



REPUBLIC OF KENYA



KENYA LAW
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**Gachuru v Wabiru (Environment & Land Case 192 of 2015)
[2025] KEELC 231 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 231 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 192 OF 2015
JO OLOLA, J
JANUARY 30, 2025**

BETWEEN

PRISCILLA WANJIRU GACHURU PLAINTIFF

AND

HARRISON KARIUKI WABIRU DEFENDANT

JUDGMENT

Background

1. By a Plaintiff dated and filed herein on 3rd July, 2015, Priscilla Wanjiru Gachuru (the Plaintiff) prays for the following against the Defendant:
 - a. The Defendant be ordered to demolish and remove his building and structures that are in her land, Aguthi/Gatitu/3018;
 - b. The Defendant be ordered to cease and stop any acts of trespass and a permanent injunction do issue stopping him from entering or occupying her land;
 - c. The Defendant do pay costs of this suit; and
 - d. The Honourable Court be pleased to grant the plaintiff any other or further relief it may deem fit to grant.
2. Those prayers arise from the Plaintiff's position that she has at all material times been the registered proprietor of the parcel of land known as Aguthi/Gatitu/3018 which borders the Defendant's parcel of land known as Aguthi/Gatitu/3023. It is the Plaintiff's case that the Defendant has built on a portion of her land and that despite being made aware of the same, the Defendant has refused to remove the same.



3. Harrison Kariuki Wabiru (the Defendant) is opposed to the grant of the prayers sought by the Plaintiff. In his statement of Defence dated and filed on 3rd June, 2016, the Defendant denies having encroached upon and/or building a residential house on the Plaintiff's parcel of land.
4. It is the Defendant's case that the Plaintiff bought her parcel of land in the year 2005 with the current boundaries after the previous owner had relinquished his interests on a portion of land measuring 110 X 10 Feet to the Defendant's predecessor in title.
5. The Defendant further avers that the dispute herein concerns the boundary of the two parcels of land and that this court has no jurisdiction to determine the same as provided under Section 18(2) of the [Land Registration Act](#) No. 3 of 2012.

The Plaintiff's Case:-

6. The Plaintiff called two witnesses in support of her case at the trial.
7. PW1 – Priscillah Wanjiru Gachuru is the Plaintiff and a retired Civil Servant. Relying on her recorded Statement, PW1 testified that she bought L.R. No. Aguthi/Gatitu/3018 measuring 50 X 100 Feet from one Anthony Nguuri Wanjau in the year 2005. She told the court the seller had shown her all the beacons and that the same was developed.
8. PW1 told the court that on the lower part of the plot she bought there was a permanent building belonging to the Defendant and that the seller showed her a Ruling by the Land Registrar requiring the building to be demolished. In the year 2006, PW1 approached the Defendant's agent and enquired when the Defendant would remove the building. The Defendant's agent warned PW1 never to go back to the house as according to the agent, the Plaintiff had gone there to collect rent.
9. PW1 testified that she thereafter approached an Advocate who filed Nyeri CMCC No. 748 of 2006 against the Defendant. That suit was later struck out and PW1 then filed a dispute before the Land Registrar Nyeri. The Defendant refused to comply with the Land Registrar's Ruling thereby compelling PW1 to institute this suit.
10. PW2 Anthony Nguuri Wanjau is a farmer in Mukurweini. He told the court he is the one who sold the suit property to the Plaintiff. Relying on his recorded statement dated 8th August, 2023, PW2 told the court the suit property was a sub-division of LR No. Aguthi/Gatitu/46 and that he bought the same from one Charles Wachira Wahome.
11. PW2 told the court that all the sub-divisions were developed except L.R. No. Aguthi/Gatitu/3017 which was being used by the said Charles Wachira Wahome as an access road to his other plots. PW2 told the court Charles went on to construct some structures on the empty plot and on part of L.R. No. Aguthi/Gatitu/3018.
12. PW2 testified that the new structures became a nuisance to the owners of the other plots and they were forced to seek the intervention of the District Land Registrar who visited the site and ordered that they be removed. PW2 further told the court that the structures built on Plot No. 3017 were removed but those on Plot No. 3018 were not removed.
13. PW2 told the court that when he sold Plot No. 3018 to the Plaintiff he had told her that the structures thereon were for demolition. He told the court he had not sold those structures to the Plaintiff since they did not belong to him. He further told the court that if the Land Registrar's orders were fully complied with the structures could have been demolished.



The Defence Case

14. The Defendant equally called two witnesses in support of his case.
15. DW1- Harrison Kariuki Wabiru is the Defendant himself and a resident of Karatina. Relying on his statement recorded on 9th June, 2016, DW1 testified that he is the registered proprietor of LR No. Aguthi/Gatitu/3023 together with its private access road and the development standing thereon. He told the court he bought the property from one Charles Wahome Wachira on 16th November, 1999.
16. DW1 told the court the seller introduced him at different times to his neighbors before going away. One of the neighbors Anthony Nguuri Wanjau later sold off his property to the Plaintiff herein. DW1 told the court the Plaintiff did not purchase the access road which was already part of the Defendant's land.
17. DW2- Makata Abdi Mwinyi is a businessman and the former proprietor of the suit property. He told the court the parties are his neighbors having bought the land which he had sub-divided and sold.
18. DW2 told the court he was the owner of the original title No. Aguthi/Gatitu/46 measuring approximately 5 to 6 Ha. He sub-divided the same into various portions including Plot Nos. 3018, 3019 and 3023. DW2 told the Court he is still the owner of Plot No. 3019 and that he was aware the Plaintiff had encroached on his plot as well as Plot No. 3023 which belongs to the Defendant.
19. DW2 testified that they had entered into an agreement with the Plaintiff on 13th July, 2017 that she would vacate the area she had encroached on.

Analysis and Determination

20. I have carefully perused and considered the pleadings filed by the parties herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused the submissions and authorities placed before me by the Learned Advocates representing the parties.
21. By her suit as filed herein, the Plaintiff has urged the court to order the Defendant to demolish and remove his building and other structures that the Defendant is said to have erected on the parcel of land known as Aguthi/Gatitu/3018. In addition, the Plaintiff has urged the Court to issue a permanent order of injunction restraining the Defendant from any further acts of trespass upon the suit property.
22. It is the Plaintiff's case that she is the registered proprietor of the said parcel of land measuring some 50 X 100 Feet. It is further the Plaintiff's case that the Defendant who is the proprietor of an adjacent parcel of land has put up a building that occupies her portion of land thereby reducing its size substantially.
23. On his part, the Defendant denies encroaching upon and or constructing a building on the Plaintiff's portion of land. It is his case that he bought his parcel of land as it is in the year 1999 and that in the year 2005 when the Plaintiff purchased her own Plot No. 3018, the previous owner thereto had relinquished his interest on a portion of land measuring some 110 X 10 feet to the Defendant.
24. In support of her case, the Plaintiff produced a Certificate of Lease for the said L.R. No. Aguthi/Gatitu/3018 indicating that she was registered as the proprietor thereof on 20th July, 2005. As to the circumstances under which the same came to be registered in her name, the Plaintiff told the court that she had purchased the same from one Anthony Nguuri Wanjau in the year 2005.
25. According to the Plaintiff, as at the time of the purchase, she noted that there was a permanent building belonging to the Defendant on the lower part of the property she had purchased. She told the court



the vendor had then showed her a Ruling made by the Land Registrar which required the Defendant to demolish the said building.

26. On his part, the Defendant produced a Certificate of Lease for L.R. No. Aguthi/Gatitu/3023 as well as a Sale Agreement indicating that he purchased the said property from one Charles Wahome Wachira on 16th November, 1999. It was the Defendant's case that he had purchased the property together with another portion measuring 110 X 10 feet road of access from the said Charles Wahome Wachira.
27. From the material placed before the court, it was apparent that the two parcels of land were part of the sub-division of a parcel of land originally known as Aguthi/Gatitu/46 then registered in the name of the family of Abdi Makata Mwinyi (DW2). That sub-division yielded Plot Nos. 3017, 3018 and 3023 among others. It was also apparent from the evidence placed before the court that at some point in time, the three plots were sold by DW2's family to one Charles Wahome Wachira.
28. There was no dispute that before he re-sold the three parcels of land, the said Charles Wahome Wachira resided on Plot No. 3023 and that he had also developed and built various structures on the other two parcels of land.
29. From the testimony of Anthony Nguuri Wanjau (PW2) he did purchase the suit property from the said Charles in the year 1998. It is PW2 who later sold the land in the year 2005 to the Plaintiff herein.
30. While the Plaintiff did not produce any Sale Agreement, the Defendant produced the Sale Agreement between himself and the said Charles Wahome Wachira. The Agreement executed on 16th November, 1999 provides under Clause 1 thereof as follows:

The property being sold is Plot No. Aguthi/Gatitu/3023 registered as owned by the vendor herein together with the (110 X 10) feet road of access plus all the developments therein (houses).

31. Arising from the foregoing, it was evident that in addition to the plot known as Aguthi/Gatitu/3023, the vendor had also sold a portion of land he considered his access road together with the developments thereon. It was also apparent to me that the permanent building that the Plaintiff desires the Defendant to demolish, was one of the developments that had been sold to the Defendant.
32. While the Plaintiff insisted that the Defendant's building had reduced the size of the suit property, it was clear to me that that had indeed been the intention of the original owner – Charles Wahome Wachira. At Page 18 of their bundle of documents, the Defendant has produced a letter dated 25th August, 1998 written by Charles to Anthony Nguuri Wanjau (PW2) and signed by both of them. That letter reads in the relevant portion as follows:

“Enclosed is your letter duly signed by me. From 25th August, 1998 I have formally handed over the premises and the keys to you and all matters related to the premises are your responsibility except the 13 feet road of access to my house as agreed.”

33. Arising from the foregoing, it was evident that PW2 did not take vacant possession of the disputed portion of land from Charles. It was actually PW2's evidence before the court that he did not sell the structures erected on the said portion of land to the Plaintiff as they did not belong to him. He also confirmed that he had not bought those structures. He could not do so because they belonged to Charles who was then still in occupation of Plot No. 3023. A year later, Charles disposed off his possession to the Defendant and moved away from the area.



34. Since PW2 had not taken possession of the disputed portion, he could not have handed over vacant possession thereof to the Plaintiff herein some six years later when he sold the same and the Plaintiff was clearly mistaken in her assumption that the portion of land belonged to her.
35. Indeed, in the circumstances herein, I was unable to see any boundary dispute upon which the Land Registrar could pronounce himself. There was no boundary dispute. All that happened was that the original owner of the land had failed to formally sub-divide the section described as measuring 110 X 10 feet from the suit property at the time of sale and to amalgamate the same to the Defendant's title. That omission did not entitle the Plaintiff to the portion of land.
36. It follows that I was not persuaded that there was any merit in the Plaintiff's case. The same is dismissed with costs to the Defendant.

**JUDGMENT DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS
SIGNED AND DATED AT MOMBASA THIS 30TH DAY OF JANUARY 2025.**

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J.O. OLOLA

JUDGE

Judgement delivered in the presence of:

- a. Firdaus the Court Assistant.
- b. Mr. Kebuka Wachira Advocate for the Plaintiff
- c. Mr. Mwaniki Advocate for the Defendant

