



REPUBLIC OF KENYA



**Kebari & 19 others v County Government of Nyamira (Environment & Land
Case E005 of 2021) [2024] KEELC 3807 (KLR) (30 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3807 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E005 OF 2021**

JM KAMAU, J

APRIL 30, 2024

BETWEEN

- JUSTUS ANCHINGA KEBARI 1ST PLAINTIFF**
JAMES NCHOGU KEBARI 2ND PLAINTIFF
LAWRENCE RETEMA MASAMBA 3RD PLAINTIFF
KENNEDY NYANGAU 4TH PLAINTIFF
AGNES MENGE 5TH PLAINTIFF
ESTHER WANJIRU ONGONGA 6TH PLAINTIFF
PASKALIAH KEMUNTO OGUTU 7TH PLAINTIFF
STEPHEN JAMES MOSE ONCHERA 8TH PLAINTIFF
AUGUSTINE MANWA 9TH PLAINTIFF
NYANDWARO NYAGARA 10TH PLAINTIFF
JOSEPH MOREKA KEBARI 11TH PLAINTIFF
CHARLES NYASENDE KEBARI 12TH PLAINTIFF
SARINGI KEBARI 13TH PLAINTIFF
PAUL NYAGARA 14TH PLAINTIFF
PACIFIKA MAKORI MOSE 15TH PLAINTIFF
RICHARD NYAMAMBA MOGESA 16TH PLAINTIFF
FRANCISCA MONGINA MAKORI 17TH PLAINTIFF
JOSEPH NYAMWAYA MABIRIA 18TH PLAINTIFF
JOSEPH MOKAYA MIGIRO 19TH PLAINTIFF



JASON MAOMANYI NYANUMBA 20TH PLAINTIFF

AND

COUNTY GOVERNMENT OF NYAMIRA DEFENDANT

JUDGMENT

1. In this suit commenced by a Plaint dated 26/5/2021 the Plaintiff's claim is that the 20 out of them own different plots all comprised in East Kitutu/Mwamangera/1142 with different plot numbers which they purchased for value from the late Kebari Ndigiti and on which they have made significant developments. There was a suit in Kisii High Court Number 99 of 1982 where orders of ownership and entitlement of some of the Plaintiffs was determined by Justice V.V Patel on 26/6/1987. The said properties were repossessed by the Defendant herein on 1/4/2020 and destruction of fixtures thereon effected leading to losses amounting to kshs. 285,464,500/=. This was done without prior Notice of the demolition and the Plaintiffs aver that it was fraudulent. It was also carried out in spite of the Defendant collecting Rates and other revenues from the Plaintiffs. The Plaintiffs then sought for the following reliefs in their prayers:-
 - i. Compensatory Damages on the basis of full repayment value of the suit property herein as developed by the Plaintiffs prior to the demolition thereof together with unencumbered open market value of the land upon which that same was constructed being Title Number East Kitutu/Mwamangera/11421 measuring One Nought Three Hectares or thereabouts and situate at Keroka within Nyamira County (suit land) as at the time of Judgment herein the the aggregated sum of Kenya shillings two hundred and Eight five Million, Four Hundred and sixty four thousand, five hundred (285,464,500.00) as per the current valuation of Tuliflocks Limited or such other values as may be determined upon quantification by a licenced Quantity Surveyor or valuer to be agreed upon by the parties within 14 days of judgment herein as appointed by the court upon failure of such agreement.
 - ii. Loss of Earnings in terms of rental income received from the structures on the suit premises as particularized hereunder;



Name of proprietor	Rental income per annum
Justus Anchinga Kebari	36,000*12= 432,000
James Nchogu Kebari	36,000*12 = 432,000
Lawrence Reteno Mosimba	36,000*12 = 432,000
Kennedy Nyangau	36,000*12 = 432,000
Agnes Menge	50,000*12 = 600,000
Esther Wanjiru Onganga	36,000*12 = 432,000
Paskaliah Kemunto Ogutu	42,000*12 = 504,000
Stephen James Mose Onchera	48,000*12 = 576,000
Augustine Manwa	65,000*12 = 780,0000
Nyandwaro Nyagara	45,000*12 = 540,000
Joseph Moreka Kebari	80,000*12 = 960,000
Charles Nyasende Kebari	36,000*12 = 432,000
Saringi Kebari	22,000*12 = 264,000
Paul Nyagarara	50,000*12 = 600,000
Pacifika Makori Mose	65,000*12 = 780,000
Richard Nyamamba Mogesa	36,000*12 = 482,000
Francisca Mongina Makori	36,000*12 = 482,000
Joseph Nyanwaya Mabararia	
Joseph Mokaya Migiro	36,000*12 = 432,000
Jackson Momanyi Nyanumba	36,000*12 = 432,000
TOTAL	11,316,000

very wrong and a confirmation of the leaseholds

- iii. Loss of future earnings in terms of rental income as particularized in (ii) above
- iv. Interest in (i) (ii) and (iii) hereinabove.



- v. General damages for distress, anxiety and anguish during and after the demolition of the properties
 - vi. Costs of the suit
 - vii. Any other reliefs this Honourable Court deems fit and just to grant
2. In her Statement of Defence dated 12/7/2021, the Defendant denied that she illegally repossessed the suit property from the Plaintiffs and that the Plaintiffs had acquired the property, which belonged to the Defendant as Trustee for the Residents of the County of Nyamira, illegally. She also avers that the Plaintiffs were not parties in Kisii High Court Case No. 99 of 1982 and can therefore not benefit from the Decree therein. Any demolition thereat was justified. The Defendant also averred that the Plaintiffs had fraudulent documents of ownership of the suit property which had been acquired illegally and that the same were forgeries and that whatever was put up on the land as development was not approved by her. The Defendant consequently asked the court to dismiss the suit with costs. All these averments were denied in the Plaintiffs' Reply to Defence dated 27/10/2021.
 3. In adducing evidence, the Plaintiffs were represented by 3 of them starting with Justus Anchinga Kebari as DW1 who testified that he owns a hotel at Keroka Town on the suit property.
 4. Justus Anchinga Kebari, the 1st Plaintiff, a hotel owner at Keroka Town, Richard Nyaramba Mogesa, an owner of Plot 60 x 100feet, Joseph Moreka Kebari a retired Public Health Officer and a brother to the 1st Plaintiff and an owner of a plot with Plot number 441 and David Chege Kariuki, a valuer testified on behalf of the Plaintiffs. Mr. Kebari said he inherited East Kitutu/Mwamangera/1142 from his late father Kebari Ndigiti who died in 1994. He said that some of the Plaintiffs were his brothers and the others bought their parcels from his late father and that he has been on the suit land since birth on 11/2/1960 and that in Kisii High Court case number 99 of 1982 the County Council of Kisii was ordered to return the land to the deceased but instead the council demolished their houses. To wind up his case, he produced;
 1. Order of Justice V.V Patel issued on 26/5/1987 in Case Number Kisii 99 of 1982
 2. Rent payment receipts to the Defendant
 3. Plot ownership cards
 4. Request for plots to the Gusii County Council and Building plans for the shops
 5. Letter dated to the Town clerk on acknowledgement of the plots
 6. Press statement from the Governor of Nyamira
 5. On cross examination he said that the disputed land is still in the name of his late father and that he did not know the size of the suit land but that before the flattening of the same there were more than 20 people in occupation. The land East Kitutu/Mwamangera/1142 – 3 acres was excised out of East Kitutu/Mwamangera/441. He also admitted that he did not produce KRA Returns to show how much he earned from the demolished plots. His land is 50 x 100ft. He had 3 self-contained units each bringing Kshs.36,000/= per month since 1990 which were all occupied until demolition by use of escalator and that the Defendant had approved the buildings thereon. He finalized his re-examination by saying that the photos produced in court were taken by the valuer after the demolition.
 6. Richard Nyaramba Mogesa produced the sale agreement dated 4/1/1987, from Gusii County Council and the Approved plans. On cross examination, Pw2 said he bought his parcel of land from the late Ndigiti where he has lived till 1987 on a 60 x 100feet plot and that the Defendant allowed him to put



- up a permanent building which has all along given him income. He had 3 self-contained units each giving him an income of Kshs. 3,000/= per month, a total of Kshs. 9,000/=. He is demanding Kshs. 7.2 million.
7. Joseph Moreka Kebari testified that he was a younger brother to the 1st Plaintiff and gave evidence similar to that of the latter. He claimed to have but Kshs.52,150,000/=. He said that even if the land belonged to the Defendant, having lived there since 1987 then he had acquired adverse possession over the same. He owned 60 x 100feet plot and that he had 6 brothers on the land. He had 8 unit storey houses each fetching Kshs. 20,000/= per month, a total of Kshs. 136,000/= per month and that he had got all the building and development approvals from the Defendant including the Certificate of Occupation.
 8. David Chege Kariuki a valuer practicing in the name and style of Tulifocks produced his Valuation Report with the date of valuation indicated as 25/2/2021 detailing what each of the Plaintiffs suffered having personally visited the suit land. He said that each of the Plaintiffs had a lease certificate of the property he claimed. He was to determine the open market value and Damages on the suit land. He compared the figures given by the plot owners with those of the neighbourhood and that it was unnecessary to get the Bills of Quantities. Mr. Reuben Jack Maseke, Advocate testified that he acted for 11 Plaintiffs in Kisii High Court Civil Suit No. 99 of 1982 who included Kebari Ndigiti. A consent by the owners and the Defendant was recorded in court whose purport was that each of the plot owners be allocated what they were occupying. The said recorded consent which is still in force is dated 26/6/1987 shows that Parcel Number East Kitutu/Mwamangera/1142 was allocated to the late Kebari.
 9. Francis Mobisi Mbeche, Defendant's Director of Land Administration testified that East Kitutu/Mwamangera/1142 belongs to the Defendant to whom it was allocated first to its predecessors, County Council of Nyamira on 17/7/1970. He produced the area map, official search, a circular from the Ministry of Lands showing that no public land should be allocated to individuals. On cross examination he said that Nyamira County Council was founded in 1992 and finally said that he didn't know how Gusii County Council acquired the property.
 10. DW2 Robert Atika, County Surveyor, Nyamira produced the Title Abstract to show that it was first registered on 17/7/1970, Entry No. 2 on 20/12/2005 it was issued to Nyamira County Council. Zacharia Christo Ondieki, acting Director of Urban Development with the County Government of Nyamira testified the suit land belongs to the Defendant and is part of the open air market of Keroka and has never been private land. The County Government was established in 1994 and the County Government of Nyamira came into being in April 2013. The last 2 witnesses Everlyne Bosibori Nyambane, Physical Planner of Lands, Housing and Urban Development of the Defendant who said that the area is earmarked as an open air market and that he did not have any record of any allottees of the plots in the suit land, nor any applications. There are no approvals from the Defendant's Physical Planner save from Urban Development Directorate and that he also did not have any document to show that the place was allocated as an open air market.
 11. The last witness, George Kariuki Maina, County Land Registrar, produced documents showing that the suit land was registered as belonging to Nyamira County Council on 17/7/1970. The ownership has never changed. Before then the land was unregistered. But the Land Registrar did not produce the documents to show this in court.
 12. This is the evidence produced in court.
 13. From the evidence above, the order of Justice V.V. Patel dated 26/6/1987, certain persons were ordered to be given specific plots. This is in Kisii High Court Civil Cause No. 99 of 1982. They are; Plaintiff No. 3 Plot No. 124 Plaintiff No. 7 plot Nos. 115 and 115 Plaintiff No. 12 Plot no.1 129



14. Other Plaintiffs, Nos.2, 5, 9, 10 and 11 were advised by the court to apply to the Defendant Council for allocation of the plots they occupy in Title No. East Kitutu/Mwamangera/1142 and the 4th Plaintiff Richard Nyaramba Kogeya and 8th Plaintiff Patrick Nyamwaya and Lawrence to be allocated Plot Numbers of the plot they occupy. Interestingly, there is nothing to show who is what Plaintiff in Kisii High Court Civil Case No. 99 of 1982 and if that were the case, then those mentioned therein and give certain orders should have proceeded to execute these pronouncements in that case but not to file another case to prove what they had already been given by a competent superior court with jurisdiction. Otherwise this case in as far as the litigants in that case are concerned would be res judicata. We now come to what is shown as the payment receipts to the Defendant. The same came from
1. Chrisantus Mere Plot No. 8727/51A – 1 Unit @1,000/= paid on 13/1/2020
 2. An earlier receipt for Kshs. 2,000/= by the same payee for Plot No. 8727/51 formerly Plot No. 8727/51A paid on 14/8/2018
15. The only semblance of ownership are 2 cashier's miscellaneous receipts of Kshs. 150/= and Kshs 7,200/= respectively issued on 5/5/79 and 27/9/2013 respectively and an ownership of plot card dated 3/8/1977 issued to Francis Nyangáu who also attached a conditional allotment letter dated 3/8/1977 in Kiswahili language. There is also a record of Keroka Township Plots long list with the rubber stamp of Town Council of Keroka where the actual date is not clear but the year is indicated as 2010. The same also shows that the allottees owe the council arrears.
16. Most of the plots are said to be developed but nothing shows that they were allocated to the people appearing on the 1st column or what "arrears place" means. The same also applies to the "year". And as I have observed above, I am unable to determine the ownership of the suit plots in the absence of any documents on the pleadings showing who were the Plaintiffs in Kisii High Court No. 99 of 1982. The issue of compensation would have been considered in this case if only ownership of the suit property was established. This would have been a cause of action separate from what was in Kisii High Court Civil Case No. 99 of 1982. But the Plaintiffs never produced documents, especially pleadings to show that the pronouncements referred to them. In the Decree produced in court the only legible thing in the Title of the case is ".....and 11 others v Gusii County Council." It would not be safe to conclude that the 12 Plaintiffs in the High Court of Kisii Civil Case No. 99 of 1982 are the same or some of them are the ones in this case.
17. There is nothing to help us draw a nexus between the 2 sets of Plaintiffs. I am therefore unable to insert what I cannot see. Pw5, Mr. Masese, senior Advocate with very wide experience and who acted for the Plaintiffs in the earlier case said that he had not been furnished with the pleadings in the case and agreed with the court that somebody looking at the Order/Decree produced in this court would not know the nature of the claim nor the Plaintiffs therein. He could not also tell whether the Title Deed East Kitutu/Mwamangera/1142 was in the name of the client he represented, Kebari Ndigititi nor whether it was freehold or a leasehold. The Title Deed shows that since 1990, the land belongs to the Defendant herein and I have not been asked to impeach the same. It is also important to note that the Kebari Ndigititi who it is claimed owned the land is now deceased and no grant of letters of administration has been obtained in respect to his Estate.
18. Due to failure to prove ownership, there is no need to consider the other prayers and the Defendant having given the Plaintiffs Notice of what she called repossession on 1/4/2021 that was enough to warn the Plaintiffs of the dire consequences that would follow and given them time to remove their buildings and wares and relocate. This was too serious an issue to be taken to be an April 1st Joke. It



is clear that the Plaintiffs had been given earlier Notices. I therefore dismiss the suit in its entirety but spare the Plaintiffs the costs of the same.

JUDGMENT READ AND DELIVERED IN OPEN COURT AT NYAMIRA ON 30TH DAY OF APRIL, 2024

HON. MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: - Brenda

Plaintiffs' Counsel - Mr. Mirieri

Defendant's Counsel – Ms. Wanjohi holding brief for Mr. Omwenga

