



REPUBLIC OF KENYA



Kaguthi & 3 others v New Gatundu Mixed Farmers Co. Ltd (Environment & Land Case 51 of 2023) [2024] KEELC 3500 (KLR) (25 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3500 (KLR)

FORMERLY NYAHURURU ELC. 18 OF 2019

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA

ENVIRONMENT & LAND CASE 51 OF 2023

YM ANGIMA, J

APRIL 25, 2024

BETWEEN

JOSHUA NGUGI KAGUTHI 1ST PLAINTIFF

JOSEPH NDINIKA CHEGE 2ND PLAINTIFF

DANSON MUIRURI KABARI 3RD PLAINTIFF

ZAKAYO MINAE THUO 4TH PLAINTIFF

AND

NEW GATUNDU MIXED FARMERS CO. LTD DEFENDANT

JUDGMENT

A. Plaintiffs' Claim

1. By a plaint dated and filed on 04.04.2019 the Plaintiffs sued the Defendant seeking the following reliefs:
 - a. A declaration that the sub-division, distribution and allocation of parcels of land known as Nyandarua/Sabugo/2651, Nyandarua/Sabugo/241, Nyandarua/Sabugo/116 and Nyandarua/Sabugo/90 violated the provisions of the companies Act Cap. 486 Laws of Kenya hence illegal and null and void *ab initio*.
 - b. The cancellation of any sub-division of parcels of land known as Nyandarua/Sabugo/251, Nyandarua/Sabugo/241, Nyandarua/Sabugo/116 and Nyandarua/Sabugo/90 and amalgamation/consolidation of the same.
 - c. A permanent injunction pending hearing of the suit, temporary injunction restraining the Defendant either in person, agent, servants, employee from evicting, selling, sub-dividing, allocating and or dealing with parcels of land known as Nyandarua/Sabugo/251, Nyandarua/



Sabugo/241, Nyandarua/Sabugo/116 and Nyandarua/Sabugo90 in a manner adverse to the Plaintiffs.

- d. A mandatory order compelling the Defendant to call/convene a general or special meeting to facilitate the distribution of the suit parcels of land to its members.
 - e. Costs and interest of the suit.
2. The Plaintiffs pleaded that they were bona fide members of the Defendant (the company) and that they were suing on their own behalf and some 300 members who were resident on the company's properties known as Title Nos. Nyandarua/Sabugo/251 and 241. The Plaintiffs pleaded that the company had through imposters who were claiming to be legitimate officials illegally and fraudulently sub-divided the suit properties and caused some portions thereof to be allocated to strangers and non-members of the company some of whom had sought to evict genuine members from the suit properties.
3. The Plaintiffs pleaded the following particulars of fraud and illegality against the Defendant in paragraph 10 of the plaint:
- a. Failing to convene a special meeting to pass a resolution to validate the distribution and sub-division of the suit parcels of land.
 - b. Failing to procure the requisite land control board consent.
 - c. Illegally removing/lifting restriction lodged against the suit parcels.
 - d. Failure to convene an annual general meeting since the year 2000.
 - e. Allowing imposters to run the operations of the Defendant.
 - f. Forging signatures of bona fide deceased directors.
 - g. Issuing title deeds to non-members and imposters.

B. Defendant's Defence

4. The Defendant filed a defence denying the Plaintiffs' claim in its entirety and putting them to strict proof thereof. It denied any fraud or illegality in its dealings with the suit properties and denied all the particulars of fraud and illegality pleaded in the plaint. It pleaded that at all material times it acted in accordance with its objectives and that at all material times the members of the company were consulted on the sub-division and allocation of the suit properties. It was further pleaded that the 1st – 4th Plaintiffs were all allocated land by the company from amongst Parcel Nos. 116, 241 and 251 and that they had taken possession and settled on their respective portions hence they had no legitimate cause of action against the company.

C. Trial of the Action

5. At the hearing hereof the 1st Plaintiff, Joshua Kaguthi testified on his own behalf and on behalf of his Co-Plaintiffs. He adopted the contents of his supporting affidavit sworn on 04.04.2019 as his evidence in chief and produced the documents in the Plaintiffs' list of documents as exhibits. Although the Plaintiffs had pleaded in paragraph 6 of the plaint that there were over 300 members residing on the suit properties, PW1 disputed this at the trial and stated that they were fewer than 100. PW1 conceded that he was aware that the suit properties were subdivided after the issuance of the consent of the Land Control Board (LCB) but he did not agree with the mode of sub-division and distribution. It also transpired at the trial that the 3rd and 4th Plaintiffs were deceased and that the 1st Plaintiff did not have legal authority to represent them at the trial.



6. The Defendant, on the other hand, called one witness George Wathaka Kangethe to testify on its behalf. He stated that he was the Chairman of the Company and he adopted the contents of his replying affidavit sworn on 08.07.2019 and his witness statement dated 12.09.2022 as his evidence in-chief. He testified that the suit properties were sub-divided and distributed amongst members lawfully and that all necessary approvals were obtained from the relevant authorities. It was his evidence that a meeting of members was held prior to distribution whereby it was agreed that those members in occupation would be allocated 2 acres each whereas those who were not would get ¼ acre each. He denied all the allegations of illegality and fraud pleaded by the Plaintiffs and contended that the 1st Plaintiff had even attended the LCB for consent during the process of sub-division and distribution of the suit properties.

D. Directions on Submissions

7. Upon conclusion of the trial, the parties were granted timelines within which to file and exchange their respective submissions. The record shows that the Plaintiffs filed written submissions dated 19.02.2024 whereas the Defendant filed written submissions dated 02.02.2024.

E. Issues for Determination

8. The court has noted that the parties did not file an agreed statement of issues for determination. As such, the court shall frame the issues for determination as stipulated under Order 15 rule 2 of the Civil Procedure Rules, 2010. Under the said rule, the court may frame issues from any of the following:
 - a. The allegations contained in the pleadings.
 - b. The allegations made on oath by or on behalf of the parties.
 - c. The contents of documents produced by the parties.
9. The court has considered the pleadings, evidence and documents on record in this matter. The court is of the opinion that the following are the key issues which arise for determination herein:
 - a. Whether the Plaintiffs have proved their claim against the Defendant to the required standard.
 - b. Whether the Plaintiffs are entitled to the reliefs sought in the suit.
 - c. Who shall bear costs of the suit.

F. Analysis and Determination

a. Whether the Plaintiffs have proved their claim against the Defendant to the required standard

10. The court has considered the evidence and submissions on record on this issue. It is evident from the material on record that the Plaintiffs' claim was based upon alleged fraud and illegality particulars whereof were pleaded in the plaint. The court has considered the Plaintiffs' allegations that the Defendant had failed to convene annual general meetings since 2000; that it had allowed imposters to run its operations; and that it had failed to convene a special general meeting to validate the sub-division and distribution of the suit properties.
11. The court is of the opinion that those particulars do not constitute particulars of fraud as known to law since they are merely complaints relating to the internal affairs and operations of the company. The court is of the opinion that those are matters which are governed by company law and the articles of association of the company and they do not relate to the environment, the use and occupation of land, or title to land as contemplated under Article 162(2)(b) of the Constitution of Kenya, 2010 and Section



- 13(1) of the [Environment and Land Court Act](#), 2011. Moreover, the relevant articles of association of the company were not produced at the trial to demonstrate their alleged violation by the Defendant.
12. The court is of the view that the Plaintiffs' allegation that the Defendant had illegally removed restrictions registered against the suit properties was not proved at the trial. The evidence on record shows that the Defendant was the registered owner of the suit properties at the material time hence a land owner is, prima facie, entitled to apply to the land registrar for removal of any restriction which may have been registered against its property. It is clear from the provisions of Section 78 of the [Land Registration Act](#), 2012 that the authority to remove a restriction lies solely with the land registrar and not the land owner. There is no evidence on record to show that the restrictions were removed by the Defendant. As such, if the Plaintiffs were aggrieved by their removal then they ought to have joined the land registrar in the suit to enable them demonstrate any illegality on his part.
 13. The court has considered the Plaintiffs' allegations that the Defendant had forged signatures of deceased directors and issued title deeds to non-members and imposters. The court is unable to find any credible evidence on record to demonstrate the alleged forgery. The particulars of the deceased directors were not specified in the plaint. There was no evidence that the alleged forgery was reported to any law enforcement agency for investigation and action. There was also no credible evidence to demonstrate that non-members had been allocated land by the Defendant. No particulars of the alleged imposters were pleaded in the plaint.
 14. Finally, the court has considered the Plaintiffs' complaint that the Defendant did not obtain consent from the land control board prior to undertaking sub-division of the suit properties. The material on record shows that the Defendant did apply for consent to sub-divide the suit properties into various portions. For instance, there is evidence on record that consent was granted for sub-division of parcel 241 into various portions and at least 30 consent letters were produced by the Defendant. The 1st Plaintiff conceded at the trial that he was aware that the suit properties were subdivided upon issuance of the consent of the LCB but he contended that he did not agree with the mode of distribution. The court finds the Plaintiffs' allegations unproved. The material on record further shows that the Plaintiffs were allocated two (2) acres of land save for the 3rd Plaintiff who was allocated 3 acres. They all took possession and settled on their respective portions hence the issue of consent was not raised in good faith.
 15. The material on record further shows that the Defendant had a membership of about 3200 in Kenya and that it owned parcels of land in other parts of the country. The 1st Plaintiff conceded at the trial that he was aggrieved because he was expecting a bigger allocation than 2 acres hence the motivation for filing suit. The material on record further shows that some of the Defendant's members in Kiambu County were allocated $\frac{1}{4}$ acre each. During cross-examination by the Defendant's advocate the 1st Plaintiff conceded that there was a meeting amongst members of the company, the directors, and the local administration on the distribution of the land but contended that he did not agree with the resolutions passed at the meeting. The court is of the view that since resolutions are passed by the majority in a company then the dissenting minority is bound by such resolutions. The court is thus of the opinion that the Plaintiffs have no legitimate grievances on the size of the land allocated to them.
 16. For the foregoing reasons, the court finds that the Plaintiffs have failed to prove the allegations of fraud and illegality pleaded against the Defendant. The court is further of the opinion that the Plaintiffs have failed to prove their claim against the Defendant to the required standard hence their suit ought to fail.
 17. The court finds it strange that although the Plaintiffs claimed that there were about 300 members on the suit properties who were aggrieved by the Defendant's actions none of those members supported the Plaintiffs' suit. They did not seek to be joined in the proceedings and they did not attend court



to testify in support of the Plaintiffs' suit. It would thus appear that the Plaintiffs were pursuing their own personal interests whilst invoking the name of 300 disinterested members.

b. Whether the Plaintiffs are entitled to the reliefs sought in the suit

18. The court has found and held that the Plaintiffs have failed to prove their pleaded claim against the Defendant to the required standard. It would, therefore, follow that the Plaintiffs are not entitled to the reliefs sought in the suit, or any one of them.

c. Who shall bear costs of the suit

19. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons v Twentsche Overseas Trading Co. Ltd* [1967] EA 287. The court finds no good reason to depart from the general rule. As a result, the Defendant shall be awarded costs of the suit to be borne by the 1st and 2nd Plaintiffs jointly and severally.

G. Conclusion and Disposal Orders

20. The upshot of the foregoing is that the court finds and holds that the Plaintiffs have failed to prove their claim against the Defendant to the required standard. The court further finds and holds that the Plaintiffs are not entitled to the reliefs sought in the suit. Consequently, the court makes the following orders for disposal of the suit:

- a. The Plaintiffs' suit be and is hereby dismissed in its entirety.
- b. The Defendant is hereby awarded costs of the suit to be borne by the 1st and 2nd Plaintiffs jointly and severally.

It is so decided.

JUDGMENT DATED AND SIGNED AT NYANDARUA THIS 25TH DAY OF APRIL, 2024 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Odhiambo for the Plaintiffs

Mr. Njiru Mbogo for the Defendant

C/A - Carol

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Y. M. ANGIMA

JUDGE

