



REPUBLIC OF KENYA



Mwanaongoro & 8 others v National Land Commission & another (Environment & Land Case 165 of 2015) [2024] KEELC 13789 (KLR) (13 December 2024) (Judgment)

Neutral citation: [2024] KEELC 13789 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 165 OF 2015
MAO ODENY, J
DECEMBER 13, 2024**

BETWEEN

**DR SZUMBAH MWANAONGORO 1ST PLAINTIFF
JOHN KURIA GITU 2ND PLAINTIFF
PETER GATHUI 3RD PLAINTIFF
ANGELICA M KIVUVA 4TH PLAINTIFF
JEMMIMAH KERUBO MONARI 5TH PLAINTIFF
ROSE KHISAVULA ALUVAALA 6TH PLAINTIFF
SAMUEL WAMBUGU MUCHEMI 7TH PLAINTIFF
GEORGE KIMANI KUIRA 8TH PLAINTIFF
JOHN OWINO 9TH PLAINTIFF**

AND

**NATIONAL LAND COMMISSION 1ST DEFENDANT
HON ATTORNEY GENERAL 2ND DEFENDANT**

JUDGMENT

1. By Plaint dated 9th June, 2015, the Plaintiffs herein sued the Defendants seeking the following orders:
 - a. A declaration that the plaintiffs are entitled to the peaceful, use, possession and occupation of Nakuru Municipality Block 12/281, Nakuru Municipality Block 12/269, Nakuru Municipality Block 12/278, Nakuru Municipality Block 12/274, Nakuru Municipality Block 12/275, Nakuru Municipality Block 12/271, Nakuru Municipality Block 12/279 AND Nakuru Municipality Block 12/273 as the registered owners.



- b. A declaration that the directive published on page 20 of the Wednesday 20th May, 2015 in the Daily Nation was ultravires hence null and void and of no legal effect.
- c. A permanent injunction to restrain the Defendants by themselves, their agents, servants or any person claiming under them from entering, demolishing and or removing structures erected thereon, displacing, dispossessing, or dealing in whatsoever manner with the parcels of land Nakuru Municipality Block 12/269, Nakuru Municipality Block 12/281, Nakuru Municipality Block 12/278, Nakuru Municipality Block 12/274, Nakuru Municipality Block 12/275, Nakuru Municipality Block 12/271, Nakuru Municipality Block 12/279, Nakuru Municipality Block 12/273 AND Nakuru Municipality Block 12/270 and the developments thereon on the strength of directive appearing on page 20 of the Wednesday 20th May, 2015 Daily Nation publication.
- d. Costs and interests of the suit.
- e. Such other and further relief the Honourable court may deem fit and just to grant.

Plaintiffs Case

2. PW1 Dr. Szumbah Mwanaongoro adopted his witness statement dated 9th June 2015 and stated that he is a Retired University Lecturer living in Milimani Estate Nakuru. He testified that he knows the other Plaintiffs as they live in the same neighborhood, have a common cause and has authority to give evidence on their behalf.
3. PW1 testified vide a directive contained in the Daily Nation dated 20th May 2015, the Chairperson of the National Land Commission directed that land owned by the Plaintiffs herein was allegedly grabbed from Moi Primary School Nakuru and as such any developments erected thereon ought to be demolished.
4. PW1 testified that he applied for allocation of the suit property and purchased it from a person by the name Chelule who was the original allottee who had already developed it but he made improvements.
5. It was PW1's evidence that the suit parcels of land being Nakuru Municipality Block 12/281, Nakuru Municipality Block 12/269, Nakuru Municipality Block 12/278, Nakuru Municipality Block 12/274, Nakuru Municipality Block 12/275, Nakuru Municipality Block 12/271, Nakuru Municipality Block 12/279 AND Nakuru Municipality Block 12/273 initially belonged to Municipal Council of Nakuru, however the Municipal Council of Nakuru was indebted to the Kenya National Assurance and during a meeting held on 14th October 1997, (See Pex No. 2 resolution No. 6)) it was unanimously resolved that the plots in Milimani be subdivided and the extra plots be sold to enable the Council offset the loan of Kshs 6,000,000/= (six Million) owed to the Kenya National Assurance Company (in Liquidation) in respect of Moi Estate.
6. It was PW1's further testimony that vide a letter dated 17th September 1997 the Municipal Council of Nakuru wrote to the Permanent Secretary Ministry of Local Government informing them the Council was facing financial liquidity problems which made it impossible to meet certain obligations and therefore sought authority to offload some properties the Council owned in section 35 of the Municipality that do not generate revenues commensurate with maintenance costs. That some of the properties occupied large pieces of land, which could be subdivided, and the sub plots sold as separate entities.
7. PW1 stated that vide a letter dated 4th May 1998 the Ministry of Local Government wrote to the Town Clerk Nakuru Municipal Council granting them approval to sell the suit land on condition that the



properties to be disposed of are properly valued and funds from the same be applied to repay the outstanding loan from the Kenya National Assurance (in Receivership) which was used to construct Moi Estate Flats.

8. According to PW 1 upon the approval the Nakuru Municipal Council offered the suit parcels for sale and the Plaintiff were successful in the allotment and were issued with allotment letters and respective title documents. He stated that they continued living peacefully on their parcels of land until 26th November 2010 when the District Land Registrar Nakuru issued a Gazette Notice No 15574 in the Kenya Gazette where he notified the public as follows:

“WHEREAS the parcel of land whose details are described under schedule herein below were allocated and title issued to private developers, it has come to the notice of the government that the said parcels of land were reserved for public purposes of *the Constitution*, the Government Lands Act and the Trust *Land Act*, the allocations were therefore illegal and unconstitutional.”

9. PW1 testified that they challenged the gazette Notice vide Nakuru High Court Judicial Review Misc. Application No 3 of 2011, Dr. Szumbah Mwanaongoro & Others Vs Nakuru District Land Registrar & another wherein the court allowed the application and issued orders of certiorari and prohibition against the decisions of the Respondents.
10. It was PW1’s testimony that the National Land Commission has not informed them that they have withdrawn the notice to demolish their properties and urged the court to enter judgment as prayed in the plaint.

Plaintiffs Submissions

11. Counsel for the Plaintiffs filed submissions dated 14th October, 2024 and identified the following issues for determination:
 - a. Whether the Plaintiffs have proved their case to the required standards?
 - b. Whether this Honorable Court ought to issue an order declaring the 1st Defendant’s intention of demolishing the Plaintiffs’ properties as unlawful, illegal, null and void?
 - c. Whether this Honorable Court ought to issue an order of permanent injunction against the Defendants?
 - d. Whether costs ought to issue?
12. On the first issue, counsel submitted that the Plaintiffs are the legal owners of the suit properties and are entitled to the exclusive and unimpeded right of possession, occupation, enjoyment and use of the suit properties. Counsel submitted that the Plaintiffs have proved their case to the required standards and that the evidence remains uncontroverted. Counsel relied on the cases of Linus Nganga Kiongo & 3 others vs Town Council of Kikuyu [2012] eKLR and John Kanyungu vs Daniel Kimani [2000] eKLR.
13. On the second issue, Counsel submitted that the Plaintiffs have proved that they acquired the title deeds legally and procedurally and as such the directive that they should demolish their developments ought to be declared null and relied on Section 24 (a) and 26 of the *Land Registration Act* and the cases of Margaret Njeri Wachira vs Eliud Waweru Njenga [2018] eKLR, Jolas Nicholas Manyasi vs Benson Masini Timbwa [2018] eKLR and Kamoye vs Tipango & 2 others [2024] KEELC 4227 (KLR).



14. Counsel further gave a chronology of events that led to the approval for sale, allocation and issuance of the title deeds to the Plaintiffs, which has been captured in the evidence above. Counsel also relied on the Judicial Review Judgment delivered on 20th July 2016 which quashed the gazette Notice by the Land Registrar cancelling the Plaintiffs' titles where the court held that the Land Registrar has no powers to cancel a title.
15. On the third issue, counsel submitted that the Plaintiffs are entitled to a perpetual injunction against the Defendants and relied on Article 40 (1) of *the Constitution* of Kenya and the case of Kenya Power & Lighting Co. Limited vs Sheriff Molana Habib [2018] eKLR. On the fourth issue, counsel submitted that the Plaintiffs are entitled to costs and reliance was placed on the case of Orix Oil Limited vs Paul Kabeu [2014] eKLR.

Analysis And Determination

16. The issues for determination are as follows:
 - a. Whether the 1st defendant's directive to demolish the Plaintiffs' properties on the suit land is lawful.
 - b. Whether the court ought to issue a permanent injunction against the defendants from interfering with the suit parcels.
 - c. Whether the Plaintiffs are entitled to an order that they are entitled to peaceful use possession and occupation of the suit parcels of land as registered owners.
 - d. Who should pay costs.
17. The background to this case explains the process by which the Plaintiffs acquired the suit parcels of land. The Plaintiff gave evidence that the suit parcels of land initially belonged to the Municipal Council of Nakuru, which owed the Kenya National Assurance Company (in Liquidation) money. He stated that during a meeting held on 14th October 1997, (See Pex No. 2 resolution No. 6)) it was unanimously resolved that the plots in Milimani be subdivided and the extra plots be sold to enable the Council offset the loan of Kshs 6,000,000/= owed to the Kenya National Assurance Company (in Liquidation) in respect of Moi Estate.
18. It is further on record that vide a letter dated 17th September 1997 the Municipal Council of Nakuru wrote to the Permanent Secretary Ministry of Local Government informing them that the Council was facing financial liquidity problems which made it impossible to meet certain obligations and therefore sought authority to offload some properties the Council owned in section 35 of the Municipality that do not generate revenues commensurate with maintenance costs.
19. The Ministry of Local Government gave its approval vide a letter dated 4th May 1998 addressed to the Town Clerk Nakuru Municipal Council granting them approval to sell the suit land on condition that the properties to be disposed of are properly valued and funds from the same be applied to repay the outstanding loan from the Kenya National Assurance (in Receivership) which was used to construct Moi Estate Flats.
20. There is no evidence that such approval was challenged or rescinded by the Ministry of Local Government. There was further no evidence that the conditions set for the approval were never met or whether the allocation was riddled with fraud or illegality.
21. Furthermore, the Nakuru Land Registrar's attempt to cancel the titles unprocedurally was quashed vide Nakuru High Court Judicial Review Misc. Application No 3 of 2011, Dr, Szumbah



Mwanaongoro & Others Vs Nakuru District Land Registrar & another. The court stated that the Land Registrar had no power to cancel titles without a court order. It therefore follows that the National Land Commission's directive for the demolition of the Plaintiff's residential houses on the suit parcels of land was illegal and null and void the plaintiffs having acquired the suit parcels procedurally.

22. Section 24 (a) of the [Land Registration Act](#) provides:

“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.”

23. Section 25 (1) of the [Land Registration Act](#) provides:

The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—

- a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.

24. Section 26 (1) of the [Land Registration Act](#) provides:

“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.”

25. There was no evidence to show that the Plaintiffs acquired the suit parcels of land fraudulently or unprocedurally having followed the due process as provided by law and approved by the Ministry of Local Government. The defendants did not file any documents to controvert the Plaintiffs' evidence. When they were served with a hearing notice, counsel for the 2nd Defendant indicated that the matter could proceed without their participation as they had not filed any response to the case.

26. On the issue whether the Plaintiffs are entitled to an order of a permanent injunction, in the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR where the court held as follows:

:“...A permanent injunction which is also known as perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus



a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”

27. The 1st Defendant did not give evidence to show that they had withdrawn their intention to demolish the Plaintiffs’ houses hence the threat was still eminent. The Plaintiffs are therefore entitled to a permanent injunction having proved that the directive by the Defendant was unlawful.
28. From the evidence and material placed before me, I am satisfied that the Plaintiffs are the registered owners of the suit parcels of land and are entitled to protection of their property as provided under Article 40 of *the Constitution*. They are also entitled to enjoy peaceful possession and occupation of their suit parcels of land without interference.
29. Consequently, I issue the following orders:
 - a. A declaration is hereby issued that the plaintiffs are entitled to the peaceful, use, possession and occupation of Nakuru Municipality Block 12/281, Nakuru Municipality Block 12/269, Nakuru Municipality Block 12/278, Nakuru Municipality Block 12/274, Nakuru Municipality Block 12/275, Nakuru Municipality Block 12/271, Nakuru Municipality Block 12/279 AND Nakuru Municipality Block 12/273 as the registered owners.
 - b. The directive published on page 20 of the Wednesday 20th May, 2015 in the Daily Nation is hereby declared null and void.
 - c. A permanent injunction is hereby issued restraining the Defendants by themselves, their agents, servants or any person claiming under them from entering, demolishing and or removing structures erected thereon, displacing, dispossessing, or dealing in whatsoever manner with the parcels of land Nakuru Municipality Block 12/269, Nakuru Municipality Block 12/281, Nakuru Municipality Block 12/278, Nakuru Municipality Block 12/274, Nakuru Municipality Block 12/275, Nakuru Municipality Block 12/271, Nakuru Municipality Block 12/279, Nakuru Municipality Block 12/273 AND Nakuru Municipality Block 12/270 and the developments thereon on the strength of directive appearing on page 20 of the Wednesday 20th May, 2015 Daily Nation publication.
 - d. Costs of the suit are awarded to the Plaintiffs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 13TH DAY OF DECEMBER 2024.

M. A. ODENY

JUDGE

