



**Meritei v Oduor & 63 others (Environment & Land Case E002 of 2021)
[2024] KEELC 13233 (KLR) (14 November 2024) (Judgment)**

Neutral citation: [2024] KEELC 13233 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E002 OF 2021
LC KOMINGOI, J
NOVEMBER 14, 2024**

BETWEEN

GEORGE NDULA MERITEI PLAINTIFF

AND

MAURICE OUNDO ODUOR 1ST DEFENDANT

THE LAND REGISTRAR KAJIADO 2ND DEFENDANT

**HON ATTORNEY GENERAL & 61 OTHERS & 61 OTHERS & 61
OTHERS 3RD DEFENDANT**

JUDGMENT

1. By the Complaint filed on 12th January 2021, the Plaintiff avers that at all times, he has been the registered owner of property Kajjado/Kaputiei North/6386 measuring approximately 4.05 hectares, and that the 1st and 2nd Defendants were the officials of Afya Sacco Society Limited Ketri Branch.
2. On or about 23rd November 2009, the Plaintiff noted that there were strangers who had started encroaching on the suit property and upon inquiry, they informed him that they had purchased the suit property. He then conducted a search at the Kajjado Land Registry only to discover that the records had been changed to reflect the 1st and 2nd Defendants as the registered owners of the suit property. The Plaintiff claims that this alteration was illegal and fraudulent because he had never sold or transferred the suit property to either the 1st and 2nd Defendants or any other persons.
3. He gave the particulars of fraud against the 1st and 2nd Defendants as: having acquired a title deed for the suit property dated 2nd April 2002 in their names while the Plaintiff was still in possession of the original title deed; the 1st and 2nd Defendants acquiring a title deed in their name unprocedurally and without appropriate documentation such as an undated Land Control Board consent; and using forged documents which the Plaintiff did not execute.



4. It is the Plaintiff's case that, the 1st and 2nd Defendant then subdivided the suit property into several parcels with title numbers; Kajiado/Kaputiei-North/12968 to Kajiado/Kaputiei-North/13026 and transferred them to the 3rd to the 61st Defendants. As such, this subdivision and transfer was also fraudulently undertaken since the 1st and 2nd Defendants did not have capacity to transfer that which did not legitimately belong to them.
5. The Plaintiff also claimed that the 62nd Defendant who is the Land Registrar Kajiado aided the fraud by: issuing the 1st and 2nd Defendants with a title deed to the suit property without legitimate documents, accepting improperly executed transfer documents such as unsigned Land control board's consent and issuing the 1st and 2nd Defendants with another title deed while the Plaintiff was still in possession of the original title deed.
6. The Plaintiff claims that upon this realisation, he filed a complaint with the Director of Criminal Investigations and charges were preferred against the 1st, 2nd and 62nd Defendants in Nairobi Chief Magistrates Court Criminal Case No. 1471 of 2012.
7. He thus prayed for judgement against the Defendants jointly and severally for orders that:
 - a. The Plaintiff is entitled to vacant possession and to enjoy all rights and interests appurtenant to land parcel title number Kajiado/Kaputiei North/6386.
 - b. An order directing the 62nd Defendant to rectify the register by cancelling the registration of the 1st to 61st Defendants as proprietors of parcels of land known as Kajiado/Kaputiei North/12968 to 13026 and a further order restoring the Plaintiff as the proprietor of the original parcel of land known as Kajiado/Kaputiei North/6386.
 - c. The Defendants by themselves, tenants/servants and/or agents or any other occupants do forthwith deliver and give vacant possession of the title number Kajiado/Kaputiei North/6386 and the resultant subdivisions to wit title numbers Kajiado/Kaputiei North/12968 to 13026.
 - d. The Defendants, their servants, agents or any other occupants be forcefully evicted from the suit property should they fail to deliver vacant possession within 21 days from the date of the Order of this Honourable Court.
 - e. A permanent injunction to issue restraining the Defendants by themselves, their agents and or servants from trespassing, from entering, from alienating and from erecting structures or building thereon or from committing acts of waste on the land known as title number Kajiado/Kaputiei North/6386 or any part thereof or from interfering with the Plaintiff's title and interest over the said property.
 - f. The Officer Commanding Police Station, Kitengela do assist towards peaceful and effective eviction in compliance with the Court's eviction Order.
 - g. Mesne profits in favour of the Plaintiff and against the Defendants from the date of interference or trespass until the date of judgement or such other date that the trespass is put to a stop.
 - h. Costs of this suit and interest thereon at Court rates.
8. The 1st to the 61st Defendants were served by way of substituted service but neglected and or refused to enter appearance and/or file defences.
9. The 62nd and 63rd Defendants in their statement of defence denied and challenged the allegations against them on grounds that the 62nd Defendant conducted its Statutory mandate and transferred



the suit property on the strength of the documents presented to them among them: a sale agreement, application for consent at the Land Control Board; letter of Consent from the Land Control Board and duly executed transfer form. As such, the suit against them should be dismissed with costs.

Evidence of the Plaintiff

10. PW1, George Ndula Meritei the Plaintiff, adopted his witness statement dated 12th January 2021 as his evidence in chief and produced his bundle of documents which was marked as P. Exhibit 1 to 16 respectively. He also produced another bundle of documents Marked as MFI 1 to 17. He indicated that he had filed the suit as the registered owner of the suit property having purchased it from one Moses Leeyio Lenkoko in the year 1999. He stated that he was peacefully in possession of the property until sometime in 2009 when he was informed that there were some people on his land who were undertaking some construction. He found contracted masons and he informed them that he was the owner of the property. He did a search at the Kajiado Lands registry and found that the records had been altered. His name as the registered owner had been removed. He reported the matter to the Director of Criminal Investigation and some people were charged with conspiracy to defraud. He then filed this suit seeking that the register be rectified to show him as the lawful owner.
11. On cross examination he confirmed that he purchased the property in the year 1999 and took possession though it was not fenced. He confirmed that in his bundle of documents, there was a sale agreement, land control board consent to transfer, executed transfer document which had a Court stamp indicating that it was duly executed, however the identification number indicated was not his. He also confirmed that he filed a complaint against some of the Defendants, among them the Land registrar Kajiado and the criminal case is pending.
12. On re-examination he confirmed that he neither sold the suit property, nor signed the any of the documents produced. He also indicated that he never went the Land Control Board. He also pointed out that the identification number indicated was not his.
13. PW2 Gedion Osundwa a document examiner working at the National Police Forensic Laboratory at the Directorate of Criminal Investigations in Nairobi, stated that on the 21st October 2021 they received documents from one Sergeant Gilbert Okello Number 81416 of the Land Fraud Investigation Unit. The exhibits Marked as A was the documents in question; marked as B1-B6 were known signatures of the Geroge Ndula Meritei; and marked as C1 – C6 were specimen signatures of George Ndula Meritei. He also stated that these documents were accompanied by an exhibit memo form duly filled and signed. The request was to ascertain whether the signatures in documents A and B were the same compared to the known signatures.
14. He further stated that he did the analysis on the 28th October 2021 and his findings were that the signatures were made by different authors. He then compiled the report, signed and stamped it on the same date. He produced it as P. Exhibit 17. He also testified that he had produced the same report at the Milimani Law Courts in the Criminal case where the accused persons had been charged with conspiracy to defraud contrary to section 317 of the Penal Code as per the Charge Sheet marked as P. Exhibit 12.
15. On cross examination he confirmed that he was requested to carry out the analysis by the Directorate of Criminal Investigations and filed the report. He stated that the exhibits examined by him were not before court but the report clearly articulated what documents he had analysed.
16. On re-examination he confirmed that after he finished the analysis he returned the documents to the forwarding office.



Evidence of the Defendants

17. DW1, Rosemary Mwangi, the Land Registrar Kajiado adopted her witness statement dated 21st February 2024 as part of her evidence and produced her bundle of documents which was marked as D. Exhibit 1 to 5. These were the documents presented for the transfer and registration of the suit property. She testified that the transfer form signed by the Plaintiff was a genuine transfer form in their records.
18. On cross examination she confirmed that the transferor had to surrender the original title deed before the transfer could be effected but that she did not have the original title deed. She also stated that while the transfer form was duly executed and signed by the Plaintiff, she had no way of confirming whether the signature on that document was authentic because she was not familiar with the Plaintiff's known signature. She also went on to confirm that from the records, there was an indication of fraud suspected in the subsequent titles. She informed court that there was a restriction from M/S Solonka Advocates and a letter from M/S Namada Advocates complaining about the restriction. She did not have a copy of the letter in court.
19. On re-examination DW1 confirmed that for transfer of land to be effected, the original title deed must be availed. That the transfer having been effected meant that the original title was availed. She also confirmed that the executed transfer bore the Plaintiff's signature and his ID No. 1158609 although she had no way of confirming the authenticity of the signature.
20. At the close of the oral testimonies, parties tendered final written submissions.

The Plaintiff's submissions

21. In the submissions dated 31st May 2024, counsel submitted on the following issues.
22. On whether the 1st and 2nd Defendants had fraudulently obtained title to parcel number Kajiado/Kaputiei North/6386 and caused it to be subdivided and transferred to the 3rd to the 61st Defendants, counsel submitted that the Plaintiff had adduced evidence to show that the suit property was transferred and registered in the 1st and 2nd Defendants names without his consent and/or knowledge. He had similarly produced evidence of the fraud against the Defendants such as the criminal charges preferred against them citing the Court of Appeal cases of Kinyanjui Kamau vs George Kamau Njoroge (2015) eKLR and Vijay Morjaria vs Nasingh Madhusingh Darbar & another (2000) eKLR. Counsel went on to submit that the Land Control Board meeting allegedly held on 9th January 2002 where the transfer of the suit property was deliberated was also false because a perusal of the said minutes did not have evidence of the said deliberations.
23. As such, the Plaintiff was entitled to the reliefs sought having discharged his burden of proof. Counsel further submitted that the 1st and 2nd Defendants not having good title to the suit property could not pass good title to the 3rd to the 61st Defendants. Therefore, title acquired through fraud or a corrupt scheme ought to be cancelled as espoused by Section 80 of the *Land Registration Act*. Reference was made to the following cases: Munyu Maina vs Hiram Gathitha Maina (2013) eKLR, Zachariah Wambugu Gathimu & another vs John Ndung'u Maina (2019) eKLR, Samuel Odhiambo Olude & 2 others vs Jubilee Jumbo Hardware Ltd & another (2018) eKLR and Nebus Muthomi Thegetha vs Julius Ndung'u Mwangi & another (2020) eKLR.
24. On whether the Plaintiff was entitled to mesne profits, counsel submitted that the Plaintiff having proved that the Defendants encroached onto his property means he had been deprived of the use and occupation of the suit property for a period of 15 years from 23rd November 2009 and was entitled to



the reliefs sought. Counsel cited *Sheraton Apartments Ltd & 5 others vs Miriam Wanjiru & 4 others* (2018) eKLR which held that mesne profits are assessed according to the current open market letting value for the period of the trespass and where trespass has been proved, a party need not prove that he suffered any specific damages for an award of damages to issue.

25. On the issue of costs, counsel submitted that as per Section 27 of the *Civil procedure Act* costs follow the event and the Plaintiff was entitled to the costs of the suit.

The 62nd and 63rd Defendants' submissions

26. Counsel submitted that the single issue for determination was whether the Plaintiff had proved the allegation of fraud against the 62nd Defendant. Counsel submitted that there was no evidence tendered to show that the 62nd Defendant fraudulently transferred and registered the suit property to the 1st and 2nd Defendants. He thus did not meet the evidentiary burden of proof for fraud as was held in *Gichinga Kiibutha vs Caroline Nduku* [2018] eKLR. The suit against the 62nd and 63rd Defendants should thus be dismissed with costs.

Analysis and Determination

27. I have considered the pleadings, the evidence, the rival submissions and the authorities cited. I find that the issues for determination are:
- i. Who is rightful owner of land known as Kajiado/Kaputiei North/6386;
 - ii. Whether the Plaintiff has proved his case on a balance of probability;
 - iii. Whether the Plaintiff is entitled to the reliefs sought;
 - iv. Who should bear costs of the suit?
28. The Plaintiff's case is that he is the sole and legal owner of property Kajiado/Kaputiei North/6386 from the year 1999 and has neither sold nor transferred it to anyone. He produced the title deed issued on 26th March 1999 in his favour. He also produced a Green Card which showed that he acquired it from one Moses Leeiyo Lenkoko. This part of his evidence was confirmed by the Land Registrar who testified as DW1 and confirmed that their records showed that the suit property was previously registered in the Plaintiff's name who acquired it from one Moses Leeiyo Lenkonko. It was until 2nd April 2002 when the title changed hands and was transferred to Tom Kireri, Joshua Arori, Jackton Ouma Odunga and Maurice Oundo Oduor. It would then be closed on subdivision on 21st April 2004 when it was subdivided to parcels; Kajiado/Kaputiei North/12968 to 13026 respectively and transferred to the 3rd up to the 61st Defendants.
29. Land Registrar stated that the property was transferred and subdivided on the strength of documents presented at the Land Registry. The said documents included duly executed transfer forms, consent from Land Control Board and sale agreement.
30. The Plaintiff denied ever executing any sale agreements and/or transfer forms. And that any documents used were forgeries. To support his allegation of forgery, the Plaintiff called as PW2, a Forensic Document Examiner who produced the forensic examination report dated 21st October 2021. He confirmed that as per his expert analysis of the signatures availed, the Plaintiff's signature on the sale agreement dated 19th February 2002 between him and members of Afya Sacco Society Ketri Branch and his known signature did not match. They were made by different authors.



31. The Plaintiff produced documents that were used to effect the transfer to the 1st and 2nd Defendants. The letter of consent from the Land Control Board for parcel 6386 dated 9th January 2002 makes reference to an undated application for consent. The consent was allegedly issued on 9th January 2002 while the sale agreement is dated 19th February 2002. Did the parties seek consent to transfer the property before executing a sale agreement?
32. Further, the minutes of the Land Board meeting dated 9th January 2002 annexed to the Letter of consent do not have parcel 6386 as part of the parcels that were granted consent. Is it possible that consent was granted without the matter being discussed and agreed to by the Board? And if this was to happen, then the legality of the consent could not be sustained.
33. The Plaintiff also testified that he still has his original title deed issued in 1999. The Land Registrar confirmed that it was not procedurally correct for a new title deed to be issued while the previous one had not been surrendered. This also leads the court to question the procedural soundness and hence the legality of the title held by the Defendants. This notwithstanding, this Court also takes cognisance that the Land Registrar in her witness statement dated 21st February 2024 on paragraph 63 reads, “it is important to state that all these parcels are restricted due to suspected fraud.”
34. Once again, this is a confirmation from the body mandated with keeping records of land transactions that the records they have regarding suit property 6386 and subsequent subdivisions might not be accurate after all.
35. If the root of the title is questioned and its procedural appropriateness, then the end result is nothing but a mere piece of paper. The only time the sanctity of title is protected is if, it was acquired legally and procedurally as established by section 26 of the *Land Registration Act*:
 - (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except-
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
36. A title can therefore be impeached if it fails to meet the foregoing standards. This was affirmed by the Court of Appeal in the case of *Frann Investment Limited v Kenya Anti-Corruption Commission & 6 others* [2024] KECA 714 (KLR):

“... The doctrine is now recognised under section 26(1) of the *Land Registration Act*, 2012 which affirms the sanctity of title to immovable property and the indefeasibility thereof in the absence of fraud, misrepresentation or other unlawful conduct in its acquisition. This doctrine was confirmed in *Dr. Joseph Arap Ngok vs. Justice Moijo ole Keiwua & 5 others, Civil Appeal No.Nai.60 of 1997*, where this Court categorically declared that:

“Section 23(1) of the Act gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act. It is



our law and law takes precedence over all other alleged equitable rights of title. In fact the Act is meant to give such sanctity of title, otherwise the whole process of registration of Titles and the entire system in relation to ownership of property in Kenya would be placed in jeopardy.”

37. There being suspected fraud on the parcels of land as confirmed by the DW1, and evidence of how the property changed hands from the Plaintiff to the Defendants has been questioned, only means that the titles held by the Defendants are invalid, irregularly acquired and therefore illegal. This was bolstered by the Court of Appeal in *Munyu Maina v Hiram Gathiha Maina* [2013] eKLR where they held:

“... when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register...”

38. Unfortunately, the Defendants squandered the opportunity to defend their case by failing to appear. As such, this relying on the Plaintiff’s evidence, testimonies of PW2 and DW1 as well as the documentary evidence, this court finds that the Plaintiff has proved his ownership of property Kajiado/Kaputiei North/6386. The court cannot protect that which is irregularly acquired. The 1st to 61st defendants cannot benefit from an illegality.

39. The next issue is therefore whether he is entitled to the reliefs sought. The Plaintiff prayed for cancellation of all consequent titles and rectification of the register as well as vacant possession of the suit property. I find that he is entitled to the reliefs sought.

40. Having found that the registration, in favour of the 1st, 2nd Defendants and subdivision of parcel 6386 to parcels 12968 up to 13026 was irregularly undertaken, this court has powers under Section 80 of the *Land registration Act* which provides that:

(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.

41. In conclusion I find that the Plaintiff has proved his case as against the Defendants on a balance of probabilities.

42. Accordingly Judgement is entered for the Plaintiff against the Defendants jointly and severally as follows;

a. The Plaintiff is George Ndula Meritei is hereby declared the legal and lawful owner of property Kajiado/Kaputiei North/6386.

b. The Land Registrar Kajiado be and is hereby directed to cancel the title deeds in respect of all that parcel of land known as Land Reference Number Kajiado/Kaputiei North/6386 in the names of Tom Kireri, Joshua Arori, Jackton Ouma Odunga and Maurice Oundo Oduor and upto the 59th Defendants and rectify the records by registering it in the name of George Ndula Meritei within sixty (60) days from the day of this Judgement.

c. That an order of permanent injunction is hereby issued restraining the Defendants by themselves and/or their agents from interfering with, moving into, and laying claim or in any manner interfering with the Plaintiff’s peaceful occupation of all that parcel of land known as Kajiado/Kaputiei North/6386.



d. That the Plaintiff shall have costs of the suit to be borne by 1st to 61st Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14TH DAY OF NOVEMBER 2024.

L. KOMINGOI

JUDGE.

In the presence of:

Ms. Khafafa for the Plaintiff.

N/A for the 1st to 61st Defendants.

Ms. Kerubo for the 62nd, 63rd Defendants.

Mutisya – Court Assistant.

