



Nickson & another v Mabonga & 3 others (Environment & Land Case 135 of 2016) [2023] KEELC 18737 (KLR) (13 July 2023) (Judgment)

Neutral citation: [2023] KEELC 18737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 135 OF 2016**

**EO OBAGA, J
JULY 13, 2023**

BETWEEN

NABISWA ONGWEKO NICKSON 1ST PLAINTIFF

BEATRICE NAWIRE NABISWA 2ND PLAINTIFF

AND

JENIPHER NANYAMA MABONGA 1ST DEFENDANT

PHILEMON BOINET 2ND DEFENDANT

HENRY K. SEREM 3RD DEFENDANT

JOSEPH BOIT MAIYO 4TH DEFENDANT

JUDGMENT

Introduction and Background

1. The 1st Plaintiff is a nephew to the 1st Defendant. The 1st Defendant was married to Dismas Wafula Masakhwe who was a brother to the 2nd Plaintiff. Dismas Wafula Masakhwe and his sister the 2nd Plaintiff have since passed on. The 2nd Defendant is son to the 4th Defendant. The 3rd Defendant is a Director of Kiyomegei Company Limited.
2. Kiyomegei Company Limited purchased from East African Tanning and Extract Company Limited (EATEC) which it then subdivided and gave its shareholders according to the shares held by each shareholder. The company's land was Soy/Soy Block 10 (Navillus)/534. One of the shareholders of the company was Beatrice Khasoa Rotich who has since died.
3. Beatrice Khasoa Rotich was allocated 0.6 of an acre which she then sold to Dismas Wafula Masakhwe on December 28, 2001 at a consideration of Kshs 54,000/= (suit property). After the demise of Dismas Wafula Masakhwe, the Plaintiffs moved to Nairobi where they secretly obtained grant of letters of



administration which they used to file this suit without the knowledge of the 1st Defendant who is the widow of Dismas Wafula Masakhwe.

4. The 1st Defendant has since moved to court and had her name included as one of the administratrix of the Estate of her late husband. The 1st Defendant has since sold the suit property to the 3rd Defendant.
5. The Plaintiffs brought this suit against the Defendants in which they claim the following reliefs: -
 - a) Permanent injunction be issued against the Defendants whether acting by themselves or through their agents, servants or any other person acting through them restraining them from taking possession, developing, constructing, cultivating, sub-dividing, alienating, encumbering, disposing off, transferring, charging or in any manner so deal with parcel of land measuring approximately 0.6 acres, located at Simbi Market along Soy Kisangui Road which portion of land was delineated from parcel of land known as LR No Soy/Soy Block 10/Navillus/534.
 - b) General damages.
 - c) Costs of the suit.
 - d) Interest on (b) and (c) above at Commercial rates.
 - e) Any other and/or further relief as the Honourable court shall deem fit to grant.

Plaintiff's case

6. The 1st Plaintiff testified that he is the eldest grandson of Juliana Nekesa Masakhwe (Deceased). The Deceased was displaced by grandchildren of one of her sons. The family then decided to purchase land where they could settle her. Six family members contributed Kshs 10,000/= each making a total of Kshs 60,000/= The money was then given to Dismas Wafula Masakhwe to purchase land on behalf of the Deceased. Dismas Wafula Masakhwe then proceeded to purchase 0.6 of an acre from Beatrice Khasoa Rotich.
7. The deceased was settled on the land at Soy area where she lived until 2015 when she died. Her remains were interred at Mumias. The Late Dismas Wafula Masakhwe was also interred at Mumias. The 1st Defendant then sold the suit property to the 3rd Defendant. The 1st Plaintiff testified that they did not want the 1st Defendant to sell the suit property to an outsider. The family wanted the 1st Defendant to sell the land to one of the family members.

Defendants' case

8. The 1st Defendant testified that her late husband purchased the suit property from Beatrice Khasoa Rotich in 2001. They then built a house where she lived with her four children until 2015 when her mother in-law died. The Plaintiffs wanted to disinherit her. As a result of the wrangles surrounding the suit property, she decided to sell it to the 3rd Defendant. She testified that the Plaintiffs had secretly obtained grant of letters of administration in respect of her late husband but she moved to court and filed an application for re-vocation of the grant. She has since been made one of the administratrix of the Estate of her late husband.

Submissions of parties

9. The Plaintiff filed submissions on June 23, 2023. The Defendants filed their submissions on April 19, 2023. The Plaintiff submitted that the 1st Defendant did not prove that she was married to Dismas



Wafula Masakhwe and that the purported sale of October 24, 2015 is null and void in view of the provisions of section 45 of the Law of Succession Act.

10. The Defendants submitted that the Plaintiffs did not have *locus standi* to bring this suit against them as they did not take out grant of letters of administration in respect of the Estate of Juliana Nekesa Masakhwe on whose behalf they were pursuing the suit. In support of this, the Defendants relied on the case of Grace Mwakiria Mugambi v Pblip Kimani [2018] eKLR where it was stated as follows:-

“I think given its ramifications, this Court ought first to ask itself whether the Plaintiff has the requisite standing to bring this suit. I say so because if a party is found to have no *locus standi*, it would mean that he/she cannot be heard even on whether or not he has a case worth listening to. In other words, if this Court were to find that the Plaintiff has no *locus standi*, then the Plaintiff cannot be heard and that point alone may dispose of the suit. Thus to have *locus standi*, a party must be able to demonstrate to the Court sufficient connection to support that party's participation in the case. Traditionally therefore *locus standi* arises where a party stands to directly and/or personally suffer some harm, injury or prejudice as a result of the situation which gives rise to the relief being sought. There are of course instances where the Constitution now grants parties standing even where such party has not demonstrated any personal injury or loss.”

11. The Defendants also relied on the case of Christopher Mutiembu Machimbo & 3 others v County Surveyor Transzoia & 4 others [2022] eKLR it was stated as follows:-

“the court cited the case of Law Society of Kenya v Commissioner of Lands & Others, Nakuru High Court Civil Case No.464 of 2000, where it was held as follows: “*locus standi* signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”. Further in the case of Alfred Njau and Others v City Council of Nairobi [1982] KAR 229, the Court also held that: ---

“The term *locus standi* means a right to appear in Court and conversely to say that a person has no *locus standi* means that he has no right to appear or be heard in such and such proceedings.” The court further stated that; “Therefore, *locus standi* means the right to appear before and be heard in a court of law. Without it, even when a party has a meritorious case, he cannot be heard because of that. *locus standi* is so important that in its absence, party has no basis to claim anything before the Court.”

12. The Defendants further submitted that the Plaintiffs did not prove the alleged contribution to the suit property.

Analysis and Determination

13. I have carefully considered the evidence adduced by the Plaintiffs and that of the Defendants. The 3rd Defendant was sued as he is a director of Kiyomigei Company Limited and was one of the witnesses who witnessed the sale agreement between Beatrice Khasoa Rotich and Dismas Wafula Masakhwe. The 2nd Defendant was sued as he is the one who purchased the suit property from the 1st Defendant. The 4th Defendant was sued as he is father to the 2nd Defendant.
14. The issues which stand out for determination are firstly whether there was contribution to the purchase of the suit property by six persons. Secondly, whether the suit property was purchased as family



property. Thirdly, are the Plaintiffs entitled to the reliefs being claimed. Lastly, which order should be made on costs.

15. The 1st Defendant testified that she sold the suit property as the family wanted to disinherit her. Her evidence is supported by the Plaintiffs' evidence which shows that the Plaintiffs secretly took out letters of administration in respect of the Estate of her late husband. The 1st Plaintiff also claimed in his written witness statement that the 1st Defendant was not married to the late Dismas Wafula Maskhwe.
16. The 1st plaintiff claimed that six persons including him contributed Kshs 10,000/= each towards purchase of the suit property. There was absolutely no evidence that the contribution was by six persons. If there was indeed contribution, then the 1st Plaintiff would not have testified that they filed this suit as the 1st Defendant had sold land to an outsider whereas they wanted her to sell it to one of the family members.
17. The 1st Plaintiff struck me as a person who was not telling the truth. Indeed, he and the deceased 2nd Plaintiff were out to disinherit the 1st Defendant. That is why they secretly went and filed for succession in Nairobi without informing the widow of the deceased who ranked in priority to them when it came to succession of the Estate of the Deceased Dismas Wafula Masakhwe.
18. The 1st Defendant though she had no confirmed grant was entitled to sell the suit property as she was rightfully the heir in any event. Though she intermeddled in the Estate of the Deceased, she was liable to account for that to herself and her children who were entitled to the suit property.

Disposition

19. I find that the suit herein is misconceived. The same belonged to Dismas Wafula Masakhwe. The Plaintiffs have failed to prove their suit which is hereby dismissed with costs to the Defendants.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 13TH DAY OF JULY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Wangalwa for Plaintiff.

Mr. Kemboi for Defendant.

Court Assistant –Laban

E. O. OBAGA

JUDGE

JULY 13, 2023{{^}}

