



REPUBLIC OF KENYA



**KENYA LAW**  
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**Muinde & 2 others v Okemba (Environment & Land Case 114 of 2014)  
[2023] KEELC 16387 (KLR) (22 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16387 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 114 OF 2014**

**NA MATHEKA, J**

**MARCH 22, 2023**

**BETWEEN**

**APOLLO MUINDE ..... 1<sup>ST</sup> PLAINTIFF**

**LUCY W PETER ..... 2<sup>ND</sup> PLAINTIFF**

**RACHEAL W MUTUNGA ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**ERNEST OYAYA OKEMBA ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiffs aver that they are the registered and/or rightful owners and entitled to the possession of all that parcel of land known as Plot No 539, Miritini measuring approximately 200 Square metres. The Plaintiffs aver that they purchased the suit property from one Allan D. Njoroge for valuable consideration without notice of any other interests. In or about the month of May, 2012, the Defendant wrongfully entered into the suit property and has wrongfully taken possession of the same and erected and continues to erect permanent and semi-permanent structures thereon. The Plaintiffs aver that the Defendant has thereby trespassed and is still trespassing onto the suit property to the utter detriment of the Plaintiffs. By virtue of the Defendant's trespass and wrongful occupation of the suit property, the Defendant has misused, damaged, wasted, destroyed, and/or degraded the suit property. The Plaintiffs aver that despite written and repeated verbal requests to vacate and deliver up the suit property to the Plaintiffs, the Defendant has wrongfully failed and refused to do so. The Plaintiffs pray that judgment be entered against the Defendant for;
  1. A declaration that the Plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of the property Known as Plot No 539, Miritini and the Defendant is accordingly a trespasser thereon,



2. A mandatory injunction compelling the Defendant to demolish and/or remove the structures erected on the property known as Plot No 539, Miritini and to deliver up vacant possession of the suit property to the Plaintiffs.
  3. A permanent injunction restraining the Defendant whether by himself, his servants, authorized agents, employees or through anyone deriving title through him or otherwise howsoever from continuing to construct; erect, excavate and/or build structures on the property known as Plot No 539, Miritini and/or from disposing of, selling, transferring leasing, charging or in any manner whatsoever dealing with the said property.
  4. General damages for trespass.
  5. Costs of this suit and interest at such rate and for such period of time as this Honourable Court may deem fit to grant.
  6. Any such other or further relief as this Honourable Court may deem appropriate.
2. The Defendant avers and maintains that he is lawfully in occupation of the suit property having purchased the same from the previous owner Mr Allan Njoroge on the March 25, 2007 for valuable consideration. The Defendant further avers that Allan Njoroge had no valid title, interest or right that he could possibly pass on to the Plaintiffs having already sold to the Defendant the suit property in 2007 and the Plaintiffs therefore acquired no valid title, interest or right in the suit property capable of enforcement. The Defendant further avers that the Plaintiffs are not entitled in any way to the possession or occupation of the suit property. The Defendant took possession of the suit property upon purchasing it in 2007 and has since developed it and put up a residential house thereon in which he resides with his family. The Defendant prays that the Plaintiffs' suit be dismissed with costs. This court has considered the evidence and submissions therein. PW1 testified that they brought the suit land from one Allan Njoroge in 2008. A transfer was effected in favour of the Plaintiffs and a certificate of transfer issued in the year 2011 she produced the Certificate of transfer of property Ref: HD/MTN/539, Sale agreement dated June 20, 2008, rates payment receipt, Photographs and a demand letter as PEx1 to 5. DW1 testified that he purchased the land from Allan Njoroge in 2006 for Kshs 207,000/= vide an agreement dated March 25, 2007 and paid the full purchase price. He took immediate possession and put up his residential house. It was only later in 2011 that he heard the Plaintiffs' claim that they bought the land in 2008. The Defendant produced the sale agreement dated March 25, 2007, Agreement dated July 27, 2007, email dated May 19, 2011, letter by Oguk Advocates dated July 5, 2019, letter from the Municipal Council of Mombasa dated March 7, 2006, bunch of Petty Cash Vouchers and Bank statements as DEx 1 to 7. I have perused the exhibits in great detail. DEx1 states that the Said Allan had received Kshs 70,000/= and the balance was to be paid to his agent. What is of interest to the Court is the email sent to the Defendant by the said Allan Njoroge DEx 2 he stated that the Defendant had not paid the balance and this was five years later. That he had now sold the same to the Plaintiff. The Defendant maintains that he paid the balance to the agent but no evidence has been adduced to prove this fact and it would appear to me that the vendor Allan Njoroge repudiated the sale agreement and sold the suit land to the Plaintiffs. Even if the Defendant cleared the balance and this has not been established during cross examination he stated that he cleared the balance after he received the email (DEx2) clearly the property was no longer available at this time. He also admits that he never paid any rates according to the sale agreement to date. The Defendant also never transferred the property to his name. I find the Defendant's defence does not add up and I reject it.



3. The law in respect of the sale of land is set out under section 3 (3) of the *law of contract* which provides that;

“No suit shall be brought upon a contract for the disposition of an interest in land unless

- (a) The contract upon which the suit is founded:-
  - (i) In writing
  - (ii) Is signed by all the parties thereto; and
  - (iii) The signature for each party signing has been attested by a witness who is present when the contract was signed by such party.

4. I find that the sale agreement between the Plaintiffs and the said Allan Njoroge meets these prerequisites. The PW1 produced a transfer effected in favour of the Plaintiffs and a certificate of transfer issued in the year 2011, she produced the Certificate of transfer of property Ref: HD/MTN/539, Sale agreement dated June 20, 2008, rates payment receipt, Photographs and a demand letter as PEx1 to 5. I find that the Plaintiffs have proved their case on a balance of probabilities and I grant the following orders;

1. A declaration that the Plaintiffs are entitled to exclusive and unimpeded right of possession and occupation of the property Known as Plot No 539, Miritini and the Defendant is accordingly a trespasser thereon,
2. A mandatory injunction compelling the Defendant to demolish and/or remove the structures erected on the property known. as Plot No 539, Miritini and to deliver up vacant possession of the suit property to the Plaintiffs within the next 60 (sixty) days upon service of this order.
3. A permanent injunction restraining the Defendant whether by himself, his servants, authorized agents, employees or through. anyone deriving title through him or otherwise howsoever from continuing to construct; erect, excavate and/or build structures on the property known as. Plot No 539, Miritini and/or from disposing of, selling, transferring leasing, charging or in any manner whatsoever dealing with the said property.
4. Costs of this suit to be borne by the Defendant.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MOMBASA THIS 22<sup>ND</sup> DAY OF MARCH 2023.**

**N.A. MATHEKA**

**JUDGE**

