



Ndiba v Chomba & others & 2 others (Environment & Land Case 457 of 2014) [2024] KEELC 5346 (KLR) (19 July 2024) (Judgment)

Neutral citation: [2024] KEELC 5346 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 457 OF 2014**

**JO OLOLA, J
JULY 19, 2024**

BETWEEN

JOHANA NG'ANG'A NDIBA CLAIMANT

AND

WATSON WACHIRA CHOMBA & OTHERS 1ST DEFENDANT

LUCY WAMBUI WACHIRA 2ND DEFENDANT

THE LAND REGISTRAR, NYERI 3RD DEFENDANT

JUDGMENT

1. This suit was initially filed as Nyeri HCCC No. 51 of 2012. It was transferred to this court in 2014.
2. By a Plaint dated and filed in court on 6th March 2012, Johana Ng'ang'a Ndiba (the Plaintiff) sought for the rectification of the register by cancellation of the 1st and 2nd Defendants' names as the proprietors of the parcel of land known as LR. No. Nyeri/Endarasha/3150 and for his name to be entered in the register as the proprietor thereof.
3. It is the Plaintiff's case that he was the proprietor of LR. No. Nyeri/Endarasha/31 (the original title) and that sometime in the year 1987, he sub-divided the same into LR. No. Nyeri/Endarasha 950 and 951. The Plaintiff avers that he subsequently proceeded to sub-divide LR. No. Nyeri/Endarsaha/950 into LR. No. Nyeri/ Endarasha/1529, 1530, 1531 and 1532. He sold the other parcels and retained LR. No. Nyeri/Endarasha/1532 measuring some 2 acres on the ground. However, upon perusing the Registry Index Map and conducting a search at the Land Registry in January 2012, the Plaintiff discovered that the said LR. No. Nyeri/Endarasha 1532 only measures ¼ of an acre and that the remainder is registered in the joint names of the 1st and 2nd Defendants as LR. No. Nyeri/Endarasha /3150.



4. It is the Plaintiff's case that the registration of the 1st and 2nd Defendants as the proprietors of the said Nyeri/Endarasha/3150 is unlawful and fraudulent and hence his prayers for the rectification of the register.

The Plaintiff's Case

5. This suit proceeded by way of formal proof as the three (3) Defendants never filed any Statement of Defence.
6. At the trial which proceeded before the Honourable Justice Ombwayo on 21st May 2013, the Plaintiff called two (2) witnesses.
7. PW1- Benard Muruku Githinji told the court that he has known the Plaintiff since 1963 and that the Plaintiff had got his land the same way that he (PW1) had got his own in Endarasha. PW1 testified that the Plaintiff had been cultivating his land all that time although he had sold a bit of it.
8. PW1 testified that the Plaintiff was unhappy about the acreage of his land and that he (PW1) would be surprised if he was told that the Plaintiff's land is only $\frac{1}{4}$ on an acre.
9. PW2 – Ndururi Mureithi equally told the court he had known the Plaintiff from 1962 and that the Plaintiff had been residing on the land. He told the court the 1st Defendant bought his parcel of land in the 1980s. PW2 testified that the Plaintiff's parcel on the ground measured $2\frac{1}{2}$ acres and that he had been utilizing the same.
10. PW2 told the court that the Plaintiff had sold a portion of his land but he had remained with $2\frac{1}{2}$ acres and not $\frac{1}{4}$ acre.

Analysis and Determination.

11. I have carefully perused and considered the pleadings filed by the Plaintiff herein, the testimonies of his witnesses as well as the evidence placed before the court. I have similarly perused and considered the submissions filed by the Learned Counsel for the Plaintiff. The Defendants neither filed pleadings nor did they participate at the trial herein.
12. By his Plaint as filed herein on 6th March 2012, Johana Ng'ang'a Ndiba (the Original Plaintiff) had sought for the rectification of the Register by cancellation of the names of the 1st and 2nd Defendants as the proprietors of the parcel of land known as LR. No. Nyeri/Endarasha 3150.
13. It was the Plaintiff's case that he was the absolute proprietor of a parcel of land known as Nyeri/Endarasha/31 and that sometime in the year 1987, he had subdivided the same into LR. No. Nyeri/Endarasha/ 950 and 951. The Plaintiff pleaded that he had then sold Nyeri/Endarasha/951 but retained parcel No. 950.
14. It was further the Plaintiff's case that he subsequently sub-divided Parcel No. 950 into Nyeri/Endarasha 1529, 1530, 1531 and 1532. He sold th other parcels and retained LR. No. Nyeri/Endarasha/1532 which according to him measured some 2 acres on the ground. However, sometime in 2012 upon perusing the Registry Index Map (RIM) and conducting a search on parcel No. 1532, the Plaintiff pleaded that he realized that contrary to his expectations, the said parcel of land only measured about $\frac{1}{4}$ of an acre and that the remainder was registered in the joint names of the 1st and 2nd Defendants as LR. No. Nyeri/Endarasha/3150.
15. As it turned out, the Original Plaintiff did not testify at the trial. He passed away a year after he instituted this suit and about a month after his two witnesses herein testified at the trial. In the absence



of the Plaintiff's testimony, it was unclear to this court how he had come to the conclusion that LR. No. Nyeri/Endarasha/1532 which he had retained measured 2 acres on the ground.

16. The Plaintiff's neighbours PW1 and PW2 who testified in support of his case did not provide any evidence of how they came to know that the parcel that remained after the Plaintiff sold various portions of his land measured 2 acres. Indeed according to PW2, the remaining portion was not 2 acres as stated by the Plaintiff but 2 ½ acres.
17. In the absence of any survey reports giving measurements of the portion of the original parcel of land and the portions that had been sold, it was unclear even in the absence of any pleadings from the Defendants how the court could come to the conclusion that the Plaintiff's portion of land should measure 2 acres on the ground and not the ¼ acre that he stated he had found himself with.
18. In addition, the Plaintiff failed to provide any evidence to demonstrate the LR. NO. Nyeri/Endarasha/3150 that is registered in the names of the 1st and 2nd Defendants was as a result of a subdivision of his parcel of land known as Nyeri/Endarasha/1532.
19. In the circumstances herein and even though this suit was undefended, I was not persuaded that the Plaintiff had proved his case to the required standards.
20. Accordingly, the Plaintiff's suit is hereby dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 19TH DAY OF JULY, 2024.

In the presence of:

Mr. C.M. Kingori for the Plaintiff.

No appearance for 1st and 2nd Defendants.

Mr. Kuria holding brief for M. Kiarie for the 3rd Defendant.

Court Assistant: Michael.

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J. O. OLOLA

JUDGE

