



REPUBLIC OF KENYA



**Mtsonga & another v Mwangemi & another (Environment & Land Case  
56 of 2013) [2023] KEELC 17430 (KLR) (16 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17430 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT & LAND CASE 56 OF 2013**

**MAO ODENY, J  
MAY 16, 2023**

**BETWEEN**

**RODGERS KABILA MTSONGA ..... 1<sup>ST</sup> PLAINTIFF**

**SHADRACK NYINGE MTSONGA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**JAPHETH MWANGEMI ..... 1<sup>ST</sup> DEFENDANT**

**PATRICK MWAROME MWANGEMI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 4<sup>th</sup> April, 2013 the Plaintiff<sup>s</sup> herein sued the Defendant<sup>s</sup> seeking the following orders;  
-
  - a. A permanent injunction against the Defendant<sup>s</sup> stopping themselves, their agents, employees from alienating, disposing, wasting, damaging, trespassing, developing, constructing or in any other manner interfering with the Plaintiff<sup>s</sup> peaceful occupation and enjoyment of the suit land, a mandatory injunction compelling the Defendant<sup>s</sup> to desist from illegal interference of the suit land.
  - b. A declaration that the suit land measuring 6 acres or thereabout situated at Kidutani- Chonyi is the property of the late Michael Mutsonga Lewa in conformity with the findings of the panel of elders in Land Case No. LDT/41/97 and the Decree of Kilifi SRM Land Dispute Case No. 6 of 1998 and the Plaintiff<sup>s</sup> herein are the legal beneficiaries for the benefit of the family of the late Michael Mutsonga Lewa.
  - c. Costs and interest of the suit.



### **Plaintiffs' case**

1. Pw1 Rodgers Kabila Mstonga adopted his witness statement filed on 5<sup>th</sup> April 2013 as his evidence in chief and the list of documents dated 4<sup>th</sup> April 2013 which he produced as exhibit Nos. 1 to 6. PW1 further produced a further list of documents dated 20<sup>th</sup> August 2021 and 30<sup>th</sup> November 2021 as exhibit Nos. 7, 8 and 9.
2. It was PW1's testimony that sometime in 1997, his late father Michael Mutsonga Lewa had a land dispute with Japhet Mwangemi vide Land Civil Case No. LDT/41/97 of 17<sup>th</sup> June 1997 and Kilifi SRM Land Dispute Case No. 6 of 1998 awarded the land to his late father. That the Defendant have since reclaimed the land despite that decision and have continued to stress and threaten the Plaintiffs.
3. PW1 stated that they are the legal beneficiaries of the unregistered parcel of land located at Kidutani-Chonyi Division and that on 15<sup>th</sup> March 2013 the 2<sup>nd</sup> Defendant moved into the Plaintiffs' land and violently prevented a tractor hired by the Plaintiff to plough the suit land.
4. The Defendant filed a Defence on the 26<sup>th</sup> April, 2013 but did not participate in the proceedings.

### **Plaintiffs' Submissions.**

5. Counsel submitted that the Plaintiff obtained a Limited Grant to file this suit and that the Plaintiffs produced as evidence an award of the Land Disputes Tribunal and letters from the Adjudication office that the suit property known as parcel number 2232 Mwembe Kati/ Kisidi Adjudication Section, belonged to their late father.
6. Counsel relied on Section 30 (1) of the *Land Adjudication Act*, Cap 284 and submitted the Plaintiff has complied with the provision of the law, as consent was obtained via a letter from the Land Adjudication Officer dated 25<sup>th</sup> November, 2021 and the records from the adjudication office confirm that the Plaintiffs are the owners of the suit property. Counsel relied on the case of *Joseph Ogola Asiago & Another v Joseph Abong Apudo & Others* (2021) eKLR.

### **Analysis And Determination.**

7. The issues for determination are;
  - a. Who is the lawful proprietor of Plot No. 2232 Mwembe Kati/ Kasidi Adjudication Section situated at Chonyi Sub – County, Kilifi
  - b. Whether the Plaintiffs are entitled to the remedies sought.
8. This suit is not an appeal against the Land Disputes Tribunal Award but for enforcement of that award vide a permanent injunction against the Defendants who entered the suit land without the Plaintiffs' permission. The Land Disputes Tribunal had elaborate procedures of adoption and appeal in case a party is aggrieved by the award of the Tribunal as was held in the case of *Catherine C Kittony v Jonathan Muindi Dome & 2 others* [2019] eKLR.
9. The award ceased to exist after it was adopted as a judgment of the court vide Kilifi SRM Land Dispute Case No. 6 of 1998 which awarded the land to the Plaintiffs' late father. The Plaintiff produced a limited grant to give him locus standi to sue on behalf of his deceased father, consent letter from the Land Adjudication Office allowing him to institute a suit in an area undergoing adjudication as per section 30 (1) of the *Land Adjudication Act*.



10. In the case of *William Mutuura Kairiba v Samuel Nkari & 2 others* [2018] eKLR the Court held that consent is a mandatory requirement under Section 30(1) of the *Land Adjudication Act* Cap 484.
11. From the oral and documentary evidence adduced which is uncontroverted, I find that the Plaintiffs have proved their case against the Defendants as was held in the case of *Festo Sewe Obiero v Caleb Omondi Opiyo & 2 Others* [2020] eKLR as follows:

“That from the oral and documentary evidence tendered by PW1 and PW4, Parcel No. 2088 – Kochogo Adjudication Section, the suit land, was upon adjudication and objection process created from the parent parcel that belonged to the Plaintiff’s late father and registered with the Plaintiff. That the Land Adjudication and Settlement Officer’s letters dated 26th January 2010, 31st January, 2012 and 29th December 2011 produced by PW1 as exhibits 1, 6 and 7 respectively, and whose content have not been challenged, and or rebutted confirms that the suit land is registered with the Plaintiff.”

12. The upshot is that the Plaintiff’s claim succeeds with costs.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 16<sup>TH</sup> DAY OF MAY, 2023.**

**M.A. ODENY**

**JUDGE**

NB: In view of the Public Order No. 2 of 2021 and subsequent circular dated 28th March, 2021 from the Office of the Chief Justice on the declarations of measures restricting court operations due to the third wave of Covid-19 pandemic this Judgment has been delivered online to the last known email address thereby waiving Order 21 [1] of the Civil Procedure Rules.

