



**John & 5 others v Mugambi & 3 others (Administrators of the Estate of Benjamin Revel Ndubai)
(Environment & Land Case 45 of 2014) [2024] KEELC 1587 (KLR) (13 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1587 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE 45 OF 2014
CK NZILI, J
MARCH 13, 2024**

BETWEEN

**DAVID MUTHURI JOHN 1ST APPLICANT
SIMON MUTETHIA JOHN 2ND APPLICANT
ANDREW MUTETHIA JOHN 3RD APPLICANT
MARK BUNDI JOHN 4TH APPLICANT
PETER MUTHUIYA JOHN 5TH APPLICANT
ANN NKATHA JOHN 6TH APPLICANT**

AND

**DAVID PIUS MUGAMBI 1ST RESPONDENT
RICHARD MWONGERA 2ND RESPONDENT
LEON MURITHI NDUBAI 3RD RESPONDENT
LEENE MARGARET NDUBAI 4TH RESPONDENT
ADMINISTRATORS OF THE ESTATE OF BENJAMIN REVEL NDUBAI**

RULING

1. The court, by an application dated 12.1.2024, is asked to order the land registry Meru to revert suit land L.R No. Ntima/Igoki/567 registered in the name of deceased John Guantai Iringo. The reasons are contained in the affidavit of David Muthuri John, sworn on 12.1.2024. The applicant avers the land registry reverted the land to his uncle Stanley Iringo instead of his father John Guantai Iringo as per an official search attached as annexure D.M. "J" to the supporting affidavit.



2. The applicants aver that as children of John Guantai John, they had sought the cancellation of the illegal transfers done on the suit land by David Mugambi and Benjamin Revel Ndubai and that the transfer from Stanley Iringo to John Guantai Iringo was never disputed, for it was legal.
3. The applicants aver that the prayer sought would facilitate the execution of the decree of the estate of John Guantai Iringo to the rightful beneficiaries. Even though the application was served upon the respondents and the Land Registrar Meru no grounds of opposition or a replying affidavit was filed against the motion.
4. The suit herein was instituted by a plaint dated 24.2.2014. The complaint by the plaintiffs was that L.R No. Ntima/Igoki/567 belonging to their late father had been transferred to Richard Mwongera Ndubai and later to Kariba Mbaabu and later to Benjamin Revel Ndubai, the father to the 2nd, 3rd and 4th defendants, yet it was family or ancestral land passed on from their grandfather to their father in trust for himself and the plaintiffs therein. It was averred that the land had been subdivided into 30 portions, namely L.R No's. 338 to 3410. They sought the declaration and cancellation of the subdivisions and transfers, reversion of the land into L.R No. Ntima/Igoki/567 and a permanent injunction.
5. The 2nd – 4th defendants opposed the suit by a statement of defense dated 30.6.2014, stating that the late Benjamin Revel Ndubai had lawfully bought the parcel for valuable consideration. They denied any existence of trust or breach of it by the deceased.
6. In a judgment dated 25.1.2023, the court found that the initial L.R No. Ntima/Igoki/567 and the resultant subdivisions were subject to customary trust in favor of the plaintiffs. The court canceled the subdivisions and transfers for the land to revert to its original parcel number in the name of the deceased. A permanent injunction was also issued in favor of the plaintiffs.
7. The original parcel number was L.R No. Ntima/Igoki/567. The register was opened on 8.1.1970 in the name of Stanley Iringo. Going by paragraph 5 of the plaint dated 24.2.2014, the plaintiffs were alleging the resultant changes to the initial title register to the defendants were subject to customary trust and its breach thereof. In paragraph 13 thereof they sought for the reversal of the transfers from their father's name to one Stanley M'Mbogori M'Iringo and any other person thereafter to the eventual subdivisions into 30 portions.
8. The court granted prayers No. (a) (b) & (c) of the plaint, whose effect was to invalidate and cancel the entries after 8.1.1970 and to revert the land to its original status. The court was clear in its entire judgment on what was at issue and what the original status of the land was at the opening of the register on 8.1.1970.
9. Parties are bound by their pleadings. There was no registration made in the name of John Guantai Iringo. The plaintiffs brought no evidence that Stanley Iringo had transferred the land to their late father, John Guantai Iringo.
10. Prayers (a), (b) & (c) of the plaint dated 24.2.2014 did not make any specific prayer for the land to revert to the estate of John Guantai Iringo. The plaintiffs had sought for the land to revert to L.R No. Ntima/Igoki/567. The plaintiffs had not sued as legal representatives of the estate of the late John Guantai Iringo. The cause of action before the court and the reliefs sought are, therefore, in line with the decree issued. It cannot be true that the land registrar misinterpreted the decree.
11. Therefore, the applicants have not proved any error apparent on the face of decree or judgment. See Highway Furniture Mart Ltd vs P.S Office of the President & another (2006) eKLR. A party coming to court must be clear on what they want. Parties are bound by their pleadings, and issues flow from the pleadings. See Mutinda Mule vs IEBC (2013) eKLR. A court cannot grant reliefs not requested



for and evidence led to that effect, guided by the pleadings of the parties. If the plaintiffs mistakenly thought their late father, John Guantai Iringo, was the registered owner of L.R No. Ntima/Igoki/567, unfortunately, a copy of records that was availed did not contain such facts or entries in the name of their late father.

12. The witness statement and evidence of Stanley Mbogori clarified the point that the land in 1975 was under his name. He did not indicate when he transferred the land to his late brother and if such a transfer was affected on the register. Godfrey Gitari, a young brother who testified as PW 2, confirmed the position and said that there was an exchange of land. It is up to the applicants to enforce the decree against the estate of their uncle in the normal process. See *Dominic Ngugi Waithiru vs Milka Wanjiru Muigai & another* (2010) eKLR.
13. The upshot is that I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 13TH DAY OF MARCH, 2024

In presence of

C.A Kananu

1st plaintiff

Miss Kerubo for Miss Kiome for the plaintiff applicant

HON. C K NZILI

JUDGE

