



Ndegwa & 3 others (Filed for and on behalf of Likii Umoja Community Based Organization) v Muriuki & 3 others (Environment & Land Case 51 of 2021) [2023] KEELC 15911 (KLR) (15 February 2023) (Judgment)

Neutral citation: [2023] KEELC 15911 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 51 OF 2021
AK BOR, J
FEBRUARY 15, 2023
(FORMERLY NYERI ELC CASE NO. 280 OF 2015)**

BETWEEN

**SIMON GATHII NDEGWA 1ST PLAINTIFF
DUNCAN KARANJA WANGANGA 2ND PLAINTIFF
CHRISTOPHER JEPTANUI KIPSAT 3RD PLAINTIFF
KARANJA MATAHA 4TH PLAINTIFF
FILED FOR AND ON BEHALF OF LIKII UMOJA COMMUNITY BASED ORGANIZATION**

AND

**STEPHEN KARIUKI MURIUKI 1ST DEFENDANT
GEOFFREY GAKIRI MACHARIA 2ND DEFENDANT
ANTHONY MUNYIRI MUNENE 3RD DEFENDANT
TYRUS WAWERU BARU 4TH DEFENDANT**

JUDGMENT

1. The Plaintiffs who are the Chairperson, Vice-chairperson, Secretary, Treasurer and Founder of Likii Umoja Community Based Organization respectively filed this suit on 20/11/2015 claiming that they were allocated Plot No. E3 at Likii Settlement Scheme (the suit property) by the Nanyuki Municipal Council on which they erected permanent buildings and established a nursery and primary school that had over 230 pupils.



2. The Plaintiffs averred that the Defendants and the Nyumba Kumi operatives had threatened to mobilise the Likii Community to eject the Plaintiffs from the management of the school, evict them from the suit property and take over the project. They claimed that on various occasions the Nyuma Kumi operatives broke into the school premises and intimidated the Plaintiffs who reported the matter to the police.
3. The Plaintiffs sought a perpetual order restraining the Defendants or their agents from ejecting the Plaintiffs from the management of the establishments by Likii Umoja Community Based organization and occupation of the suit property. They also sought the costs of the suit plus interest.
4. The Defendants filed the defence on 30/3/2016 in which they denied the Plaintiffs' claim and argued that the Plaintiffs had no locus standi to the suit property which they claimed was public land.
5. This suit was heard by Lady Justice Waithaka on 22/10/2018 when the 1st Plaintiff testified. He told the court that he was the Chairman of Likii Umoja Community Based Organisation and that the organisation was registered under the Ministry of Labour Social Security and Services vide the certificate issued on 13/9/2015, a copy of which he produced. Prior to the registration of the organisation, it operated as Likii Umoja Self-help Group pursuant to a certificate issued on 10/3/1999 by the Ministry of Gender, Children and Social Development.
6. He testified that the organisation was allocated the suit property on 30/5/2000 and produced the letter from the Municipal Council of Nanyuki addressed to Likii Nursery School. It was his evidence that Likii Umoja Community Based Organisation established a nursery and primary school on the suit property. He was apprehensive because the Defendant and his Nyumba Kumi operatives had threatened to mobilise the community to eject the Plaintiffs from the management of the school, evict them from the suit property and take over the project.
7. He produced the inspection report for the suit property dated 6/5/2015 which was prepared by the Ministry of Land and Housing giving the list of the students per class in the school and confirming that the school had met the requirements for registration. He also produced minutes for the meeting of Likii Umoja Self Help Group held on 19/11/2014 on the suit property which confirmed that the 1st Plaintiff was the Chairman of the Group.
8. He produced a school sanitary inspection report dated 24/12/2013 vide which the District Public Health Officer for Laikipia East recommended registration of the school to the Principal Secretary, Ministry of Education because it had met the basic health requirements. He also produced a letter dated 18/9/2006 from the District Education Officer, Laikipia District vide which confirmed that Likii Nursery School was known as a community project and that the community had shown dedication and commitment towards the improvement of the welfare of children despite having meagre resources.
9. Additionally, he produced the letter dated 14/11/2002 vide which the Municipal Council of Nanyuki confirmed that the suit property was registered under Likii Nursery School and the Council had no objection to the parents' desire to develop the school. The letter dated 2/12/2013 confirmed that Likii Umoja Primary School was in the process of being registered.
10. On being cross examined by the Defendants' advocate, the witness confirmed that they did not have a title deed for the suit property and that he had not obtained an official search showing that the land was registered in their name. He stated that title deeds had not been issued to any of the plot owners in that area.
11. The Defendants did not call any witness. The case was closed and the court gave directions on the filing of submissions.



12. The case was transferred from the Nyeri Environment and Land Court (ELC) to Nanyuki ELC at the end of 2021. Diligent effort was made to trace the advocates for the parties resting with the letter dated 7/10/2022 which directed the Deputy Registrar, of the Nyeri ELC to effect service on the parties. Only the Defendants' advocate appeared on 9/11/2022, 22/11/2022 and 5/12/2022.
13. The Plaintiffs filed submissions which the court has considered. The Plaintiffs relied on the documents which they produced in evidence and urged the court to grant the orders sought in the suit. They relied on the decision in Nairobi High Court Civil Case 1853 of 1998- Douglas Mwangangi Ngutu v Charles Maingi Njeri and Joseph Mundia Kuria where Lady Justice Angawa found the Defendant liable and stated that they should have gone to court to give evidence on the defence they raised. That decision does not assist the Plaintiffs much because it related to a running down claim.
14. The issue for consideration is whether the court should grant the orders sought in the plaint. From the documents which the Plaintiffs' witness tendered in evidence, it is evident that the Plaintiffs were allocated the suit property on 30/5/2000 vide the letter of the Municipal Council of Nanyuki addressed to Likii Nursery School. The 1st Plaintiff gave the history of how the community based organisation came to be registered. Looking at the reports filed in court, the Ministries of Education and Health inspected the suit property and found it suitable for the running of the schools.
15. Despite the Defendants claiming in their defence that the suit property was public land, they did not tender evidence to support their allegation. The Plaintiffs proved their case on a balance of probabilities.
16. An order is issued restraining the Defendants, their agents or servants from ejecting the Plaintiffs or interfering with the running of the school on Plot No. E3 Likii. The Defendants will pay the costs of the suit to the Plaintiffs.

DELIVERED VIRTUALLY AT NANYUKI THIS 15TH DAY OF FEBRUARY 2023.

K. BOR

JUDGE

In the presence of: -

Stella Gakii - Court Assistant

No appearance for the Plaintiffs and the Defendants

