



**Gachehu & another (Suing as the administrators of the Estate of Erastus Gachehu Wanyeki - Deceased) v BOG Kagumo High School (Environment & Land Case 501 of 2014) [2024] KEELC 7505 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 7505 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 501 OF 2014  
JO OLOLA, J  
NOVEMBER 14, 2024  
(FORMERLY NYERI HCC 87 OF 2010)**

**BETWEEN**

**RONALD NDERI GACHEHU ..... 1<sup>ST</sup> PLAINTIFF**

**MARY NYAGUTHI WANJOHI ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATORS OF THE ESTATE OF ERASTUS  
GACHEHU WANYEKI - DECEASED**

**AND**

**THE BOG KAGUMO HIGH SCHOOL ..... DEFENDANT**

**JUDGMENT**

**Background**

1. This suit was initially instituted in the High Court as Nyeri HCCC No. 87 of 2010. It was transferred to this court on 26<sup>th</sup> November 2014.
2. By their Plait dated 28<sup>th</sup> July 2010, Ronald Nderi Gachehu and Mary Nyaguthi Wanjohi suing as the Administrators of the Estate of Erastus Gachehu Wanyeki (the Plaintiffs) pray for Judgment against the Defendant for:-
  - i). An order for delivery of vacant possession by the Defendant School of Land Parcel No. Ruguru/Gachika/1022 to the Plaintiffs and the removal of the sewage lagoons and all other structures thereon;
  - ii). A permanent injunction restraining the Defendants, their servants or agents from entering, occupying and in any way committing any acts of waste, trespassing and/or interfering with



the Plaintiff's quiet and peaceful possession and occupation of the Land Parcel No. Ruguru/Gachika/1022;

- iii). Mesne profits at the rate of Kshs. 40,000/= per annum from 1972 until the date of delivery of vacant possession of LR. No. Ruguru/Gachika/1022 to the Plaintiffs;
  - iv). Costs of this suit; and
  - v). Interest on c and d above at the court rates.
3. Those prayers arise from the Plaintiffs' contention that their father the late Erastus Gachehu Wanyeki was the registered proprietor of all that parcel of land originally known as Ruguru/Gachika 851 which the deceased later sub-divided into two portions, namely; Ruguru/Gachika/1021 measuring 0.405Ha and Ruguru/Gachika 1022 measuring 0.784 Ha.
  4. The Plaintiffs aver that sometime in the year 1972, the Defendant School requested the deceased to permit the School to use and occupy a portion of the said LR. No. Ruguru/Gachika/851 on the understanding that the Defendant would give the deceased suitable alternative land of equivalent value subject to the deceased's approval or in the alternative to compensate the deceased for his land in monetary form at the prevailing market rates.
  5. The Plaintiffs accuse the defendant of subsequently failing to meet its part of the bargain with the deceased and that as a result, the Plaintiffs have been deprived of their quiet and peaceful possession and occupation of the suit land.
  6. But in its Statement of Defence and Counterclaim dated 5<sup>th</sup> October 2010, the Board of Governors Kagumo High School (the Defendant) avers that the Plaintiffs are non-suited against it and that the suit is bad in law, misconceived and incurably defective at it is time-barred by the Limitation of Actions Act and does not conform to the mandatory provisions of the Civil Procedure Act and Rules.
  7. It is the Defendant's position that the deceased accepted their request to occupy, develop and use the said LR. No. Ruguru/Gachika/851 and that they further agreed that the deceased would transfer the same to the Defendant upon the Government of Kenya finding alternative land for the deceased and his family. The Defendant denies that there was an agreement between itself and the deceased to compensate him in monetary terms and avers that it did take possession after the agreement not under any licence of the deceased but as the owner thereof.
  8. It is further the Defendant's case that sometime in the year 1986, the Government obtained alternative land being Plot No. 76 at Ol Kaluo in Nyandarua District which it offered to the deceased but the deceased and his family apparently rejected the same without informing the Defendant until sometime in the year 2000. The Defendant asserts that the Plaintiffs were subsequently offered another parcel of land in Gatarakwa which offer they have neither accepted nor rejected to date.
  9. By way of the Counterclaim, the Defendant avers that they have acquired ownership of the portion of the suit land by virtue of the possession and long occupation thereof with the knowledge of the deceased and the Plaintiffs. Accordingly, the Defendant prays for the following:
    - i). That the Plaintiffs' suit be dismissed with costs;
    - ii). A declaration that the Defendant is the owner of the suit land, in particular Ruguru/Gachika/1022;



- iii). In the alternative, all that part of the suit land under use, possession and or occupation of the Defendant be surveyed and it be declared that the Defendant has the right of ownership, vacant/quite possession, occupation and use of the same for the said lagoons and digesters;
- iv). That a permanent injunction be issued restraining the Plaintiffs, their servants, agents or employees from entering, occupying and or in any way interfering with the Defendant's quite possession and/or occupation of the land and to take all such steps as are required by law to ensure that the Defendant is duly registered as the proprietor thereof.

### **The Plaintiffs' Case**

10. Ronald Nderi Gachehu (PW1) testified as the Plaintiffs' sole witness. Relying on his recorded Statement dated 3<sup>rd</sup> May 2021, PW1 told the court that the suit land belonged to his father and that the Defendant acquired the land compulsorily in the year 1972. PW1 told the court that there was an understanding that they would be given alternative land but the same had since not materialized.

### **The Defence Case**

11. The Defence equally called one witness in support of their case. Dr. Cyrus Mwirigi (DW1), the Chief Principal of the Defendant School told the court it was true the Government was to compensate the Plaintiffs' family with land. He testified that they do not have any records to show that Plaintiffs were given land.

### **Analysis and Determination.**

12. By their suit herein, the two Plaintiffs suing as the Administrators of the Estate of Erastus Gachehu Wanyeki pray for an order of delivery of vacant possession and removal of the sewage lagoons and all other structures erected on the parcel of land known as Ruguru/Gachika/1022 by the Defendant School. The Plaintiffs also pray for a permanent injunction restraining the Defendant, its servants and/or agents from entering, occupying, committing any acts of waste or trespassing into the said parcel of land.
13. In addition, the Plaintiffs pray for an order of mesne profit at the rate of Kshs. 40,000/- per annum from 1972 until the date of delivery of vacant possession of the suit property to themselves.
14. The basis for those prayers is the assertion by the Plaintiffs that their father Erastus Gachehu Wanyeki was the registered proprietor of all that parcel of land originally known as LR. No. Ruguru/Gachika/851. It is their case that their father later sub-divided that parcel of land into two namely; Ruguru/Gachika/1021 and Ruguru/Gachika/1022.
15. It was the Plaintiff's case that sometime in the year 1972, the Defendant school had requested their now deceased father to permit the school to use the portion that later came to be known as Ruguru/Gachika/1022 on the understanding that the Defendant would give the deceased suitable alternative land of equivalent value subject to the deceased's approval and that in the alternative the deceased would be compensated in monetary terms at the prevailing market rates.
16. The Plaintiffs plead that while their father honoured his part of the bargain, the Defendant School had on its part reneged on the agreement and had failed to offer the deceased alternative land and/or to compensate him for the market value thereof.
17. On its part, the Defendant does not deny having taken possession of the land. It is their case that the deceased accepted their request to occupy, develop and use the portion of land on the undertaking that



he would transfer the same to the school upon the Government of Kenya finding alternative land for the deceased. The Defendant denies that there was an agreement between itself and the deceased to compensate him in monetary terms.

18. It was further the Defendant's case that in the year 1986, the Government obtained and offered Plot No. 76 situated at Ol Kalou in then Nyandarua District but the deceased rejected the same without informing the Defendant.
19. The Defendant asserts that the suit as filed is misconceived and time-barred by the *Limitation of Actions Act* and urges the court to dismiss the same.
20. From the material placed before the court, there was no dispute that sometime in the year 1972, the Plaintiffs' father had agreed and permitted the Defendant School to use part of the suit property for sewage installation pending the process of finding an alternative land that would be allocated to the Plaintiffs' father by the Government.
21. It was also not in dispute that in accordance with that understanding some land was in actual fact, found and offered to the Plaintiffs' father. In support of their own case, the Plaintiffs have produced a letter dated 10<sup>th</sup> October 1986 addressed to their father Gachehu Wanyeki by the then Provincial Commissioner Central Province one L.D Galgalo. The letter marked "confidential" reads as follows:-

“Re: Alternative land for Mr. Gachehu Wanyeki

Refer to Headmaster Kagumo's letter No.....of 28<sup>th</sup> August 1986.

This is to inform you that you have been allocated with Plot No. 76 Ol'Kalou in Nyandarua District in compensation for the 4 acres you gave to Kagumo High School( the plot is five acres one).

Please see the District Settlement Officer Nyandarua to finalize this allocation.”

22. In his testimony before the court, Ronald Nderi Gachehu (PW1) told the court that his father received the letter. It was however his case that their father was not at the time shown the land and that they continued living and working on the suit land.
23. It was interesting to note that despite this major development in their quest to be compensated with alternative land, the Plaintiffs said very little as to why their father was not shown the land and what steps they took, if any, to access the newly allocated land.
24. From the material placed before the court, it was evident that the Plaintiffs' father was well and alive for another five (5) years after this allocation before he met his death on 4<sup>th</sup> June 1991. It was curious that it took another 14 years after the allocation for the Plaintiffs herein to visit the Defendant School and to start all over again claiming compensation.
25. On 10<sup>th</sup> July 2000, the Plaintiffs' family met the representatives of the school who then undertook to continue pursuing the allocation of the alternative land.
26. I was unable to find the basis upon which the school undertook to pursue another alternative parcel of land for the Plaintiffs. At it were, there was no evidence whatsoever that the Plaintiffs' father had declined the offer of land given to him on the request of the school in the year 1986. It was telling that when PW1 was asked during cross- examination why they never followed the issue during their father's lifetime, his response was that when he was alive, their father did not want them to deal with the issue of the land.



27. While in their pleadings herein the Plaintiffs purport that the permission to use the suit land was on condition that their father would be given land subject to his approval, there was no evidence that the understanding entered into with their father had given him power to approve or disapprove any land allocated to him by the Government.
28. In the circumstances herein, I was persuaded that the Defendant had honoured its part of the bargain as the Government had by the letter dated 10<sup>th</sup> October 1986 discharged the responsibility owed to the Plaintiffs' father. If indeed the Plaintiffs' father had not taken the offer as purported, it was erroneous and quite ambivalent for the family to wait for another 14 years before informing the Defendant that they had rejected the offer. There was nothing placed before the court by either of the parties to show that they had sought any clarification from the Government regarding the fate of the said Plot No. 76 Ol' Kalou that had in the year 1986 been allocated to the Plaintiffs' father.
29. It follows that I am not persuaded that there was any merit in the Plaintiffs' case. I dismiss the same and enter Judgment for the Defendant as sought in the Counterclaim in the following terms:
- i). A declaration is hereby made that the Defendant is the owner of the Parcel of land known as Ruguru/Gachika/1022 measuring 0.784 Ha.
  - ii). A permanent injunction is hereby issued restraining the Plaintiffs, their servants, agents and/or employees from entering, occupying and/or in any way interfering with the Defendant's quite possession of or disposing and or alienating the parcel of land known as Ruguru/Gachika/1022.
  - iii). The Plaintiffs are hereby directed to execute transfer documents in favour of the Defendant in respect of all that parcel of land known as Ruguru/Gachika/1022 and to take all such steps as are required by the law to ensure the Defendant is duly registered as the proprietor thereof and in default the Deputy Registrar of this court shall be at liberty to execute all the necessary documents and instruments as by law required.
  - iv). The costs of this suit shall be borne by the Plaintiffs.

**DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**In the presence of:**

Mr. C.M. Kingori for the Plaintiffs.

Mr. Karweru and Mr. Gisemba for the Defendant.

Court Assistant: Kendi

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**J. O. OLOLA**

**JUDGE**

