



**Muigai v Ndimu Farmers Co-operative Society & 2 others (Environment & Land Case 121 of 2015) [2024] KEELC 13733 (KLR) (13 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13733 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 121 OF 2015  
MAO ODENY, J  
DECEMBER 13, 2024**

**BETWEEN**

**GEOFFREY MAINA MUIGAI ..... PLAINTIFF**

**AND**

**NDIMU FARMERS CO-OPERATIVE SOCIETY ..... 1<sup>ST</sup> DEFENDANT**

**JAMES MAINA NDUNG’U ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR NAKURU ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By a Further amended Plaintiff dated 17<sup>th</sup> July, 2023, the Plaintiff herein sued the Defendants seeking the following orders:
  - a. Temporary injunction to restrain the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from processing title deed for plot No 458 (now plot No. 510) in Ndimu F.C.S Limited pending hearing and determination of the suit.
  - b. A declaration that the Plaintiff is a beneficiary of plot no 458 (now PLOT NO 510) in equal share with the 2<sup>nd</sup> Defendant.
  - c. An order of eviction against the 2<sup>nd</sup> Defendant.
  - d. Costs of suit.
  - e. Any other or further relief that this Honourable court may deem fit and just to grant in the circumstances.



## Plaintiff's Case

2. PW1 Geoffrey Muigai adopted his witness statement dated 5<sup>th</sup> May, 2015 as part of his evidence in chief and testified that he inherited parcel of land known as Elburgon/Elburgon Block 7 plot No 458 in Ndimu from his father who had also inherited it from his grandfather. PW1 further testified that there was a will made by his grandfather in 1967 in relation to the suit parcel that was kept by the 1<sup>st</sup> Defendant.
3. It was PW1's testimony that his grandfather divided the parcel into two, one portion was allocated to Dauri Muthoni, and the second portion to Mariam Nyakairu who were his grandmothers. PW1 testified that after his grandfather and two grandmothers passed away, his father and his brothers Joseph Macharia and Samwel Ndungu Muigai called a family meeting to discuss the three pieces of land namely, Keringet Block 1 (Ikombe) Igat farm measuring 9 hectares, Keringet Msituni farm under (the 1<sup>st</sup> Defendant) Ndimu Farmers' Co-operative Society measuring 3 acres and Elburgon/Elburgon Block 7 plot 458 respectively.
4. PW1 stated that the meeting resolved that his grandfather's property be divided into two equal shares with one half being allocated to his father and the other to his brother Samwel Ndungu Muigai whereby his father requested to be given his share which he subsequently sold to Keringet Msitunui farm without his involvement.
5. PW1 produced the list of documents filed in court on 5<sup>th</sup> May, 2015 as follows: the letter dated 5<sup>th</sup> May by the Ndimu Farmers' Cooperative Society, Summons dated 3<sup>rd</sup> July, 1987 by the Chief Elburgon, Notice to vacate dated 20<sup>th</sup> April, 1988; Notice to vacate dated 10<sup>th</sup> March, 1989 from the Chief Elburgon ; Letter dated 2<sup>nd</sup> January, 2001 to the committee of Ndimu Farmers' Cooperative Society; Receipts dated 22<sup>nd</sup> January, 2001 and 29<sup>th</sup> January, 2001 issued by Ndimu Farmers' Cooperative Society Chief's summons dated 13<sup>th</sup> June, 2006, Certificate of search for Zakayo Muigai, Burial permit No C708522 for Joseph Macharia Nganga and a family letter dated 21<sup>st</sup> April, 1985.
6. PW1 further testified that there was a dispute between Ndimu Farmers' Cooperative Society (the 1<sup>st</sup> Defendant) and members of the cooperative society and that in 2016, the County Commissioner asked that all Ndimu dwellers be given title deeds. He stated that he was issued with a title for Elburgon/Elburgon Block 7 and that Block 8 titles were cancelled during the meeting with the County Commissioner, which resolved that they be given titles for Block 7. PW1 further stated that he has a title deed and map for Elburgon/Elburgon Block 7 plot 458 which he produced as Exhibit P11 (a) and (b) respectively.
7. It was PW1's evidence that they were subsequently asked to give back their titles so that they could be given titles for Block 10 of which he surrendered but the Land Registrar told him to wait as there was a dispute. He stated further that he was not informed that the map for Block 10 had changed whereby Block 458 became Block 510. That there was a dispute between him and his cousin after the change of the map.
8. Upon cross-examination by Ms. Wanjeri for the 3<sup>rd</sup> Defendant, PW1 stated that his grandfather was a member of the 1<sup>st</sup> Defendant society and that the family meeting resolved that his name be written in place of his father who died in 1992. Further that the family resolved that the property be divided into two.
9. PW1 confirmed that he has a title deed and stated that his claim against the 3<sup>rd</sup> Defendant is the fact that he returned his title deed and waited for a replacement but he never got it and instead it was given



to the 2<sup>nd</sup> Defendant. PW1 stated that Samwel Ndungu is his uncle and that he has not filed a caveat as there is a pending case hence they cannot do anything on the land.

### 3<sup>rd</sup> Defendant's Case

10. DW1 Collins Liyai a Land Registrar produced a certified copy of the original register edition No. one of Land Parcel No. Elburgon/Elburgon Block 7/458 which was opened on 24<sup>th</sup> September, 1993 and it measures approximately 0.5700 hectares. He testified that entry number one is dated 24<sup>th</sup> September, 1993 and the land is registered to the Government of Kenya, entry number two is dated 2<sup>nd</sup> March, 2016 which shows that the land was transferred and registered in the name of the Geoffrey Maina Mungai the Plaintiff, ID No 0479991 P.O BOX 321 Elburgon.
11. DW1 stated that entry number three is dated 2<sup>nd</sup> March, 2016 with the title deed issued and all the three entries are signed, further that part C has no encumbrances registered. It was his evidence that the title Pex 11 tallies with the register,
12. It was DW1's further evidence that initially, the parcel was Block 8, but vide a gazette notice it was changed to Block 10 and the current Block 7 Ndimu was initially Block 8 which was an error from the survey department. DW1 testified that when the survey department noticed the error, the Registrar had issued titles under erroneous Registry Index Maps (RIM), it necessitated issuance of a gazette notice calling on all the title holders to surrender them for rectification and issue new titles under the rectified RIM (Block 7). He testified that only the people who had collected titles had to surrender. DW1 testified that the Plaintiff had not been issued with title under Block 8 and therefore his application was treated as a first time application under Block 7.
13. According to DW1 there was an issue with Block 10 and confusion at the survey department which led to a suit Nakuru ELC NO 112 of 2019, Elijah Muhandi & 90 others vs Director of Survey and 2 others. DW1 testified that the matter has not been determined but it is challenging the survey process, which should be falling under Block 7 but are appearing under Block 10. DW1 testified that he has communication from the Attorney General attaching a court order dated 26<sup>th</sup> January, 2021 restraining the Registrar from issuing titles under the Blocks and it lists about 90 parcels. DW1 testified that they have continued to receive complaints from the 1<sup>st</sup> Defendant due to this confusion and they have ceased issuance of titles under Block 7, 8 and 10 until ELC No.112 of 2019 is determined and a fresh survey is done.
14. DW1 further stated that the Plaintiff's parcel No. 458 does not appear on the list of parcels listed in the court order and that he does not have any documents showing that parcel 458 became parcel 510 and produced the certified copy of the green card as Exhibit D1.
15. Upon cross-examination by the Plaintiff, DW1 stated that there is Block 7 and 10 in Ndimu Farm and both of them are legal. DW1 stated that it is possible that the Block 7/458 was moved to Block 10/510 and as at now, Block 7/458 is at Block 7.
16. DW1 further stated that on the dispute of Block 7/458 being Block 10/510, it would be necessary for a survey to be done and that there is the case pending before court. Further that he does not know when the survey will be done as it depends on the case in court. DW1 stated that the Plaintiff and the 2<sup>nd</sup> Defendant can go to the survey department and look for a surveyor to answer the questions they might have.



### **Plaintiff's Submissions**

17. The Plaintiff filed submissions dated 27<sup>th</sup> November, 2024 and reiterated the evidence on record and urged the court to grant the orders as payed in the Amended Plaintiff with costs.

### **3<sup>rd</sup> Defendant's Submissions**

18. Counsel for the 3<sup>rd</sup> Defendant filed submissions dated 31<sup>st</sup> October, 2024 and identified the following issues for determination:
  - a. Whether there is a claim against the 3<sup>rd</sup> Defendant?
  - b. Who should bear the costs of the suit?
19. Counsel submitted that this seems to be a family dispute between the Plaintiff and the 2<sup>nd</sup> Defendant which they have failed to resolve amicably. Counsel submitted that the 3<sup>rd</sup> Defendant through the green card has shown the Plaintiff has no claim against the 3<sup>rd</sup> Defendant as there is no fraud or transfer to a third party and urged the court to dismiss the Plaintiff's suit.

### **Analysis And Determination**

20. The issue for determination is whether the Plaintiff is a beneficiary of plot No. 458 (now PLOT NO 510) in equal share with the 2<sup>nd</sup> Defendant and whether the 2<sup>nd</sup> defendant should be evicted from the suit parcel.
21. The Plaintiff gave the background to this suit and tendered evidence in respect of what transpired leading to the current dispute. The 2<sup>nd</sup> Defendant never tendered any evidence to dispute the Plaintiff's allegation on the ownership of the suit parcel of land.
22. From the Land Registrar's testimony and the documents produced, it is evident that the register of Land Parcel Elburgon/Elburgon Block 7/458 measuring 0.5700 was opened on 24<sup>th</sup> September, 1993 in the Plaintiff's name and a title deed issued and further that the records tally with the plaintiff's title.
23. It is also on record from the testimony of the Land Registrar that the Survey Department noticed an error in Blocks 7 and 8 with the RIM Maps and issued a gazette whereby the Blocks changed to Block 10. The survey department noticed the error after the Registrar had already issued titles under erroneous Registry Index Maps (RIM), which necessitated the issuance of a gazette notice calling on all the title holders to surrender them for rectification and issuance of new titles under the rectified RIM (Block 7). The Registrar testified that only the people who had collected titles had to surrender and that the Plaintiff had not been issued with title under Block 8 hence his application was treated as a first time application under Block 7.
24. It is further on record that the Plaintiff surrendered his original title deed for rectification as per the gazette notice but was told by the land Registry to wait as there was a dispute and confusion as stated by the Land Registrar in his testimony. There is no evidence that the surrendered title was cancelled for fraud hence it is still a legal and valid title awaiting regular rectification due to an error by the survey department on the Maps.
25. Section 26 of the *Land Registration Act*, 2012 provides as follows:

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- (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 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.
26. The Land Registrar also told the court that there was an issue and confusion with Block 10 at the survey department which led to a suit Nakuru ELC NO 112 of 2019, Elijah Muhandi & 90 others vs Director of Survey and 2 others challenging the survey process falling under Block 7 but are appearing under Block 10 which is pending before the court.
27. The Land Registrar further informed the court that vide a court order dated 26<sup>th</sup> January, 2021 Land Registrar was restrained from issuing titles under the Blocks and it lists about 90 parcels of which the Plaintiff's title is not amongst them.
28. From the evidence by both parties, I find that the Plaintiff has proved his case on a balance of probabilities and therefore issue the following orders:
- a. A declaration that the Plaintiff is a beneficiary of plot no 458 (now PLOT NO 510) in equal share with the 2<sup>nd</sup> Defendant.
  - b. The 2<sup>nd</sup> Defendant to give vacant possession of the suit parcel within 45 days, failure to which eviction to issue.
  - c. Costs to the Plaintiff.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 13<sup>TH</sup> DAY OF DECEMBER 2024.**

**M. A. ODENY**

**JUDGE**

