



Nyoike (Suing as the personal representative ad litem in the Estate of Gerald Nyoike Muiruri) v Kanyi & 4 others (Civil Appeal E120 of 2021) [2024] KECA 1392 (KLR) (11 October 2024) (Judgment)

Neutral citation: [2024] KECA 1392 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E120 OF 2021
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
OCTOBER 11, 2024**

BETWEEN

LENNY MUIRURI NYOIKE (SUING AS THE PERSONAL REPRESENTATIVE AD LITEM IN THE ESTATE OF GERALD NYOIKE MUIRURI) APPELLANT

AND

**CATHERINE NJERI KANYI 1ST RESPONDENT
DAVID KAMAU KIMEMIA 2ND RESPONDENT
JAMES MAINA MUIRURI 3RD RESPONDENT
METHI & SWANI FARMER CO-OPERATIVE SOCIETY
LTD 4TH RESPONDENT
THE LAND REGISTRAR MURANGA 5TH RESPONDENT**

(Being an appeal from the judgment of the Environment and Land Court of Kenya at Murang'a (J.G. Kemei, J.) dated 15th September 2021 in ELC NO. 226 of 2017)

JUDGMENT

1. The deceased Gerald Nyoike Muiruri died intestate on 11th November 2004. He was the husband of Catherine Njeri Kanyi (1st respondent) and father of the appellant Lenny Muiruri Nyoike. The appellant is the step-son of the 1st respondent.
2. Following the death of the deceased, the 1st respondent went to Nyeri in HC Succession Cause No. 529 of 2006 and obtained a grant of letters of administration following which she transferred land parcel No. Mitubiri/Wempa/B.L. 2/132 into her name jointly with those of James Kamau Kimemia



- (2nd respondent) and James Maina Muiruri (3rd respondent). The suit land measures about 0.2023 Hectares.
3. In the amended plaint filed before the High Court in Murang'a, and later transferred to the Environment and Land Court at Murang'a, the appellant claimed that the suit land belonged to the deceased and that, following his death, the 1st, 2nd, 3rd and 4th respondents had fraudulently and illegally caused it to be transferred into the names of the 1st, 2nd and 3rd respondents. The 4th respondent is the official liquidator of Methi and Swani Farmer Cooperative Society Limited. The Cooperative Society was the owner of a large parcel of land which had been subdivided into plots which had been allocated to members. The suit land comprised one of the plots that the appellant claimed belonged to his father. His case was that he was the only beneficiary of the estate of the deceased, the 1st respondent having been remarried, and therefore entitled to the suit land. He sued to have the alleged fraudulent registration to be cancelled and that he instead be registered as the owner of the parcel.
 4. The 1st respondent's defence was that she and the deceased had on 25th April 2000 jointly bought Plot No. 22 from one Duncan Ringo Mbatiah for Kshs.190,000.00; that the said Duncan Ringo Mbatiah was holder of share certificate No. 3690 in the Cooperative Society and that the certificate entitled him to Plot No. 22. Subsequently, the deceased sold his share to the 2nd respondent (35ft by 150 ft) and 3rd respondent (35ft by 150ft) on 21st September 2002 and 21st July 2002, respectively. According to her, what was left was her entitlement in the plot (share certificate) which, when the deceased died, she caused it to be transferred to her. Because the deceased had not transferred what he had sold to the 2nd and 3rd respondents, this is why she caused the transfer into her name and that of the two respondents. The respondents denied the claim that the transactions were fraudulent or illegal.
 5. The Environment and Land Court (J.G. Kemei, J.) received the evidence from the parties and witnesses and dismissed the appellant's claim with costs. The decision aggrieved the appellant who filed the present appeal which essentially blamed the trial court for not accepting his version that the suit land had been fraudulently taken by the 1st, 2nd and 3rd respondents.
 6. The parties are entitled to the re-evaluation and re- assessment of the evidence tendered before the trial court and to our independent conclusions thereon on the questions of fact and law. (See *Abok James Odera T/a J. Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013]eKLR). In doing this, this Court is not oblivious to the fact that the trial court had the advantage of seeing and hearing the witnesses.
 7. From the evidence on record, the suit property originally known as Plot No. 22 under share certificate No. 3690 of the 4th respondent was owned by Duncan Ringo Mbatiah. On 25th April 2000 the property was sold to the deceased and the 1st respondent for Kshs.190,000.00 (D. Exhibit 4). This agreement was not challenged. The plot measured 150ft by 150ft. The other unchallenged evidence was that on 21st July 2002 the deceased sold 35ft by 150ft of the suit property to the 3rd respondent, and on 21st September 2002 the deceased sold 35ft by 150ft of the suit property to the 2nd respondent. The 1st respondent produced each of the agreements in evidence. The evidence was supported by the evidence of the 2nd and 3rd respondents. According to the 1st respondent, what was left was her share; that that was the understanding between her and the deceased. So that, when the deceased died and she being a joint owner, his claim ceased. This is why she went to the succession court and succeeded the deceased who had died before transferring the shares of the 2nd and 3rd respondents. The title, after succession, were registered in the joint names of the 1st, 2nd and 3rd respondents.
 8. This is the evidence that the trial court considered alongside the evidence of the appellant and his witnesses. It accepted the version by the respondents. It should be borne in mind that the appellant was



twelve (12) years old when the deceased died in 2004. He was eight (8) years old when the deceased and the 1st respondent bought the suit property from Duncan Ringo Mbatiah, and ten (10) years old when the deceased sold the two portions to the 2nd and 3rd respondents. The trial court stated as follows:-

- “ 48. From the documentary evidence of acquisition, there is a presumption of joint tenancy between Gerald and the 1st defendant as per the sale agreement. The sale of the portions to the 2nd and 3rd defendants was executed by Gerald alone giving credence to the evidence of the 1st defendant that the joint tenancy had been severed. If they held the land jointly, the 1st defendant would have executed the agreement with Gerald. She did. The 1st defendant was therefore left with her portion of land being the ½ share, Gerald having disposed of his share. The conduct of the parties up to this point does not support joint ownership of the land. It is to be noted that at this time the title to the suit land had not been processed.
49. The plaintiff has argued that the absence of a severance agreement suggests that the land is still being held jointly. No evidence was adduced to support this position.
50. Upon the death of Gerald, Ringo transferred the whole land to 1st defendant on 5th May 2005. Even if the presumption of joint ownership is taken to exist, this transfer would still be unassailable given that the 1st defendant survived her husband.
51. On the same date the 1st defendant transferred two portions each measuring 35 ft by 150 ft to the 2nd and 3rd defendants in pursuance and in performance of the agreement between Gerald and the said 2nd and 3rd defendants, improperly leaving half portion in her name. Eventually the land became registered in the names of the 1st – 3rd respondents in 2011 as tenants in common.”

9. We have reconsidered the entire evidence and conclude that the trial court’s observations and findings were borne by the evidence as recorded. The appellant was not party to the transactions over the suit property between the deceased and the 1st respondent, on one hand, and between the deceased and the 2nd and 3rd respondents, on the other hand.

10. Our conclusion is that the appeal lacks merits. It is dismissed.

11. This was largely a family dispute. The parties shall pay own costs on appeal.

DATED AND DELIVERED AT NYERI THIS 11TH DAY OF OCTOBER 2024.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A. O. MUCHELULE



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JUDGE OF APPEAL

I certify that this is a true copy of the Original.

Signed

DEPUTY REGISTRAR

