



REPUBLIC OF KENYA



**Nduati v Njoroge & 3 others (Environment & Land Case 7 of 2020)  
[2025] KEELC 180 (KLR) (30 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 180 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 7 OF 2020  
JO OLOLA, J  
JANUARY 30, 2025**

**BETWEEN**

**CHARITY GATHIGIA NDUATI ..... PLAINTIFF**

**AND**

**MARTIN NDUATI NJOROGE ..... 1<sup>ST</sup> DEFENDANT**

**SAMUEL KARIUKI WACHIRA ..... 2<sup>ND</sup> DEFENDANT**

**SIMON MURIITHI NDUIRE ..... 3<sup>RD</sup> DEFENDANT**

**LAND REGISTRAR, NYERI COUNTY ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 6<sup>th</sup> February, 2020, Charity Gathigia Nduati (the Plaintiff) prays for judgment against the 4 Defendants jointly and severally for:
  - a. A declaration that the transfer and registration of the suit property known as Thegenge/Karia/3782 by the Defendants was fraudulent, illegal, null and void;
  - b. An order compelling the 4<sup>th</sup> Defendant to cancel the transfer and the title of the suit property known as Thegenge/Karia/3782 issued to the 2<sup>nd</sup> Defendant and 3<sup>rd</sup> Defendant and the same be registered in the joint names of the Plaintiff and the 1<sup>st</sup> Defendant;
  - c. An order for a permanent injunction restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their agents or servants from interfering with the property known as Thegenge/Karia/3782;
  - d. Costs of this suit and interest at Court rates;
  - e. Any other relief this Honorable Court may deem fit and just to grant.



2. Those prayers arise from the Plaintiff's contention that she has been legally married to the 1<sup>st</sup> Defendant since the year 1994 and that they had jointly acquired the suit property during their marriage and made it their matrimonial home.
3. It is the Plaintiff's case that sometime in April, 2018 she learnt that the 1<sup>st</sup> Defendant was planning to sell the suit property and she proceeded to lodge a caution against the property. She asserts that when the 1<sup>st</sup> Defendant learnt about the caution the 1<sup>st</sup> Defendant assaulted and evicted her and thereafter proceeded to sell the property without her consent.
4. Martin Nduati Njoroge (the 1<sup>st</sup> Defendant) neither entered appearance nor did he participate in these proceedings.
5. Samuel Kariuki Wachira and Simon Muriithi Nduire (the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants) were opposed to the grant of the orders sought by the Plaintiff. In their joint Statement of Defence dated 30<sup>th</sup> May, 2021, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants plead that they were strangers to the Plaintiff's assertion that the suit property was acquired jointly by herself and the 1<sup>st</sup> Defendant and that the same was their matrimonial home.
6. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendants aver that vide a Sale Agreement dated 1<sup>st</sup> November, 2019, they jointly purchased the suit property from the 1<sup>st</sup> Defendant at a consideration of Kshs. 7,000,000/= which sum they paid in full. It is their case that prior to the purchase, they had done due diligence and established that the property which was vacant was registered in the name of the 1<sup>st</sup> Defendant.
7. The 4<sup>th</sup> Defendant entered appearance and filed its defence statement on 22<sup>nd</sup> July, 2022. The 4<sup>th</sup> Defendant asserted that it is a stranger to the allegations raised by the Plaintiff concerning her relationship with the 1<sup>st</sup> Defendant.
8. It is the 4<sup>th</sup> Defendant's case that the suit as filed does not disclose any reasonable cause of action against them and that the Plaintiff's claim in its entirety lacks merit.

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

9. At the trial, the Plaintiff (PW1) testified as the sole witness in her case. Adopting her statement dated and filed herein on 6<sup>th</sup> February, 2019, PW1 reiterated that she got married to the 1<sup>st</sup> Defendant in 1994 and that they had been blessed with three (3) issues.
10. PW1 told the Court they had acquired the suit property jointly during the subsistence of the marriage and had developed the same by building their one-storied residential house thereon. Sometime in April, 2018 PW1 got to learn that the 1<sup>st</sup> Defendant was planning to sell their matrimonial home. She told the court it was then that she lodged a caution on the property.
11. PW1 testified that when the 1<sup>st</sup> Defendant learnt about the caution, he physically assaulted PW1 and threw her out of the matrimonial home. Thereafter the 1<sup>st</sup> Defendant proceeded to sell the property without PW1's consent. PW1 told the court she came to learn that the property had been transferred to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants on 9<sup>th</sup> December, 2019 when she conducted an official search at the Nyeri Lands Registry.

#### **Analysis and Determination: -**

12. I have carefully perused and considered the pleadings filed herein, the testimony of the Plaintiff as well as the evidence adduced before the court. I have similarly perused and considered the submissions and authorities placed before the court by the Learned Counsels representing the parties.



13. By her Complaint as filed herein on 6<sup>th</sup> February, 2020, the Plaintiff urges the court to declare that the transfer and registration of all that parcel of land known as Thegenge/Karia/3782 (the suit property) by the Defendants was fraudulent, illegal, null and void. The Plaintiff also craves an order compelling the 4<sup>th</sup> Defendant in particular to cancel the said transfer and to cause the suit property to be registered in the joint names of the Plaintiff and the 1<sup>st</sup> Defendant.
14. In addition, the Plaintiff has urged the court to issue an order of a permanent injunction restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their agents and/or servants from interfering with the suit property.
15. Those prayers arise from the Plaintiff's contention that since the year 1994, she has been married to the 1<sup>st</sup> Defendant with whom they acquired the suit property and made it their matrimonial home. It is the Plaintiff's case that sometime in April 2018, she discovered that the 1<sup>st</sup> Defendant was planning to sell the suit property.
16. To forestall the planned sale the Plaintiff told the court that she immediately lodged a caution on the property. However, when her husband discovered what she had done, the husband assaulted her and threw her out of the home before proceeding to sell the same without her consent.
17. As it turned out, the 1<sup>st</sup> Defendant neither entered appearance nor did he participate in these proceedings in any capacity. On their part, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants pleaded that they were strangers to the Plaintiff's claim that she was married to the 1<sup>st</sup> Defendant and that the suit property comprised their matrimonial property. It was their case that they had entered into a sale agreement with the 1<sup>st</sup> Defendant on 1<sup>st</sup> November 2019 whereupon they acquired the property at the sum of Kshs. 7,000,000/=
18. Similarly, the Land Registrar Nyeri County (the 4<sup>th</sup> Defendant) asserted that he was a stranger to the Plaintiff's claim that she was married to the 1<sup>st</sup> Defendant. It was the 4<sup>th</sup> Defendant's position that the suit as filed does not disclose any reasonable cause against his office.
19. In support of her case, the Plaintiff has provided a Certificate of Registration of a Change of particulars in respect of a business registered under the Business Names Act known as Ephemart Contractors in which she is indicated as "W/O" of the 1<sup>st</sup> Defendant. It was her case that those indications mean "wife of" the 1<sup>st</sup> Defendant. In addition, the Plaintiff has produced her National Identity Card bearing the names "Nduati" as her surname. Nduati happens to be the middle name of the 1<sup>st</sup> Defendant. The Plaintiff explained that she adopted that name as her surname upon marriage to the 1<sup>st</sup> Defendant.
20. Further, the Plaintiff has exhibited copies of Certificates of Birth for her three (3) children. Her name appears in the Certificate as the mother of the said children while the 1<sup>st</sup> Defendant is named as their father.
21. As it were, the 1<sup>st</sup> defendant herein did not file any pleadings before the court nor did he testify as a witness. He did not rebut the Plaintiff's testimony that she was his wife. Looking at the documents produced by the Plaintiff, I was left with no doubt that the Plaintiff was indeed a wife to the 1<sup>st</sup> Defendant.
22. From a perusal of a Copy of the title deed for the suit property, it was evident that the same was registered in the name of the 1<sup>st</sup> Defendant on 5<sup>th</sup> October, 2012. Given the uncontroverted evidence of the Plaintiff, it was clear to me that the same was acquired during the subsistence of the said marriage.



23. In that respect Section 93(2) of the [Land Registration Act](#) No. 3 of 2012 provides thus:

If land is held in the name of one spouse only but the other spouse(s) contributes by their labour or other means to the productivity, upkeep and improvement of the land, that spouse (s) shall be deemed by virtue of that labour to have acquired an interest of that land in the nature of an ownership in common with the spouse in whose name the certificate of ownership has been registered and the rights gained by the spouse (s) shall be recognized in all cases as if they were registered.

24. On the other hand, matrimonial property is defined under Section 6 of the [Matrimonial Property Act](#), 2013 as follows:

- “ 6. For the purposes of this Act, Matrimonial property means:
- a. The matrimonial home or homes;
  - b. Household goods and effects in the matrimonial home or homes;  
or
  - c. Any other immovable and movable property jointly owned and acquired during the subsistence of the marriage.

25. Arising from the foregoing, it was evident to me that the suit property was registered in the name of the 1<sup>st</sup> Defendant in trust for the Plaintiff. By disposing off the property after throwing out the Plaintiff therefrom, it was clear that the 1<sup>st</sup> Defendant did so with the intent to defeat the Plaintiff's interests on the property.

26. In regard to the sale or disposal of matrimonial property, Section 12 (1) of the [Matrimonial Property Act](#) provides that:

“ An estate or interest in any matrimonial property shall not, during the subsistence of a monogamous marriage and without the consent of both spouses, be alienated in any form, whether by way of sale, gifts lease, mortgage or otherwise”.

27. Section 28 of the [Land Registration Act](#) on the other hand provides as follows:

- “ 28. Unless the Contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register –
- a. Spousal rights over matrimonial property;
  - b. Trusts including customary trusts;

28. As was stated in Kadzo Mkutano –versus- Mukutano Mwamboje Kadosho and 2 others (2016) eKLR:

“ Section 28 of the [Land Registration Act](#) recognizes spousal rights over matrimonial property as an overriding interest. Spousal consent is therefore required before a spouse can sell matrimonial property. In the absence of such a consent, the sale becomes null and void.”

29. As it turned out, the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants did not testify herein and no evidence was adduced by themselves as to how they acquired the suit property and/or any consideration paid by themselves



towards its acquisition. There was therefore no evidence on which they could purport that they were bonafide purchasers for value.

30. In the premises herein I was persuaded that the Plaintiff had proved her case on a balance of probabilities. Accordingly, I hereby enter judgment for the Plaintiff and make the following orders:
- a. A declaration is hereby issued that the transfer and registration of the suit property known as Thegenge/Karia/3782 by the Defendants was fraudulent, illegal, null and void.
  - b. An order is hereby issued compelling the 4<sup>th</sup> Defendant to cancel the transfer and the title of the suit property issued to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants and instead to have the same registered in the joint names of the Plaintiff and the 1<sup>st</sup> Defendant.
  - c. An order of a permanent injunction is hereby issued restraining the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants, their agents or servants from interfering in any manner whatsoever with all that property known as Thegenge/Karia/3782.
  - d. Each party shall bear their own costs.

**JUDGMENT DELIVERED THROUGH THE MICRO – SOFT TEAMS VIRTUAL MEANS  
SIGNED AND DATED AT MOMBASA THIS.....30<sup>TH</sup> ..... DAY OF.....JANUARY.....2025.**

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**J.O. OLOLA**

**JUDGE**

Judgement delivered in the presence of:

- a. Firdaus the Court Assistant.
- b. No appearance for the Plaintiffs
- c. No appearance for the 1<sup>st</sup> and 3<sup>rd</sup> Defendants
- d. Ms. Nyambura Mbugua holding brief for Ms. Chege for the 4<sup>th</sup> Defendant

