



Mwangi (Being the Administrator of the Estate of the Late Emily Kanyi Mwangi) v Mwangi & another (Environment & Land Case 37 of 2018) [2024] KEELC 3428 (KLR) (25 April 2024) (Judgment)

Neutral citation: [2024] KEELC 3428 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 37 OF 2018
MN GICHERU, J
APRIL 25, 2024**

BETWEEN

ALICE NJERI MWANGI (BEING THE ADMINISTRATOR OF THE ESTATE OF THE LATE EMILY KANYI MWANGI) PLAINTIFF

AND

HILDA NYAMBURA MWANGI 1ST DEFENDANT

DISTRICT LAND REGISTRAR, KAJIADO 2ND DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the two defendants both jointly and severally.
 - a. A declaration that the transfer of the suit land i.e. Title No. Ngong/Ngong/25924 from the deceased Emily Kanyi Mwangi to the first defendant was obtained unprocedurally, illegally and the same is null and void and it be cancelled.
 - b. A mandatory injunction to compel the 2nd defendant to cancel and rectify the land register for the suit land to revert to the plaintiff. This is as per the plaint dated 25/9/2012.
2. The plaintiff's case is as follows. She is the administratrix of the estate of her late mother Emily Kanyi Mwangi who filed this suit in 2012 but sadly died before it could be concluded. The plaintiff is also a sister to the first defendant. The deceased was the registered owner of the suit land. Through trickery the 1st defendant made her mother sign some documents which included forms transferring the suit land to the 1st defendant. She also deceived her mother to take the title deed to the office of Barongo Ombasa Advocate while lying to her that it would be safer there and that it would be returned to her once the advocate had finished dealing with it. The old lady was then sickly and on heavy medication. She had uncontrolled hypertension and ischaemic heart disease.



- After a long time, the deceased asked the 1st defendant for the title deed. It was not available. It is then that the mother learnt that the 1st defendant had transferred family land to herself alone through deceit.
3. In a bid to recover her land, the deceased filed Tribunal Case No. TC/203/7/2010 at the Land Disputes Tribunal, Kajiado North. The tribunal ruled in the favour of the deceased by ordering that the suit land be transferred to her and the executive office of the court to sign the transfer documents if the 1st defendant was reluctant to comply with the tribunal order. Aggrieved by the decision of the tribunal, the 1st defendant filed a Judicial Review application being J.R. No. 77 of 2011 at Machakos challenging the jurisdiction of the tribunal to order the cancellation of the title deed issued to her. The High Court quashed the orders issued by the tribunal. It was after the quashing of the orders of the tribunal that the deceased filed this suit. It was the contention of the deceased and it is also the contention of current plaintiff that the 1st defendant does not live on the suit land. She is married and lives in Kawangware and the last time she lived on the land was 1986. On the other hand, the plaintiff has been living on the land since 1985. If the land reverts to the name of the deceased, the entire family of the deceased will decide what to do with it.
 4. According to the plaintiff, there are many irregularities with the process that led to the 1st defendant being registered as the owner of the suit land. For example, letter of consent issued by the Land Control Board dated 6/10/2009 clarifies the nature of transaction as a transfer instead of a gift yet no consideration was paid. The transfer form dated 22/3/2010 gives the value of the land as Kshs. 200,000/-when it was valued at Kshs. 7.4 million. Soon after the 1st defendant obtained the title deed for the suit land, she issued an eviction notice to the occupiers of the land. She did not want her mother to be buried on the suit land yet it is family land owned by the entire family but not by the 1st defendant alone.
 5. The following evidence was filed in support of the plaintiff's case.
 - a. Witness statements by Emily Kanyi Mwangi dated 25/9/2012 and Alice Njeri Mwangi dated 7/12/2018.
 - b. Copies of ruling in HCCC No. 77 of 2011 at Machakos and Tribunal decision.
 - c. Copies of application for consent and consent of the land control Board dated 5/10/2009 and 6/10/2009 respectively.
 - d. Copy of transfer form dated 22/10/2010.
 - e. Copy of letter from Pastor John Mutitu.
 - f. Copy of medical report from KNH dated 15/6/2011.
 - g. Copies of letters to Land Disputes Tribunal dated 10/7/2010 and 17/9/2010 respectively.
 - h. Copy of letter from Barongo Ombasa Advocates dated 5/7/2010.
 6. The 1st defendant, through counsel on record filed an amended statement of defence and counterclaim dated 23/7/2020 in which she generally denies the plaintiff's claim and then makes the following averments.

Firstly, the deceased has various parcel of land at Karati in Naivasha which have been bequeathed to the plaintiff, Adam Maina, Moses Kiarie, Festus Kirathi and four other grandchildren each of them receiving 1 ½ acres respectively. It is only the 1st defendant who got no land from the deceased and upon this realization, she bequeathed the 1st defendant the suit land.



Secondly, the deceased on her own volition transferred the suit land to the 1st defendant by instructing the firm of Barongo Ombasa to carry out the transfer on her behalf and attending the Land Control Board. At this time she was of sound mind and in good health.

Thirdly, the 1st defendant admits that the plaintiff resides on the suit land but with her permission.

Fourthly, the suit land was a gift from her mother inter vivos and it is Alice Njeri who instigated the mother to file the tribunal case as well as the current one.

Fifthly, the defendant prays for a permanent injunction to issue against the plaintiff, her agents, servants, employees, assigns, and/or personal representatives acting under her instructions and/or directions from interfering with, alienating, dispossessing and/or any other manner howsoever abrogating the 1st defendant's rights as the duly registered proprietor of the suit land.

Finally, she prays for the costs of the suit and interest thereon at the rate of 25% per annum with effect from the date of filing of the suit until payment in full.

7. In support of her case, the 1st defendant filed the following evidence.
 - a. Witness statement dated 22/10/2012.
 - b. Copy of title deed for the suit land dated 1/4/2010.
 - c. Copies of certificate of official search, application for consent of the Land Control Board and mutation form all dated 26/10/2010, 5/10/2009, 6/10/2009 and 9/2/2009.
 - d. Copies of letters dated 17/9/2010, 1/8/2010 and 19/8/2010.
 - e. Copy of transfer of land form, photographs and receipts.
 - f. Copies of green cards and certificates of official search for L.R. Naivasha/Maraigushu Block 4/2316-21 and 362.
 - g. Copy of receipt dated 22/9/2022 being number 316023.
8. The second defendant did not enter appearance or file a defence in this suit.
9. At the trial on 31/10/2022 and 6/3/2023 only the plaintiff Alice Njeri Mwangi and the 1st defendant Hilda Nyambura testified. Each one of them adopted the witness statements and documents on record as their evidence. They were then subjected to cross-examination by counsel for the opposite side. Each one of them reiterated what is in their pleadings, witness statements and documents.
10. Counsel for the parties filed their written submissions on 12/1/2024 and 19/2/2024 with the defendant's counsel filing first. The following issues were identified as coming up for determination.
 1. Whether the deceased, Emily Kanyi Mwangi, voluntarily allocated and transferred the suit land to the 1st defendant.
 2. Whether the 1st defendant fraudulently and illegally alienated the suit land.
 3. Whether the deceased allocated and transferred to the plaintiff and other siblings various parcels of land in Karati within Naivasha.
 4. Whether the plaintiff instigated the deceased to file this suit without just cause or legal justification to dispossess the 1st defendant of the suit land.
 5. Whether this cause of action is re judicata vis a vis Machakos HCC JR. No. 77 of 2011.



6. Whether the plaintiff merits the prayers pleaded in the plaint.
 7. Whether the 1st defendant merits the prayers pleaded in the counterclaim.
 8. Who should bear the costs of the suit and counterclaim.
 9. Does this court have power to order the 2nd defendant to rectify the title deed for the suit land which is in the name of the 1st defendant to the name of the plaintiff.
11. 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 submissions by learned counsel for parties, the nine (9) issues raised and the law cited in the submissions.
 12. On the first issue, I find that the deceased Emily Kanyi Mwangi did not voluntarily transfer the suit land to the 1st defendant. Had she done so, she would not have filed TC/203/7/2010 in the year 2010 and this suit in 2012. These two suits are more than sufficient proof that she was defrauded of her land by the 1st defendant. The deceased has been very consistent in her actions and words as can be seen in the pleadings that she was tricked into signing documents that transferred her land against her will. I believe the deceased because she is not just another witness but the mother of the 1st defendant. I believe every word that she has written in her witness statement. This finding also covers the second issue.
 13. On the third issue, I find that the deceased did not transfer any land to her children in her lifetime except to Moses Kiarie to whom she transferred L.R. Ngong/Ngong/25926. In her lifetime, the deceased did not transfer any land to any other person and if she did, none of the parties has brought this out either in the pleadings or the evidence. The 1st defendant in her witness statement dated 22/10/2012 did not say anything about inter vivos gift. The written statement of defence dated 22/10/2012 is also silent on this issue. The amended defence and counterclaim dated 23/7/2020 mentions this inter vivos gift in passing in paragraphs 5 (a) without enumerating who are the deceased's children and who are the grandchildren. A look at the supplementary list of documents dated 25/10/2022 shows land parcels numbers Naivasha/Maraigushu/2316, 2317 and 2318 are still in the names of the deceased. The relationships between the deceased and Boniface Mwaura L.R. 2319 and 2320 and Jeremiah Gakarumi Kyore L.R. 2321 has not been established in evidence. It came up abruptly in the written submissions. It should have come up in the pleadings and evidence so that it could be subjected to rebuttal by way of evidence and cross-examination. Coming up in submissions, it has no probative value.
 14. Looking now at the fourth issue, I find that the plaintiff did not instigate the deceased to file the tribunal case and this case. The finding on the first issue also covers this issue.
 15. Regarding the fifth issue, I find that this suit is not res judicata Machakos HCC JR. 77/2011. The only finding that the court made in the Machakos case was that the tribunal had no power to cancel the title deed issued to the 1st defendant. The court did not say that the title deed was lawfully issued. It made no decision on that aspect.
 16. On whether this court has power to order for the revocation of the title deed in the name of the 1st defendant, yes it has such power. Section 13(2) (a) of the Environment and land Court (Act No. 19 of 2011) provides as follows.

“In exercise of its jurisdiction under Article 162 (2) (b) of *the Constitution*, the court shall have power to hear and determine disputes

- a. relating to ...title...”



That is the provision that gives this court the power to revoke title deeds acquired unlawfully and through fraud.

17. On whether the 1st defendant merits the prayers pleaded in the counterclaim, I find that she does not because she used trickery to obtain the title deed to the land.
18. I find that the plaintiff merits the prayers pleaded in the plaint, the plaintiff here being the original one i.e. Emily Kanyi Mwangi so that the title will revert to her estate for the suit land to be distributed to her lawful heirs.
19. In summary, I enter judgment for the original plaintiff as prayed for in the plaint dated 25/9/2012. I also award the plaintiff costs of the suit.

Secondly, I dismiss the 1st defendant's counterclaim with costs.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 25th Day of April 2024.

M.N. GICHERU

JUDGE

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