



REPUBLIC OF KENYA



**Kimani & another v Muiruri & 3 others (Environment & Land Case
6 of 2019) [2024] KEELC 3340 (KLR) (23 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3340 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 6 OF 2019**

MN GICHERU, J

APRIL 23, 2024

BETWEEN

JAMES NJOROGE KIMANI 1ST PLAINTIFF

TABITHA MUKAMI NJOROGE 2ND PLAINTIFF

AND

ANSEMI NJOMO MUIRURI 1ST DEFENDANT

MARTIN KANGARA 2ND DEFENDANT

DISTRICT LAND REGISTRAR, KAJIADO NORTH 3RD DEFENDANT

THE HON. ATTORNEY GENERAL 4TH DEFENDANT

JUDGMENT

1. The plaintiffs seek the following reliefs against the defendants jointly and severally.
 - a. A permanent injunction restraining the defendants, their agents or servants from selling, charging, leasing, cultivating, or interfering in any way with L.R. No. Ngong/Ngong/4957, suit land.
 - b. A declaration that the title of the 1st defendant, Anselmi Njomo Muiruri with regard to the suit land was procured fraudulently and the same be cancelled forthwith.
 - c. That subsequent to prayer (b) above the 3rd defendant be and is hereby ordered to rectify the register to remove the names of the 1st defendant and title thereto with respect to the suit land to revert to the joint proprietorship of the plaintiffs.
 - d. General damages for trespass to the suit land.
 - e. Costs of the suit.



This is as per the plaint dated 4/5/2016.

2. The plaintiffs' case is as follows. They are the registered joint owners of the suit land having bought the same from Gathinji Ndungu in the year 1982. While purchasing the land, the plaintiffs who are husband and wife, complied with all the procedural requirements like sale agreement, application for consent of the Land Control Board which they obtained, transfer instrument and payment of stamp duty. Soon after purchasing the suit land, the plaintiffs took possession by cultivating thereon growing Sukuma wiki and tomatoes. There has been no dispute on the ownership of the land since 1982. However on 22/4/2016, the land was invaded by the first and second defendants through one Malik. The defendants attempted to fence of the land but they were repulsed by the plaintiffs who also made a report to the police and the District Land Registrar. The said entities were unable to resolve the dispute and this prompted the plaintiffs to file this suit.
3. In support of their case, the plaintiffs filed the following evidence.
 - a. Witness statements by the two plaintiffs dated 4/3/2016.
 - b. Copy of title deed dated 18/5/1982.
 - c. Copy of application for consent of the Land Control Board dated 9/3/1982.
 - d. Copy of letter of consent of the Land Control Board dated 11/3/1982.
 - e. Copy of transfer instruments dated 13/5/1982 and 18/5/1982.
 - f. Copy of certificate of official search dated 25/4/2016 in the name of the first defendant.
 - g. Registration particulars of the first defendant issued by the National Registration Bureau dated 26/4/2016.
 - h. Copy of summons to appear before Land Registrar dated 26/4/2016 issued to the first defendant to appear before the District Land Registrar, Kajiado North.
4. The 1st defendant, through counsel in record, filed a written statement of defence dated 20/2/2017 in which he denies the plaintiffs' claim and avers as follows.

Firstly, he is the registered owner of the suit land and such registration was procedurally obtained after purchasing the land from the plaintiffs.

Secondly, he says that he paid stamp duty as required.

Thirdly, it is now too late in the day for the plaintiffs to try and rescind the sale.

For these and other reasons, he prays that the plaintiffs' suit be dismissed with costs.
5. In support of his case, the 1st defendant filed the following evidence.
 - a. Witness statement by the 1st defendant dated 20/2/2017.
 - b. Certified copy of the transfer instrument dated 10/1/2017.
 - c. Certified copy of letter of Land Control Board dated 10/11/2015.
 - d. Certified copy of the register of the suit land dated 10/1/2017.
6. The 3rd and 4th defendants filed a written statement of defence dated 15/9/2016 in which they generally deny the plaintiffs' claim and add as follows.



Firstly, the transfer of the suit land was done in good faith, in adherence to the law and with the consent of all parties to the transaction. They pray that the plaintiffs suit against them be dismissed.

7. In support of their case, the 3rd and 4th defendants filed the following evidence.
 - a. Witness statement by Joel M. Mwinzi, Land Registrar, dated 22/9/2016.
 - b. Copy of green card for the suit land dated 6/9/2016.
 - c. Copy of stamp duty assessment dated 17/11/2015.
 - d. Copy of receipt for payment of stamp duty from Kenya Commercial Bank.
 - e. Copy of transfer form duly signed and registered
 - f. Copy of letter of consent dated 10/11/2015 together with the application form for consent.
8. At the trial on 8/11/2021 only the plaintiffs testified. According to the second plaintiff, the address of 103619-00101 Nairobi is wrong. Their correct address is 627-001 Nairobi.

Secondly, the photographs of the purported sellers are not theirs.

Thirdly, the ID No. on the transfer form is incorrect.

Fourthly, the P.I.N. given of A000092619C is incorrect. The correct one is A001164287Q.

Fifthly, the second plaintiff did not pay stamp duty as alleged.

Finally, the plaintiffs still have the original title deed issued to them in 1982. The plaintiffs adopted their witness statement and documents and were cross –examined at length by the counsel for the first defendant.
9. The first defendant, even though given ample opportunity to attend court to testify did not do so. The third and fourth defendants did not participate in the trial.
10. The plaintiffs’ counsel filed written submissions dated 4/12/2023 and identified the following issues for determination.
 - a. Whether the 1st and 2nd defendants fraudulently acquired the suit land in collusion with the 3rd defendant.
 - b. Whether the plaintiffs are entitled to the reliefs sought in the plaint.
 - c. Who bears the costs.
11. I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and testimonies at the trial. I have also considered the written submissions on record as well as the issues and the case law cited therein. I find that the issues as identified by the plaintiffs’ counsel will determine the dispute.
12. On the first issue, I find that the 1st defendant fraudulently acquired title to the suit land. In this regard, I believe the evidence by the plaintiffs that they did not sell the land to him and that is why they remain with the original title deed.

Secondly, the particulars of the transferors in the transfer form dated 10/1/2017 are not genuine especially the postal address, the photographs and the P.I.N (Personal Identification Numbers). Further, I do not believe the averments by the first defendant that he bought the land from the plaintiffs. Had he bought the land, he would not have used forged documents to transfer it to himself.



I do entertain the probability that the third defendant was presented with forged documents and failed to detect the forgery. I do not therefore find the 3rd and 4th defendants liable for the fraud perpetrated by the 1st defendant. I find that the plaintiffs have successfully challenged the authenticity of the registration of the 1st defendant as the owner of the suit land under Section 26 of the [Land Registration Act](#).

13. On the second issue, I find that the plaintiffs are entitled to the reliefs sought in the plaint because they did not sell their land to the 1st defendant or any other person.
14. For the above stated reasons, I enter judgement for the plaintiffs against the first defendant as prayed for in the plaint. The costs will be borne by the first defendant alone.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 23RD DAY OF APRIL 2024.

M.N. GICHERU

JUDGE

