



Mbugua & 2 others (Suing as Administrators of Moses Mbugua Mwangi alias Mbugwa Mwangi (Deceased)) v Kavingo & 3 others (Environment & Land Case 161 of 2018) [2024] KEELC 14015 (KLR) (18 December 2024) (Judgment)

Neutral citation: [2024] KEELC 14015 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 161 OF 2018
NA MATHEKA, J
DECEMBER 18, 2024**

BETWEEN

**ISAAC GICHIA MBUGUA 1ST PLAINTIFF
JOSEPH MBAI MBUGUA 2ND PLAINTIFF
ELIZABETH WANJIKU MBUGUA 3RD PLAINTIFF
SUING AS ADMINISTRATORS OF MOSES MBUGUA MWANGI ALIAS
MBUGWA MWANGI (DECEASED)**

AND

**SAMMY KAVINGO 1ST DEFENDANT
MUNGA RWAMBI 2ND DEFENDANT
KANZE POPO 3RD DEFENDANT
JOSEPH REUBE MNAZI 4TH DEFENDANT**

JUDGMENT

1. The plaintiffs aver that the suit property being Plot No. 715/VLMN Title No.2152 belongs to their late father who bought the same way back on 27th July 1971. The plaintiff avers that on 30th January 2012 they provided and obtained grant of letters of administration intestate. The plaintiffs aver that, they proceeded to the Lands office Mombasa and obtained a certificate of postal search and on which document it indicated that the suit property still belongs to their late father Moses Mbugua Mwangi. The plaintiffs aver that on or around February 2018, they realized that the 1st defendant had started developing the suit property without their consent and/or approval. The plaintiffs aver that on 21st February 2018, they proceeded to the Chief Officer, Land Planning and Housing, County Government of Mombasa to enquire whether he has given any approval for any development on the



said property. The plaintiffs aver that they are apprehensive that the defendants will forcefully and unlawfully disfranchise the suit property.

2. The plaintiffs aver that they approached the 1st defendant who is developing the suit property who informed that he purchased the same from the 2nd defendant but upon approaching the 2nd defendant he could not produce any documents whatsoever to claim ownership but instead he used abusive language and threatened. The plaintiffs pray for judgment against the defendants jointly and severally for the following relief;
 - a. A declaratory order that the suit property solely belongs to the plaintiffs to the exclusion of the defendants.
 - b. An order of injunction restraining the defendants from trespassing on, alienating, disposing off and /or in any way dealing with the suit property in any manner whatsoever that may interfere with the plaintiff rights of ownership, quiet possession and enjoyment thereof.
 - c. Orders of eviction of all the defendants/respondents from the suit property do issue. and
 - d. That the O. C. S, Changamwe Police Station to give assistance in execution of this orders.
 - e. Cost and incidentals to this suit and interests thereon.
3. The 2nd defendant avers and states that the plaintiffs claim is time barred under the Laws of Limitation cap 22 Laws of Kenya and the prayers sought cannot issue. The 2nd Defendant avers that he has acquired the portion of the suit property by way of adverse possession.
4. This court has considered the evidence and submissions therein. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24(a) of the [Land Registration Act](#) provides as follows:

“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.”
5. Section 26 (1) of the [Land Registration Act](#) states as follows:

“The Certificate of Title issued by the Registrar upon registration ... 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... 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.”
6. The law is clear that, the Certificate of Title issued by the Registrar upon registration 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 and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.
7. This court in considering this matter referred to the case of Elijah Makeri Nyangw’ra vs Stephen Mungai Njuguna & Another (2013) eKLR where the court held that the title in the hands of an



innocent third party can be impugned if it is proved that the title was obtained illegally, unprocedurally or through a corrupt scheme. The Judge in the case while considering the application of section 26(1) (a) and (b) of the Land Registration Act rendered himself as follows;

“-----the law is extremely protective of title and provides only two instances for challenge of title. The first is where the title is obtained by fraud or misrepresentation to which the person must be proved to be a party. The second is where the certificate of title has been acquired through a corrupt scheme.”

8. PW1 testified that the suit property being Plot No. 715/VLMN Title No.2152 belongs to their late father Moses Mbugua Mwangi who bought the same way back on 27th July 1971. He produced the title deed and certificate of search proving the same. That PW2 the caretaker was taken there in 2001 and his father built the houses in 2008. The plaintiff avers that on or around February 2018, they realized that the 1st defendant had started developing the suit property without their consent and/or approval. PW2 the caretaker confirms that he went to the suit property in 2001. That he found the 2nd 3rd and 4th defendants had constructed houses and were living there. It is therefore cannot be true that the defendants came in 2018.
9. DW1, Munga Rwambi testified that he went to the suit land in 1962. He was employed by a whiteman who left after Kenya attained independence never to return. He has built a house and lives there with his family. That he later sold a piece of the land to the 1st defendant. That they occupy a small portion of the land. DW2, Joseph Reuben Mnazi stated that he does not live on the suit land and has since moved to Rabai. That it is his father in law who still lives there.
10. It has been established that the plaintiffs' father is the registered proprietor of the suit land. Be that as it may, it appears that there are some people residing on the suit land and who have been there prior to 2001 as per PW2's evidence on oath. It is not clear who is currently on the suit land apart from the 2nd defendant. Section 28 (h) of the Land Registration Act, 2012 provides as follows;
 28. Overriding interests
Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interest as may for the time being subsist and affect the same, without their being noted on the register-
 - (h) rights acquired or in process of being acquired by virtue of any written law relating to the limitation of actions or by prescription.
11. Could it be possible that the some of the defendants were on the suit land before 1971 when the plaintiff purchased the same. If so was there any effort then to gain vacant possession? All these questions have not been answered. I find that the plaintiffs have failed to establish that the defendants invaded the suit land in 2018 as it is their evidence that some of them were in occupation prior to 2001. I find that the plaintiffs have failed to prove their case on a balance of probabilities and it is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 18TH DAY OF DECEMBER 2024.

N.A. MATHEKA

JUDGE

