



Ngumba & 6 others v Kyanjau Housing Co-operative Society Limited & 2 others (Environment & Land Case E114"B" of 2021) [2025] KEELC 708 (KLR) (18 February 2025) (Ruling)

Neutral citation: [2025] KEELC 708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E114"B" OF 2021
BM EBOSO, J
FEBRUARY 18, 2025
[FORMERLY MILIMANI CASE NO. 409 OF 2013]**

BETWEEN

**STANLEY WAICHIGO NGUMBA 1ST PLAINTIFF
STANLEY KINUTHIA MWANGI WANDAKA 2ND PLAINTIFF
PAUL KAMATU NGUGI 3RD PLAINTIFF
JOSEPH MBIRURI WAWERU 4TH PLAINTIFF
ARTHUR GACHONDE KIHARA 5TH PLAINTIFF
EARNEST WAMBURU MBARI 6TH PLAINTIFF
ESTHER WANJIRU 7TH PLAINTIFF**

AND

**KYANJAU HOUSING CO-OPERATIVE SOCIETY LIMITED ... 1ST DEFENDANT
CONTOUR ESTATE LIMITED 2ND DEFENDANT
THE HON ATTORNEY GENERAL 3RD DEFENDANT**

RULING

1. The plaintiffs initiated this suit through a plaint dated 26/3/2013. The plaint has been amended twice. At this point, the plaintiffs' claim is contained in the further amended plaint dated 21/11/2017.
2. The case of the plaintiffs is that, at all material times, the 1st defendant was the proprietor of land parcel number Thika Municipality Block 18/290. They contend that the 1st defendant subdivided the said land into various subdivisions/plots, among them, parcel number Thika Municipality Block 18/1706;



- 1707; 1708; 1709; 1710; 1711; 1712; 1713; 1714; 1715; and 1717 which they [the 1st defendant] sold to the plaintiffs or to the plaintiffs' predecessors in title.
3. The plaintiffs add that they noticed that the defendants were resurveying the Subdivision Scheme and were introducing new beacons into the Subdivision Scheme. At that point, they established that the two defendants had colluded with the Land Registrar and were altering the registry index map (RIM), survey maps, and green cards and were dividing the land into smaller plots and altering the beacons in the Scheme, with the intention of selling the newly created plots to new purchasers. They termed the defendants' actions as fraud. Among other reliefs, they urged this court to issue a permanent injunction restraining the defendants against interfering with their plots and to compel them to reinstate the original registry index map, survey maps, green cards and beacons.
 4. The 1st and 2nd defendants filed a statement of defence dated 2/5/2013. They amended the defence on 16/1/2018. They denied selling the plots to the plaintiffs, adding that the 1st defendant sold the suit land to the 2nd defendant. They denied fraud and reiterated that the plaintiffs had no proprietary right in the land.
 5. On 15/11/2022, the 1st defendant brought a notice of motion dated 15/11/2022 urging this Court to issue an order requiring the Thika Land Registrar and the Thika Land Surveyor to visit Thika Municipality Block 18/290 to: (i) confirm if the parcels claimed to be owned by the plaintiffs are subdivisions surveyed out of Thika Municipality Block 18/290; and (ii) confirm the beacons and note whether land parcel number Thika Municipality Block 18/290 has ever been subdivided or is intact on the ground. The said application is the subject of this ruling.
 6. The application was premised on the grounds outlined in the motion; in the supporting affidavit of Michael Njuguna Njonge; and in the applicant's written submissions dated 23/8/2024. The case of the applicant is that a report by the Land Registrar and the Land Surveyor may render the hearing of the suit unnecessary as it may have answers to the issues before the Court. They contend that the Land Registrar and the Land Surveyor are the custodians of all relevant records relating to registered land in Kenya. They fault the plaintiffs for making allegations of fraud and at the same time opposing involvement of the two statutory officers in the contemplated exercise. They urge the Court to grant the orders.
 7. The 2nd defendant supported the application through a replying affidavit sworn by its director, Francis Murigih Kariuki on 8/5/2024. The 2nd defendant contends that a surveyor's report will assist the Court by enlightening it on the matters in dispute in the suit. The 2nd defendant further contends that the issues for determination in the suit include: (i) the history of land parcel number Thika/ Municipality Block 18/290; (ii) whether the plots claimed by the plaintiffs are geographically within the confines and boundaries of Thika Municipality Block 18/290; (iii) whether plots claimed by the plaintiffs are geographically within the confines and boundaries of Thika Municipality Block 18/290. The 2nd defendant adds that these are technical issues that can easily and summarily be settled by way of a survey report.
 8. The plaintiffs opposed the application through a replying affidavit sworn by Stanley Kinuthia Mwangi Wandaka on 18/6/2024 and written submissions dated 13/9/2024 filed by Kinuthia Wandaka & Company Advocates. The plaintiff contend that the application is not founded on any law and that the sections quoted do not relate to the reliefs sought. The plaintiffs urge that the 1st defendant should defend the suit as framed given that it has not filed a counterclaim. The plaintiffs further urge that the Land Registrar and the Land Surveyor cannot be ordered to file a report given that the issues in the suit is not a boundary dispute. The plaintiffs state that the Land Registrar Thika and the Surveyor are compromised given that despite being aware the suit had been filed on 26/3/2013, the Land Registrar



issued a title on 19/9/2013. The plaintiffs contend that this application is meant to use the court as an investigation tribunal in favour of the defendants. The plaintiffs urged the Court to dismiss the application and award costs to the plaintiffs. The 3rd defendant did not file a response to the application.

9. The Court has considered the application; the response to the application; and the parties' respective submissions. The Court has also considered the relevant legal frameworks and jurisprudence. The single question to be determined in this ruling is whether orders should issue at this point requiring the Thika Land Registrar and the Thika Land Surveyor to visit the suit land and confirm if: (i) any of the parcel in this dispute is a subdivision out of Thika Municipality Block 18/290; and (ii) confirm the beacons on the ground and note whether parcel number Thika Municipality Block 18/290 has ever been subdivided or is intact on the ground.
10. It is clear from the prayers and from the arguments advanced in support of the application that the 1st defendant wants to enlist the Court for the purpose of gathering evidence. The 1st defendant is inviting the court to embark on evidence gathering mission. That, regrettably, is not part of the adjudicatory function of the Court in a dispute of this nature. The 1st defendant is supposed to gather and bring evidence controverting the plaintiffs' claim and evidence. The evidence is supposed to be brought in form of a trial bundle that contains witness statements and documentary evidence. Suffice it to state that, should the 1st defendant require witness summons to issue to a particular witness, they are at liberty to apply for the witness summons.
11. In this suit, allegations have been made about falsification of registry index maps, survey records and other land registration records by the two officers. It would not be proper for the Court to get involved in gathering evidence to support or controvert those allegations. That responsibility belongs to the parties to the suit. My finding is that there is no proper basis for granting the orders sought in the application.
12. The result is that the application dated 15/11/2022 is rejected. Costs shall be in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF FEBRUARY, 2025

B M EBOSO [MR]

JUDGE

In the Presence of

Mr Wandaka - 2nd Plaintiff [in Person]

Ms Kamau for the 1st, 3rd – 8th Plaintiffs

Mr. Tupet – Court Assistant

