



REPUBLIC OF KENYA



**Maritim v Malit & 8 others (Environment & Land Case 156 of 2014)  
[2023] KEELC 22630 (KLR) (18 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 22630 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 156 OF 2014**

**JM ONYANGO, J**

**MAY 18, 2023**

**BETWEEN**

**JOSEPH KIPKEMOI MARITIM ..... PLAINTIFF**

**AND**

**WILLIAM MALIT ..... 1<sup>ST</sup> DEFENDANT**

**JAMES KIPSANG CHIRCHIR ..... 2<sup>ND</sup> DEFENDANT**

**SAMWEL MALAKWEN KIPYA ..... 3<sup>RD</sup> DEFENDANT**

**JOHANA KIPROP BETT ..... 4<sup>TH</sup> DEFENDANT**

**WILSON KIPLAGAT KIPRONO ..... 5<sup>TH</sup> DEFENDANT**

**WILLIAM KIMUTAI BUSIENEI ..... 6<sup>TH</sup> DEFENDANT**

**KIPLAGAT KATAM ..... 7<sup>TH</sup> DEFENDANT**

**JOSEPH KIPROTICH TERGECH ..... 8<sup>TH</sup> DEFENDANT**

**BARNABA KIMUTAI BIWOTT ..... 9<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff is the registered owner of land parcel number Nandi/LessosSettlement Scheme/650. He instituted this suit against the Defendants jointly and severally claiming that the defendants had wrongfully entered his land and that they have been in unlawful occupation thereof. He therefore seeks the following reliefs:
  - a. An order of eviction to be issued against the Defendants
  - b. A permanent injunction to restrain the Defendants, their agents and/or servants from dealing with the aforementioned land



- c. A declaratory order to issue declaring the Plaintiff herein as the bonafide proprietor of the aforementioned land
  - d. Costs of the suit
  - e. Interest on (a), (b), (c) and (d) above. (sic)
  - f. Any other of further relief that this Honourable Court may deem reasonable to grant.
2. The defendant filed a joint statement of Defence and Counterclaim dated 17<sup>th</sup> June 2014 denying the Plaintiff's claim. In the Counterclaim, they allege that they purchased their respective portions of land for valuable consideration but the plaintiff refused to transfer the same to them. They therefore claim that they are occupying the said parcels of land by virtue of the said purchase and they are the legal and bona fide owners thereof. They further allege that the plaintiff's attempts to evict them are unlawful. Consequently, they pray that the plaintiff's suit be dismissed with costs and that a declaration be issued that they are the legal owners of their respective portions of the suit property. They also pray for a permanent injunction to restrain the plaintiff from interfering with their portions of land and an order compelling the plaintiff to sign the requisite transfer forms in favour of the defendants and in default the Deputy Registrar to sign the said forms on his behalf.
  3. The Plaintiff filed a Reply to Defence and Defence to the Counterclaim dated 8<sup>th</sup> July, 2014 in which he reiterated that he was the registered owner of land parcel number Nandi/Lessos Settlement Scheme/650. He denied having sold any portion of his land to the defendants. He further denied having obtained the consent of the Land Control Board to transfer the suit property and stated that the said agreements were null and void for want of consent. He stated that the matters raised in the Counterclaim were res judicata as the same had been determined in Kapsabet PMCC No 161 of 2007.
  4. The suit was set down for hearing on diverse dates between December 2015 and October 2022. PW1 testified before Justice Ombwayo. My immediate predecessor Justice Kibunja took the evidence of PW2-PW9 as well as DW1 while I took the evidence of DW2.

#### **Plaintiff's Case**

5. The plaintiff testified that he is the registered owner of land parcel number Nandi/Lessos Settlement Scheme/650. He stated that he sued the defendants because they entered his land illegally without his consent. He denied selling his land to the defendants. He told the court that the defendants had sued him in Kapsabet court vide Kapsabet PMCC No 161 of 2007 seeking an order of specific performance against him but they did not succeed. He produced his title deed, certificate of official search and the proceedings and judgment in Kapsabet PMCC No 161 of 2007 as his exhibits
6. In cross-examination he admitted signing some agreements although he said he signed them on behalf of his son without realizing that they were sale agreements as he believed that his sons wanted to vacate the land and seek alternative land elsewhere. He denied having been paid any money by the defendants.

#### **Defendants' Case**

7. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup> and 9<sup>th</sup> Defendants testified as DW1 to DW8. They each relied on their witness statements dated 30<sup>th</sup> June, 2014 as their evidence in chief. All the defendants except the 2<sup>nd</sup> defendant testified that they had purchased various portions of land from the Plaintiff pursuant to sale agreements entered into between themselves and the plaintiff on various dates between 2001 and 2006. James Kipsang Chirchir (2nd Defendant) stated that he purchased his land from Barnaba who had in turn purchased it from the plaintiff. Since the defendants did not have the original sale agreements, the



same were marked for identification. They stated that they did not go to the Land Control Board to get consent and that the Plaintiff had not transferred the respective portions they purchased from him. They admitted that they had filed a suit for specific performance against the Plaintiff vide Kapsabet PMCC No 161 of 2007 but their suit was dismissed.

8. The Defendants called two independent witnesses. The first one, William Tanui who introduced himself as a surveyor testified as DW9. He told the court that he had surveyed the Plaintiff's land parcel No Nandi/Lessos Settlement Scheme/650 in 2004 and divided it into 12 portions. He produced a copy of the sketch plan that he prepared after the survey as Defendants' Exhibit 13. He stated that the sketch plan was presented to the Land Control Board in August 2004 and he produced the minutes of the Land Control Board dated 9.9.2004 and a letter of consent dated 9.3.2016 as Defendants' Exhibits 14 and 15 respectively.
9. Abraham Kinyori Mutai Birech testified as DW10. He introduced himself as the Assistant chief, Sochoi Location. He stated that he was familiar with the dispute between the plaintiff and the defendant on as the former chief of his location had tried to mediate the dispute between the parties without success. He produced a list of persons who claimed that they had purchased portions of the plaintiff's land.
10. After the close of the Defendants' case, both parties filed their submissions. The plaintiff's submissions dated 9.11.22 were filed through the firm of M/S Chebii & Company Advocates while the Defendants' Submissions dated 2.12.22 were filed through the firm of M/Ngala & Company Advocates.

#### **Plaintiff's Submissions**

11. Learned counsel for the plaintiff submitted that the Plaintiff was the absolute proprietor of land parcel No Nandi/Lessos Settlement Scheme/650 and pursuant to sections 24, 25 and 26 of the [Land Registration Act](#), his rights to the said title were indefeasible.
12. He further submitted that the sale agreements the defendants sought to rely on were null and void for want of consent from the Land Control Board as no consent was obtained within six months as required by section 6 of the [Land Control Act](#). He contended that although the agreements were made on different dates, the minutes of the Land Control Board produced by DW10 were issued in 2004.
13. Counsel further submitted that the Defendants could not revisit the issue of specific performance as the same had conclusively been determined in Kapsabet PMCC No 161 of 2007 and the issue of purchase was therefore res judicata. It was his submission that pursuant to section 44 of the [Evidence Act](#), the said judgment acted an estoppel against all the defendants.

#### **Defendants' Submissions**

14. On his part, learned counsel for the Defendants submitted that the Plaintiff had acknowledged that he sold portion of his land to the defendants and that he signed the agreements on the understanding that his sons would move out. It was his submission that this evidence was consistent with the evidence in Kapsabet PMCC No 161 of 2007 and the same should be considered as an admission in accordance with sections 17 and 18 of the [Evidence Act](#).
15. With regards to consent of the Land Control Board, counsel contended that DW10 had produced minutes of a meeting of the Land Control Board held on 9<sup>th</sup> September 2004 and a consent letter dated 9<sup>th</sup> March 2016 and therefore the sale agreements were valid.



## Issues for Determination

16. Having considered the pleadings, the evidence adduced by the parties and the rival submissions, the following issues arise for determination:
- i. Whether the Plaintiff entered into valid agreements for the sale of portions of land parcel No Nandi/Lessos Settlement Scheme/650 to the defendants.
  - ii. Whether the Defendants are in lawful occupation of portions of the suit property.
  - iii. Whether the plaintiff is entitled to the reliefs sought in the Plaintiff.
  - iv. Whether the defendants are entitled to the reliefs sought in the Counterclaim.

## Analysis and Determination

17. It is not in dispute that the plaintiff is the registered proprietor of land parcel number Nandi/Lessos Settlement Scheme/650. At the crux of this dispute is the question as to whether the plaintiff entered into valid agreements with the Defendants for the sale of portions of the suit property. Although the Defendants were not able to produce the original sale agreements, the same are said to have been produced in Kapsabet PMCC No 161 of 2007 where the Defendants sued the Plaintiff for specific performance. In the said judgment, the plaintiff denied having signed the sale agreements and stated that the defendants had dealt with his sons. In the instant suit, he admits that he signed the agreements on behalf of his son who had moved elsewhere. However, he categorically denies having entered into any sale agreement with the defendants or receiving money from any of them. Be that as it may, the validity of the said agreements has been called into question on account of the fact that consent of the Land Control board was not obtained within a period of six months as required by sections 6 and 8 of the *Land Control Act*. The said sections provide as follows:

### Section 6. Transactions affecting agricultural land

- a. “Each of the following transactions that is to say –  
the sale, transfer, lease mortgage, exchange, partition or other disposal of or dealing with any agricultural land which is within a land control area,
- b. the division of any such agricultural land into 2 or more parcels to be held under separate titles other than the division of an area is void for all purposes unless the Land Control Board for the land control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act.”

### Section 8

“An application for consent in respect of a controlled transaction shall be made in the prescribed form to the appropriate Land control board within six months of the making of the agreement for the controlled transaction by any party.

Provided that the High Court may notwithstanding that the period of six months may have expired extend that period where it considers that there is sufficient reason so to do upon such conditions if any as it may think fit.”

18. From the above provisions it is clear that consent must be obtained within six months from the date of the sale agreement, unless the period is extended by the court, failing which agreement shall be rendered null and void. See the case of *David Sironga Ole Tukai v Francis Arap Muge & 2 others* [2014]eKLR.



The defendants produced minutes of a meeting of the Land Control Board held on 9<sup>th</sup> September, 2004 and a letter of consent purportedly issued on 9<sup>th</sup> March 2016 without any evidence that the period within which consent was to be obtained had been extended. Considering that the sale agreements were entered into between 2001 and 2006 the consent issued in 2016 was hopelessly out of time.

19. At any rate the plaintiff produced the judgment in Kapsabet PMCC No 161 of 2007 where the court noted that the plaintiff declined to attend any sessions of the Land Control Board, which means that consent was not obtained within the requisite period. It is therefore clear that the agreements are null and void for want of Land Control Board consent. It would appear that the defendants subsequently obtained the letter of consent of the Land Control Board after the said judgment in the hope that they would persuade the court to have the land transferred to them. As correctly submitted by counsel for the plaintiff, the defendants are estopped from revisiting the issue of specific performance as the same is *res judicata*.
20. The second issue for determination is whether the defendants are occupying the suit property lawfully. The plaintiff is the registered proprietor of the suit property. Section 22 of the [Land Registration Act 2012](#) provides that:

“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....”

Section 24 of the [Land Registration Act](#) No 3 of 2012 provides as follows:

“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”.

Section 25 (1) of the said Act further provides that:

“the rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of the 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 to any lawful encumbrances, set out in this section”.

21. The defendant’s suit for specific performance having been dismissed, the defendants’ occupation of the suit property has no legal basis and their continued stay on the plaintiff’s land is unlawful.
22. Flowing from the above findings the plaintiff has proved his case on a balance of probabilities and he is therefore entitled to an order of eviction against the defendants. Conversely, the defendants have failed to prove that they are entitled to any portion of the suit property and they are therefore not entitled to the reliefs sought in the Counterclaim.
23. Accordingly, the defendants’ counterclaim is dismissed with costs to the Plaintiff.
24. I enter judgment for the plaintiff and make the following final orders:
  - a. The defendants are ordered to vacate the Plaintiff’s land parcel number Nandi/Lessos Settlement Scheme/650 within 30 days from the date of this judgment failing which they shall be forcibly evicted.



- b. A permanent injunction is hereby issued restraining the defendants, their agents and/or servants from dealing with land parcel number Nandi/Lessos Settlement Scheme/650.
- c. A declaration is hereby issued that the Plaintiff is the bonafide, absolute proprietor of land parcel number Nandi/Lessos Settlement Scheme/650.
- d. The defendants shall bear the costs of the suit and Counterclaim.

**DATED, SIGNED AND DELIVERED VIRTUALLY VIA MS TEAMS PLATFORM THIS 18<sup>TH</sup> DAY OF MAY 2023.**

.....

**J.M ONYANGO**

**JUDGE**

In the presence of:

- 1. Dr. Chebii for the Plaintiff
- 2. Miss Ngala for the Defendant

Court Assistant: A. Oniala

