



Mutiso v Simitu & 5 others (Environment & Land Case 852 of 2014 & 17 & 18 of 2010 (Consolidated)) [2023] KEELC 22406 (KLR) (30 November 2023) (Judgment)

Neutral citation: [2023] KEELC 22406 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 852 OF 2014 & 17 & 18 OF 2010 (CONSOLIDATED)
MD MWANGI, J
NOVEMBER 30, 2023

BETWEEN

MICHAEL M MUTISO PLAINTIFF

AND

LAWRENCE NGUNIKO SIMITU 1ST DEFENDANT

JOYCE NGINA SIMITU 2ND DEFENDANT

CATHERINE NJERI NG'ANG'A 3RD DEFENDANT

THE COMMISSIONER OF LANDS 4TH DEFENDANT

THE CHIEF LAND REGISTRAR 5TH DEFENDANT

THE HON ATTORNEY GENERAL 6TH DEFENDANT

JUDGMENT

1. The dispute herein is over the parcel of land known as LR No 209/11030 at Imara Daima, in Nairobi City County, hereinafter referred to as the suit property. Michael Mutiso Muthiani, Benson Muriithi Kariuki and Lawrence Nguniko Simitu & Joyce Ngina Simitu, all claim ownership of the suit property. The latter two, who are husband and wife claim common ownership of the suit property.
2. That was the reason for the consolidation of the three suits; ELCC 852 of 2014, 17 of 2010 and 18 of 2010. The matters proceeded to full hearing with four witnesses testifying before the court. The witnesses were Benson Muriithi Kariuki, Michael Mutiso Muthiani, Lawrence Nguniko Simitu and Catherine Njeri Ng'ang'a.

Evidence Adduced Before the Court

3. Michael Mutiso Muthiani on his part claimed that he was the registered owner of the suit property. He alleged that he applied for a grant at the government Land's office to be issued with a letter of



- allotment which was issued in 1999. He alleged that he paid the premiums on 18th August, 1999. He was subsequently issued with a title to the suit property on 12th June, 2001.
4. Michael Mutiso claimed that he took possession of the suit property in the year 2000 and constructed a 'mabati' structure on the suit property where his workers used to stay as he looked for funds to develop the property. He asserted that he has been in quiet, continuous and uninterrupted occupation of the suit property since the year 2000.
 5. Michael Mutiso claimed that sometimes in the year 2008 one of his workers told him that he had been approached by a lady known as Catherine Njeri Ng'ang'a who was inquiring about the title to the suit property and whether it was on sale. The lady too was at the same time claiming ownership of the suit property.
 6. In the year 2009, Michael Mutiso claims that a stranger came into the suit property and started constructing. On the 31st December of the same year, Michael Mutiso states that he was served with a Court Order restraining him from trespassing into the suit property. He stated that he obeyed the Court order and moved out of the sit property. He alleges that the stranger, whom he later came to know as Joyce Ngina Simitu removed the temporary structures that had built on the suit property and she started constructing therein with an intention to defeat his title.
 7. Michael Mutiso allegedly obtained a copy of the title in the name of Joyce Ngina Simitu and he noted that it was issued on 7th August, 2002, whilst his own title had been issued earlier, on 12th June, 2001.
 8. Michael Mutiso in his witness statement discloses that he went to the Lands Office to verify his title documents but the Registrar who had signed his title denied her own signature on the title.
 9. Michael Mutiso accuses Joyce Ngina Simitu of colluding with some cartels at the Ministry of Lands to destroy his records of title and replacing them with the fake title in the name of Joyce Ngina Simitu and Lawrence Nguniko Simitu.
 10. Michael Mutiso further alleged that he left his title at the Lands Office for authentication several times and at no time was he informed that his title was fake. Though he alleged that he still held the original title, he did not produce it as an exhibit nor show it to the court for verification.
 11. Michael Mutiso on Cross-examination by Advocate Katunga Mbuvi for Joyce Ngina Simitu and Lawrence Nguniko Simitu confirmed that he was born on 13th August, 1972. In 1986, he was only 14 years old. The letter of allotment is dated 9th December, 1987. He however, asserted that he only paid the stand premium in the year 1999 when he was 37 years old. Between the year 1987 and 1999, he was not in possession of the suit property though it had allegedly already been allocated to him.
 12. Michael Mutiso stated that he took possession of the suit property after acquiring the title. He confirmed that he did not have the original title with him in Court nor the search allegedly issued to him confirming him as the registered proprietor of the suit property. He nonetheless agreed that the search he was issued with 'recently' as per his witness statement, confirmed Joyce Ngina Simitu and Lawrence Nguniko Simitu as the registered proprietors of the suit property.
 13. Benson Muriithi Kariuki on his part (the Plaintiff in ELCC 852 of 2014) alleged that he was allotted the suit property by the Commissioner of Lands on 26th October, 1987. He had neither parted with possession of the suit property nor transferred it to any other person at any one time. He stated that he was shocked in the year 2016 when he sought to pay rent arrears due to the government, when he discovered that the suit property had been registered in the name of another person, one Florence Kalekye Kirinya.



14. Benson Muriithi stated that after the allotment, he had been subsequently issued with a title deed on 25th June, 1998. A search he conducted in 2019 showed his name as the registered proprietor of the land. He did not have that specific search with him in court.
15. Under Cross-examination by the Advocate for Joyce Ngina Simitu and Lawrence Simitu, Benson Muriithi confirmed that in July, 2010, after a search conducted on his behalf by his own sister, Ruth Kariuki, he was informed that the names on record in regard to the suit property were those of Joyce Ngina Simitu and Lawrence Nguniko Simitu. Benson Muriithi further confirmed that he had no evidence to prove the allegations of fraud/forgery against Joyce Ngina Simitu and Lawrence Nguniko Simitu.
16. Under Cross-examination by the Advocate for Catherine Njeri Ng'ang'a, Benson Muriithi affirmed that though he had sued Catherine Njeri Ng'ang'a he had no claim against her. He confirmed the search in his bundle of documents indicating Lawrence Nguniko Simitu and Joyce Ngina Simitu as the registered owners/proprietors of the suit property.
17. Lawrence Nguniko Simitu who was the third to testify on behalf of Joyce Ngina Simitu and on his own behalf, stated in his evidence in chief that he is the legal owner of the suit property. He is in possession of the land and there is a construction in the suit property which he had commenced and building materials collected therein. The construction had been approved by the County Government of Nairobi City County. He produced the approval documents to prove the same.
18. Lawrence Nguniko asserted that he bought the suit property from its previous owner. At the time of the purchase of the suit property, it was fenced with a concrete fence all round it and had a steel gate. The previous owner, Catherine Ng'ang'a held a title to the suit property in the name of the person who had sold it to her, backed by an allotment letter and copies of the transfer documents from its previous owner. Catherine Ng'ang'a took Lawrence Nguniko and his wife Joyce Nguniko physically to the suit property. They thereafter conducted due diligence and confirmed that indeed, Catherine Ng'ang'a was the lawful owner of the suit property having acquired it from its previous owner. They agreed on a consideration of Kshs 5,000,000, made an agreement thereafter finalized the transfer process, first to Catherine Ng'ang'a, then to themselves.
19. Lawrence Nguniko stated that he came to know about Benson Muriithi's claim after he and his wife were served with Court papers. However, he had known Michael Mutiso when they started excavations on the suit property because he mobilized youths who threatened to harm the workers who had been deployed on the site. The incidence was reported to the police who conducted investigations culminating in the issuance of the letter dated 11th February, 2010 by the land Registrar. The letter by the Registrar of Lands stated that the title presented by Michael Mutiso to the Registrar was a forgery and that they had retained it.
20. Lawrence Nguniko asserted that he and his wife had his original title which he showed to the Court. He pointed out that both Michael Mutiso and Benson Muriithi had confirmed that he and his wife were the registered owners of the suit property.
21. In response to questions put across by Ms. Mwangi Advocate, Lawrence Nguniko confirmed that Catherine Ng'ang'a showed him a letter of allotment in the name of Florence Kalekye Kirinya. The title she was holding too was in the name of Florence Kalekye Kirinya. He affirmed that he conducted a search that confirmed Florence Kalekye Kirinya as the registered owner of the suit property. He however did not have that search with him. Catherine Ng'ang'a was holding a duly executed transfer in her favour.



22. Lawrence Nguniko confirmed that he paid the stamp duty assessed on the transfer.
23. In response to questions by Mr. Malanga Advocate, Lawrence Nguniko stated that Joyce Ngina Simitu was his wife and Co-owner of the suit property. He averred that what he meant by saying that by 'tracing' the root of title held by Michael Mutiso was based on the findings of the Land Registrar.
24. Mr. Lawrence Simitu insisted that they bought the suit property as innocent purchasers without notice. They conducted due diligence and physically inspected the suit property before purchasing it. He on his part took the documents to the Ministry of Lands and conducted a search of the title.
25. Mr. Lawrence Nguniko confirmed that he had testified in a Criminal Case in Makadara Law Courts where he had stated that he did not conduct a search of the title to the suit property before signing the agreement.
26. At the time of signing the sale agreement with Catherine Ng'ang'a, the title to the suit property had not been registered in her name. Lawrence Nguniko in his response during Cross-examination confirmed meeting Florence Kalekye at Embakasi Police Station and she confirmed having sold the suit property to Catherine Ng'ang'a. The title to Florence Kalekye has not been disputed.
27. In re-examination, Lawrence Nguniko affirmed that he was holding the genuine title to the suit property in addition to being in possession of the land.
28. Catherine Njeri Ng'ang'a in her testimony associated with the documents produced by Lawrence Nguniko. She affirmed that she is the one who had sold the suit property to him at Kshs 5 million. In explaining the disparity in the figure used in assessment of stamp duty, she stated that Kshs 2.0 million was the value of the land whereas Kshs 3.0 million was the value of the developments on the land.
29. Catherine Ng'ang'a confirmed that she had on her part bought the land from Florence Kalekye Kirinya in the year 2004. She sold it to Lawrence Nguniko in the year 2009. She had bought the land vacant at the sum of Kshs 600,000.00. She had confirmed ownership of the suit property by visiting the Lands office where she was able to see the correspondence file.
30. Catherine Ng'ang'a asserted that at the time she was constructing a wall around the suit property, no one raised any issue with her. She could only remember Michael Mutiso passing-by only once and there was no interference whatsoever with the construction.
31. In response to questions during Cross-examination, she reiterated that she had conducted due diligence confirming Florence Kalekye as the registered owner of the suit property. She took time before completing payment of the purchase price to Florence Kalekye hence the delay in registering the transfer in her name. She paid Florence Kalekye with some of the monies she obtained after selling the suit property to Lawrence Simitu and his wife.
32. In response to Mr. Malanga Advocate for Michael Mutiso, Catherine Ng'ang'a stated that although she had entered into an agreement with Florence Kalekye, she had not produced it as one of her documents in this case. Florence Kalekye gave her all her documents which she verified with the Lands Office.
33. In response to Mr. Katunga Mbuvi Advocate for Lawrence Nguniko, Catherine Ng'ang'a asserted that she had possession of the suit property at the time she was selling it to Lawrence Nguniko and his wife. She had all the documents in relation to the suit property including the original title, though in the name of Florence Kalekye.



Court's Directions:

34. Upon close of the trial, the Court directed parties to file written submissions. All the parties except Michael Mutiso filed their submissions. The Court has had an opportunity to read the submissions which now form part of the Court's record.

Issue for Determination

35. The main issue for determination in this matter is the ownership of the suit property, LR No 209/11030 at Imara Daima, in Nairobi County. The other issue which will flow from the finding in regard to the main issue is the other reliefs that may issue to the lawful proprietor of the suit property. Finally, the court will have to determine the issue of costs.

Analysis and Determination

A. Who is the lawful proprietor of the suit property?

36. As I stated at the beginning of this judgement, each of the three (3) claimants in this Consolidated suit claim ownership of the suit property. Each, in his testimony before the Court explained the basis of his claim, as I have analyzed under the sub-heading "Evidence Adduced Before the Court".
37. Both Michael Mutiso and Benson Muriithi confirmed that in spite of their claims, they had conducted searches at the Lands Offices which showed Joyce Ngina Simitu and Lawrence Nguniko Simitu as the registered proprietors of the Land. The two Co-owners the testimony of Lawrence Nguniko Simitu before the Court affirmed that they had the original title to the suit property and were also in possession of the suit property. They traced the root of their title to Florence Kalekye Kirinya who had sold it to Catherine Ng'ang'a; Catherine Ng'ang'a was the one who sold the suit property to Lawrence Nguniko Simitu and Joyce Ngina Simitu.
38. As Lawrence Nguniko rightly observed in his testimony before the Court, the authenticity of the title of Florence Kalekye Kirinya has not been challenged by any party.
39. Although Benson Muriithi claimed to have acquired a title to the suit property, in his own words, upon conducting a search, it brought the names of Joyce Ngina Simitu and Lawrence Nguniko Simitu as the registered proprietors of the suit property. He did not explain why the records with the Land Registrar did not reflect his own title. He simply did not authenticate his title.
40. Michael Mutiso could not recollect how he got to know about the availability of suit property before he applied for allotment. Though he alleged that he was allotted the suit property in 1987, he only sought to pay the standard premium 23 years later in 1999.
41. The law as regards allotment letters is now well settled. An allotment letter does not confer title; it is only an intention by the government to allocate land.
42. In the case of *Lilian Waitthera Gachubi v David Shikuku* (2005) eKLR, the Court was categorical that an allotment letter is not a title.
43. In the case of *Stephen Mburu & 4 others v Casmat Merchants Ltd & another* [2012] eKLR, Kimondo, J pronounced that:

"From a legal standpoint, a letter of allotment is not a title to property; it is transient and (is) often a right/or offer to take property."



44. Indeed, in response to a question by Mr. Njenga Advocate, Benson Muriithi confirmed that he did not meet the Special Conditions on the Letter of Allotment. This consequently means that the offer in the letter of allotment lapsed. By 2010, when he purportedly went to pay the stand premium, the offer had long lapsed and as came out during the hearing, the plot had since been issued to another person.
45. The Supreme Court of this Country in the case of *Torino Enterprises Ltd v A.G.* (Petition 5 (E006) of 2022 [2023] KESC 79 (KLR), affirmed the position on the place of an allotment letter. The Court stated that:
- “Suffice it to say that an Allottee in whose name the allotment letter is issued must perfect the same by fulfilling the conditions therein. These conditions include but are not limited to, payment of stand premium and ground rent within prescribed timelines.”
46. Earlier on, the Supreme Court in answering the question whether an allotment letter can pass a good title stated that,
- “it is settled law that an allotment letter is incapable of conferring interest in land being nothing more than an offer, awaiting fulfillment of conditions therein.”
47. The Supreme Court made reference to the pronouncement in the case of *Gladys Wanjiru Ngacha v Teresia Chepsaat & 4 others* [2008] eKLR, where the Court had stated that:
- “It has been held severally that a letter of allotment per se is nothing but an invitation to treat. It does not constitute a contract between the offeror and the offeree and does not confer an interest in land at all.”
48. That said, Benson Muriithi, having failed to take the offer within the stipulated timelines did not acquire any lawful interest in the suit property. There was no way he was to acquire a lawful title premised on the expired allotment letters.
49. The Claim by Michael Mutiso too is based on allotment letter that came out in his name in 1987. It was dated 9th December, 1987. At the time, Michael Mutiso was barely 14 years old; below the age of majority. He allegedly paid the stand premium in the year 1999. He alleged that he took possession of the suit property in 2001 after acquiring the title. However, in 2008, when he attempted to conduct a search, none was forth coming. Though he alleged that he was issued with one in 2009, he did not produce it in Court. Though Michael Mutiso alleged fraud against Land officers in cahoots with Lawrence Nguniko Simitu and Joyce Ngina Simitu, he did not prove it. It was at that point that he confirmed what he referred to as a recent search confirming Lawrence Nguniko Simitu and Joyce Ngina Simitu as the registered proprietors of the suit property.
50. The Court’s finding is that the Michael Mutiso Muthiani has not proved his case as against Catherine Njeri Ng’ang’a.
51. Michael Mutiso Muthiani has not proved his claim of ownership over the suit property. The title he holds, if any, as stated in the letter by the Land Registrar is fake and was not issued from Lands office. Further, Michael Mutiso’s claim of allotment of the suit property fails too. He was not even of majority age when the purported letter of allotment was issued in 1987. He was merely 15 years old going by his National Identity Card. He did not have the legal capacity to own property at the time in his own name at the time.



52. Additionally, Michael Mutiso did not comply with the special conditions in the letter of allotment, no wonder the Letter from the Registrar's office states that his purported title was not issued from the Lands' office.
53. Benson Muriithi too has not established his claim of ownership of the suit property. He did not sufficiently explain how he obtained the purported letter of allotment. Again, he did not comply with the terms therein and within the timelines specified.
54. On their part, Joyce Ngina Simitu and Lawrence Nguniko Simitu were able to explain how they obtained their title. They purchased the Land from Catherine Njeri Ng'ang'a who in turn had purchased the Land from Florence Kalekye Kirinya, the original allottee of the suit property. The authenticity of the title by Joyce Ngina Simitu and Lawrence Nguniko Simitu has been confirmed by the Land Registry through searches, referred to by both Michael Mutiso and Benson Muriithi. Both Michael Mutiso and Benson Muriithi confirmed conducting searches which confirmed Joyce Ngina Simitu and Lawrence Nguniko Simitu as the duly registered proprietors of the suit property. The two had commenced developments on the suit property until they were restrained through an order of the Court. Having considered and analyzed the totality of the evidence adduced, the Court finds that Joyce Ngina Simitu and Lawrence Nguniko Simitu are the bona fide and lawful registered owners of the suit property. They are entitled to quiet possession of the suit property.
55. The court accordingly, grants orders of permanent injunction in favor of Joyce Ngina Simitu and Lawrence Nguniko Simitu against Michael Mutiso Muthiani and Benson Muriithi Kariuki: either by themselves, servants, and /or agents from trespassing into and or interfering with their possession of the suit property being bona fide registered owners.

On costs

56. On costs, Joyce Ngina Simitu and Lawrence Nguniko Simitu are awarded costs as against Benson Muriithi Kariuki and Michael Mutiso Muthiani jointly and severally.
57. Catherine Njeri Ng'ang'a is also awarded costs of the suit as against Benson Muriithi Kariuki.
58. For purposes of assessment of costs, the consolidated suits shall be treated as one suit.
59. Accordingly, the court makes the following final orders:
 - a. The claims by Michael Mutiso Muthiani and Benson Muriuki Kariuki are dismissed.
 - b. It is hereby declared that Joyce Ngina Simitu and Lawrence Nguniko Simitu are the bona fide and lawful registered owners of the suit property, LR No 209/11030 at Imara Daima, in Nairobi City County.
 - c. A permanent injunction is hereby issued in favor of Joyce Ngina Simitu and Lawrence Nguniko Simitu against Michael Mutiso Muthiani and Benson Muriithi Kariuki, either by themselves, servants, and /or agents from trespassing into and or interfering with their possession of the suit property being bona fide registered owners.
 - d. Joyce Ngina Simitu and Lawrence Nguniko Simitu are awarded costs as against Benson Muriithi Kariuki and Michael Mutiso Muthiani jointly and severally. Catherine Njeri Ng'ang'a is also awarded costs of the suit as against Benson Muriithi Kariuki.
 - e. For purposes of assessment of costs, the consolidated suits shall be treated as one suit.

It is so ordered.



**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 30TH DAY
OF NOVEMBER, 2023.**

M. D. MWANGI

JUDGE

