



**Ndoore v Kiragu (Environment & Land Case 128 of 2017)  
[2024] KEELC 5978 (KLR) (20 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 5978 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 128 OF 2017  
JO OLOLA, J  
SEPTEMBER 20, 2024**

**BETWEEN**

**DUNCAN MWANGI NDOORE ..... PLAINTIFF**

**AND**

**ELIZABETH WANGARI KIRAGU ..... DEFENDANT**

**JUDGMENT**

1. By his Complaint dated 27<sup>th</sup> July 2017, Duncan Mwangi Ndoore (herein after the Plaintiff) prays for Judgment against the defendant for:
  - a). An order directing the Defendant to vacate the suit land failing to which she will be forcefully evicted from land parcel No. Chinga/Gikigie/646;
  - b). A permanent injunction against the Defendant, her agents, Servants or assigns from trespassing upon land parcel No. Chinga/Gikigie/646 or acting in any other manner whatsoever which is inconsistent with the Plaintiff's rights over the said property;
  - c). An order that the Defendant pays the Plaintiff mesne profits at the rate of Kshs. 20,000/= as from 27/9/2016 till the date the Defendants vacates the land; and
  - d). Costs of the suit.
2. Those prayers arise from the Plaintiff's contention that he is the registered proprietor of the said land parcel No. Chinga/Gikigie/646 (the suit property) having legally bought the same from one Mary Murugi Kiragu and Jenericah Mwihaki Kiragu.
3. The Plaintiff avers that the Defendant has without his permission or consent encroached upon the suit property thereby interfering with his ownership rights and quiet possession thereof.



4. Elizabeth Wangari Kiragu (the Defendant) is opposed to the grant of the orders sought in the Plaintiff. In her brief Statement of Defence dated and filed herein on 9<sup>th</sup> October 2021, the defendant denies that the Plaintiff bought the suit property in the manner stated in the plaintiff.
5. The Defendant denies that she has encroached on the suit property and asserts that she was brought up in the suit property whose original owner was her father, one Kiragu Gitonga who is now deceased.

#### **The Plaintiff's Case**

6. At the trial herein the Plaintiff called two witnesses in support of his case.
7. PW1- Duncan Mwangi Ndoore is the Plaintiff himself. Relying on his written statement dated 27<sup>th</sup> July 2017, the Plaintiff told the court he brought the suit property and was registered as the owner thereof on 27<sup>th</sup> September 2016.
8. PW1 testified that had moved into his parcel of land illegally and without his consent and urged the court to have the Defendant evicted therefrom. PW1 told the court that as a result of the Defendant's trespass, he had suffered loss as he was unable to manage the property in a manner that was beneficial to himself and his family. PW1 further told the court that the defendant was a habitual trespasser who had been evicted from the same land by the previous owner one Mary Murugi Kiragu through a court order.
9. PW2- Jenericah Mwhihaki Kiragu is a nurse by profession and a resident of Othaya and a step-sister of the Defendant. PW2 told the court that the Plaintiff bought the suit property from her mother one Mary Murugi Kiragu. PW2 further told the court that the Defendant was her step sister and that PW2's mother got married to their father after the Defendant's mother passed away.
10. PW2 testified that prior to his death, their father had distributed his estate to each of the houses and that the house to which the Defendant belonged had been given 4 acres of land. After the death of the father, the family filed succession Cause No. 129 of 2000 at the Kangema Resident Magistrate's Court. Being dissatisfied with the court's decision, PW2's mother instituted Nyeri HCCA No. 154 of 2002 wherein the court held that both land parcel Nos. Chinga/Gikigie/646 and Chinga/Gikigie/664 belonged to PW2's mother.
11. PW2 further told the court that during the pendency of the Succession Cause, the Defendant had forcefully moved into the suit land which belonged to PW2's family at the time. As a result, PW2's mother filed an application in the said Nyeri HCCA No. 154 of 2002 following which the Defendant was ordered to vacate the suit property. PW2 told the court that the Defendant disregarded the court orders and had to be forcefully evicted on 25<sup>th</sup> March 2013.
12. PW2 testified that following her eviction, the Defendant stayed out of the land until after they sold the land to the Plaintiff in 2016.

#### **The Defendant's Case.**

13. In support of her case, the Defendant similarly called two witnesses who did testify on her behalf.  
DW1- Elizabeth Wangari Kiragu is the Defendant herself and a resident of Chinga Gikegie. She told the court the suit property belongs to her father Kiragu Gitonga who is now deceased. She told the court that the land belongs to her family and that the Plaintiff bought the same behind her back.



15. DW1 testified that she had lived on the land for more than 50 years and that she had brought up her 4 children thereon. DW1 further told the court she had been working on the land and that she has tea bushes thereon. DW1 told the court the land was sold by Mary Murugi who is the 2<sup>nd</sup> wife of her father.
16. DW2- Mathew Gichohi Kiragu is a farmer in Chinga Gikegie and a relative of the Defendant. DW2 told the court the land in dispute initially belonged to the Defendant's father- Kiragu. He told the court that when the Defendant's mother passed away, Kiragu married a second wife who did not like the Defendant.
17. DW2 told the court it was the said second wife who sold the land on which the Defendant was then living without telling the Defendant or any member of the clan. DW2 told the court that after selling the land, Kiragu's second wife relocated to Kieni leaving the defendant alone on the land she had sold.

### **Analysis and Determination**

18. I have carefully perused and considered the pleadings herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions placed before me by the Learned Advocate acting for the Plaintiff and those of the Defendant who is acting in person.
19. By the suit herein, the Plaintiff accuses the defendant of encroaching upon the parcel of land known as Chinga/Gikigie/646 without his consent or authority and thereby interfering with his ownership rights and quiet possession thereof.
20. For those reasons, the Plaintiff urges the court to grant an order directing the Defendant to vacate the suit property failure to which the defendant should be forcefully evicted from the same. In addition, the Plaintiff urges the court to issue an order of a permanent injunction restraining the Defendant from trespassing upon the suit property. He also urges the court to order the Defendant to pay mesne profit as from 27<sup>th</sup> September 2016 until such a date that the Defendant shall vacate the land.
21. On her part, the Defendant denies the Plaintiff's accusation. While she admits that she resides on the suit property, she denies that her occupation is an act of trespass. It is the Defendant's case that she rightfully occupies the land as the same belonged to her father and that she has been in occupation thereof ever since she was born.
22. It is the Defendant's case that the Plaintiff purchased the suit property from her step mother one Mary Murugi Kiragu without her knowledge and/or consent and while aware that she resided on the suit property.
23. From the material placed before the court, there was no dispute that the suit property was indeed initially registered in the name of the Defendant's father Kiragu Gitonga. It was also apparent that the Defendant remained unmarried and that she had all along occupied a portion of the suit property.
24. It was not in dispute that upon the demise of the Defendant's mother, her father had married a second wife being the said Mary Murugi Kiragu. Following the death of the Defendant's father, her step-mother filed Kangema RM Succession Cause No. 129 of 2000; In the matter of the estate of Kiragu Gitonga. In a Judgment delivered on 25<sup>th</sup> September 2002, the Hon. R.N. Muriuki, RM directed that land parcel Number Chinga/Gikigie/646 and 664 which formed the deceased estate be shared out equally between the Defendant and her step-mother Mary Murugi.
25. Dissatisfied with the said Judgment, the Defendant's step- mother instituted Nyeri HCCA No. 154 of 2002. Having heard the Appeal and in a decision rendered on 26<sup>th</sup> March 2004, the Honourable H.



M Okwengu J (as she then was) did uphold the Appeal and directed that the parcels of land be vested in the name of the Defendant's step-mother.

26. The Defendant who appeared to me to be illiterate however denied any knowledge of the said Appeal and stated that she was unaware when the Judgment was rendered. A perusal of the said Judgment produced as Pexh 4 does not indicate if the Defendant was a party to the proceedings and there was no evidence that the Defendant was served with any orders therefrom.
27. While the Defendant acknowledged in cross-examination that at one point in time her step-mother caused her to be removed forcefully from the land, it was her case that she immediately returned to the land and that her step-mother thereafter proceeded to sell the land to the Plaintiff without her knowledge. That position was indeed supported by her witness Mathew Gichohi Kiragu (DW2) who told the court that the Defendant's step-mother sold the land and left the Defendant thereon as she relocated to Kieni.
28. In my considered view, that explains the reason that the Plaintiff was unable to explain exactly the year and time when the Defendant trespassed onto the suit property and any steps that he took about it. Having purchased the land with the knowledge that the Defendant was residing in a portion thereof and given the Defendant's historical and customary claims to the land as depicted in her testimony, I did not think the Plaintiff was entitled to the orders of eviction on unproven allegations of trespass.
29. Having failed to prove that the Defendant had indeed trespassed into the suit property after he purchased the same, the claim for mesne profits did not lie, and must also fail.
30. In the premises I was not persuaded that the Plaintiff had proved his case on a balance of probabilities and I dismiss the same.
31. In the circumstances of this case, each party shall bear their own costs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 20<sup>TH</sup> DAY OF SEPTEMBER, 2024.**

In the presence of:

Ms. Macharia holding brief for Muchiri for the Plaintiff.

Ms. Elizabeth Wangari – the Defendant in person.

Court Assistant: Michael

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**J. O. OLOLA**

**JUDGE**

