



REPUBLIC OF KENYA



**Ngaurr v Muguku & 2 others (Environment & Land Case  
105 of 2018) [2024] KEELC 3875 (KLR) (29 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3875 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 105 OF 2018**

**MN GICHERU, J**

**APRIL 29, 2024**

**BETWEEN**

**MOSES PALIMELES OLE NGAURR ..... PLAINTIFF**

**AND**

**LEAH WANJIKU MUGUKU ..... 1<sup>ST</sup> DEFENDANT**

**THE HON ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**THE DISTRICT LAND REGISTRAR, NGONG ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants.
  - i. A declaration that L.R. Ngong/Ngong/225 belongs to the plaintiff.
  - ii. Order to the District Land Registrar Ngong to comply with the Chief Land Registrar's orders in the letter dated 6/5/2011 requiring him to reconstruct the register in regard to the Title Deed held by the plaintiff.
  - iii. Mesne Profits from the 1<sup>st</sup> defendant and damages for trespass.
  - iv. A permanent injunction barring the 1<sup>st</sup> defendant either by herself or through representatives, agents, employees and servants from trespassing upon Ngong/Ngong/225.
  - v. Costs of this suit and interest at court rates.
  - vi. Such other and further relief as the court may deem fit. This is as per the plaint dated 27/5/2015.
2. The Plaintiff's case is as follows. He is the registered owner of L.R. Ngong/Ngong/255, suit land. He got registered on 13/5/1989 and he was issued with the title deed. He inherited the land from his father



Ole Ngaurr Morera. It came to the attention of the plaintiff that the 1<sup>st</sup> defendant had encroached on the suit land by removing the fence put up by the plaintiff and combining it with her own land Ngong/Ngong/632. Before this the suit land had been registered to Samuel Monaya Sekento but the dispute between him and the plaintiff was resolved in favour of the plaintiff. When the plaintiff discovered the new encroachment onto the suit land by the 1<sup>st</sup> defendant he complained to the Chief Land Registrar who wrote a letter dated 6/5/2011 directing that a register be reconstructed for the suit land and the errors be expunged from the record. The 3<sup>rd</sup> defendant is yet to comply with this directive. In preparation for the site visit, the plaintiff was made to pay Kshs. 6,000/- as fees. He was issued with summons for the site visit but he has never been supplied with a copy of report even after numerous visits to the offices of the surveyor and the Land Registrar. It is when the 3<sup>rd</sup> defendant failed to resolve the dispute that the plaintiff filed this suit.

3. In support of his case, the plaintiff filed the following evidence.
  - a. Witness statement by plaintiff and Nicholas Kasaine Ole Ngaurr.
  - b. Copy of title deed for the suit land.
  - c. Copy of map showing L.R. No. 632.
  - d. Copy of receipt dated 21/6/1995.
  - e. Copies of application for consent of the Land Control Board and the consent letter dated 20/11/2000 and 5/12/2000 respectively.
  - f. Copy of affidavit sworn by Samuel Monana Sekento dated 27/5/2010.
  - g. Copies of correspondence dated 16/6/2010, 26/4/2011, 24/6/2014 and 21/10/2014.
  - h. Copy of certificate of official search dated 15/7/2010.
  - i. Copy of boundary dispute summons dated 8/2/2013.
  - j. Copy of notice to sue issued to Attorney General and dated 30/4/2015.
4. The 1<sup>st</sup> defendant in a written statement of defence dated 15/7/2015 generally denies the plaintiff's claim and avers as follows.

Firstly, L.R. No. 225 does not exist and she owns L.R. Ngong/Ngong/632 which is nowhere near L.R. No. 225.

Secondly, since 1989, her son Daniel Muthanji Muguku has been in occupation of L.R. 632 where he has built a home. She prays for the dismissal of the plaintiff's suit.
5. In support of her case, the 1<sup>st</sup> defendant filed the following evidence.
  - a. Copy of certificate of incorporation of Muguku Poultry Farm Limited.
  - b. Copy of title deed for L.R. Ngong/Ngong/632 in the name of Muguku Poultry Farm.
  - c. Copy of certificate of official search for L.R. 632.
  - d. Copy of Registry Index Map showing the subdivision of L.R. 225.
  - e. Copies of witness statements by the 1<sup>st</sup> defendant, Daniel Muthanji and Samuel Monana Sekento and copy of affidavit by Samuel Monana Sekento.



6. The second and third defendants, in a written statement dated 4/11/2015 generally deny the plaintiff's claim and then aver as follows.

Firstly, L.R. 632 does not adjoin L.R. 255 but it was created from L.R. 255 together with L.R. No. 633. This was on 11/8/1965. L.R. 255 belonged to one Murera Nakuru. It mutated into L.R. 632 measuring 32 acres. L.R. 632 was transferred to John Mokoosio on 5/1/1966 then to Nelson Muguku Njoroge on 7/5/1980. It was later transmitted to the 1<sup>st</sup> defendant on 1/3/2012 through Succession Cause No. 129/2011 at the High Court in Nairobi. Later on 10/1/2013 the 1<sup>st</sup> defendant transferred L.R. 632 to Muguku Poultry Farm Limited.

Secondly, the green card for the suit land is therefore a forgery since L.R. 255 does not exist.

7. In support of their case, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed the following evidence.
  - a. Witness statement by Joel Mwinzi, Land Registrar dated 14/3/2016.
  - b. Copy of green card for L.R. 632 and 633.
  - c. Copy of survey report dated 5/8/2013.
8. At the trial on 8/4/2019, 1/10/2019, 5/10/2021, 8/2/2022 and 23/5/2023 a total of five (5) witnesses testified. They included the plaintiff, the 1<sup>st</sup> defendant, Daniel Muthanje, Samuel Monana Sekento and Kenneth Gitau Njoroge. Each of the two parties adopted their witness statements and documents. They reiterated what is in their pleadings. They were then cross examined by counsel for the adverse party.
9. Counsel for the parties filed written submissions on 15/9/2023 and 27/11/2023 respectively. Both of them are agreed on the issues for determination as follows.
  - i. Whether the plaintiff's suit is time barred.
  - ii. Whether L.R. Ngong/Ngong/255 exists.
  - iii. Whether L.R. No. 255 adjoins L.R. No. 632 and whether the 1<sup>st</sup> defendant encroached on L.R. 255.
  - iv. Whether the plaintiff is entitled to the reliefs sought.
10. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and testimony at the trial. I have also considered the written submissions by both sides including the issues identified and the law cited. I am in agreement with the learned Counsel for the parties that the four issues that they have identified will resolve the dispute. I make the following findings on the issues identified.
11. On the first issue, I find that the plaintiff's claim is not time barred. The 1<sup>st</sup> defendant has not stated anywhere in the pleadings or evidence that they occupy the plaintiff's land or that they have done so far a period of 12 years or more. Had there been such evidence, then the issue of limitation would arise. Since it did not arise earlier, it cannot abruptly arise in submissions.
12. On the second issue, I find that L.R. No. Ngong/Ngong/255 does not exist. The plaintiff who has the burden of proof was not able through evidence to demonstrate where L.R. 255 came from. He should have shown us the number of his father's land as well as the acreage and how L.R. 255 came about. It is the plaintiff who bears the burden of proof because he is the party to fail if no evidence is adduced on either side. Furthermore, it is not disputed that it is the 1<sup>st</sup> defendant who is in possession of the land claimed by the plaintiff. This means that over and above the normal burden of proof imposed on



the plaintiff by Sections 107 and 108 of the Evidence Act, he acquired an extra burden under Section 116 of the same Act which provides,

“When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner”.

The plaintiff has not been able to prove whether he was ever in possession of the suit land and when he lost such possession. This is critical because the 1<sup>st</sup> defendant has been able to prove possession and ownership since the year 1965. In addition to the above, the official records prove that L.R. 255 ceased to exist in 1966 and it did not belong to the plaintiff or his father but to one Murera Nakuru who transferred it to John Mokoosio who transferred it to Nelson Muguku who is the husband to the 1<sup>st</sup> defendant. The concatenation of events and transfers leading to the 1<sup>st</sup> defendant’s ownership of L.R. 632 is clear and official. The plaintiff does not have any root to the land that he claims.

13. On whether L.R. No. 255 abuts L.R. 632 and whether the 1<sup>st</sup> defendant has encroached on L.R. 255, I find that L.R. No. 255 does not abut L.R. 632 because as we have found, it does not exist. The 1<sup>st</sup> defendant cannot therefore encroach on non-existent land.
14. On whether the plaintiff is entitled to the reliefs sought, I find that he is not because the land does not exist. I dismiss the plaintiff’s suit with costs to the defendants.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29<sup>TH</sup> DAY OF APRIL 2024.**

**M.N. GICHERU**

**JUDGE**

