



**Macharia & 3 others v County Government of Kajiado (Environment and Land Case Civil Suit 624 of 2017) [2024] KEELC 6948 (KLR) (24 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6948 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE CIVIL SUIT 624 OF 2017  
MN GICHERU, J  
OCTOBER 24, 2024**

**BETWEEN**

**JOHN KARUMO MACHARIA ..... 1<sup>ST</sup> PLAINTIFF  
MICHAEL MWANGI NDUNGU ..... 2<sup>ND</sup> PLAINTIFF  
CHARLES KIMANI KIMOTHO ..... 3<sup>RD</sup> PLAINTIFF  
PURITY MUMBI NGUNJIRI ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**THE COUNTY GOVERNMENT OF KAJIADO ..... DEFENDANT**

**JUDGMENT**

1. The plaintiffs seek the following reliefs against the defendant.
  - a. A declaration that the plaintiffs lawfully acquired for valuable consideration all that property known as Ngong/Township/Block 2/522, 861, 487, B, G and 888, Kajiado(suit property) and that the plaintiffs are the lawful owners or allottees of the said parcels of land and are entitled to quiet and vacant possession thereof.
  - b. A declaration that the defendants acts of forcefully possessing the suit parcels amounts to trespass and conversion.
  - c. A mandatory injunction compelling the defendants to give vacant possession of the suit parcels.
  - d. A permanent injunction restraining the defendant whether by itself, its agents and or servants from interfering, trespassing, constructing, alienating, charging, selling disposing off, dealing or in any way interfering with the plaintiffs' quiet possession of the suit property.
  - e. Compensatory damages in form of cash and finance.



f. In the alternative to prayers (c) and (d) compensatory damages as assessed herein below.

1. Ngong/Block 2/522 – Kshs. 17, 250,000/-
  2. Ngong/Block/863 – Kshs. 17, 250,000/-
  3. Ngong/Block/487 – Kshs. 16, 675, 000/-
  4. Ngong/Block/861 – Kshs. 16, 675, 000/-
  5. Ngong/Block/Plot H – Kshs. 27, 94, 000/-
  6. Ngong/Block/888 – Kshs. 25,070,000/-
- Total Kshs. 120, 865,000/-

g. Costs of this suit.

h. Any other order that the court shall deem fit and meet to grant.

This is as per the amended plaint dated 23/10/2018.

2. The plaintiffs' case is as follows. They are the registered owners of the suit parcels which they acquired through purchase as follows.

- a. 1<sup>st</sup> plaintiff – from Daniel Ole Muyaa.
- b. 2<sup>nd</sup> plaintiff – from Ruth Wanjera Mwangi.
- c. 3<sup>rd</sup> plaintiff – from Henry Rapasi.
- d. 4<sup>th</sup> plaintiff – from Albert M. Leina.
- e. 5<sup>th</sup> plaintiff – from Sarah Sindamei.
- f. 6<sup>th</sup> plaintiff – from Christopher Isaiah Rapasi.

The 1<sup>st</sup> to 5<sup>th</sup> plaintiffs constructed on their respective parcels commercial structures which they rented to tenants who operate diverse businesses. The income generated from the said structures is a source of their livelihoods. All the structures on the suit land were put up with the express approval of the County Council of Olkejuado which is the predecessor of the defendant. For the period that the plaintiffs have owned the suit parcels they have been paying rent and the applicable rates to the defendant.

3. On 26/11/2010 the Registrar of Lands purported to revoke the title to the suit parcels. This prompted the 1<sup>st</sup> to 4<sup>th</sup> plaintiffs to file a Judicial Review application which was No. 129 of 2011, Republic – versus- County Council of Kajiado and 2 others, Ex parte John Karumo Macharia and 4 others to challenge the unlawful revocation of their titles to the land. The High Court ruled in favour of the plaintiffs in a ruling dated 31/10/2012. It is the plaintiffs' contention that they are not aware of any legitimate process undertaken by any of the Government agencies including the defendant leading to the cancellation of the titles. On or about the 26/8/2016, the defendant started excavating on the area reserved for a bus terminus which is adjacent to the plaintiffs' land and deposited huge mounds of soil, debris and sand on the plaintiffs' land which has blocked access to the structures thereon. No notice of intention to take over the suit land was ever issued to the plaintiffs yet they have not encroached on the defendant's land reserved for a bus park or any other public utility. The defendant has therefore converted the plaintiffs' land to public use and if they are not wishing to relinquish it to the plaintiffs they should compensate the plaintiff with the current market value of the suit land.



4. In support of their case, the plaintiffs filed the following evidence.
  - i. Witness statements by the plaintiffs as well as supplementary witness statements.
  - ii. For the 1<sup>st</sup> plaintiff  
Certificate of lease for L.R. Ngong/Township/Block 2/522.Certificate of official search dated 4/2/2010.Copy of sale agreement dated 3/1/2002.Copy of letter of allotment dated 30/3/1999.Copy of consent to transfer dated 8/1/2002.Copies of approved building plans.Copy of gazette notice No. 15581 dated 26/11/2010.Copy of ruling in Misc. 129/2011.Copy of order in Misc. No. 129/2011.Copy of index map.
  - iii. 2<sup>nd</sup> plaintiff  
Copy of minutes of Kajiado Central Plot allocation committee dated 8/1/1999.Copy of letter of allotment dated 30/3/1999.Copy of letter dated 2/1/2007.Copy of rates clearance certificate dated 2/10/2001.Copy of letter dated 25/10/2002.Copy of letter dated 25/10/2002.Copy of receipt dated 1/3/2008.Copy of receipt dated 28/9/2010.
  - iv. For 4<sup>th</sup> plaintiff  
Copy of application to transfer dated 9/9/2009.Copy of rent receipt dated 23/1/2009.Copy of letter of allotment dated 30/3/1999.
  - v. For 5<sup>th</sup> plaintiff  
Copy of consent to transfer dated 22/4/2002.Copy of letter of allotment dated 30/3/1999.Copy of transfer of Plot No. H dated 26/3/2002.Copy of rates clearance certificate dated 22/4/2002.Copy of approved building plans.Copy of certificate of occupation dated 12/2/2002.Copy of certificate of occupation dated 12/2/2002.Copy of official search dated 29/7/2013.Various trading licences.
5. The defendant through counsel on record filed a written statement of defence dated 22/2/2019 in which it is averred as follows. Firstly, the entire claim by the plaintiff is denied. Secondly, it is averred that the suit land was public land designated for the purposes building a bus park and a market. Thirdly, it is denied that any rates were ever paid and if they were, then it was by mistake. Fourthly, the plaintiffs were given adequate notice to voluntarily remove all their illegal structures but they chose to ignore it. Fifthly, if any buildings were demolished, they had been erected on public land and without the necessary approvals by the defendant as required by the Physical Planning Act (cap 286). Sixthly, any action taken against the plaintiffs was pursuant to statutory duties and mandate and all the requisite procedures were followed. Seventhly, the plaintiffs 'claim is time barred. Finally, any allocation of the suit land was invalid, illegal and void ab initio.  
  
For the above and other reasons, the defendant prays for the dismissal of the plaintiffs suit with costs.
6. In support of its case, the defendant filed the following evidence.
  - i. Witness statement by the defendant's County Surveyor, Joshua Lemaikai dated 3/10/2018.
  - ii. Copy of Ngong Township Development *Plan of 1998*.
  - iii. Gazette Notice Vol. (XII – No. 124).
  - iv. Copy of survey plan no. KAJ. 164. 92. 8t 563w3w3e.
7. At the trial four of the plaintiffs testified by adopting their witness statements and documents as their evidence. They were then subjected to cross –examination by the defendant's counsel. In addition, the plaintiffs called the evidence of valuation by the valuer who valued the suit property. On the part of the defendant the only witness who testified was the County Surveyor, Joshua Lemaikai. His evidence



is to the effect that all he did was to resurvey the suit property. He also adopted his witness statement and documents as his evidence.

8. Counsel for the parties did not file written submissions within the set timelines.
9. I have carefully considered all the evidence adduced in this case by both sides including the witness statements and documents. I have also considered the testimony at the trial. I find that the following issues arise.
  - i. Whether the suit land was private or public land.
  - ii. Whether the plaintiffs were issued with valid ownership documents.
  - iii. Whether the defendant is stopped from denying the plaintiffs ownership.
  - iv. Whether Gazette Notice Vol. CX11-No. 124 has any legal effect.
  - v. Which orders have the plaintiffs proved.
10. On the first issue, I find that the suit land became private land the moment the predecessor of the defendant alienated it. There is overwhelming evidence in form of certificates of lease, certificates of official search, letters of allotment and approval of transfers to prove that the plaintiffs acquired the suit land lawfully and officially. All these documents are prima facie evidence that the plaintiffs are the absolute owners of the suit land within the meaning of Section 26(1) of the *Land Registration Act (Act No. 3 of 2012)*. The defendant, apart from merely alleging that the lease documents were invalid did not call any evidence to rebut the prima facie evidence adduced by the plaintiffs. All that the defendant did was to call a witness who only talked about carrying out a resurvey of the suit land. His evidence had nothing to do with the ownership of the suit land. This finding also covers the second issue.
11. On the third issue, I find that the defendant is estopped from denying that the plaintiffs owned the suit land. Again, there is evidence that the defendant received payments from the plaintiffs in form of rates. I have also taken judicial notice of the fact that A.M. Leina was the secretary of plots allocation committee and Daniel Ole Muyaa was the Chairman of Kajiado County Council. These two sold some of the suit plots to the 1<sup>st</sup> and 4<sup>th</sup> plaintiffs. Anybody buying the suit land would be excused from any suspicion that the sale was improper when buying from Daniel Ole Muyaa and A.M. Leina. The defendant is bound by the actions of its predecessors in office. The rule of general estoppel under Section 120 of the *Evidence Act* applies. It proves as follows.

“When one person has, by this declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth or that thing”.
12. As for the fourth issue, I find that Gazette Notice Volume CXII – No. 124 has no legal effect because it was quashed by Miscellaneous Application No. 129 of 2011. There was no appeal against this High Court decision. The defendant’s witness while under cross examination said he was not aware of any appeal. Had there been any appeal, it would have been pleaded.
13. From the foregoing, I find that the plaintiffs have proved their claim against the defendant on a balance of probabilities. There are some prayers that are out of reach of the plaintiffs even though they have succeeded in their litigation against the defendant. The unavailable prayers are those seeking an order of injunction and quiet possession of the suit land because as we have been told, the plaintiffs’ property



on the suit land was demolished and the land put into different use. There are however other alternative prayers still available to the plaintiffs.

14. I enter judgment for the plaintiffs against the defendants in terms of prayers (a), (b), (e), (f) and (h) of amended plaint dated 23/10/2018.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**M.N. GICHERU**

**JUDGE**

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