



**Wambui & another v Gatundu Nyakinyua Co Limited & 2 others (Environment & Land Case 673 of 2017) [2023] KEELC 15915 (KLR) (23 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 15915 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 673 OF 2017  
JG KEMEI, J  
FEBRUARY 23, 2023**

**BETWEEN**

**MOSES KAMAU WAMBUI ..... 1<sup>ST</sup> PLAINTIFF**

**MWIHAKI NDUTIRE ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**GATUNDU NYAKINYUA CO LIMITED ..... 1<sup>ST</sup> DEFENDANT**

**DANIEL MAINA KARANJA ..... 2<sup>ND</sup> DEFENDANT**

**BENSON MAINA MWANGI ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. On the July 24, 2017 the plaintiffs filed suit against the defendants seeking the following orders;
  - a. A declaration that the parcel of land known as Gatuanyaga/ngoliba/block1/1645 (suit land) belongs to the 1<sup>st</sup> plaintiff hence the registration of the 2<sup>nd</sup> defendant and subsequent registration of the 3<sup>rd</sup> defendant be cancelled and that the 1<sup>st</sup> plaintiff be registered as proprietor.
  - b. Costs of the suit.
2. It is averred that at all material times the 2<sup>nd</sup> plaintiff was the bonafide member of the 1<sup>st</sup> defendant vide share certificate no 1764 issued on the February 23, 1979. As a member she balloted and got plot no 1645 whereupon she was shown the beacons by the 1<sup>st</sup> defendant and put in possession. That thereafter she pursued the issuance of title in her name and in one such pursuit visited the offices of the 1<sup>st</sup> defendant in 2008 but the process required that she waits. Later she was alerted that some third parties including the 2<sup>nd</sup> defendant were in the process of interfering with her possession whereupon she decided to carry out a search at the lands registry Thika and thereon discovered her land has been registered in the name of the 3<sup>rd</sup> defendant on the February 10, 2020.



3. The 1<sup>st</sup> defendant denied any acts of fraud and avers that it was not involved in the registration and issuance of the subject title in the name of the 2<sup>nd</sup> and 3<sup>rd</sup> defendants and contends that the suit does not lie against it.
4. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants filed a statement of defence wherein they denied the claim of the plaintiffs and sought to put them in strict proof. In addition, the 5<sup>th</sup> defendant contended that he is the current registered owner of the land having acquired it through the right process.
5. At the hearing the plaintiffs case was led by two witnesses. PW1 – Mwihaki Ndutire testified and relied on her witness statement dated the November 16, 2021 and produced exhibits marked as PEX No 1. That she acquired the land from Nyakinyua vide share certificate no 1764 on the February 23, 1979. That she balloted for plot No 1645 shown the boundary and the beacons and took possession. That the processing of the title took time to be completed. She later learnt that some people were interfering with her land forcing her to carry out a search whereupon she discovered that the land has been registered in the name of the 3<sup>rd</sup> defendant on the February 10, 2020.
6. PW2 - Moses Kamau Wambui rehashed the testimony given by PW1 except that he added that in 2016 the 2<sup>nd</sup> defendant disposed of the land and the transfer was effected directly to him. He relied on his witness statement dated the November 16, 2021 as his evidence in chief and the exhibits on page 14 – 20 of the plaintiffs bundle in support of his case. He stated that he bought the land in 2016 though at the time the register did not disclose the 2<sup>nd</sup> plaintiff as the registered owner.
7. Counsel for the 1<sup>st</sup> defendant did not present any witnesses and elected to close his case without adducing evidence.
8. The 2<sup>nd</sup> and 3<sup>rd</sup> defendants though served with the hearing notice and having been called out in and outside the court room were absent and their cases were deemed closed.
9. Written submissions have been filed and which I have read and considered. Messrs. Muturi Njoroge & Co. Advocates filed submissions on behalf of the plaintiff while Messrs. Kimani Githongo filed written submissions on behalf of the 1<sup>st</sup> defendant
10. The key issue for determination is whether the plaintiffs have proved their case against the defendants and who meets the costs of the suit.
11. There is no contest against the suit of the plaintiffs. The suit has not been contested by any of the defendants. With due respect to counsel for the 1<sup>st</sup> defendant, as long as no witness was presented before court the pleadings on record before the eyes of the court remain that - pleadings. A witness testimony becomes evidence once it is tested through cross examination anything else is a no show.
12. I have perused the evidence of the 2<sup>nd</sup> plaintiff and on a balance of probability find that; she is a member of the 1<sup>st</sup> defendant and holder of ballot No 1645; her name appears in the members register of the 1<sup>st</sup> defendant; vide a letter dated the July 17, 2008 the 1<sup>st</sup> defendant confirmed categorically that the 2<sup>nd</sup> plaintiff is the owner or allottee of the suit land and the company proceeded to issue a clearance certificate no 1075 addressed to the chairman Land Control Board.
13. In the absence of any other evidence in rebuttal I find that the 2<sup>nd</sup> plaintiff has proved her case and I enter judgement in her favour as follows;
  - a. A declaration that the parcel of land known as Gatuanayaga/ngoliba/block1/1645 (suit land) belongs to the 2<sup>nd</sup> plaintiff hence the registration of the 2<sup>nd</sup> defendant and subsequent



registration of the 3<sup>rd</sup> defendant be cancelled and that the 2<sup>nd</sup> plaintiff be registered as proprietor.

b. I make no orders as to costs.

14. Orders accordingly

**DELIVERED, DATED AND SIGNED AT THIKA THIS 23RD DAY OF FEBRUARY, 2023 VIA MICROSOFT TEAMS.**

**J G KEMEI**

**JUDGE**

**Delivered online in the presence of;**

Ms. Mbiyu HB Muturi Njoroge for plaintiff

Kimani for 1<sup>st</sup> defendant

2<sup>nd</sup> and 3<sup>rd</sup> defendants – Absent

Court Assistants – Esther / Kevin

