



**Gachagua v Lands Registrar Nyeri (Environment & Land Miscellaneous Case E012 of 2023) [2024] KEELC 7109 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7109 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND MISCELLANEOUS CASE E012 OF 2023**

**JO OLOLA, J  
OCTOBER 31, 2024**

**BETWEEN**

**EPHRAIM MWANGI GACHAGUA ..... APPLICANT**

**AND**

**LANDS REGISTRAR NYERI ..... RESPONDENT**

**RULING**

1. By the Chamber Summons dated and file herein on October 2023, Ephraim Mwangi Gachagua (the Applicant) prays for orders.
  1. Spent.
  2. That entries 5 and 6 dated 20/8/1997, entry 7 dated 27/8/1997 and entry 8 dated 27/8/1998 on the Green Card relating to Plot (No.) Konyu-Baricho 2133 be declared invalid and be removed from the Lands Register; and
  3. That entry Nos. 2, 3 and 4 be reinstated and entry 4 be the last valid entry on the Greed Card.
2. The Application is supported by an Affidavit sworn by the Applicant and is premised on the grounds that:
  - a). The Applicant was a joint registered owner of Land Title No. Konyu/Baricho/2133 together with one Sophia Watare Gachigua;
  - b). The joint proprietors sub-divided the said parcel of land into some 8 plots namely Konyu/Baricho/2405, 2406, 2407, 2408, 2409, 2410, 2411 and 2412;
  - c). Mysteriously and without the knowledge of the joint proprietors, the entries of joint registration and sub-division on the Green Card over LR. No. Konyu/Baricho/2133 were cancelled;



- d). The cancellation was illegal, unprocedural and undocumented and the same have caused the Applicant great inconvenience and prejudice as the Applicant wishes to exercise his proprietary rights over the land.
3. The Nyeri Land Registrar F.W. Gitonga (the Respondent) is opposed to the application. In his Replying Affidavit filed herein on 14<sup>th</sup> February 2024, the Respondent avers that according to their records, the property known as Konyu/Barichu/2133 is registered solely in the name of Sophia Watare Gachigua.
  4. The Respondent further avers that those records shows that the register was rectified on entry numbers 2 and 4 and that the same prompted the cancellation of entry No 4 and reinstatement of entry No. 1 in the Green Card which indicates Ms. Sophia Watare Gachigua as the registered proprietor. The Respondent states that in the cancelled entries, the name of the Applicant appeared to apparently show that the land was held jointly between the said Sophia and the Applicant and that a title was issued to them on 28<sup>th</sup> December 1992 which is the same day Sophia was issued with a title in her sole name.
  5. The Respondent further avers that the rectifications were done after their office noted certain irregularities on the title. It is their case that the documents produced by the Applicant have certain discrepancies which require an investigation as they seem to purport that the sub-divisions were done on 23<sup>rd</sup> June 1995 which would be before the time the mother title was issued on 27<sup>th</sup> August 1997.
  6. I have carefully perused and considered both the application and the response thereto. I have similarly perused and considered the submissions placed before me by the Learned Counsels acting for the Applicants. I was unable to find any submissions lodged on behalf of the Respondent.
  7. By this Miscellaneous Application, the Applicant prays for a declaration that the cancellation of various entries in the Green Card relating to Land Title No. Konyu/Baricho/2133 were invalid and urges that the said cancellations be removed from the land register. In addition, the Applicant urges the court to be pleased to reinstate the cancelled entries.
  8. Those prayers arise from the Applicant's contention that sometime on 28<sup>th</sup> December 1992, the suit property was registered jointly in his name and the name of one Sophia Watare Gachigua. It was further the Applicant's case that following their joint registration as aforesaid, they decided on 23<sup>rd</sup> June 1995 to sub-divide the suit property into some eight (8) plots, the same being LR. No. Konyu/Baricho/2405 to 2412.
  9. It is further the Applicant's case that while the resultant sub-divisions were immediately registered in the names of the said Sophia Watare Gachigua and himself they both came to discover that some two years later, on 27<sup>th</sup> August 1997, the entries in support of the sub-divisions were mysteriously and illegally cancelled and the suit property was reinstated solely in the name of Sophia Warare Gachigua without the knowledge or involvement of the joint proprietor.
  10. The Applicant accuses the Respondent herein of acting outside his mandate by unilaterally cancelling his name from the title and cancelling the sub-divisions yet the Respondent's own investigations and that of the Police had not found any anomalies on how the title had been procured in their joint names.
  11. It is the Applicant's case that the said Sophia Watare Gachigua subsequently passed away on 29<sup>th</sup> September 2004 and that as the sole surviving proprietor the suit property should hence be registered in his name.
  12. From his response herein, the Land Registrar Nyeri did not deny that there had been alterations made in regard to the ownership of the suit property. It was the Respondent's case that their office had



- discovered certain irregularities in the registration of the name of the Applicant into the register and hence the need for its rectification. The Respondent accused the Plaintiff of failing to disclose that there were other substantive elements including third parties that had lodged instructions over the property claiming beneficial interests and hence the Respondent's inability to comply with the Applicant's requests.
13. From a perusal of the Applicant's lengthy 53- paragraph Supplementary Affidavit sworn on 15<sup>th</sup> April 2024, it was not difficult to discern the reasons it had taken the Applicant some 26 years before lodging this claim against the Respondent. That Affidavit reveals that the said Sophia Watere Gachigua was the Applicant's maternal grandmother and that the Applicant was brought up by the said grandmother after his mother died when the Applicant was barely eight (8) years old.
  14. That Affidavit also reveals that other than the Applicant's deceased mother Catherine Njeri Gachigua, Sophia had two other daughters namely, Agnes Wanjiru Kihuraini and Beatrice Gakenia Mbugua. While the Applicant avers that the changes to the ownership of the suit properties were done mysteriously and without the knowledge of Sophia or his own, it was evident that as their mother grew older, the two surviving daughters had increasingly become suspicious of their nephew in regard to the ownership of the suit land which hitherto solely belonged to their mother.
  15. From the material placed before the court, it was evident that while the Applicant insisted that Sophia had voluntarily agreed to have the land registered in their joint names, his two aunts' suspected that he was taking advantage of their mother's age to have the ownership transferred to himself. That must have been the reason by a letter dated 31<sup>st</sup> July 1997, (Annexure EMG 18) both Sophia and the Applicant were summoned to appear before the District Land Registrar Nyeri on 20<sup>th</sup> August 1997 and were required to take with them any documents relating to the suit property.
  16. While the Applicant asserts that no irregularities or fraud was discovered following the summons, it was evident that it was on the very same 20<sup>th</sup> day of August 1997 when they appeared before the Land Registrar that the Entry No. 2 in the Green Card was rectified and cancelled. Some 7 days later, the sub-divisions that had been made were equally cancelled and the original title reinstated in the sole name of Sophia.
  17. As it were, the Land Registrar is empowered under Section 79(2) of the *Land Registration Act* to rectify or direct the rectification of a register or document where the document in question has been obtained by fraud and the Applicant has not by this application demonstrated that the rectifications that were done were outside the mandate as to warrant this court to intervene.
  18. In any event, it was evident to me that this was not a matter that could be resolved without the involvement of the Estate of Sophia Watere Gachigua in its entirety. By filing this application solely against the Land Registrar, the Applicant was clearly intent in excluding the other beneficiaries of the estate who he elaborately names in his Supplementary Affidavit from participating in these proceedings.
  19. It follows that I am not persuaded that there is merit in the Chamber Summons dated October 17, 2023. The same is dismissed with costs to the Respondent.

**DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 31<sup>ST</sup> DAY OF OCTOBER, 2024.**

**In the presence of:**

Mr. Muchangi for the Applicant.

Mr. Kuria holding brief for Mumbi for the Respondent.



Court Assistant: Kendi

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**J. O. OLOLA**

**JUDGE**

