



**Wang’ombe (Legal representative of Estate of Francis Wangombe Wangai) &
2 others v County Government of Laikipia (Environment & Planning Appeal
E001 of 2024) [2024] KEELC 7310 (KLR) (28 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7310 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & PLANNING APPEAL E001 OF 2024**

AK BOR, J

OCTOBER 28, 2024

BETWEEN

**STEPHEN MURIUKI WANG’OMBE (LEGAL REPRESENTATIVE OF ESTATE
OF FRANCIS WANGOMBE WANGAI) 1ST APPELLANT
CARONNELIUS KINYUA KARIUKI 2ND APPELLANT
LUCY WANJIRU WANGOMBE 3RD APPELLANT**

AND

COUNTY GOVERNMENT OF LAIKIPIA RESPONDENT

JUDGMENT

1. In this appeal, the Appellants challenge the decision of the decision of Hon. B. Mararo, Senior Principal Magistrate, vide which the Learned Magistrate dismissed the Appellants suit being Nanyuki CM ELC Case No. 22 of 2018. In the plaint dated 9/8/2016, the Appellants sought an eviction order to remove the Respondent or its agents from the parcels of land known as Laikipia/Salama/Muruku Block I/3364, 3366 and 3368 (“the suit properties) which they claimed to own respectively. Additionally, they sought to have the Respondent build its dispensary on parcel number 3362.
2. In its defence dated 6/10/2016, the Respondent denied the Appellants’ claim and averred that the registration of the Appellants as proprietors of the suit properties was done illegally, fraudulently, unlawfully and in a manner which constituted acquisition of property reserved for public use without due process.
3. The matter proceeded to hearing before the trial court where parties called witnesses and tendered evidence in support of their respective cases. Upon conclusion of the trial, the Learned Magistrate found that the suit properties were meant for public utility and that the mutation forms which created the suit properties were not registered. While dismissing the Appellants’ claims, the trial court



found that the Appellants had unprocedurally subdivided land meant for public utility which was not available for subdivision.

4. In the memorandum of appeal dated 14/3/2024, the Appellants faulted the Learned Magistrate for disregarding the evidence of the director who gave them the suit properties and for misdirecting himself on the facts given by the surveyor on the certified mutation forms for the suit properties. They also argued that the trial court erred by not finding that the Government was in agreement with what the defunct land buying Company wished to do with some of its public plots as they sought to have the decision of the trial court dismissed and in its place the reliefs sought in their plaint allowed by this court.
5. The Appellants case before the trial court was that they purchased their respective plots comprising the suit properties from Kieni East Farmers Company Limited (the Company) through its Director and paid Kshs. 10,000/= each. Their claim was that the Company acquired Laikipia/Salama/Muruku Block I/920 measuring 3.64 hectares in 1999 which it subdivided and allotted the resultant plots among its members who were interested in the land. They produced a copy of the title deed issued to the Company on 2/7/2009. According to them, the land was surveyed on 28/7/2010 and they were allotted plots and subsequently issued title deeds for the suit properties on 7/4/2011 and 2/4/2014, copies of which they tendered in evidence.
6. They contended that the Respondent was building a dispensary on their land without their consent which in their view amounted to trespass. They produced copies of the Company's certificate of incorporation, the gazette notice dated 5/6/2009 vide which the Company was dissolved and the sketch map for the subdivision of Laikipia/Salama/Muruku Block I/920. They also produced a copy of the mutation form dated 28/7/2020 in respect of the subdivision of Laikipia/Salama/Muruku Block I/920 to create parcel numbers 3342 to 3355 together with the list of the beneficiaries of the resultant plots. According to the list bearing the Company's stamp, the Appellants were allocated parcel numbers 3364, 3366 and 3368 respectively while parcel numbers 3371, 3372 and 3373 were reserved for police post, dispensary and social hall respectively.
7. The Respondent relied on various correspondence including the letter dated 13/7/2017 from the National Land Commission (NLC) stating that the Company was granted approval to subdivide its land on 24/5/1995 on condition that it surrendered land for public utility to the Government. In that letter, NLC took the view that the subdivision of Laikipia/Salama/Muruku Block I/920 was illegal since the land constituted public land. NLC recommended revocation by the courts of the title over Laikipia/Salama/Muruku Block I/920 as well as all the titles that arose from the subdivision of this parcel of land. Additionally, that the ongoing development by the Respondent of a dispensary on the suit properties was to proceed since it was being undertaken on public land meant for the public good.
8. The Respondent also produced a copy of a search dated 31/8/2016 for Laikipia/Salama/Muruku Block I/920 (Kieni East) showing the proprietor as Kieni East Farmers Limited and that it was reserved for public utility. The other documents it relied on was correspondence from the Ministry of Lands approving the subdivision of the Company's land reference number (L.R No.) 9927 measuring 4271 hectares into 2865 agricultural plots subject to surrender of portions of the land for public purposes including schools, health centres, water point and cattle dip. The Company's letter dated 18/12/1995 conveyed its acceptance of the Government's conditions.
9. The Respondent relied on a handwritten schedule of the allottees of parcel numbers 913 to 928 indicating that parcel number 920 was for a polytechnic. The typed version of the schedule showed the Company as the beneficiary of parcel number 920. The Respondent produced part of the proposed



subdivision plan containing parcel number 920. It also tendered a copy of the mutation form for the subdivision of Laikipia/Salama/Muruku Block I/920 in evidence.

10. During the trial, the Appellants called the Company's Director, Muchiri Kiama Maina to give evidence in support of their claim. He told the court that the subdivision of the Company's land had been marred by controversies that resulted in the dissolution of the board and that there were leadership wrangles in the Company. That as the Company's sole surviving director in 1999, he reserved Laikipia/Salama/Muruku Block I/920 for the Company and not the Government as the Respondent contended. In his opinion, the former director misled the Respondent to build the dispensary on the Appellants' land yet it is he is who allotted the suit properties to the Appellants when he was a director of the Company.
11. The Appellants submitted that they filed Nyeri ELC Case No. 176 of 2016 seeking to remove the Respondent from their land and since the value of the land was less than Kshs. 20,000,000/=, they sought the transfer of the suit to the Nanyuki Chief Magistrates Court. The matter was transferred to Nanyuki on 7/3/2018. They urged that the evidence tendered during the trial showed that Laikipia/Salama/Muruku/Block 1-Kieni East/920 was lawfully mutated and allocated. They relied on the evidence of Muchiri Kiama and the documents from the Department of Lands on how the process of mutation and transfer was undertaken.
12. They also relied on the letters from the Ministry of Lands and Settlement dated 9/10/2002, 6/9/2002 which confirmed that although Naromoru Kiamathage Block 1/136 and Naromoru Kiamathage Block 1/Kieni East 76 were registered in the name of the Government of Kenya, they were the property of Kieni East Farmers Company Limited. They added that Laikipia/Salama/Muruku/Block 1-Kieni East had four other trading centres planned under public plot purpose which were released by the Director of Surveys in 2001. They relied on the registry index map (RIM) in support of this.
13. They submitted that at the time Kieni East Farmers Company Limited was dissolved, there were several other trading centres in the scheme which were undergoing the process of placing boundaries and registration for title deeds. They urged the court to rely on the evidence tendered during the hearing by the director or secretary of the defunct Company.
14. They faulted the Learned Magistrate for attaching too much weight to the cross-examination and not looking at the Appellants' witness statements. They denied that they were fraudulently allocated the suit properties and reiterated that the allocation was done by the defunct Company through its director Muchiri Kiama. They questioned how the land set aside for public amenities such as the dispensary plot, police post and social centre were set aside and how they could have shared that land.
15. Regarding the evidence of Mr. Josephat Wasua, the NLC Coordinator, they challenged his assertion that the department of land agents were misled and wondered whether the other similar land transactions undertaken by the Company were products of misguidance. They faulted the NLC Coordinator for discrediting the officers of the Department of Lands and for not calling witnesses from the Department of Lands to guide the trial court towards a credible determination of the dispute.
16. They urged that the NLC Coordinator influenced Mr. Ndungu the Laikipia West Rumuruti Land Registrar to testify and tell the court that there were no title documents for parcel No. 920 yet in his letter to the Registrar High Court Nyeri he urged the court to nullify all the title deeds derived from the subdivision of parcel number 920 including the suit properties. In their opinion, the trial court should have summoned the former Laikipia Land Registrar, Mr. Mburu who processed the title deeds for the resultant plots created from Laikipia Salama/Muruku/Block 1-Kieni East 920.



17. They submitted that there was evidence that this conflict was orchestrated by two former directors of the Company, that is Moses Murithi Waiganjo and Lawrence Murithi Kimondo. They stated that Muchiri Kiuma Maina who gave evidence on their behalf knew that the two former directors took away several important plot allocation registers as well as the land scheme registers for Laikipia, Nyeri and Nyandarua. They submitted that upon the demise of the Company's chairman, Samuel Thagana Gachora in 2001, Muchiri Kiuma encountered claims of double allocation of the land as can be seen in the filing of Nakuru HCCC No. 285 of 2009.
18. The Appellants attached a copy of the judgment in that case as well as photographs of the dispensary which the court will have to disregard as those should have been produced in evidence before the trial court. No leave was sought to introduce new evidence at the appeal stage. They invited the court to look at the letter dated 23/3/1994 from the Nyeri district Land officer to the Company regarding the issue of public purpose plot.
19. The Respondent submitted that the suit properties resulted from the subdivision of parcel No. 920 which was reserved for public utility as a polytechnic pursuant to the approval given to the Company for the subdivision of L.R No. 9927 which later became Laikipia/Salama/Muruku Block 1/Kieni East. It maintained that the Appellants unprocedurally subdivided land reserved for public utility which was the basis for the trial court dismissing their suit.
20. The Respondent relied on *Dina Management Limited v County Government of Mombasa & 5 Others* [2021] eKLR on the issue of courts being enjoined to nullify titles to grabbed land. Further, that the court stated that a democratic society holds public land and resources in trust for the needs of that society. The court went further to state that alienation of land that defeated the public interest went against the letter and spirit of Section 1 and 1A of *the Constitution*.
21. The Respondent submitted that the memorandum of appeal was not signed by the Appellants and that there was no authority from the 2nd and 3rd Appellants making the memorandum of appeal defective. This is a matter which the Respondent should have raised before the appeal was heard to give the Appellants an opportunity to respond.
22. The Respondent submitted that in arriving at its judgment, the trial court took into account the evidence of the director of the Company who testified on behalf of the Appellants. It added that the director admitted in his testimony that parcel no. 920 was reserved for a polytechnic.
23. The Respondent referred the court to the evidence of Daniel Yakona who testified on its behalf and told the court that the RIM remained intact and that the mutations were not authorised by the Land Registrar for registration. It maintained that there was no proof that the mutation forms for parcel no. 920 was ever registered in the Ministry of Lands and that parcel numbers 3364, 3366 and 3368 which the Appellants laid claim to were none existent in the survey records. It urged that this evidence was corroborated by the evidence of the Land Registrar.
24. The Respondent submitted that Josphat Wasua the former NLC County Coordinator produced the letter dated 13/7/2017 confirming that the land belonged to the Government and the Company had no right to sub divide it and allocate it to its members. Further, that both the Land Control Board and the Surveyor were misled into consenting and facilitating the illegal subdivision of parcel no. 920.
25. Moreover, that the surveyor confirmed that the non-registration of the mutation forms dated 2/8/2010 deemed the subdivision of parcel no. 920 irregular and non-procedural. That the totality of the evidence therefore showed that the purported survey carried out by the district surveyor which resulted in the creation of the Appellants' parcels of land was unprocedural and irregular meaning they did not acquire title to the suit properties. The Respondent maintained that it had proved its case to a degree



- higher than a balance of probabilities that the mutation process which was not registered was tainted with fraud and illegality.
26. The Respondent submitted that there was no material placed before the court to show any arrangement or agreement between the Company and the Government indicating that the Government would give the Company the leeway to make use of the land set aside for public use. The Respondent adverted to NLC's letter dated 13/7/2017 where it stated that the Company submitted the proposed subdivision scheme plan which was approved subject to conditions including the surrender of public utilities to the Government.
 27. The Respondent relied on the letters exchanged between the Company its surveyors and the Lands office dated 24/5/1994, 21/10/1994 and 18/12/1994 which mention the issue of reservation of public utility land as a condition precedent to the grant of approval for the Company to subdivide its land as well as the fact that the Company accepted the conditions given by the Ministry of Lands in the letter dated 18/12/1995.
 28. Additionally, the Respondent submitted that once the subdivision was approved, the Company had to surrender the areas earmarked for schools, health centers, boreholes, cattle dips and other public utilities free of cost as shown in the plan. It contended that the subdivision scheme plan was not varied by the Company after its approval which would have granted the Company the freedom to use the public utility land for private purposes.
 29. The Respondent maintained that the Company breached the covenant between itself and the Government when it sanctioned the use of parcel no. 920 for private use contrary to the conditions given on 24/5/1995.
 30. The appeal was canvassed through written submissions which the court duly read and considered. What falls for determination in this appeal is whether the suit properties constituted public land, and secondly, whether or not the mutation forms that led to the issuance of the titles for the suit properties were ever registered.
 31. The Respondent's position is that parcel no. 920 remained public land and was not available for allocation to the Appellants as they contended. It relied on the handwritten extract of the register showing that the land was reserved for a polytechnic. Unfortunately, the full register was not produced and the copy of the register tendered in evidence was not certified by the Company officials or the land registrar to establish its authenticity. The court notes that a typed copy of what seems to be register was also tendered in evidence indicating that parcel no. 920 belonged to Kieni East Farmers Company Limited.
 32. The Appellants produced a copy of the title deed for parcel no. 920 issued on 2/7/2003 by the Laikipia Land Registry for the land measuring 3.642 hectares. They also produced a copy of the mutation for parcel no. 920 stamped by the district surveyor on 20/8/2010 together with the sketch plan for the subdivided portions. They produced a copy of the schedule with the Company's stamp showing the allottees of the parcels that resulted from the subdivision of parcel no. 920. The court notes that the names of the 2nd and 3rd Appellants are shown are included in that list while parcel no. 3364 is indicated against the name of Francis Wang'ombe Wangai.
 33. Based on the titles which the lands office issued to the Appellants for their individual plots and to the Company in respect of parcel number 920, as well as the impugned mutation forms, the court is persuaded that indeed parcel no. 920 was subdivided and the process of subdivision was completed before the issuance of the titles to the Appellants. This conclusion is buttressed by the letter dated 13/7/2017 from NLC to the Registrar of the High Court Nyeri and the Laikipia County Government



- confirms the fact that the District Surveyor completed the process of the subdivision of parcel no. 920. The recommendations made by Mr. Josphat Wasua in that letter was that the court ought to cancel all titles emanating from parcel no. 920 being parcel numbers 3342 to 3374 because the land was reserved for public use in line with Article 62 (1) of *the Constitution*.
34. Mr. Wasua was also of the view that the first title which was issued to the Company for parcel no. 920 was fraudulently issued and should be revoked by the court for being irregularly processed. He indicated in that letter that the Ministry of Lands approved subdivision of L.R No. 9927 measuring 4271 hectares vide the letter dated 24/5/1995 on certain conditions including the surrender of land for public use and specifically mentioned areas marked for schools, health centres, bore hole cattle dip among others.
 35. The Respondent relied on the certificate of official search done on parcel no. 920 on 31/8/2016 showing that the land was reserved for public utility even though the Company was indicated as proprietor of that land with effect from 3/9/2001. The letters dated 24/5/1995 and 21/10/1994 referred to the subdivision of parcel no. 9927 by the Company. The Company agreed to the conditions for the subdivision through its letter of 18/12/1995.
 36. The Respondent did not adduce evidence to show that parcel no. 920 specifically was reserved for public utility. What emerges from the evidence tendered by the director is that there was some disagreement and leadership wrangles among the directors of the Company and different directors of the company may have had different versions of which part of the Company's land was specifically set aside for public utility. It would have been helpful if evidence were led on the steps that were supposed to be undertaken once land earmarked by the Company was reserved for public utility and the process followed in surrendering those parcels to the Government.
 37. The letter dated 28/10/2002 on the notepaper of the Company gave a list of 27 parcels of land that were to be reserved for public use including dams, churches, schools and water points. According to that list, parcel no. 894 appearing at number 7 was reserved for a polytechnic. Parcel no. 920 does not appear on that list. A similar letter was written to the Land Registrar in Nanyuki setting out different parcels of land for public purpose. The letter was received by the land Registrar on 2/9/2009. Parcel no. 920 does not appear on the schedule of the parcels of land that were reserved for public utility according to that letter.
 38. The court prefers the evidence of Muchiri Kiuma who as the former director of the Company gave the chronology of how the subdivision of the land was done. Looking at the letters dated 9/10/2002 and 6/9/2002 from the Land Registrar Nyeri to the District Officer Kieni East Division it is clear that some of the parcels of land belonging to the Company were registered in the name of the Government of Kenya even though they were the property of the Company.
 39. What emerges from the evidence tendered in court is that the Company's land was subdivided on condition that the Company surrendered land earmarked for public purposes to the Government as a condition for the approval to subdivide parcel no. 9927. NLC and the Respondents failed to establish that parcel no. 920 was set aside for public use after the subdivision of L.R No. 9927. The letter dated 23/3/1994 from the District Land officer mentioned that Naromoru/Naromuru/Block 1/484 was surrendered to the Government and was Government land which the Company had no authority to subdivide. No evidence was led to prove that parcel no. 920 was surrendered to the Government by the Company and how it became public land as the Respondent and NLC contended.
 40. Under the Development and Use of Land (Planning Regulations) L.N 516/1961, Regulation 11 required every person who needed consent for development to apply to the Central Authority. The Central Authority was empowered to consent to the application subject to conditions it thought



proper to impose under Regulation 12. Regulation 16 provided that land surrendered for public purposes was to be freely surrendered to the Government and would be made available for public purposes related to the area generally as and when required.

41. Under Regulation 24, the Registrar was to refuse to register a document relating to development of land, including subdivision, unless consent required by the regulations had been given or the appropriate conditions relating to the consent had been complied with. The Government was bound by the regulations.
42. Looking at the time when approval was granted to the Company in 1995 up to 2009 when the Company was dissolved, it would be expected that the land registrar and the other Government officers should have taken steps to secure the land surrendered by the Company for public use so as to bring some certainty as to which exact parcels of land were earmarked and surrendered for public use when the Company's land was subdivided and allocated to its members following the grant of approval to the Company to subdivide its land.
43. Muchiri Kiama Maina gave evidence and told the court that he wished to have the remaining few people given their title deeds in Laikipia/Salama/Muruku Block 1 Kieni East based on the land register which he presented to the Land Registrar Laikipia. According to the list of the plots created from the subdivision of parcel no. 920, parcel no. 3371 was reserved for a police post, parcel no. 3372 was reserved for a dispensary, parcel no. 3373 was reserved for a social hall while parcel no. 3374 was for Kieni East Company Limited. No evidence was led to explain why the Respondent did not construct the dispensary on parcels number 3372 and instead erected it on the suit properties.
44. The court is satisfied that the Appellants proved their case on a balance of probabilities before the trial court and that the Respondent should have constructed the dispensary on parcel no. 3372. No evidence was led regarding the other persons allocated plots that resulted from parcel 920 and whether they had occupied the plots allocated to them. The Appellants' position was that parcel no. 920 was reserved for a trading centre. It would have been helpful to the court if the Respondent had led evidence regarding the status of the other portions of land which emanated from parcel 920 and how this specific parcel of land was reserved for public utility.
45. The appeal is allowed in the following terms: -
 - a. The judgment of the trial court dated 5/3/2024 is set aside.
 - b. The court finds that on a balance of probabilities, the Appellants proved their claim of ownership of the parcels of land known as Laikipia/Salama/Muruku Block I/3364, 3366 and 3368.
 - c. In light of the fact that the Respondent has constructed a dispensary on the Appellants' land being Laikipia/Salama/Muruku Block I/3364, 3366 and 3368 using public funds, instead of erecting it on Laikipia/Salama/Muruku Block I/3372 measuring 0.6908 hectares which was reserved for a dispensary, the Appellants cannot take possession of the parcels of land known as Laikipia/Salama/Muruku Block I/3364, 3366 and 3368.
 - d. With the participation of NLC, the Respondent is to proceed to subdivide Laikipia/Salama/Muruku Block I/3372 reserved for a dispensary with a view to allocating the Appellants plots which are equivalent to the sizes of Laikipia/Salama/Muruku Block I/3364, 3366 and 3368 as compensation within six months of the date of this judgment.
 - e. In the event that it is not be possible to excise plots from Laikipia/Salama/Muruku Block I/3372 for allocation to the Appellants as ordered above, parties are to engage a valuer to



ascertain the value of Laikipia/Salama/Muruku Block I/3364, 3366 and 3368 for purposes of payment of prompt compensation by the Respondent to the Appellants. NLC is to be involved in the process of determination of the compensation payable to the Appellants and payment of such compensation.

- f. The Appellants are awarded the costs of the suit and of the appeal.

DELIVERED VIRTUALLY AT NANYUKI THIS DAY 28TH DAY OF OCTOBER 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Stephen Muriuki Wang'ombe- 1st Appellant

Ms. Joyce Nduta for the Respondents

Diana Kemboi- Court Assistant

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