



**Wachira v Kachuodho Holdings Limited & 5 others (Environment & Land Case E018 of 2022) [2024] KEELC 13251 (KLR) (18 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13251 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E018 OF 2022  
JA MOGENI, J  
NOVEMBER 18, 2024**

**BETWEEN**

**AMOS NJUGI WACHIRA ..... PLAINTIFF**

**AND**

**KACHUODHO HOLDINGS LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**SANGIRA STEPHEN OCHOLLA ..... 2<sup>ND</sup> DEFENDANT**

**THE NAIROBI CITY COUNTY ..... 3<sup>RD</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR ..... 4<sup>TH</sup> DEFENDANT**

**THE INSPECTOR GENERAL OF POLICE ..... 5<sup>TH</sup> DEFENDANT**

**THE HON. ATTORNEY GENERAL ..... 6<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced by way of a Plaint dated 25/01/2022 in which the Plaintiff seeks for judgment to be entered against the Defendants as follows:
  - a. A Declaratory judgment to the effect that the demolition of the suit property known as LR No. 209/2389/130 and the eviction of the Plaintiff's tenants by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Defendant was illegal, highhanded, unlawful, malicious and contrary to all known provisions of the law.
  - b. An order for the cancellation of the purported Certificate of Lease issued to the 1<sup>st</sup> Defendant by the 4<sup>th</sup> Defendant over the suit property known as LR 209/2389/130.
  - c. A declaratory judgment to the effect that the Plaintiff is the sole registered proprietor of the suit property known as LR 209/2389/130 and that his registration is indefeasible under the provisions of law.



- d. A permanent injunction order do issue to restrain the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> defendants either by themselves, their agents, servants, employees or any other person or group of persons acting on their behalf from ever trespassing into, encroaching and/or interfering in any manner whatsoever with the Plaintiff's quiet peaceable possession of the suit property known as LR No. LR 209/2389/130.
  - e. Special damages of Kenya Shillings Twenty Two Million, Three Hundred Thousand (Kshs 19,808,000/-) with interest at court rates of 14% COURT p. a from November 2021 until full payment.
  - f. Mesne profit at the rate of Kenya Shillings One Hundred and Ninety Two Thousand (Kshs 192,000) from November 2021 until full restitution and/or compensation
  - g. General damages, the quantum thereof to be determined by this Honorable Court.
  - h. Aggravated and exemplary damages, the quantum thereof to be determined by this Honorable Court.
  - i. Cost of the suit
  - j. Interest on (f), (g) and (i) above at court rates
  - k. Such other and/or further Orders as this Honorable Court may deem fit and just to grant in the circumstances of this case.
2. In his Plaint, the Plaintiff stated that he is the registered proprietor of the suit property which is located in Pangani area within the Nairobi County, having obtained it as a leasehold from the Government for a term of 50 years with effect from 1/05/2005 pursuant to a surrender registered as IR 7681/12. He stated further that on 28/10/2021 some goons hired by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants evicted tenants from the suit property and demolished the suit property claiming that it belonged to the 1<sup>st</sup> defendant.
  3. He stated that 1<sup>st</sup> defendant laid claim to the suit property alleging to have a certificate of lease registered by the 4<sup>th</sup> defendant in collusion with the 1<sup>st</sup> and 2<sup>nd</sup> defendants. That the Certificate of Lease is for a term of 99 years from 01.01.2021 granted to the 1<sup>st</sup> defendant by the 3<sup>rd</sup> defendant as the Lessor. He proceeded to set out the particulars of illegality, and criminality on the part of the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, and 4<sup>th</sup> defendants. That the 3<sup>rd</sup> Defendant purported to issue a Certificate of Lease under the provisions of Land Registration Act, 2012 whereas the land has all along been held under the provisions of the Registration of Titles Act Cap 281 (now repealed.).
  4. Thus the action of the 3<sup>rd</sup> defendant was illegal. Further that the 1<sup>st</sup> to 4<sup>th</sup> defendants ought to have known that the suit property was charged to HFCK and not available for a grant. That the demolition which was carried out by hired goons escorted by the authority of the 5<sup>th</sup> defendant led to losses since the defendants vacated the suit property.
  5. The plaintiff averred that he had had suffered and continued to suffer immense prejudice, astronomical damages and irreparable harm as a consequence of the said conduct of the 1<sup>st</sup> defendant.
  6. The 1<sup>st</sup> defendant did not file a defence to the plaintiffs' claim neither did the 2<sup>nd</sup> and 3<sup>rd</sup> defendants file any defence. The 4<sup>th</sup> to 6<sup>th</sup> defendants filed a joint statement of defence and denied all the allegations contained in the plaintiff's plaint. The 4<sup>th</sup> defendant denied any role in hire of goons to destroy the plaintiff's suit property if at all.



## Plaintiff's case

7. The Plaintiff, Amos Njugi Wachira testified as PW1. He stated that he purchased the suit property on 1/01/2007 from one Ephantus Ngochi who also took a loan of Ksh 4 million for the plaintiff to enable him buy the suit property. That when he came back from Ireland he took over the loan. That the property was however demolished on 28/10/2021 but he did not receive any court order but that he was informed by his care taker.
8. He stated that the property did not belong to the 1<sup>st</sup> plaintiff as claimed and the certificate for lease produced is fake. Upon cross-examination he stated that he bought the suit from Ephantus Wachira Ngoci at a consideration of Kshs 5 million which he paid through the bank. That Mr Ngoci took a loan that the plaintiff was paying for him and that he had mortgaged the title with HFCK. He testified that Ephantus owned the land under leasehold but he owns the land under freehold.
9. When cross-examined further by the Counsel for the 4<sup>th</sup> to 6<sup>th</sup> defendants he stated that the suit property was valued at Kshs 5 million and that Mr Ngochi Ephantus was to take a loan on his behalf of Kshs 4 million and then when he came back from Ireland he took it over. He testified that the 5<sup>th</sup> defendant should be held accountable for the demolition because the goons who demolished his property were protected by the police. He stated that the Sale Agreement he had produced which is at page 5 had a typo since the title read LR 209/2389/30 whereas it should read LR 209/2389/130.
10. PW-2 David Gikunju Ngatia testified that he was the caretaker of PW1. It was his testimony that the police at Pangani Police Station did not tell them the building was to be demolished when they visited the station with some tenants on 27/10/2021. It was his testimony that he worked for Mr Amos since 2006 and that Mr Amos bought the plot in 2006. He stated that after the demolition of the house which had single rooms and bedsitter he went and obtained an OB number on 31/10/2021.
11. PW3- Paul Ngugi testified that they established that the building was demolished and that for their valuation they were given a valuation report done on 14/08/2013 and they also conducted their inspection and they confirmed that there were resemblance between what was reported and what was demolished. From his testimony he stated that the building was a commercial/residential and that it was fetching a monthly rent of Kshs 192,000 as per the report from Masterways.
12. It was his testimony that the cost of reinstatement would be Kshs 15,200,000 and consequential loss would be Kshs 4,608,000. Upon being cross-examined he stated that they place the value of the property to Kshs 51,000,000.
13. PW5- Mary Njoki Ng'ang'a stated that he was the Regional Manager for Masterways Real Estate which managed the Plaintiff's property but which was demolished in 2021. That at the time of demolition the property had 11 tenants but only 2 had signed the tenancy agreement. When cross-examined she stated that the agreement for management of the suit property was executed in 2018 and that she had no records of the rental income before renovations.
14. PW6- Hedaya Malezi Keza stated that she was the Legal Manager of HFC Ltd. She stated that Mr Amos, PW1 was granted a facility in November 2013 of Kshs 5 million and the legal charge is dated 12/02/2014. It was her testimony that the bank had no dispute against the charge. Upon cross-examination she testified that there was another offer letter dated 7/10/2013 on page 248 of the plaintiff's bundle and another on at page 50-55 which show that the letters are not from the same institution. She stated that no one has come to claim the suit property or change it at the bank.



## Defence Case

15. DW1- Vincensia Juma introduced herself as a Land Registrar attached at the office Court's section and produced the following documents, a copy of title, transfer document from initial owner from Esther Njoki, charge document dated 7/09/2006 and registered on 28/09/2006, discharge dated 5/07/2010 and registered on 22/07/2010 among others. It was her testimony valuation requisition for stamp duty on 1/05/2005 from transferor Ephantus and transferee was Amos Wachira. That the current registered owner is Amos Njugi Wachira.
16. Upon cross-examination she testified that the charge produced at page 1-4 is the correct charge. That the registration of the new charge was done pursuant to transfer from another title that the one at page 77 was owned by one Piedade Francisco Cardos who own the property being allocated by the government the grant was IR 7681.
17. It was her testimony that the charge at page 1 the lessor is Government of Kenya from 1/05/2005 and that she is not aware how the property passed to a private entity from the government. Further that based on the documents at page 73 the owner/lessor is shown as the County Government of Nairobi and the leasehold of the property was issued in 1934. She stated that she did not have the registration documents with her but they have had instances when one property has two files due to double allocation. According to her it was her testimony that it was not possible that the County Council of Nairobi could have owned the suit property. With this the defendant closed their case.

## Analysis and Determination

18. Only the plaintiff filed submissions on the directions of the court dated 22/11/2023. None of the defendants filed any submissions.
19. With the foregoing outline of the pleadings, litigation history, evidence and submissions and of course the relevant law I must now decide the suit.
20. The main issue for determination is whether the plaintiff has proved their case against the Defendants to the required standard.
21. Although the 1<sup>st</sup> defendant who had laid claim to the suit did not file a defence, the Plaintiff has a duty to formally prove their case on a balance of probabilities as is required by law.
22. In the case of *Kirugi and Another Vs Kabiya & 3 others* (1987) KLR 347 the Court of Appeal held that;  

“The burden was always on the Plaintiff to prove his case on a balance of probabilities even if the case was heard as formal proof”. Likewise, failure by the Defendant to contest the case does not absolve a plaintiff of the duty to prove the case to the required standard.”
23. Similarly, in the case of *Gichinga Kibutha Vs Caroline Nduku* (2018) eKLR the Court held that;  

“It is not automatic that instances where the evidence is not controverted the Claimants shall have his way in Court. He must discharge the burden of proof. He must proof his case however much the opponent has not made a presence in the contest.”
24. Proof of ownership of land is found in documentary evidence which lead to the root of title. There must be shown an unbroken chain of documents showing the true owner. Once proof of ownership is tendered then the holder of the documents is entitled to the protection of the law. There is no doubt



that such proof will be on a balance of probabilities, but the court must be left in no doubt that the holder of the documents proved is the one entitled to the property.

25. The evidential burden of proof placed on the Plaintiff is captured in sections 109 and 112 of the [Evidence Act](#) and states as follows:

“109. 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.

112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.”

26. The Court of Appeal in *Mumbi M’Nabea vs David M.Wachira* [2016] eKLR while discussing the standard of proof in civil liability claims in this jurisdiction stated as follows:

“In our jurisdiction, the standard of proof in civil liability claims is that of the balance of probabilities. This means that the Court will assess the oral, documentary and real evidence advanced by each party and decide which case is more probable. To put it another way, on the evidence, which occurrence of the event was more likely to happen than not.

.....The position was re-affirmed by the Court of Appeal in *Maria Ciabaitaru M’mairanyi & Others v. Blue Shield Insurance Company Limited -Civil Appeal No. 101 of 2000* [2005] 1 EA 280 where it was held that:

“Whereas under section 107 of the [Evidence Act](#), (which deals with the evidentiary burden of proof), the burden of proof lies upon the party who invokes the aid of the law and substantially asserts the affirmative of the issue, section 109 of the same Act recognises that the burden of proof as to any particular fact may be cast on the person who wishes the Court to believe in its existence.”

27. With respect to the burden of proof, the learned Judges of Appeal in the case of *Palace Investments Limited vs Geoffrey Kariuki Mwenda & another* [2015] eKLR, posited thus:

“Denning J, in *Miller –vs- Minister of Pensions* [1947] 2 All ER 372 discussing the burden of proof had this to say;-

“That degree is well settled. It must carry a reasonable degree of probability, but not so high as is required in a criminal case. If the evidence is such that a tribunal can say: we think it more probable than not; the burden is discharged, but, if the probabilities are equal it is not.

This, burden on a balance or preponderance of probabilities means a win however narrow. A draw is not enough. So, in any case in which the tribunal cannot decide one way or the other which evidence to accept where both parties... are equally (un) convincing, the party bearing the burden of proof will lose because the requisite standard will not have been attained.”

28. PW1 stated that he bought the suit property on 1/07/2007 from one Ephantus Wachira Ngoci at a consideration of Ksh 5 million which he paid through the bank. Further that the said Ephantus took a loan on his behalf and that he took it over when he came back from Ireland. Further that the suit



- property was bought jointly by the Plaintiff and his wife Beatrice Warukira Nderitu but the wife of the Plaintiff did not have a Personal Identification Number and was therefore left out of the charge to the bank despite being a purchaser and signing the Sale Agreement.
29. Also the plaintiff did not present any documents in court to show that the said Beatrice who is his wife tried to acquire Personal Identification Number (PIN) but could not. It is a matter of judicial notice that Kenyans started acquiring PIN numbers as early as 1995.
  30. It therefore beats logic for one to claim that more than ten years since the introduction of PIN the wife of the plaintiff did not have one. Even if this were the case, then why was she included in the Sale Agreement if she had no capacity to execute the said agreement since she did not have a PIN. At the same time nothing prevented the Plaintiff from having the said Beatrice to be called as a witness to attest to what the plaintiff was alleging.
  31. Now, the copy of the charge that the plaintiff produced in court shows that the charge from Housing Finance Company of Kenya Limited to Ephantus Wachira Ngochi was on 7/09/2006. The amount charged was for Kshs 3,375,000 and the mortgaged property is indicated as Title Number 102605 for LR Number 209/2389/130. There is no other charge to Ephantus that would attest to the Kshs 4,000,000 testified about by the Plaintiff that was presented to support the claim of the loan and how the plaintiff took this over from Ephantus. Further it does appear that Ephantus charged the suit property for the Plaintiff before the purchase which the plaintiff stated was done on 1/07/2007.
  32. At the same time the sale agreement indicated that the amount borrowed by Ephantus from Housing Finance Company was Kshs 3,119,475 and it was in respect of LR 209/2389/30. In his evidence the plaintiff indicated that there was a typo in the Sale Agreement where digit number 1 was left out and it needed to read LR 209/2389/130. Whereas the error in the digit was explained the plaintiff did not explain the error in the figure to be borrowed from Housing Finance Company of Kenya Limited and also why later he refers to the company as Housing Finance Company.
  33. Whereas the Transfer Instrument produced by the plaintiff at page 10 of the bundle of document dated 30/06/2010 indicated that the IR number to be 102605/1 and Land Survey number as 262726, the charge instrument dated 5/07/2010 indicate the IR number to be 102605.
  34. The letter from Housing Finance signed by one Elizabeth Osodo Ag. Assistant Manager dated 09/06/2010 to Maina Muiruri & Company Advocates who acted for the Plaintiff referred to as the borrower in the letter instructed the advocate to prepare a charge of Kshs 4,000,000. At the same time the letter states that the titles are released to the lawyer's firm on its proessional undertaking. When the plaintiff appeared in court he testified that the title documents were held at the bank forgetting that the letter he produced in court dated 09/06/2010 stated otherwise.
  35. The plaintiff failed to call as witness this Ephantus Wachira Ngochi who he testified that he had taken a loan from Housing Finance of Kenya Limited for him which he later took over and paid amounting to Kshs 5,000,000. Also the plaintiff never produced in court any agreement between himself and the said Ephantus Wachira where he agreed to borrow money to finance the purchase of the suit property on his behalf which he would then take over. Apart from mentioning it in the Agreement for Sale there was no documentation as testament to this averment`
  36. In her evidence DW1 Registrar of Lands testified that the suit property IR 7681 for LR 209/2389/130 was granted to one Piedade Francisco Cardoso from 1.1.1934 to 1.1.2003 as seen vide annexure 77. At the expiration of that period the suit property is then issued as a fresh grant to one Michael Edward Gichohi Muhindi by the President from 1.01.2003 for 23 years. It was then transferred to Ephantus on 17.3.2004 as per the entry number 11 at page 80 of the Plaintiff's bundle. This outrightly



contradicts with the Certificate of Registration produced at page 151 which show that the President of the Republic of Kenya granted Ephantus Wachira Ngochi LR 209/2389/130 on Land Survey Plan Number 262726 on 1.05.2005.

37. If this were the case, then it means that the said Ephantus had the land transferred to him before the President made the grant to him. Further being a grant of public land as provided for at paragraph (b) of the document at page 151 it follows that the procedures leading to alienation of public land had to be followed. No evidence was presented in court to show that this was followed. DW1 in her evidence despite being the Land Registrar deliberately failed to pick out this anomaly and chose to go off on tangent to mislead the court. It is a shame to hear some of our officers testify in court knowing too well that they are not honest about what they testify about. May God truly take care of Kenyans and one day give this country officers who truly care about truth, honesty and integrity.
38. Now Ephantus being the grantee of the suit property as per the document produced at pages 151 and 152 of the contract failed to respect one of the special conditions of the grant as provided at paragraph 6. The condition stated thus;

“The Grantee shall not sell, transfer, sublet, charge or part with the possession of the land or any part thereof without the prior written consent of the Commissioner of Lands.” [Emphasis Added]
39. Therefore, if that was just one of the conditions then the said Ephantus needed to obtain prior permission from the Commissioner of Lands who had delegated from the President to “issue” the grant to sell the suit property or transfer to the plaintiff herein. The plaintiff only produced the sale agreement but did not produce the said authority that would have allowed the said Ephantus to sell and or transfer the suit property to him.
40. I also scrutinized the Statement produced at page 155 of the plaintiff’s bundle and noted that it seems that the plaintiff only started to repay his loan borrowed for him by Ephantus in 2017. Even if that were the case the plaintiff failed to support the claim that Ephantus borrowed a loan for him from HFCK which he took over by presenting the bank statement showing this. Further the bank statement presented in court was not produced by the maker and therefore no one could testify to its authenticity and it was not clear why it only for 2017 January to March.
41. Since the root of the Plaintiff’s title was in question, it was not sufficient for the Plaintiff to waive his title to the suit property as proof of ownership. In the case of *Munyu Maina v Hiram Gathiba, Nyeri C.A No. 239 of 2009* [supra] the Court of Appeal stated that where a title is under challenge, a registered proprietor must go beyond the instrument of title and prove the legality of how he acquired the title.
42. Thus the Plaintiff was under an obligation to demonstrate to this court that he legally acquired the suit property by producing sufficient evidence to show that the process through which the title deed was transferred from the Defendant to him was legal. From the documents on record, there is no document to show and prove that the plaintiff even paid stamp duty.
43. Although the Plaintiff produced several documents to prove the transfer of the suit property from one Ephantus Wachira Ngochi to himself, a keen look at the said documents reveals the same are not helpful to his case because the information contained is contradictory and in some cases incomplete. For instance, the Transfer form was not executed by the Plaintiff and his wife Beatrice Warukira Nderitu who signed the Sale Agreement and it does not bear the PIN number of transferor neither the name, number and PIN of Beatrice Warukira.



- 44. As a matter of fact, there were too many loose ends in the case of the plaintiff, infact the HFC statement at pages 155 and 195 referred to a single storey Asian House whereas the Plaintiff claimed the house that was demolished was a building of 11 units having four shops and 7 other units. One wonders where they were constructed on the single storey Asian House.
- 45. Now despite the 1<sup>st</sup> defendant having not filing their defence nor the 2<sup>nd</sup> and 3<sup>rd</sup> defendants, I find that the plaintiff's evidence is full of contradictions and as such all the pleadings, annexures and case law filed does not support the plaintiff's claim. As such the plaintiff failed to prove his case on a balance of probabilities. The suit is dismissed with costs to the 3<sup>rd</sup> 4<sup>th</sup> and 5<sup>th</sup> defendants.

It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18<sup>TH</sup> DAY OF NOVEMBER 2024**

.....

**MOGENI J**  
**JUDGE**

In the Virtual presence of:  
Mr. Kimondo for Plaintiff  
Mr. Mutava for 3<sup>rd</sup> Defendant  
No appearance for 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 6<sup>th</sup> Defendant

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**MOGENI J**  
**JUDGE**

