



**Ngunjiri v Ibrahim (Environment & Land Case 265 of 2016)
[2024] KEELC 14121 (KLR) (20 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 14121 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 265 OF 2016
A OMBWAYO, J
DECEMBER 20, 2024**

BETWEEN

: JOHN MUTHEE NGUNJIRI PLAINTIFF

AND

ALI IBRAHIM DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff commenced this suit vide a Complaint dated 19th July, 2016 against the Defendant seeking the following orders:
 - a. An order of temporary injunction restraining the Defendant herein whether by herself, her agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the Plaintiff's quiet possession and use all that parcel of land formerly known as L.R No. Gilgil/Gilgil Block 1/26307 (Kikopey) measuring approximately 1.3 Hectares and currently undergoing the process of subdivision into L.R NOS. Gilgil/Gilgil Block 1/31518-31538.
 - b. An order of permanent injunction restraining the Defendant herein whether by herself, her agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the Plaintiff's quiet possession and use all that parcel of land formerly known as L.R No. Gilgil/Gilgil Block 1/26307 (Kikopey) measuring approximately 1.3 Hectares and currently undergoing the process of sub-division into LR Nos Gilgil/Gilgil Block 1/31518-31538. c) Costs of this suit.
 - d. Interests on (c) above at court rates.
 - e. Any other or further relief that this Honourable Court may deem fit and just to grant.



2. The Defendant entered appearance and filed his statement of defence and counter claim dated 20th January, 2022 where he denied the allegations in the plaint and sought for the following orders:
 - a. A declaration that the Defendant (now plaintiff) Ali Ibrahim, is the lawful proprietor and registered owner of the parcel of land known as Parcel No. LR. NO. 29008, located in Gilgil Township.
 - b. A declaration that the Plaintiff (now defendant) John Muthee Ngunjiri is a trespasser to the parcel of land known as Parcel No. LR. No. 29008, located in Gilgil Township.
 - c. Permanent injunction against Plaintiff (now defendant) John Muthee Ngunjiri either by himself, his agents, employees and/ or servants from trespassing, entering, subdividing, allocating, occupying, selling, leasing, charging, transferring, fencing, erecting any structures or dealing in any way with the Defendant (now plaintiff) Ali Ibrahim's piece of land known as Parcel No. LR. NO. 29008, located in Gilgil Township.
 - b. A declaration that land parcel number LR NO. Gilgil/Block 1/26307 (Kikopey) and currently undergoing the process of subdivision into LR Gilgil/Gilgil Blocks 1/31518-31538 does not exist and thus any Title Deed issued to this effect is null and void.
 - c. An order of cancellation of any Title purporting to be title to land parcel number LR No. Gilgil/Block 1/26307 (Kikopey) and cancellation of the resultant subdivisions thereof being LR Gilgil/Gilgil Blocks 1/31518-31538. f) Costs of this suit and the counterclaim
 - g) Interest in (f) above

Plaintiffs' Case

3. John Muthee Ngunjiri testified as PW1 where his statement filed on 19th July, 2016 was adopted as his evidence in chief. He also produced his list of documents filed on 18th July, 2024 and 17th July, 2024. He testified that he trades as Thayo Auctioneers and general merchants. It was his testimony that he purchased the suit parcel Gilgil/Gilgil Block/26307 from James Kianja Karanja. He produced the sale agreement as (PEX1). He further testified that at the time of purchase there was no title. He testified that he paid the balance of Kshs 50,000 and received a letter from the advocate (PEX2) and the title deed (PEX3). He further testified that the Defendant gave him the title and possession. He testified that he was allocated the land by Agricultural Industrial Holdings Limited.
4. It was his testimony that he did a search at the Lands office in Naivasha (PEX 5) after which the land was registered in his name on 25th May, 2015. He further testified that he did subdivision on 30th April, 2015 (PEX 6) after which he was issued with 21 titles at Naivasha lands office PEX7 (1) PEX7(XX1). He testified that he had planned to place beacons but he was stopped by the Defendant. He went on to testify that he reported to the police station and was issued with an O.B. He added that he filed the present case where the Defendant failed to appear after which he was issued with an ex parte judgment that was later set aside. He testified that the Defendant was issued with the Certificate of title on 11th December, 2017. He produced the green cards as (PEX 8(i) PEX 8(XX1).
5. He testified that before subdivision the acreage was 1.3 ha and the Defendant's title was 0.8907 Ha. He testified that the letter dated 7th March, 2023 from the Director of Surveyor was captured in sheet no 11 with the new number as 31518 to 31538 in sheet no 64. PW1 produced the map sheet No.11 as PMFI 10 and PMFI 11. He urged the court to order that he be given the suit land. Upon cross examination by Okiro for the Defendant, he confirmed that he bought the suit property on 4th January, 2010 and was issued with the title deed in 2015. He stated that the property belonged to



- Agricultural and Industrial Holdings Limited and added that the vendor was deceased. He admitted that the agreement did not mention the suit parcel of land. He also admitted that he had no title and certificate of shares. He added that there was no transfer form or evidence of payment of stamp duty. He stated that he was not aware whether survey was done. PW1 stated that he was shown the boundary by Kianja and confirmed that there were no beacons. He further stated that mutation forms were received on 30th April, 2015 and he was registered on 25th May, 2015. He confirmed that his lawyer filed a wrong mutation. He also stated that Agricultural holding was also known as GEMA which confirmed that he was the owner of the suit land. He admitted that he never challenged the restriction.
6. Upon re-examination, he stated that he bought a share certificate and that his interest was on the allocation to Karanja who was a director in GEMA. He further stated that Karanja showed him the land. He also stated that as at 2nd July, 2014, the title was in existence. He stated that he submitted the document to National Land Commission.
 7. Eliud Ikuu Karanja testified as PW2 where his statement dated 1st August, 2023 was adopted as evidence in chief. He testified that the Plaintiff went to see his father James Kianja Karanja in pursuit of land No. Share certificate 0413311 which belonged to his uncle Gaitho Karanja(deceased).
 8. He testified that the land was given through share to Gaitho Karanja(deceased) under certificate no. 0413311 on 22nd October, 1976. He testified that the Plaintiff got his title on 25th May, 2015 and that they were given letter No. Gilgil Gilgil Block 1/26307 (Kikopey). He added that there was no dispute.
 9. It was PW2's testimony that in 2002, the Defendant the went to see Kianja where he requested him for place to keep his cattle. He went on to testify that Kianja gave him the land but did not sell it. He further testified that he did not know whether the Defendant was paying. He testified that the Defendant was on the land when it was sold to the Plaintiff. He also testified that he had left him in occupation in 1997 or 1998. PW2 testified that the land was not surveyed. He added that the Defendant had built another kraal on LR26307 where he fenced it and claimed to be the owner of the land.
 10. Upon cross examination by Okiro, he confirmed that he was the son of James Kianja Karanja but admitted that he had no documents to prove the same. He confirmed that his father died on 20th October, 2020 and that there was a succession case at Naivasha High Court where he is the administrator. He stated that the land was not owned by James Kianja Karanja but that he had the power to allocate. He further stated that Kianja's parcel was Gilgil/Gilgil Block 1/6488. He added that Kianja could not sell 26307 since he did not own it and that it had been allocated by Gema. He confirmed that he had seen the agreement dated 4th January, 2010 in the year 2024.
 11. He stated that the share certificate was given to Gaiku Karanja and that 6488 was from James Kianja Karanja issued by GEMA. He also stated that the share for Gaiku was related to 26307 and that the share certificate No.0413311 was for land No.26307. He added that Gaiku Karanja his uncle was the owner of the share certificate 0413311. He admitted that his father had no share certificate related to the land in dispute since the land belonged to GEMA. He stated that the Plaintiff was given the land by GEMA and added that he was not aware of the transactions that led to it. He admitted that the Defendant occupied LR.6488 and that he had wanted the next land. He stated that the Plaintiff came in 2010. He further stated that he was not certain when the Defendant moved out of 6488. He confirmed that his father never had a title nor was he the administrator of the estate of Gaiku Karanja.
 12. Upon re-examination, PW2 stated that he had a letter showing that Gema gave parcel No.26307 to the Plaintiff. He stated that his father was given birth certificate and he processed the title. He further stated that upon receipt of the allotment letter, they followed up the issue but did not know what transpired later.



13. Simon Gaiku Mwaura testified as PW3 where his statement dated 1st August, 2023 was adopted as evidence in chief. He testified that Gaiku Karanja was his grandfather who had parcels of land and 4 shares in the land of A.I.H (GEMA). He testified that his grandfather gave them 3 shares and remained with one share given to the land owner. He testified that his father died without a share certificate and added that one could not be given a receipt without a number. He went on to testify that there was a receipt before a share certificate and that the land was sold to the Plaintiff. He testified that Kianja Karanja applied for title and it was issued in May 2015. He added that when mzee Kianja got the land, he had not been allocated. He stated that Gema allocated him the land No.26307 on 2nd July, 2024. He went on to testify that he came to know the Defendant in 2012 where he kept his cattle in 26307.
14. Upon cross examination, he confirmed that his grandfather did not have a share certificate. He further confirmed that a share certificate could only be issued when you got land. He added that GEMA holding was not clear if they were selling land but he was given a receipt after payment. He admitted that at his death he had not identified the land. He stated that Kianja gave the Defendant permission to graze his cattle with the knowledge that the land belonged to someone else. He stated that he did not know whether James Karanja ever owned the land but he was certain that it belonged to Gaiku Karanja by virtue of the receipt. He confirmed that Gaiku Karanja did not have an allotment letter. He stated that James Kianja sold the land in 2014.
15. Upon re-examination, PW3 stated that John Mathew bought the land from Kianja Karanja. He further stated that his grandfather was a GEMA member.
16. This marked the close of the Plaintiff's case.

Defendant's case

17. Ali Ibrahim Isaak testified as DW1 where his witness statement dated 20th January, 2022 was adopted as his evidence in chief. He also produced his list of documents dated 20th January, 2022 which documents were marked as DEX 1 to 21 subject to the surveyor producing document No. 20. DW1 produced further list of documents filed on 12th July, 2024 which documents were marked as DEX 22 -DEX 24. He also produced a further supplementary list of documents dated 8th October, 2024 with one document marked as DEX 25 Upon cross examination, he stated that his land was LR No.29008 to which he had a lease from the Commissioner of lands dated 1st December, 2017. He further stated that he had allotment letters dated 15th December, 2015 (DEX25) which was issued before the lease. He added that the said allotment letter got burnt in Gilgil Teachers. He went on to state that the land was in Gilgil township and that he had the map on the surveyor's report. He denied having claimed LR Block 1/26307 since it belonged to the Plaintiff. He stated that the agreement was in respect of land No. 2A for the boundary between him and Kianja since he did not know his land clearly. He stated that his land was No.272673 and that he had a receipt from the Commissioner of lands dated 16th January, 2018. He added that he paid on 16th January, 2018 and that he was sued on 19th July, 2016. DW1 stated that he had an allotment letter before being sued which got burnt in the house. He confirmed that the allotment letter had conditions and that the agreement with Kianja was done in 1988. He stated that there was a boundary between his land and that of Kianja. He also stated that the Plaintiff had trespassed on the road and his land. DW1 stated that he paid the Commissioner of Lands and on 15th December, 2017, he was issued with an allotment letter from the National Land Commission. He stated that he was not given any explanation for the allotment letter and added that the allotment was related to the first allotment that got burnt. He stated that the allotment refers to L.R 29008 and that his land measures 0.897 acres while the Plaintiff's measures 1.3 Ha. He stated that if the land was more than 0.897 Ha, then it does not belong to him.



18. Upon re-examination, DW1 stated that the government never cancelled his allotment letter for land No. 29008. He added that his lease was issued in 2017. He went on to state that the Plaintiff claim was on Gilgil/Gilgil /Block 1/26307.
19. Duncan Cheptich the Land Surveyor, Naivasha testified as DW2. He testified that he held a Bachelor degree in Geospatial Information System from Jomo Kenyatta university with 12 years' experience. He was referred to DEX 20 where he testified that the property was on RIM sheet 11 which had been subdivided in 21 portions. He testified that there was an amendment on registration sheet no 4 and that the boundaries were overlaid. He testified that no. 26307 was overlaid on 29008. He further testified that LR 29008 was done on fixed survey while LR 26307 was done on general survey. He testified that the fixed survey was accurate and that the plan had beacons. He testified that before the general survey they were LR before becoming Blocks. He added that for a general survey to have a number, it had to come from an invitation which was not the case. He testified that a fixed survey comes from a grant or L.R 29008 falls from a fixed survey using coordinates. He explained that a general survey is done by using fixed boundaries maintained by the owners doing settlement by addition officers. It was his testimony that in case of a dispute the task is assigned to the land registrar. He further testified that the fixed survey was accurate by 3 centimeters while the general survey was accurate up to 1 meter. He testified that Gilgil /Gilgil Block 1/26307 fell under the general survey ownership while LR No.29008 under the fixed survey. He produced the report is produced as DEX 20
20. Upon cross examination, he confirmed that the report was done by his predecessor. He added that it was an advisory to the land Registrar and that the L.R was identified on the ground by getting documents from Ruaraka. He stated that the fixed survey showed the boundaries and that the original L.R was geo-referred. He confirmed that they had not made any recommendation.
21. Upon re-examination, he stated that they had findings that assisted the Land Registrar.
22. Ali Adan testified as DW3 where his statement dated 12th July, 2024 was adopted as evidence in chief. He testified that the Defendant was his neighbor and that he had occupied it in 1988. He further testified that his land was No. 66 but also admitted that he was not certain of their numbers. He went on to testify that they had obtained a certificate of lease in 2017. He testified that the Defendant's allotment letter was burned before 2017 and added that he had his. It was his testimony that they were unable to get certificate of lease since he was in Yugoslavia for a long time. He further testified that Kianja Karanja and the Defendant had a boundary dispute which was resolved. This marked the close of the Defendant's case.

Submissions

23. The Plaintiff's counsel filed his submissions dated 10th October, 2024 where he identified three issues for determination. The first issue was who between the Plaintiff and Defendant was the lawful owner of the parcel of land in issue being L.R No. Gilgil/Gilgil Block 1/26307. He relied on Section 107, 108 and 109 of the Evidence Act and submits that the Plaintiff attached evidence to demonstrate that he is the registered proprietor of the suit land. He further submits that the only evidence of allocation of LR 29008 to the Defendant is the Certificate of title issued on 18th July, 2018 and a lease issued running from 1st December, 2017. He adds that there was no evidence by the Defendant to prove fraud in the registration process culminating to the acquisition of the Plaintiff's title.
24. The second issue was whether the Defendant's counter claim should be allowed. He submits that it is a fact that registration of the suit property preceded that of the Defendant. He further submits that no evidence has been tendered to rebut ownership of the suit property save for the allegation that there was an overlap. He urges the court to dismiss the Defendant's counterclaim with costs. On the final



issue, he submits that the Plaintiff having established that he is the lawful owner of the suit property, the court should order that the title issued on 28th August, 2018 in respect of L.R No. 29008 in favour of the Defendant is null and void. Counsel relied on the case of Orix Oil (Kenya) Limited V Paul Kabau & 2 Others [2014] eKLR and JR Application No 6 of 2014 Republic V Rosemary Wairimu Munene Ex Parte Applicant V Ihururu Dairy Farmers Co-operative Society Ltd.

25. Counsel for the Defendant on the other hand filed his submissions dated 25th October, 2024 where he identified two issues for determination. The first issue was whether the Plaintiff's claim is merited. He relied on Section 24(a) and 26(1) of the [Land Registration Act](#) and Article 40 of [the constitution](#) and submits that the Defendant adduced evidence in the form of Certificate of lease to the effect that he is the registered owner of the suit property. He cited Section 3(3) of the Contract Act and submits that there was no written sale agreement produced that showed the Plaintiff purchased land parcel Gilgil/Gilgil Block 1/26307. He submits that what was being purchased vide the sale agreement was a completely different piece of land that is unrelated to the matter. He submits that the Plaintiff's title is therefore a product of illegality. He relied on the case of Republic V Land Registrar Taita Taveta District & another [2015] eKLR. He further submits that from the evidence presented by the parties, the Defendant successfully substantiated his claim of ownership while the Plaintiff's documentation was riddled with inconsistencies. He adds that the surveyor's report also confirmed the same. It was his submission that the Plaintiff's claim to ownership of the disputed land was unfounded and unsupported by any legal documentation.
26. The second issue was whether the Defendant is deserving of the prayers as per the counterclaim.
27. While submitting in the affirmative, counsel relied on the case of Nguruman Limited V Jan Bonde Nielsen & 2 others, [CA No. 77 of 2012](#); [2014] eKLR and submits that the Defendants meet the requirements for grant of an injunctive order. He urges the court to grant them costs of the suit.

Analysis and Determination

28. This court has considered the pleadings, evidence on record and submissions and is of the view that it is not in dispute that both the Plaintiff and the Defendant each own their separate parcels of land registered in their names. It was the Plaintiff's case that he purchased Gilgil/Gilgil Block/26307 from James Kianja Karanja. The title deed issued to the Plaintiff on 25th May, 2015 (PEX3) refers to Gilgil/Block 1/26307 (Kikopey). The letter by M.K Wandegwa dated 2nd July 2014 confirms that the plaintiff was allocated the parcel number 26307 by Agricultural and Industrial Holdings Ltd. A title deed was issued to the plaintiff on 25th May 2015. The plaintiff produced the title deed that was not shown to the satisfaction of the court that it was obtained fraudulently.
29. Section 24(a) of the [Land Registration Act](#) provides that:

“Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
30. Section 26(1) of the [Land Registration Act](#) further provides that:

“...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
- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

31. The Defendant on the other hand produced evidence in form of the Certificate of Lease for parcel number LR No. 29008 issued on 1st December, 2017 which the Plaintiff never challenged but was not related to the suit parcel of land. It is also this court’s view that in as much as the title produced by the Plaintiff showed that Gilgil/Gilgil Block/26307 was registered in his name, the Defendant did not challenge this in his evidence. It is not in contention that the main issue is that of a boundary dispute between the Defendant’s land and that of the Plaintiff land. It was the Defendant’s case that the Plaintiff had trespassed on the road and his land.
32. The Land Surveyor (DW2) in his evidence relied on the survey report dated 23rd June, 2021. It was his evidence that the RIM sheet 11 had been subdivided in 21 portions and there was an amendment on registration sheet no 4. He also testified that the boundaries of Gilgil/Gilgil Block 1/26307 had overlaid on L.R No. 29008. He also confirmed that LR 29008 had been done on fixed survey while 26307 on a general survey. It was his testimony that the fixed survey was accurate and that for a general survey to have a number, it had to come from an invitation which was not the case. Having established that there was overlap between the Plaintiff’s parcel and the Defendant’s parcel, this court finds that the first parcel of land to be created overrides the 2nd parcel of land to be created. The title issued to the plaintiff is a certificate of lease issued on the 28th August 2018 whereas the lease was registered on 18th July 2018. By the time the certificate of lease was being issued, the plaintiff had been issued with a title on the 25th May 2015 superseding the defendant’s title. The certificate of official search shows that the plaintiff was registered as the proprietor on the 25th May 2015 and the title deed issued instantly. It is trite law that where two titles to land appear to allocate the same interest on the ground in two different persons, the first in time prevails. In this case, the plaintiff’s title prevails.
33. The upshot of the above is that the plaintiff has proved his case on a balance of probabilities and is therefore entitled to the orders sought. Ultimately, I do grant orders that:-
 - a. An order of temporary injunction restraining the Defendant herein whether by herself, her agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the Plaintiff’s quiet possession and use all that parcel of land formerly known as L.R NO. Gilgil/Gilgil Block 1/26307 (Kikopey) measuring approximately 1.3 Hectares and currently undergoing the process of subdivision into L.R NOS. Gilgil/Gilgil Block 1/31518-31538.
 - b. An order of permanent injunction restraining the Defendant herein whether by herself, her agents and/or servants from invading, trespassing, cultivating or in any way whatsoever interfering with the Plaintiff’s quiet possession and use all that parcel of land formerly known as L.R No. Gilgil/Gilgil Block 1/26307 (Kikopey) measuring approximately 1.3 Hectares and currently undergoing the process of sub-division into LR Nos Gilgil/Gilgil Block 1/31518-31538.
34. Other than a declaration that the Defendant Ali Ibrahim, is the lawful proprietor and registered owner of the parcel of land known as Parcel No. LR. NO. 29008, located in Gilgil Township the counter claim is dismissed.



35. Each party shall bear its own costs as the Ministry of Lands was to blame for the errors that caused the parties to come to court. It is so ordered

SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2024-12-20 14:39:54

The Judiciary of Kenya

