



REPUBLIC OF KENYA



**Mwangi & 18 others v Karanja & 12 others (Environment & Land Case 27 of 2024)
[2024] KEELC 6019 (KLR) (Environment and Land) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6019 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA
ENVIRONMENT AND LAND
ENVIRONMENT & LAND CASE 27 OF 2024
MC OUNDO, J
SEPTEMBER 19, 2024**

BETWEEN

**FRANCIS MUGO MWANGI 1ST PLAINTIFF
OBADIAH MBURU WANYOIKE 2ND PLAINTIFF
GODFREY MWANGI MWAURA 3RD PLAINTIFF
MARY NJERI THIGA 4TH PLAINTIFF
JOSEPH KIRONGO NGUGI 5TH PLAINTIFF
SAMUEL THUNGU GICHUHI 6TH PLAINTIFF
JOHN GITHINJI WAWERU 7TH PLAINTIFF
RACHAEL NYAMBURA GICHUHI 8TH PLAINTIFF
HANNAH WATIRI MWANGI 9TH PLAINTIFF
PETER MUIRURI GITAU 10TH PLAINTIFF
NAOMI MUTHONI BENJAMIN 11TH PLAINTIFF
MARY WAMBUI MWAURA 12TH PLAINTIFF
ROSE WAMBUI CHEGE 13TH PLAINTIFF
NJUGUNA MURIMI 14TH PLAINTIFF
SAMUEL NJOROGE MWAURA 15TH PLAINTIFF
PETER MBUGUA MUNGAI 16TH PLAINTIFF
JOHN KIMANI NJOROGE 17TH PLAINTIFF
ELUIS MACHARIA NJAU 18TH PLAINTIFF**



ELIZABETH NJERI KARANJA 19TH PLAINTIFF

AND

JOHN MWIRIGI KARANJA 1ST DEFENDANT

JUDY MWIHAKI KARANJA 2ND DEFENDANT

ASENAH WAMBUI KARANJA 3RD DEFENDANT

WILLIAM THANJI KARANJA 4TH DEFENDANT

WILLIAM KANYI KARANJA 5TH DEFENDANT

SAMSON GICHURA 6TH DEFENDANT

CHARLES MWANGI NJORE 7TH DEFENDANT

AGNES WANGUI 8TH DEFENDANT

JOHN KARANJA 9TH DEFENDANT

ROSE WAMBUI 10TH DEFENDANT

ESTHER WANGARI KAMAU 11TH DEFENDANT

ROSE IRENE WAMBUI 12TH DEFENDANT

MARGARET WANJIRU 13TH DEFENDANT

JUDGMENT

1. Vide a Complaint dated 29th May 2015 and Amended on unknown date in January, 2016, the Plaintiffs herein sought for judgment against the Defendants for the following orders;
 - i. An order that the titles issued illegally to the Defendants in respect to land parcels Naivasha/Maraigushu Block 14/391, Naivasha/Maraigushu Block 14/392, Naivasha/Maraigushu Block 14/396, Naivasha/Maraigushu Block 14/398, Naivasha/Maraigushu Block 14/399, Naivasha/Maraigushu Block 14/401, Naivasha/Maraigushu Block 14/402, Naivasha/Maraigushu Block 14/404, Naivasha/Maraigushu Block 14/405, Naivasha/Maraigushu Block 14/407, Naivasha/Maraigushu Block 14/412, Naivasha/Maraigushu Block 14/89, Naivasha/Maraigushu Block 14/95, Naivasha/Maraigushu Block 14/74, Naivasha/Maraigushu Block 14/27, Naivasha/Maraigushu Block 14/28, Naivasha/Maraigushu Block 14/75, Naivasha/Maraigushu Block 14/98, Naivasha/Maraigushu Block 14/99, Naivasha/Maraigushu Block 14/59, Naivasha/Maraigushu Block 14/125, Naivasha/Maraigushu Block 14/193 be revoked/cancelled and new title deeds be reissued in the name of Gathengera Investment Company Limited.
 - ii. That in the alternative, the title issued illegally to the Defendants in respect to Land Parcels: Naivasha/Maraigushu Block 14/391, Naivasha/Maraigushu Block 14/392, Naivasha/Maraigushu Block 14/396, Naivasha/Maraigushu Block 14/398, Naivasha/Maraigushu Block 14/399, Naivasha/Maraigushu Block 14/401, Naivasha/Maraigushu Block 14/402, Naivasha/Maraigushu Block 14/404, Naivasha/Maraigushu Block 14/405, Naivasha/Maraigushu Block 14/407, Naivasha/Maraigushu Block 14/412, Naivasha/Maraigushu Block 14/89, Naivasha/Maraigushu Block 14/95, Naivasha/Maraigushu Block 14/74, Naivasha/



Maraigushu Block 14/27, Naivasha/Maraigushu Block 14/28, Naivasha/Maraigushu Block 14/75, Naivasha/Maraigushu Block 14/98, Naivasha/Maraigushu Block 14/99, Naivasha/Maraigushu Block 14/59, Naivasha/Maraigushu Block 14/125, Naivasha/Maraigushu Block 14/193 be revoked/cancelled and new titles be reissued in the names of the Plaintiffs herein.

- iii. That any transfer of land parcel numbers Naivasha/Maraigushu Block 14/391, Naivasha/Maraigushu Block 14/392, Naivasha/Maraigushu Block 14/396, Naivasha/Maraigushu Block 14/398, Naivasha/Maraigushu Block 14/399, Naivasha/Maraigushu Block 14/401, Naivasha/Maraigushu Block 14/402, Naivasha/Maraigushu Block 14/404, Naivasha/Maraigushu Block 14/405, Naivasha/Maraigushu Block 14/407, Naivasha/Maraigushu Block 14/412, Naivasha/Maraigushu Block 14/89, Naivasha/Maraigushu Block 14/95, Naivasha/Maraigushu Block 14/74, Naivasha/Maraigushu Block 14/27, Naivasha/Maraigushu Block 14/28, Naivasha/Maraigushu Block 14/75, Naivasha/Maraigushu Block 14/98, Naivasha/Maraigushu Block 14/99, Naivasha/Maraigushu Block 14/59, Naivasha/Maraigushu Block 14/125, Naivasha/Maraigushu Block 14/193 from the Defendants to other third parties be revoked/cancelled and new title deeds be reissued in the name of the Gathengera Investments Company Limited.
 - iv. That in the alternative, the Defendants and/or third parties who have acquired land parcel numbers Naivasha/Maraigushu Block 14/391, Naivasha/Maraigushu Block 14/392, Naivasha/Maraigushu Block 14/396, Naivasha/Maraigushu Block 14/398, Naivasha/Maraigushu Block 14/399, Naivasha/Maraigushu Block 14/401, Naivasha/Maraigushu Block 14/402, Naivasha/Maraigushu Block 14/404, Naivasha/Maraigushu Block 14/405, Naivasha/Maraigushu Block 14/407, Naivasha/Maraigushu Block 14/412, Naivasha/Maraigushu Block 14/89, Naivasha/Maraigushu Block 14/95, Naivasha/Maraigushu Block 14/74, Naivasha/Maraigushu Block 14/27, Naivasha/Maraigushu Block 14/28, Naivasha/Maraigushu Block 14/75, Naivasha/Maraigushu Block 14/98, Naivasha/Maraigushu Block 14/99, Naivasha/Maraigushu Block 14/59, Naivasha/Maraigushu Block 14/125, Naivasha/Maraigushu Block 14/193 be compelled to compensate the Plaintiffs herein at the current market rate.
 - v. Costs of the suit.
 - vi. Any other relief that the court will deem fit and just to grant.
2. The Defendants did not file any Pleadings.
 3. The Defendants having failed to either enter appearance or file any Defence despite service, the matter had proceeded for hearing on formal proof on 8th April 2024 wherein Godfrey Mwangi Mwaura, the 3rd Plaintiff herein took to the dock as PW1 and introduced himself stating that he was a farmer and lived in Gakoe Sub-location in Gatundu County.
 4. He was then examined by the court on whether he had written a witness statement to which he replied that he was not sure, but informed the court that he had however signed some documents which had been given to him by the court. Seeing that he was quite elderly, the court proceeded to examine him on his age whereby he responded that he was 90 years old
 5. He then proceeded to testify that there had been about 20 people in Gathengera Investment Company who did not get the land despite having receipts of payment and their names reflecting in the register. That conversely, the people who got the land did not feature in the register. He pointed out that the Defendants had been the people who had received the land parcels belonging to the said 20 people and proceeded to explain that one Moses was the custodian of the titles wherein after one had completed



payment of their respective debt, they were issued with their titles by the said Moses. That the titles of the land became available in the 1980's at which time he was in school and therefore would not have been in a position to know when Moses and his family collected the same although it was between the years of 1980's and 1990's. That at the time, their parents had reported the matter with the Directorate of Criminal Investigations (DCIO) wherein they had even placed a caution on the disputed parcels of land.

6. He proceeded to testify that they had filed a list of documents and titles among other documents, as their evidence. That some parcels of land was still in possession of the Moses Karanja and his family. That since the Plaintiffs' parents were aged, they now sought the assistance of the court to order Moses Karanja to give the land to the people who had not received the same.
7. His evidence was that Plot No. Naivasha/Maraigushu Block 14/193 was public land that belonged to a school which status had been confirmed by a lands officer who had visited the ground and confirmed this position. That the mother title had been subdivided into portions of land measuring either 2 ½ or 1 acre which was issued to members. That there were no portions measuring 4 acres thus they and their parents did not understand how the 4 acres portion had come about.
8. He testified that despite them summoning Moses and his family to give them their respective parcels of land, they had refused to head to their summons. That whereas he could not tell the exact measurements of land held by Gathengera Investment, yet the public land measured 15 acres out of which Moses had illegally acquired 4 acres. That the said public land had been set aside for the construction of a school, a polytechnic, a hospital, a market area and any other government facilities. That whereas Moses had taken the said land earlier, yet the Registry Map had showed how the land was to be sub-divided and utilized. That all the members of Gathengera Investment who totalled to about 300 people came from the same area.
9. He confirmed that he had served as a treasurer where their office was based in Gakoe. That the Company's business was related to land, specifically purchasing parcels of land. That there had been a chairman called Joseph Waweru who had been succeeded by Moses Karanja after his death. That upon receipt of monies paid by the shareholders, the same was deposited to the bank. Their main issue had been that there had been persons who had been issued with title deeds by the Chairman yet they had not paid whereas other people who had paid and were in possession of receipts of payment had not been allocated parcels of land.
10. That he sought from the court were orders that the titles revert back to the company so that they could be issued to the people who had not received their land. That he had been informed that documents had been filed in court and whereas he did not know the contents therein, yet he was sure that they related to the present case.
11. PW2, one Obadiah Mburu Wanyoike, the 2nd Plaintiff herein, also introduced himself as a farmer who lived in Gakoe village Gakoe sub-location within Kiambu County and was a Secretary in Gathengera Investment Company Limited. He adopted his Witness Statement as his evidence in chief and proceeded to testify that they were in court because of the land in Gathengera which had been bought by their parents but not shared to some of them.
12. That PW1 was one of the executives of Gathengera Investment whose members used to contribute money and buy land with their shares. That whereas he could not remember the measurements of the land, some members had bought 2¹/₅ acres of land in Gathengera land within Naivasha while others had bought one acre. That members started buying the said parcels of land back in the 1970's while he was still in school wherein the land had been distributed between the years of 1980's and 1990's.



That during this distribution, there had been some members who did not get land, the record, which they had given to their advocate.

13. Mary Njeri Thiga, the 4th Plaintiff herein testified as PW3 to the effect that she had recorded her statement on a date that she could not remember and that whereas she used to know how to write a long time ago, because of the problems in her eye she could no longer read and write. However, upon the Advocate re-reading her statement to her, she adopted the same as her evidence in chief then stated that the issue before court was over land in Naivasha.
14. She testified that one Moses Karanja who had been their leader had taken land belonging to those who had purchased the same, as well as a parcel of land that had been reserved for a school, shops and boreholes and that was the reason they had filed the instant suit. That they used to have an office where members would pay their monies after which they had bought land at Gathengera measuring 400 acres as a group of about 200 members. That everybody who paid for the land was advised to go to Nairobi to receive their respective titles wherein the Chairman had refused to give some people their titles.
15. That all they had wanted was for the court to help them to get back the land that had been taken by the said Moses so that the same could be given to those who did not get. That there were people who had bought land in Gakoe and moved away. That she was aware that there were interim orders of injunctive orders issued on the instant parcels of land. That she was also aware that there were documents that the Counsel had filed in relation to the matter in the list of documents dated 17th April, 2023.
16. When she was examined by the court, she testified that she did not remember when the said Moses had taken the land belonging to the members who had paid for the same.
17. The Plaintiff closed their case and subsequently, the Defence case was also marked as closed wherein parties were directed to file their submissions. At the time of writing this judgment, no submissions had been filed by either of the parties.

Determination.

18. I have duly considered the evidence adduced before court by some of the Plaintiffs herein. From the said evidence and the pleadings herein filed, it is clear that the Plaintiffs were beneficiaries and / or shareholders of Gathengera Investment Company Limited whose core function was to buy land and share the same among its members according to their respective shares on the basis of their contributions.
19. The Plaintiffs' complaint however is that whereas some members received titles to their respective parcels of land upon completion of the payments, other members did not receive their titles to their portions of land despite completion of payment. That instead the said portions of land had been fraudulently transferred to third parties who were not members and/or beneficiaries of the company wherein another portion that had been set aside for public utilities had been grabbed by one Moses Karanja who was the then Chairman of the company. The Plaintiffs hence sought for impeachment of the said titles which were obtained fraudulently.
20. The question that arises for determination herein is whether the Plaintiffs have proved their case against the Defendants on a balance of probabilities.
21. I have anxiously considered the undefended case brought forward by the Plaintiffs and its prosecution in court and find that were it filed and prosecuted by the Plaintiffs themselves, I would have forgiven them for the inefficiencies therein, but to my horror and dismay, the pleadings were filed by Counsel and prosecution conducted by Counsel.



22. I say so because the strict application of the rules implore firstly that he who alleges must prove. It is trite law, pursuant to the provisions of Sections 107-109 of the *Evidence Act*, that the burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person are clear to this effect.
23. The filing of documentary evidence is governed by the *Evidence Act* (Cap 80) and the Civil Procedure Rules Act under Order 3 Rule 2, Order 7 Rule 5 and Order 16 Rules 6 and 7 which evidence plays a crucial aspect in any trial to either prove or disapprove a claim. The production of the said documents further adds value to a suit pursuant to the provisions of Sections 107-109 of the *Evidence Act* as herein above captioned.
24. In the present case, although the Plaintiffs' case was that portions of land that had been purchased by Gathengera Investment Company Limited for its members had been fraudulently transferred to third parties who were not members and/or beneficiaries of the company wherein another portion that had been set aside for public utilities had been grabbed by one Moses Karanja, there had been no production of any documentary evidence for example title deeds to the said parcels of land in support of their evidence despite it being trite law that the foundation of ownership to land is the registration of the same as its proprietor and issuance of a title deed.
25. Indeed the Court of Appeal in *Kenneth Nyaga Mwigye v Austin Kiguta & 2 others* [2015] eKLR had held that;
- “Once a document has been marked for identification, it must be proved. A witness must produce the document and tender it in evidence as an exhibit and lay foundation for its authenticity and relevance to the facts of the case. Once this foundation is laid, the witness must move the court to have the document produced as an exhibit and be part of the court record. If the document is not marked as an exhibit, it is not part of the record. If admitted into evidence and not formally produced and proved, the document would only be hearsay, untested and an unauthenticated account.”
26. Further in the case of *Des Raj Sharma -v- Reginam* (1953) 19 EACA 310, it had been held that there is a distinction between exhibits and articles marked for identification; and that the term “exhibit” should be confined to articles which have been formally proved and admitted in evidence. In the present case, no documents were either marked for identification or produced in evidence.
27. The Plaintiffs' contention was that one Moses Karanja a Chairman to the Company had fraudulently transferred their land to third parties who were neither members and/or beneficiaries of the company and had grabbed another portion that had been set aside for public utilities.
28. In *R.G Patel vs Lalji Makanji* 1957 E.A 314, the Court of Appeal stated as follows:
- “Allegations of fraud must be strictly proved although the standard of proof may not be so heavy as to require proof beyond reasonable doubt, something more than a mere balance of probabilities is required”.
29. I find that although the Plaintiff had distinctly pleaded fraudulent activity by the said Moses Karanja, the burden of proof of fraud had fallen on them and which burden had not been discharged as there had been no evidence whatsoever submitted throughout the Plaintiff's testimony of such fraud. In the absence of any evidence to back up their claim therefore, the court finds that it cannot uphold the alleged allegation of fraud as against Moses Karanja as the same remained a mere allegation.



30. Section 80 (1) of the [Land Registration Act](#) provides that:-

“Subject to sub Section (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.”

31. From the above provisions it is clear that the court has powers to order rectification of a register by directing that the registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake. There having been no evidence adduced as earlier stated in support of the Plaintiffs’ claim to impugn the Defendants titles, the court shall reject this prayer.

32. Before I pen off, I wish to remind Counsel that they must at all material times be diligent in their calling and therefore give their best whilst representing their clients. Indeed I would borrow the holding in the case of Omwoyo –vs- African Highlands & Produce Company Limited [2002]1 KLR, where it had been held as follows:-

“Time has come for legal practitioners to shoulder the consequences of their negligent act or omissions like other professionals do in their fields of endeavor”

33. We can no longer afford to show the same indulgence towards the negligent conduct of litigation as was perhaps possible in the leisured age. Sometimes there will be cases like this one, in which justice will better be served by allowing the consequences of the negligence of the Counsel to fall on their own heads. (see Lord Griffiths in his speech in the case of Kettman vs. Hansel Properties Limited [1988] 1 ALL E.R. 38 at Page 62)

34. In the end, I find that the Plaintiffs’ suit herein lacks substantial evidence, is devoid of merit and is herein dismissed with no orders to costs.

DATED AND DELIVERED VIA TEAMS MICROSOFT AT NAIVASHA THIS 19TH DAY OF SEPTEMBER 2024.

M.C. OUNDO

ENVIRONMENT & LAND – JUDGE

