



REPUBLIC OF KENYA



Karani & 2 others v Karani alias Simon Maina Karani & 2 others (Environment & Land Case 5 of 2018) [2024] KEELC 5308 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5308 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 5 OF 2018**

JM MUTUNGI, J

JULY 18, 2024

BETWEEN

JAMES KARIUKI KARANI 1ST PLAINTIFF

PETERSON KARANI NYAWIRA 2ND PLAINTIFF

JOHN WANJOHI KARANI 3RD PLAINTIFF

AND

MAINA KARANI ALIAS SIMON MAINA KARANI 1ST DEFENDANT

JOHN MURIITHI MUTHII 2ND DEFENDANT

CHRISTOPHER MATHENGE MATE 3RD DEFENDANT

RULING

1. The brief background of this matter is that the Plaintiffs initiated this suit by filing a Plaint dated January 29, 2018, seeking orders that the 1st, 2nd, and 3rd Defendants do transfer the parcels of land they hold to the rightful recipients as per the order of the Senior Resident Magistrate in Civil Case Number 146 of 1989. Additionally, the Plaintiffs prayed for the costs of the suit against the Defendants and any other orders the court may deem necessary.
2. It was the position of the Plaintiffs that during land adjudication and demarcation in Kirinyaga District, land parcel Number Mwerua/Kagio-Ini/177 was given to one Karani Kubunya by members of his clan. However, Karani Kubunya passed away before the adjudication process was completed and since women were not eligible to be allocated clan land in Kirinyaga, the clan registered the elder son of Karani, Maina (the 1st Defendant), as the proprietor of the land to hold the same in trust for the benefit of the family of Karani Kubunya. When Maina, the 1st Defendant, became of age, he refused to surrender the trust land. Agnes Micere, the wife of Karani and mother of Maina and other beneficiaries, sued Maina Karani in Court vide S.R.M.C.C No. 146 of 1989 at Kerugoya Court. The



court ordered the trustee, the 1st Defendant, to transfer the land to the trust's beneficiaries. Each beneficiary immediately settled in their respective parcels of land awaiting transfer to them as per the court's order. However, the 1st Defendant, with intent to defraud the other beneficiaries, refused to apply to the appropriate Land Control Board to comply with the court's order. Instead, the 1st Defendant sold portions of the land to strangers, the 2nd and 3rd Defendants.

3. The 1st Defendant submitted his Statement of Defence on November 8, 2018, where he denied he was registered as the proprietor of Parcel No. Mwerua/Kagio-Ini/177 for the benefit of the family of Karani Kubunya. He contended that the order delivered on November 19, 1991 was legally time barred under the Limitation of Actions Act and could not be relied upon by the Plaintiffs. He stated he obtained the necessary Land Control Board Consent for the subdivision and denied any fraudulent intentions.
4. The 3rd Defendant filed his Statement of Defence on September 10, 2021. The 3rd Defendant referred to case No. 191 of 2012 at the Magistrate's Court which he stated had been finalized and the 1st Plaintiff and 1st Defendant had been ordered to vacate land parcel No. Mwerua/Kagio-ini/1135, which the 3rd Defendant had purchased from the 1st Defendant.
5. The Court referred the dispute in this matter to the Deputy County Commissioner Kirinyaga West Sub-County, Kirinyaga for arbitration. The Deputy County commissioner filed his report dated June 27, 2023. The parties held divergent views respecting the report which prompted the Court on 4/3/2024 to direct that the parties make their written comments and/or observations respecting the filed report for consideration by the Court in order to determine whether or not to adopt the report as an Order of the Court. The report by the Deputy County Commissioner made the following recommendations: -
 - i. The Court Order issued by Kerugoya Magistrates Court Case No. 146 of 1989 be respected and implemented to the letter.
 - ii. The title deeds issued against the Court Order be revoked.
 - iii. Mr. Simon Maina Karani has violated a Court Order and created animosity among the family members; the Court ought to take note of the same.
6. The Plaintiff did not file any comments and/or observations. The 1st Defendant's Advocate filed his comments/observations dated April 3, 2024. In the comments the 1st Defendant reiterated that the matter had previously been heard and determined by the Court. He argued the report did not constitute agreement by the parties but rather a decision of the Deputy County Commissioner. He averred the 1st Defendant did not agree with the recommendations of the Deputy County Commissioner and for that reason declined to sign the report. The 1st Defendant stated he was not afforded the opportunity to participate in the proceedings. The 1st Defendant argued the recommendations in the report appeared as though they were findings of an appeal against the decision in Kerugoya CMCC No. 191 of 2012 yet no appeal had been preferred by the Plaintiffs in that case.
7. I have reviewed the report by the Deputy County Commissioner and what comes out is that the 1st Defendant was uncooperative and that puts to question whether he had a fair hearing before the panel. The matter further raises legal issues as to limitation of the action and *res-judicata* which I consider the arbitration panel may have been ill-equipped to deal with.
8. In the premises the Court shall allow the record of the Arbitration panel to remain and form part of the record but declines to adopt the arbitration panel's recommendations as Orders of the Court.



9. The Court Orders that the suit proceed for hearing in Court. The same is fixed for pretrial directions on 16/10/2024.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 18TH DAY OF JULY 2024.

J. M. MUTUNGI

ELC - JUDGE

