



Muriuki v Njeru; Njoroge & 2 others (Applicant) (Environment & Land Case 3 of 2021) [2024] KEELC 5882 (KLR) (20 August 2024) (Ruling)

Neutral citation: [2024] KEELC 5882 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 3 OF 2021
AK BOR, J
AUGUST 20, 2024
FORMERLY NYERI ELC NO. 258 OF 2013**

BETWEEN

JOHN MURAGE MURIUKI PLAINTIFF

AND

ANN WANGU NJERU DEFENDANT

AND

CHARLES BACHA NJOROGE APPLICANT

SIMON KINYUA THEURI APPLICANT

PETER NDUNGU WANG'OMBE APPLICANT

RULING

1. After this court had delivered its judgment on 1/11/2022, vide which it issued a permanent injunction to restrain John Murage Muriuki from interfering with Ann Wangu Njeru's possession of 3.98 hectares that was to be excised from the land known as Nanyuki/South Timau Block 1/600, Charles Bacha Njoroge, Simon Kinyua Theuri and Peter Ndungu Wang'ombe brought the application dated 25/10/2023 seeking stay of execution of the orders of demolition and their eviction from the land known as Nanyuki/South Timau Block/1048 which this court issued on 23/10/2023. They also sought an order of injunction to restrain the Defendant, Ann Wangu, from evicting them or demolishing their property on parcel no. 1048. They sought to have this court vacate or set aside the orders of eviction and demolition issued on 23/10/2023 as well as an order for the cancellation of the subdivisions of Nanyuki/South Timau Block 1/600 (Mia Moja) and for a fresh subdivision to be undertaken factoring in the occupation and developments by the Applicants. Additionally, they sought an order that during the subdivision of parcel no. Nanyuki/South Timau Block 1/600 (Mia Moja) the portions which they bought from John Murage Muriuki, which they occupy and have



greatly developed, be given to John Murage Muriuki who will in turn transfer those portions to the Applicants.

2. The application was made on the grounds that this court issued orders to Ann Wangu Njeru for the eviction of the Applicants from Nanyuki/South Timau Block 1/1048. Parcel no. 1048 was created from Nanyuki/South Timau Block 1/600 (mia Moja) which was the subject matter of this suit. The other ground was that the subdivision done in July 2023 by Ann Wangu did not involve the Applicants who occupy and have developed 2.7 acres out of the total land measuring 17.75 acres. During the subdivision, Ann Wangu Njeru gave herself the portion where the Applicants have developed.
3. The other grounds were that Ann Wangu Njeru was aware of the Applicants' interest of the over the suit property and that parcel no. 600 had been on the verge of being auctioned by Biashara Sacco Society Ltd and the Applicants saved the land from being auctioned. They stated that they bought the suit land for valuable consideration with the 1st Applicant having bought his portion for Kshs. 2,000,000/= on 17/8/2016, the 2nd Applicant having bought his portion measuring ¼ acre for Kshs. 1,500,000/= on 2/2/2018 while the 3rd Applicant bought ¼ acre from John Murage Muriuki on 4/8/2021 for Kshs. 1,300,000/=. They maintained that at the time they bought their portions of the land it was solely registered in the name of John Murage Muriuki and they were not aware of the family dispute pitting John Murage Muriuki against Ann wangu Njeru. That it was only after they were served with the demand letter that they filed Nanyuki CM ELC Case No. 56 of 2023 which prompted Ann Wangu to move this court for eviction orders.
4. The application was supported by the affidavit of Charles Bacha Njoroge in which he deponed to the facts appearing on the face of the application. He exhibited copies of the sale agreement dated 17/8/2016, search dated 24/11/2016 showing that parcel no. 600 was charged to Biashara Sacco to secure a loan of Kshs. 4,000,000/= on 15/5/2015 and evidence of the payment made to Biashara Sacco Society Limited on 11/8/2016. He also annexed the agreement dated 2/11/2017 as well as photographs showing the developments carried out on the suit property. He exhibited a copy of the sale agreement dated 2/2/2018 between John Murage Muriuki and Simon Kinyua Theuri and the one dated 4/8/2021 between John Murage Muriuki and Peter Ndungu as well as the acknowledgment of payment. There were additional photographs showing a portion of land under cultivation and developments comprising shops on the suit land.
5. Ann Wangu Njeru swore the affidavit opposing the application and averred that there were contradictions in the application. She stated that the Applicants did not disclose that they forcefully evicted her from her portion of the land and removed the beacons yet she had already settled on the suit property by the time the Applicants entered into the illegal agreements of sale with John Murage Muriuki. She added that the subdivision was carried out by the District Land Officer on 12/8/2012 in the presence of John Murage Muriuki and a mutation to that effect was filled to give effect to the decree dated 19/9/2002 in Land Case No. 8 of 2002 at the Resident Magistrate's Court at Nanyuki. She added that the exercise conducted in July 2023 was not for subdivision of the land but it was a mere restoration of the beacons which the Applicants blatantly removed despite her protest in a bid to dispossess her of her inheritance. She added that the Applicants evicted her from the land in an undignified manner to the extent of demolishing her pit latrine. She maintained that the sale agreements were entered into illegally and without due diligence and that John Murage Muriuki knew of the dispute over the land when he purported to sell the land. Regarding the Biashara Sacco loan she maintained that that entity had not instituted any proceedings after she brought to its attention the proceedings before this court. She added that John Murage Muriuki had previously demonstrated and it was captured in judgment dated 1/11/2018 that she was living in the suit land since 1990 and that the Land Disputes Tribunal had directed that she would remain on the portion of the suit property which she had developed and buried



her daughter. She added that in its judgment dated 1/11/2018, the court gave effect to the decision of the Land Disputes Tribunal that parcel no. 600 was to be divided equally between her and her late brother. She went further to add that half the property which devolves to her late brother's estate was subject to certain proceedings for the benefit of his children and the Applicants' assertion that she be removed from her rightful portion to the portion of her late brother's estate would contravene the interest of the beneficiaries of her late brother's estate. She reiterated that the Applicants did not find vacant possession when they moved onto the land that they violently evicted her which prompted her to file a counterclaim for an injunction to restrain John Murage Muriuki and his agents from dealing with her portion of the land measuring 3.98 hectares. She maintained that the Applicants were well aware of the protracted court battle between her and John Murage Muriuki.

6. She concluded that the land which the Applicants bought from John Murage Muriuki could only be excised from the portion known as Block 1/1047A after the issuance of a grant to the estate of her late brother John Muriuki Njeru and that this could not be enforced on her portion being block 1/1048B. Regarding her application for eviction orders, she averred that by the time the orders were made in CM ELC Case No. 56 of 2023, she had already filed her application for eviction orders before this court. She added that this court ought to encourage due diligence and respect for court orders which the Applicants disregarded by tampering with the suit land during the pendency of the court proceedings when they forcefully dispossessed her of the land.
7. John Murage Muriuki swore an affidavit in response to the replying affidavit of Ann Wangu Njeru filed on 16/11/2023. He deponed that after this court directed parties to try and resolve the issue of surveying of the land in a manner which did not affect the Applicants on 4/9/2023, he engaged the services of Enock Ochando Mongeri, a surveyor who went to the land and came up with a draft subdivision plan for parcel no. 600. The surveyor curved out a portion measuring 3.7 hectares from an open area of the suit property without touching the permanent houses of the people living on the land. He averred that Ann Wangu was notified before the survey was done but did not show up. John Muriuki beseeched this court to adopt the draft partition as the fair and appropriate survey plan as far as Ann's share was concerned so that it could be regularized by the surveyor and fresh beacons erected. He maintained that there would be no prejudice to Ann Wangu Njeru if that were done.
8. The court directed parties to file and exchange submissions, which it has considered. The Applicants submitted that they were innocent purchasers for value who bought portions of land from John Murage and were not aware of the family dispute between the two until they were served with a demand letter by Ann Wangu Njeru requiring them to vacate parcel no. 600. They added that the judgment which Ann Wangu Njeru obtained from this court did not involve them because they were not parties to the suit. They cited Order 40 Rule 1 of the *Civil Procedure Rules* on the court's power to issue a temporary injunction to restrain acts or make orders for purposes of staying and preventing alienation or disposition of suit property. They also relied on Section 68 of the *Civil Procedure Act* which empowers the court to make an inhibition order inhibiting for a particular time or until the occurrence of the particular event, registration of dealings with land to preserve the suit property until that particular event or occurrence happened. They relied on the decision in *Katende v Harida and Company Ltd* on who a *bona fide* and innocent purchaser of land was.
9. The Applicants maintained that they had no problem with this court's judgment but were only seeking that during the subdivision of the suit property, the portions which they bought, occupy and have developed be given to John Murage Muriuki so that he can transfer those portions to them.
10. Ann Wangu Njeru filed submissions in which she quoted JR Midha of Delhi High Court who stated in his farewell speech that in a court of justice both parties knew the truth and it was the judge who was on trial. She contended that the Applicants had knowledge of every order, judgment or ruling in the



proceedings in this case since 2004. She argued that the question as to whether half the suit property was part of the estate of Muriuki Njeru, the father of John Murage Muriuki, was settled by this court's judgment and that half of the suit property which devolves to Muriuki Njeru was subject to succession proceedings for the benefit of his children who include John Murage Muriuki. She cited Section 45 of the *Law of Succession Act* which prohibits intermeddling with the assets of a deceased person and argued that if the court were to grant the prayers sought by the Applicants that the portion of the suit land which they bought from John Murage Muriuki be given to him so that he could transfer this portion to the Applicants, it would amount to an illegality which the court should not countenance. She added that the remedy available to the Applicants was to sue for breach of contract or specific performance from the portion which would fall to John Murage Muriuki after the certificate of grant is obtained in respect of the estate of Muriuki Njeru. She denied that the Applicants were innocent purchasers for value and claimed that they forcefully evicted her from her portion of the suit land and removed the beacons yet she had settled on the land in 1990. She added that the Land Disputes Tribunal determined that she was to remain on the portion of the suit land which she had developed and buried her daughter on. She submitted that the exercise conducted in July 2023 was not for subdivision of the land but was the restoration of the beacons which the Applicants had removed. She concluded that the Applicants should have applied for a citation to invite the estate of Muriuki Njeru to take out succession proceedings instead of making this court intermeddle with the estate of a deceased person. She added that the deceit by John Murage Muriuki in subdividing the land between him and his brother leaving out the other beneficiaries could not escape the eye of the court. She urged the court to dismiss the application dated 25/10/2023 with costs and to order that the Applicants be evicted from the land marked Block 1/1048 which is her portion. Finally, she sought to have the orders served upon the OCS Rumande Police Station for compliance.

11. The issue for consideration is whether the court should grant the orders sought by the Applicants in the application date 25/10/2023. The Applicants came into the scene after the Defendant obtained orders for their eviction from the suit land. Their claim is that they purchased portions of land from the Plaintiff for valuable consideration and that after this court delivered the judgment in which it directed that the suit land was to be shared equally between the Plaintiff and the Defendant, she obtained orders for the eviction of the Applicants on the ground that they occupied portions of her land. This was after the suit land was subdivided. The Defendant brought up the issue of intermeddling with the estate of the Plaintiff's father's estate in this application. It was never raised during the trial which the court notes did not involve the Applicants. Had the Defendant applied to join the Applicants to the suit before it was concluded, she would have had the opportunity to lead evidence on how the Applicants played a part in evicting her from the suit property. This court cannot make a determination on those issues at this point unless the Defendant moves it to reopen the case.
12. The Defendant does not deny that the Applicants have developed the portions of the land which they purchased from the Plaintiff. The Applicants who did not participate in the suit stand to suffer loss and harm if the Defendant proceeds to evict them from the land they occupy.
13. To bring this dispute to a close, it is necessary for another survey exercise to be undertaken for purposes of subdivision of the suit property so as to take into account the portions occupied by the Applicants.
14. The court allows the application dated 25/10/2023 in the following terms:
 - a. An order is issued staying execution of the orders issued on 23/10/2023 for demolition and the eviction of the Applicants from the land known as Nanyuki/South Timau Block 1/1048;
 - b. The orders of eviction and demolition against the Applicants issued on 23/10/2023 are set aside;



- c. An order is issued for cancellation of the subdivisions of the land known as Nanyuki/South Timau Block 1/600 (Mia Moja). A fresh subdivision is to be undertaken factoring in the occupation and developments by the Applicants. The costs re-subdividing the land will be met by the Applicants and the Plaintiff;
- d. During the subdivision of parcel no. Nanyuki/South Timau Block 1/600 (Mia Moja), the portions which the Applicants bought from John Murage Muriuki and which they occupy and have greatly developed should be given to John Murage Muriuki who will in turn transfer those portions to the Applicants;
- e. Each party shall bear its costs for the application.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF AUGUST 2024.

K. BOR

JUDGE

In the presence of: -

No appearance for the Plaintiff

Mr. Abubakar Kaimu for the Defendant

Ms. Kendi Kiruki for the Applicants

