others v C.S Land Housing and Urban Development & others](#) (2016) eKLR, the court cited Nicholas Njeru's case (supra) that the issues in the appeal had been thrashed to the pulp and could not be re-opened by way of an ordinary suit without disclosing the new cause of action that had arisen. In [Mutanga Tea & Coffee Co. Ltd v Shikara Ltd and another](#) (2015) eKLR, the court said Article 159 (2) (d) of [the Constitution](#) bars parties from avoiding alternative dispute resolution mechanisms and invoking the inherent jurisdiction of the High Court.
 26. In my view and guided by the cited case law, the plaintiff is using this court to sit on an appeal of the minister's decision, which was final under Section 29 (3) of the [Land Adjudication Act](#) in all respects. The plaintiff's issues based on fraud, illegality, and collusion were exhaustively dwelt with by the adjudicatory bodies under Cap 284. The plaintiff had the option to challenge the decision and the decision-making process by way of judicial review or a petition. He failed to invoke that jurisdiction on time.
 27. Fraud and illegality must be pleaded and proved to the required standards as held in [Arthi Highway Developers Ltd v West End Butchery Ltd & 6 others](#) (2015) eKLR, [Kuria Kiarie & 2 others v Sammy Magera](#) (2018) eKLR, [Kinaynjudi Kamau v George Kamau](#) (2015) eKLR, [Patel v Lalji Makanji](#) (1957) E.A 314. In [Central Bank of \(K\) Ltd Trust Bank Ltd & another](#) NRB Civil Appeal No. 215 of 1996, the court said fraud and conspiracy to defraud were serious allegations requiring *prima facie* proof, which is much higher and heavier than in ordinary cases.
 28. An illegality is an act forbidden by law. The plaintiff was alleging alteration of the adjudication records. None were availed to show when, how and by whom it was done. There is no indication if, upon discovery of the same in 2013 or 2014, the plaintiff filed a complaint with the Director of Land Adjudication or officers under him and involved any forensic investigative agency for a report to confirm the veracity of such allegations. It is a criminal offense to tamper with land records. See [Ndolo v Ndolo](#) (2008) 1 KLR (G & F) 742.
 29. The plaintiff has not named the officers who facilitated the fraud and colluded with the defendants to subdivide his land. No original adjudication records were produced or confirmation letters produced for the court to verify that the plaintiff's land parcel initially was ten acres. The paper trail to show the root of the defendants' parcels of land has not been challenged by the plaintiff. Other than making vague, wild, and general allegations of fraud, the plaintiff did not call any land adjudication officers to support his claim that his ten acres of land, as gathered in 1990, was eventually subdivided into the parcels of land held by the defendants.
 30. The plaintiff failed to call any clan member or neighbor who witnessed the issuance of a boundary certificate and or was issued with parcel numbers next to or bordering his parcel LR No. 2688. In [Dr. Joseph Arap Ngok v Justice Moiwo Ole Keiwua & others](#) Civil Application No. 60 of 1997, the court said a title may be challenged on account of fraud misrepresentation and or illegality.



31. The defendants produced title deeds issued by the land registrar under Section 26 of the [Land Registration Act](#). The person named in a title is a prima facie absolute owner unless evidence of fraud, unprocedural, or issuance through a corrupt scheme is established to the required standards.
32. Given that the plaintiff has failed to prove the pleaded fraud or illegality, I find the defendant's evidence or documentation credible, reliable, and legal. The upshot is that the plaintiff's suit is found incompetent, filed in a court without jurisdiction, and lacking merits. Costs to the defendants.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20TH DAY OF MARCH, 2024

In presence of

C.A Kananu

Defendant

Mr. Mwendwa for the defendants

HON. C K NZILI

JUDGE

