



**Ngugi & another v Ngugi (Environment & Land Case 122 of 2022)
[2024] KEELC 4698 (KLR) (13 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4698 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 122 OF 2022**

**JG KEMEI, J
JUNE 13, 2024**

BETWEEN

**KENNETH NGUGI WAIRIMU ALIAS KENNETH NGUGI
MUHINDI 1ST PLAINTIFF**

**FRANCIS MUHINDI KURIA ALIAS FRANCIS MIIRI
MUHINDI 2ND PLAINTIFF**

AND

CHARLES MBUGUA NGUGI DEFENDANT

JUDGMENT

1. Vide a Complaint dated 14/10/2022. The Plaintiff sued the Defendant seeking the following orders:-
 - a. A declaration that the Defendant holds the property known as LR No 20064/2 (Title No IR 88990) in trust for the Plaintiffs.
 - b. The Defendant be ordered to execute all the necessary documents relating to the replacement of the original Title over the suit property.
 - c. The Defendant to execute the transfer and all other relevant documents to facilitate the transfer of the suit property from himself to the Plaintiffs.
 - d. In default by the Defendant in (b) and (c) above, the Deputy Registrar, in the Environment and Land Court at Thika do sign all the relevant documents mentioned in (b) and (c) above in his place.
 - e. Cost of this suit.
2. It is the Plaintiff's case that at all material times to this case the Defendant is the registered trustee of the suit land on behalf and the benefit of the Plaintiffs. That the property derives its origin from the



estate of the late Jadson Ngugi Muhindi who was the grandfather and father of the Plaintiffs and the Defendant respectively.

3. That following the death of the Plaintiff's mother the Plaintiffs were bequeathed the suit land as an inheritance of their mother while they were still minors. The property was then registered in the name of the Defendant as a trustee of the Plaintiffs until they attain the age of majority. Upon the death of their mother Naomi Wairimu the Plaintiffs were placed under the guardianship of their grandmother Gladys Nyokabi Ngugi until her death in 2018. It is further averred that the Plaintiff's grandmother lodged a caution over this property in 2008 to safeguard and preserve it from being sold by the Defendants an action that angered the Defendant. In a twist of events the Defendant swore an Affidavit in 2011 expressing his desire to relinquish or determine the trusteeship in favour of the plaintiffs on the ground that they had attained the age of majority. The Plaintiffs aver that notwithstanding the change of heart by the defendant, the property was not transferred to them because the original title was misplaced or lost and that their efforts to cause the defendant to replace the same has not borne any fruits. They plead that the Defendant has breached the trust created over the property in their favour. Particulars of breach of trust are stated under paragraph 16 of the Plaint together with particulars of damages under paragraph 17 thereof.
4. On 20/12/2022 the Court was informed by the Plaintiffs' Counsel that the Defendant was served with Summons to enter appearance together with the Plaint on 10/11/2022. According to the record the Defendant failed to enter appearance or file any defence to the Plaintiff's claim.
5. On 22/4/2024 the matter proceeded *ex parte* by way of formal proof.
6. PW1 – Kenneth Ngugi Wairimu testified and relied on his witness statement dated 14/10/2022 in support of his claim he produced documents marked as PEX1-13. PW1 led evidence on his own behalf and that of Francis Muhindi Kuria his co-Plaintiff. He stated that he and his co-Plaintiff are the beneficial owners of the suit land registered in the name of the Defendant to hold in trust for them. That the property was part of their mother's inheritance from the estate of Jackson Ngugi Muhindi, their grandfather. That despite several requests urging the Defendant to transfer the land into their favour the Defendant has remained uncooperative. That his actions and omissions are designed to deny them enjoyment of proprietary rights over their inheritance yet the Defendant received his full share of his inheritance from the estate of their grandfather and father respectively. He therefore urges this Court to grant their prayers in the Plaint.
7. On 22/4/2024 Counsel for the Plaintiff elected to file written submissions. However, by the time of preparing this Judgment the Court notes that the Plaintiff did not comply with the said directions and hence no submissions.

Analysis and determination

8. Having considered the pleadings of the Plaintiff together with the evidence led during trial the Court finds that the issues for determination are as follows:-
 - a. Whether the Plaintiffs are entitled to the prayers sought in the Plaint.
 - b. Who meets the cost of the suit?
9. In this case it is not in dispute that the Plaintiffs case against the Defendant has not been controverted. That notwithstanding, the Plaintiff retains the duty to discharge the burden of proof in respect of their



claim. This was the Court's proposition in the case of *Gichinga Kibutha v Caroline Nduku* (2018) eKLR where the Court stated as follows:-

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”

10. It is the Plaintiffs' case that the Defendant holds the suit land in trust for them. The Court has analysed the documents produced by the Plaintiffs during the trial and makes the following observations; that the suit is a subdivision of parcel No LR 182/25 Kiambu which was originally owned by Jackson Ngugi Muhindi, the Plaintiffs and Defendant's grandfather and father respectively. Upon the death of Jackson Ngugi Muhindi the land among others devolved to Gladys Nyokabi Ngugi vide Certificate of Confirmation issued on 2/11/1992.
11. Subsequently vide an instrument of transfer by way of accent dated 11/2/1994 the land was transferred to Gladys Nyokabi Ngugi and later issued with a title on 8/2/1996. Further subdivisions of the original land yielded parcel No 20064/2 measuring 4.452Ha. and registered in the name of Charles Mbugua Ngugi as trustee of Kenneth Ngugi Muhindi (Defendant) and Francis Miiiri Muhindi (Plaintiffs) registered on 25/6/2002. The record also bears a testament to a caveat prepared by Gladys Nyokabi Ngugi dated 12/9/2008 and addressed to the Chief Land Registrar of Lands. In the said letter, Gladys Nyokabi Ngugi introduces herself as the mother and grandmother of the Defendant and Plaintiffs respectively. She sought to lodge a caveat on the suit land to prevent the Defendant from interfering with the said land to the detriment of the Plaintiffs who are beneficiaries of the land. Similar request was contained in the Affidavit sworn on 17/9/2008 by the said Gladys Nyokabi Ngugi.
12. The record also shows an Affidavit sworn on the 1/9/2011 by Charles Mbugua Ngugi where he states as follows:-
 - a. That I am an adult male of sound mind holding Identity Card Number 10875510.
 - b. That I registered as a Trustee for my nephews Kenneth Ngugi Muhindi a.k.a Kenneth Ngugi Wairimu and Francis Miiiri Muhindi a.k.a Francis Kuria Muhindi in respect of Title LR Number 26689.
 - c. That the said Kenneth Ngugi Muhindi a.k.a Kenneth Ngugi Wairimu and Francis Miiiri Muhindi a.k.a Francis Muhindi Kuria are now adults and I wish to be discharged from the said Trustee.
 - d. That the said Kenneth Ngugi Muhindi a.k.a Kenneth Ngugi Wairimu holds Identity Card Number 243XXXXX and is 26 years old whilst Francis Muhindi Kuria holds Identity Card Number 27XXXXX and is 22 years old.
 - e. That I swear this affidavit to inform all and sundry that the minors have now come of age and I am no longer a Trustee on their behalf.
 - f. That all that is deposed is the truth known to me of my own knowledge, information and belief.
13. Further evidence placed before this Court is the notification of approval of development permission inform of PPA2 dated 15/1/2015 addressed to the Defendant as follows:-

“FORM P.P.A 2 FIFTH SCHEDULE

{S.33 (1) (A)}



Registered No Application 014/10/2014

NOTIFICATION OF APPROVAL OF DEVELOPMENT PERMISSION

TO: CHARLES MBUGUA NGIGI

(TRUSTEE FOR KENNETH NGUGI MUHINDI & FRANCIS MIIRI MUHINDI

BOX 899-00902

KIKUYU

Your application, numbered as above, submitted on 14th October 2014 for permission to SUBDIVIDE on LR No 20064/2 situated in KIKUYU has been approved subject to the following/appended condition (s)

- a. Approval granted for TWENTY (20) portions only.
- b. Completing the subdivision within 24 months.
- c. Surrender roads of access to the Government free of cots.
- d. No encroachment into the 10 meter riparian reserve.
- e. No encroachment into the 6 meter right of way.

Dated 15/01/2015 Signed

14. It would appear that the proposed subdivision plan was approved with conditions vide the letter dated 27/1/2015 addressed to the Defendant by the District Land Administration Officer, Kiambu County. The final approval was granted vide the letter dated 13/10/2016 by the County Government of Kiambu.
15. The Court has carefully perused all the documents cited above which clearly demonstrate that the suit land is registered in the name of the Defendant to hold in trust for the Plaintiffs. Uncontroverted evidence was led by the Plaintiffs that they have now attained the age of majority and therefore entitled to a dissolution of trust and registration of the suit land in their names.
16. In the absence of any evidence to the contrary the Court finds that the Plaintiffs have proven their case and consequently I enter Judgment in favour of the Plaintiffs as follows:-
 - a. A declaration be and is hereby made that the Defendant holds the property known as LR No 20064/2 (Title No IR 88990) in trust for the Plaintiffs.
 - b. The Defendant be and is hereby ordered to execute all the necessary documents relating to the replacement of the original Title over the suit property.
 - c. The Defendant to execute the transfer and all other relevant documents to facilitate the transfer of the suit property from himself to the Plaintiffs.
 - d. In default by the Defendant in (b) and (c) above, the Deputy Registrar, in the Environment and Land Court at Thika do sign all the relevant documents mentioned in (b) and (c) above in his place.
 - e. To effectuate the above orders, the trust herein be and is hereby dissolved in favour of the Plaintiffs.
17. I make no orders as to costs.



**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 13TH DAY OF JUNE, 2024
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

1st and 2nd Plaintiffs – Absent but present when the Judgment date was taken

Defendant – Absent

Court Assistant – Phyllis

