



REPUBLIC OF KENYA



**Mwangi & 26 others v Administrators of the Estate of Letoire – Ole Ntirori (Deceased) & 9 others
(Environment & Land Case 534 of 2017) [2024] KEELC 4905 (KLR) (12 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4905 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 534 OF 2017**

MN GICHERU, J

JUNE 12, 2024

BETWEEN

JULIUS ONESMUS MWANGI 1ST PLAINTIFF
LENAH WANJIKU MUIRU 2ND PLAINTIFF
ROSE NJAMBI MUNGA 3RD PLAINTIFF
SUSAN NYAGUTHI GAITITU 4TH PLAINTIFF
JACINYA N. NKONYO 5TH PLAINTIFF
DOROTHY KIMATHI 6TH PLAINTIFF
GICHERU WANDERI ISAAC 7TH PLAINTIFF
JOSEPH MUKAMBI KHAKAME 8TH PLAINTIFF
ZAKARIA MANYURA OGERA 9TH PLAINTIFF
CAROLINE WANGECI MUGO 10TH PLAINTIFF
MARGARET GESARE OGARO 11TH PLAINTIFF
ESTHER NYAGUTHII NDERITU 12TH PLAINTIFF
JEREMIAH ORUKO 13TH PLAINTIFF
REUBEN MICHIRIE MUGO 14TH PLAINTIFF
MUNGAI GACHUHI 15TH PLAINTIFF
NINA LUGONZO 16TH PLAINTIFF
JOHNSTONE AMBROSE ANGAKA 17TH PLAINTIFF
THOMAS OKELLO OWINY 18TH PLAINTIFF
AHMED YUSUF 19TH PLAINTIFF



KEFA OKWEMA BONAYA	20 TH PLAINTIFF
DICKSON WANJALA NASOKHO BARASA	21 ST PLAINTIFF
WILBROTE NASOKHO BARASA	22 ND PLAINTIFF
SAMSON WAMBISI	23 RD PLAINTIFF
LAGAT(THE ADMINISTRATORS OF THE ESTATE OF KANDIE CHEROP	24 TH PLAINTIFF
ESTATE OF NAHASHON MURAYA SIRONIK	25 TH PLAINTIFF
CHRIS M. BICHAGE	26 TH PLAINTIFF
WANJIRU WA SALIM	27 TH PLAINTIFF

AND

THE ADMINISTRATORS OF THE ESTATE OF LETOIRE – OLE NTIRORI (DECEASED)	1 ST DEFENDANT
NAIPOSHA NTIRORI	2 ND DEFENDANT
SANE SERENJI (DECEASED	3 RD DEFENDANT
JOHN OSHUMU LETOIRE	4 TH DEFENDANT
JAMES TAIS LETOIRE	5 TH DEFENDANT
SHADRACK SEPETUKA LETOIRE	6 TH DEFENDANT
RICHARD SAITOTI LETOIRE	7 TH DEFENDANT
PAUL IBUTA LETOIRE	8 TH DEFENDANT
WILSON MESHUKO LETOIRE	9 TH DEFENDANT
DANIEL PARKEITO LETOIRE	10 TH DEFENDANT

JUDGMENT

1. The plaintiffs seek the following reliefs against the defendants.
 - a. A permanent injunction restraining the defendants, their servants and or agents from trespassing, constructing, selling, transferring, wasting, leaving and or disposing the suit property being Kajiado/Kitengela/2601, 5487, 5522 – 5, 23839, 23942, 23944, 24216, 24422 -5, 2530 – 3, 26897, 27227, 27338, 32449 – 51, 32454, 14409, 14417 and 12941.
 - b. An order of eviction to be issued against the defendants from the suit property the same to be executed by the OCS Isinya Police Station.
 - c. An order of demolition of any structures erected in the suit property either permanent or temporary and the same to be executed by the OCS Isinya Police Station.
 - d. Costs of the suit.
 - e. Interest on (c) above.



f. Any other relief that this court may deem fit to grant.

This is as per the further amended plaint dated 11/10/2018.

2. The plaintiffs' case is as follows. They are the registered owners of the suit parcels as follows.

Name Of The Plaintiff LR. No

Rose Njambi Munga 2601

Nahashon Mwaya Sironik 5487

Susan Nyaguthii Gaititu 5522 and 5523

Jacinta N. Nkonyo 5524

Dorothy Kimathi 5525

Gicheru Wanderi Isaac 6762

Zacharia Manyura Ogera 32449 and 32450

Joseph Mukambi Khakame and Zakaria Manyura Ogera 6763 and 22465

Reuben Michire Mugo 22466, 23942, 24216 and 32454

Caroline Wangechi Mugo 22468

Margaret Gesare Ogaro 22469

Julius Onesmus Mwangi and Esther Nyaguthii Nderitu 22470

Jeremia Oruko 23837

Mungai Gacuhu 24422, 24423, 24424 and 24425

Nina Lugonzo 25031 and 26897

Johnstone Abrose Angaka 25032

Thomas Okello Owiny 25033

Ahmed Yussuf 23944

Kefa Okemwa Boraya 27227

Dickson Wanyala Nasokho, Wibrote Nasokho Barasa and

Samson Wambisi 27388

Lenah Wanjiku Muiru 32451

Some plaintiffs bought the suit parcels from Letoie Ole Ntirori deceased. Those who bought from him included Rose Njambi Munga the third plaintiff who obtained her title deed for L.R. No. 2601 on 19/6/1992, Norbert Kawala who acquired L.R. No. 2602 through a transfer and was issued with a title deed on 7/3/1991, Wanjiru Wa Salimu who got registered on 28/6/1993 in respect to L.R. No. 2604 and Chris M. Bichage in respect to L.R. 12941 and 12942 respectively. The rest of the plaintiffs bought from those who bought directly from the late Letoie Ole Ntirori.

3. Rose Njambi Munga for example was introduced to the deceased by a mutual friend. On diverse dates between March 1984 and 1992, she entered into a series of transactions for purchase of L.R. 2601 which measures 28.33 hectares. By then the original land No. Kajiado/Kitengela/2002 was owned by the Ololoitikoshi Kitengela Group Ranch. It was transferred to Letoie Ole Ntirori on 23/3/1989.



He subdivided the original parcel into parcels 2601, 2602, 2603, 2604 and 2605. Rose Njambi funded the process of subdivision and on 19/6/1992 she was issued with a title deed for her parcel 2601.

In 2013, Rose received reports of suspicious activities at Kajiado Land Registry. She was advised to carry out an official search whereupon she found that the green card was missing. On 18/9/2013, she wrote a letter to the District Land Registrar Kajiado complaining about the anomaly. The Land Registrar, in compliance with the law issued a notice on 8/10/2013 through Kenya Gazette No. 14291 in Kenya Gazette Vol. CXV-No. 157 which was published on 1/11/2013. Nobody came forward to oppose the reconstruction of the register (green card). On 27/6/2016, she was issued with a certificate copy of the register (green card). Since then she has conducted several searches at Kajiado Land Registry which have confirmed that she is the registered owner of the land. She is therefore the lawful owner of L.R. 2601. This is as per her witness statement dated 14/12/2021. The case of the rest of the plaintiffs is similar to that of Rose Njambi Munga.

4. In support of their case, the plaintiffs filed the following evidence.
 - i. Witness statements by Joel Mbataru and Zacharia Manyura Ogera.
 - ii. Copies of title deed for all the suit parcels.
 - iii. Copy of letter dated 20/9/2013 written by the plaintiffs to the Land Registrar Kajiado.
 - iv. Copies of reports dated 18/2/2020 by the C.C.I.O Kajiado in respect of L.R. 12941 and 12942.
 - v. Copies of sale agreement between Letoire Ole Ntirori and Isaac Gacheru Wanderi dated 28/12/1983, John Oshumu and Reuben Michire Mugo dated 9/11/2005, James Tais Letoire and Nina Lugonzo dated 9/12/2006, James Tais Letoire and Nina Lugonzo dated 12/4/2007, Letoire Ole Ntirori and Zakaria Ogera Manyaria and Joseph Mukambi Khakame dated 19/12/2006, 6/5/2008 and 31/8/2008, copy of Gazette Notice No. 14291 in respect of L.R. 2601 dated 1/11/2013.
 - vi. Copies of green cards for L.R. 22468, 25031, 6763, 26896, 27228, 32452, 32449, 32451, 32454 and 6793.
 - vii. Copies of mutation forms for L.R. 2605, 6764, 14212, 23943, 26896 and 30328 – 33.
 - viii. Copy of certificates of official search for L.R. 5487.
 - ix. Copy of sketch map dated 4/3/1996.
 - x. Copies of identity cards for Letoire Ole Ntirori, John Oshumu and James Tais Letoire which are numbers 3428425, 14607179 and 20215163 respectively.
 - xi. Copies of affidavits by Lenah Wanjiku Muiru, Chris Bichage, Mungai Gachuhi and a report by Rose Nyambi Munga.
 - xii. Reports P.C. Elijah Njagi.
 - xiii. Copy of grant of letters of Administration in Kajiado High Court Succession Case No. 44 of 2016.
 - xiv. Copies of affidavits in support of the summons for confirmation and another in objection to the confirmation dated 2/10/2017 in Succession Cause No. 44/2016.
 - xv. Copy of replying affidavit dated 6/6/2018 in Succession Cause No. 44/2016.



5. The defendants through counsel on record, filed a defence and counterclaim dated 10/2/2014 in which they aver as follows.

Firstly, they deny the entire claim by the plaintiffs.

Secondly, it is the defendants' case that the plaintiffs' title deeds were obtained fraudulently.

Thirdly, it is stated by the defendants that there is a pending case being ELC 1376/2013 between the 1st and 4th defendants as the plaintiffs and Zachariah Manyara Ogera as the defendant.

Fourthly, in the counterclaim it is stated that the defendants are the registered owners of the suit parcels and the plaintiffs obtained parallel and fraudulent title deeds for the following parcels L.R. 2601, 263767-70, 6793, 49535 – 6 and 60089 which are registered in the names of Letoire Ole Ntirori, Richard Serenyi Letoire, Shadrack Sepekua Letoire, Wilson Meshuko Letoire, Letoire Ole Ntirori, James Tais Letoire and John Oshumu among other title deeds.

Fifthly, the 1st defendant was the registered owner of L.R. No. 2002 and when he subdivided it for the benefit of his family members unscrupulous individuals in collusion with Kajiado County Land Officials created parallel title deeds without the consent and knowledge of the defendants. The particulars of fraud include forging the 1st defendant's signature, documents, transferring the defendants' land without their knowledge, interfering with the records at the Land Registry and making fake title deeds when the genuine ones exist.

Sixthly, the defendants reported the fraud to the police.

6. The defendants pray for the following orders against the plaintiffs.

- a. Permanent injunction restraining the plaintiffs, their agents, servants, representatives and anybody claiming under them in any manner whatsoever from trespassing, encroaching, alienating transferring, wasting or in any manner dealing with L.R. Nos. 2601, 26367 – 70, 6793, 49535 -6, 60089 among others.
- b. An order directing the Kajiado County Land Registrar to cancel the title deeds in paragraph 1 (a) of the plaint.
- c. Costs of the suit.
- d. Interest.
- e. Any other relief that this court may deem fit to grant.

7. In support of their case, the defendants filed the following evidence.

- i. Witness statements by Letoire Ole Ntirori, John Oshumu, Richard Serenyi Letoire and John Gelonto all dated 10/2/2014.
- ii. Copies of title deeds for L.R. 2601, 26368, 26367, 26370, 26369, 6793, 49535, 49536 and 60089 together with copies of certificates of official search dated 21/1/2014.
- iii. Copy of records of the 1st defendant from the Registrar of Persons.
- iv. Copy of letter dated 21/12/2012 by OCPD Ong'ata Rongai withdrawing charges against the 4th and 6th defendants.
- v. Copies of land records.



- vi. Copy of certificate of confirmation of grant.
 - vii. Copy of Land Registrar's Report dated 16/1/2019 and another dated 23/7/2018.
8. At the trial on 10/3/2020, 29/9/2021, 31/1/2022, 8/12/2022, 23/11/2022, 14/3/2023 and 4/12/2023 some plaintiffs, some defendants and their witnesses testified. Each side reiterated its case as per their pleadings. Earlier on 8/11/2022, a consent order had been made to the effect that both parties appear before the District Land Registrar with their original title deeds. The registrar filed a report dated 23/1/2023 which is as follows.
- Firstly, L.R. No. 2601 belongs to Rose Njambi Munga and the title deed issued on 22/5/1990 in the name of Letoire Ole Ntirori is not authentic.
- Secondly, the title deed for L.R. No. 2602 in the name of Letoire Ole Ntirori dated 10/4/1990 is not genuine and the transfer to Norbert Kawala was proper and he had good title which he later subdivided and sold to third parties.
- Thirdly, the transfer of L.R. 2603 to Njoroge Mbugua Gitiba on 18/4/1991 by the deceased is not disputed.
- Fourthly, L.R. No. 2604 was transferred from Letoire Ole Ntirori to Wanjiru Wa Salim and title deed issued on 28/6/1993. The registration was captured in the presentation book of June 1993 as per presentation book No. 487. The land was later subdivided vide a mutation registered on 12/2/2012. The title deed in the name of Letoire Ole Ntirori purporting to have been issued on 10/4/1990 is not genuine. The land was therefore properly transferred by the said Letoire Ole Ntirori to Wanjiru Wa Salim on 28/6/1993 and the title deed issued to her. The same applies to L.R. 2605.
9. Counsel for the parties were parties were to file written submissions by 30/4/2024. Only the 3rd plaintiff's counsel filed written submissions dated 25/4/2024. Counsel by the rest of the plaintiffs and the other defendants did not file any submissions. The issues identified by the 3rd plaintiff's counsel are as follows.
- i. Whether the 3rd plaintiff is the rightful owner of L.R. 2601.
 - ii. Whether the defendants should be evicted from L.R. 2601.
 - iii. Whether a permanent injunction should issue against the 1st defendant and the estates' beneficiaries; and,
 - iv. The value of the findings of the Land Registrar Kajiado.
10. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents, the testimony at the trial and the reports by the Land Registrars especially the one dated 23/1/2023. I find that the following issues arise.
- i. Whether it is the plaintiffs or the 1st defendant who are the lawful registered owners of the suit parcels.
 - ii. Whether the defendants have discharged the burden upon them of proving fraud on the part of the plaintiffs and the Land Registrar Kajiado.
 - iii. Whether the plaintiffs are entitled to the orders sought in the plaint.
 - iv. Whether the defendants are entitled to the orders sought in the counterclaim.

I make the following findings on the above issues.



11. On the first issue, in find that is the plaintiffs who are the lawful owners of the suit land.

Firstly, it has been confirmed by the land Registrar that that is the plaintiffs' title deeds that are genuine while those held by the defendants are not authentic. Under Section 9 of the [Land Registration Act](#) (Act No. 3 of 2012), the Registrar is the custodian of the land records. His word on who is the registered owner is very authoritative. It is backed by good reasons and the available documents including green card and presentation book.

Secondly, the registrar was able to verify the original documents and title deeds presented by the parties. He was not alone. He was with the parties and their advocates as well as his own colleagues from the Land Registry. I find no reason to doubt his evidence. I find that he came to right conclusion and his report is largely in agreement with reports by his predecessors in office who had also found the transfers by the 1st defendant to the plaintiffs proper.

Thirdly, under Section 26 (1) of the [Land Registration Act](#), it is provided as follows.

“The certificate of title issued by the Registrar upon registration ...shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner...”

Since the plaintiffs have been confirmed by the Registrar to be the lawful owners, I find them to be the absolute and indefeasible owners of the suit parcels.

Fourthly, the plaintiffs have adduced credible evidence in form of sale agreements, green cards, certificates of official search showing that they bought the suit land from the defendants themselves. The defendants have not adduced any evidence to counter this evidence. John Oshumu, James Tais Letoire and Letoire Ole Ntirori himself have received money from the plaintiffs and executed documents acknowledging receipt of money. It is incredible that they can deny the obvious so blatantly. They are very inconsistent in their conduct. They are estopped from running away from documents that they have executed.

12. On the second issue, I find that the defendants have not proved fraud on the part of the plaintiffs or the land Registrar for two reasons.

Firstly, on the part of the Registrar, he is not a party in the counterclaim dated 10/2/2014. It was upon the defendants to do the following. Firstly, join the Land Registrar as a party in the counterclaim. Secondly, plead the particulars of fraud as required by Order 2 Rule 10(1) (a) of the Civil Procedure Rules. Thirdly, prove the fraud to a degree higher than on a balance of probabilities as per the holding in the case of [Ndolo –versus- Ndolo](#) Civil Appeal No. 128 of 1995. As against the land Registrar, the defendants did none of the above. Against the plaintiffs, they joined them in the counter claim and alleged fraud but they did not prove it even on a balance of probabilities leave alone to the required standard.

13. Coming to the third issue, I find that the plaintiffs have proved that they are entitled to the prayers that they seek in the plaint. Under Section 24 of the [Land Registration Act](#), I find that the plaintiffs being the registered owners of the suit parcels have absolute ownership conferred upon them. As such, they have acquired rights which cannot be defeated by the defendants or any other person. The defendants' interference with the suit parcels is inconsistent with the plaintiffs' rights as absolute proprietors thereof and it is the plaintiffs' rights as owners which must prevail as ordained by Section 25 of same [Act](#). It provides;-

1. The rights of a proprietor, whether acquired on first registration or ... shall not be defeated except as provided in this [Act](#)...”



14. Regarding the final issue, I find that the defendants are not entitled to the orders sought in the counterclaim because they have not proved fraud on the part of the plaintiffs or the Registrar in the sale and transfer of the suit land from Letoire Ole Ntirori to the plaintiffs or in any of the other transaction.
15. In conclusion therefore, I enter judgment for the plaintiffs in terms of prayers (a), (b), (c), (d) and (e) of the further amended plaint dated 11/10/2018. Secondly, I dismiss the defendants' counterclaim dated 10/2/2014 with costs to the plaintiffs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 12TH DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

