



**Lake Basin Development Authority v Okal & 38 others; Settlement Fund Trustees & another (Interested Parties) (Environment and Land Case Civil Suit 13 of 2020) [2025] KEELC 1306 (KLR) (17 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1306 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT AND LAND CASE CIVIL SUIT 13 OF 2020  
SO OKONG'O, J  
MARCH 17, 2025**

**BETWEEN**

**LAKE BASIN DEVELOPMENT AUTHORITY ..... PLAINTIFF**

**AND**

**HARUN OMUOM OKAL ..... 1<sup>ST</sup> DEFENDANT**  
**OTIENO ONGINGO ..... 2<sup>ND</sup> DEFENDANT**  
**EDWARD JUMA OYALA ..... 3<sup>RD</sup> DEFENDANT**  
**CHRISOPHER OPANGA ..... 4<sup>TH</sup> DEFENDANT**  
**JACOB OBIERO ..... 5<sup>TH</sup> DEFENDANT**  
**VERONICA ACHIENG ..... 6<sup>TH</sup> DEFENDANT**  
**PHILIP OCHANDA ..... 7<sup>TH</sup> DEFENDANT**  
**ROSELINE ATIENO ..... 8<sup>TH</sup> DEFENDANT**  
**GEORGE AWINO ..... 9<sup>TH</sup> DEFENDANT**  
**FABIANO JUMA ..... 10<sup>TH</sup> DEFENDANT**  
**PAMELA ONGUS ..... 11<sup>TH</sup> DEFENDANT**  
**AUMA ROSA OGANGO ..... 12<sup>TH</sup> DEFENDANT**  
**ALICE ADHIAMBO ..... 13<sup>TH</sup> DEFENDANT**  
**HELLEN NYONGESA ..... 14<sup>TH</sup> DEFENDANT**  
**ANDREW AKELLO ..... 15<sup>TH</sup> DEFENDANT**  
**RACHEL AWORI AUMA ..... 16<sup>TH</sup> DEFENDANT**



JUSTUS OGEKA .....	17 <sup>TH</sup> DEFENDANT
S.ORETA .....	18 <sup>TH</sup> DEFENDANT
BOAZ M. OWINO .....	19 <sup>TH</sup> DEFENDANT
JEFFITHA G.O.NDOSIO .....	20 <sup>TH</sup> DEFENDANT
E.M.OPAR .....	21 <sup>ST</sup> DEFENDANT
O.N.MUGA .....	22 <sup>ND</sup> DEFENDANT
ROSELINDA MAROKO ONGARE .....	23 <sup>RD</sup> DEFENDANT
SULEIMAN NYAMWAYA .....	24 <sup>TH</sup> DEFENDANT
ABDI KOMBAL .....	25 <sup>TH</sup> DEFENDANT
YALLA .....	26 <sup>TH</sup> DEFENDANT
LEONARD OTIENO WOMAE .....	27 <sup>TH</sup> DEFENDANT
OCHIENG GOMBE .....	28 <sup>TH</sup> DEFENDANT
DICKSON O. ALOLO .....	29 <sup>TH</sup> DEFENDANT
JOSEPH NYANDONG .....	30 <sup>TH</sup> DEFENDANT
THOMAS O. AROKA .....	31 <sup>ST</sup> DEFENDANT
FREDRICK S. ONYANGO .....	32 <sup>ND</sup> DEFENDANT
MARTIN OKUMA .....	33 <sup>RD</sup> DEFENDANT
ZACHARIA OCHANDA .....	34 <sup>TH</sup> DEFENDANT
ANTONY WERE .....	35 <sup>TH</sup> DEFENDANT
LEAH ATIENO .....	36 <sup>TH</sup> DEFENDANT
JOHN OKETCH .....	37 <sup>TH</sup> DEFENDANT
ALICE ADHIAMBO .....	38 <sup>TH</sup> DEFENDANT
GRACE ACHIENG .....	39 <sup>TH</sup> DEFENDANT

**AND**

SETTLEMENT FUND TRUSTEES .....	INTERESTED PARTY
NATIONAL LAND COMISSION .....	INTERESTED PARTY

**JUDGMENT**

1. The Plaintiff is described as a parastatal established under the *Lake Basin Development Authority Act*, Chapter 442 Laws of Kenya. In its plaint dated 30<sup>th</sup> November 2020, the Plaintiff averred that at all material times, all that parcel of land known as L.R No. 42311(hereinafter referred to as “the suit property”) was owned by the Government of Kenya through the Ministry of Agriculture and Livestock Development and the Settlement Fund Trustees (the 1<sup>st</sup> Interested Party). The Plaintiff averred that



the suit property which was being used by the Ministry of Agriculture and Livestock Development as Cattle Holding Ground was public land and as such could only be disposed of in accordance with the laws governing the disposal of such property.

2. The Plaintiff averred that in its meeting held on 8<sup>th</sup> March 1982, the Kisumu District Development Committee approved a proposal by the Plaintiff to use the suit property which measured 330 acres for its livestock development. The Plaintiff averred that the said Committee gave it authority to develop the necessary infrastructure for the said project and it started using the suit property as Livestock Multiplication Centre. The Plaintiff averred that the whole of the suit property was placed under its control and management for its livestock development venture.
3. The Plaintiff averred that after it had taken possession and control of the suit property, part of the property was invaded by squatters and at the request of the Government, the Plaintiff agreed to surrender a portion of the suit property measuring 106 acres to the Government to be used for the settlement of the said squatters leaving it with a portion of the suit property measuring 224 acres.
4. The Plaintiff averred that during the settlement of the squatters, the Defendants herein who were not squatters were added to the list of genuine squatters and allocated land with the effect that the total land that was allocated to the squatters increased by about 30 acres thereby reducing the land that was left for the Plaintiff for livestock development.
5. The Plaintiff averred that the said additional portion of the suit property measuring 30 acres was illegally acquired and subdivided to give rise to land parcels; Kisumu/Tonde/58, 59, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143 (hereinafter referred to as “the disputed land parcels”) which were allocated to the Defendants and titles issued to them.
6. The Plaintiff averred that the allocation of the disputed land parcels to the Defendants was illegal and the titles issued to the Defendants were similarly illegal, null and void and should be cancelled. The Plaintiff accused the Defendants of; obtaining titles to government land illegally, alienating land vested in a public body for private purposes, alienating land vested in a public body without following laid down legal procedure and alienating public land contrary to the provisions of the Government [Land Act](#), Chapter 280 Laws of Kenya (now repealed).

The Plaintiff prayed for judgment against the Defendants for;

- (1). A declaration that the titles acquired by the Defendants in respect of the parcels of land known Kisumu/Tonde/58, 59, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143 were acquired unlawfully and as such did not confer proper titles upon the Defendants.
- (2). An order for the cancellation of registration of the parcels of land known as Kisumu/Tonde/58, 59, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143 (“the disputed land parcels”) in the name of the Defendants and the ownership of the said parcels of land to be restored in the name of the Government.
- (3). A declaration that public interest overrides private interests over the disputed land.
- (4). A permanent injunction restraining the Defendants by themselves, their servants and agents from entering, or encroaching, trespassing upon, interfering with the Plaintiff’s user and enjoyment of the disputed land parcels.
- (5). Costs of the suit together with interest.



7. The Defendants were served with Summons to Enter Appearance by way of substituted service through newspaper advertisement following the leave that was granted by the court on 17<sup>th</sup> December 2020. Of the 39 Defendants and 2 Interested Parties sued, only the 1<sup>st</sup> Defendant entered appearance. Even for the 1<sup>st</sup> Defendant, the case against him was withdrawn with costs on 1<sup>st</sup> February 2024. The Defendants who remained in the suit did not defend the suit.
8. The suit was heard on 30<sup>th</sup> April 2024 when the Plaintiff called one witness, MICHAEL OKELLO OKUK(PW1) and closed its case. PW1 told the court that he was the Plaintiff's Deputy Director of Legal Services. He adopted his witness statement dated 30<sup>th</sup> November 2020 as his evidence in chief and produced the Plaintiff's bundle of documents of the same date as P.EXH.1. PW1 stated that the suit property initially belonged of the Ministry of Agriculture and Livestock Development from which the Plaintiff acquired the property. He stated that the Plaintiff was in possession of the suit property and had thereon; a solar irrigation plant, livestock multiplication project and sugar cane farm. He stated that the Plaintiff was also undertaking horticultural farming on the property which originally measured 330 acres. PW1 stated that a portion of the suit property measuring 106 acres was given to squatters who were landless leaving the Plaintiff with land measuring 224 acres. He urged the court to cancel the titles that were issued to the Defendants as the same were issued illegally and unprocedurally. In his witness statement, PW1 reiterated the contents of the plaint I highlighted earlier in the judgment. It is not necessary to rehearse the same here.

After the close of evidence, the court directed the Plaintiff to make closing submissions in writing. The Plaintiff filed submissions dated 26<sup>th</sup> September 2024.

### **Analysis and determination**

9. I have considered the plaint, the evidence tendered by the Plaintiff, and the submissions on record. The issues arising for determination in this suit are the following;
  - (1). Whether the Defendants are registered as the owners of all those parcels of land known as Kisumu/Tonde/58, 59, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143("the disputed land parcels"), and if so, whether the Defendants acquired the same unlawfully;
  - (2). Whether the Plaintiff is entitled to the reliefs sought in the plaint; and
  - (3). Who is liable for the costs of the suit?
10. Whether the Defendants are registered as the owners of all those parcels of land known as Kisumu/Tonde/58, 59, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143("the disputed land parcels"), and if so, whether the Defendants acquired the same unlawfully;

Order 21 Rule 6 of the Civil Procedure Rules provides as follows:

“Where there is a prayer for a judgment the grant of which would result in some alteration to the title of land registered under any written law concerning the registration of title to land, a certified copy of the title shall be produced to the court before any such judgment is delivered.”

The Plaintiff has claimed that the disputed land parcels are registered in the names of the Defendants and that the Defendants acquired the same unlawfully and as such, the titles held by the Defendants



in respect thereof should be cancelled and the land restored in the name of the Government. As I have mentioned earlier in the judgment, none of the Defendants entered appearance apart from the 1<sup>st</sup> Defendant against whom the suit was withdrawn. The suit against the 1<sup>st</sup> Defendant was withdrawn because the 1<sup>st</sup> Defendant and one, David Okal Omom had sued the Plaintiff in an earlier suit before this court namely, ELC No. 3 of 2020, Harun Omom Okal Akeyo & another vs. Lake Basin Development Authority over the parcels of land known as Kisumu/Tonde/91, 92, and 128. The court delivered a judgment in that suit on 6<sup>th</sup> November 2023. With the said judgment, the Plaintiff's claim herein as against the 1<sup>st</sup> Defendant in respect of the land parcels Kisumu/Tonde/91, 92, and 128 was untenable. The validity of the titles for the three (3) parcels of land would, therefore, not be determined in this suit as the issue had been determined in the earlier suit. That leaves land parcels, Kisumu/Tonde/58, 59, 93, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143. For the court to cancel the titles for these parcels of land, the court must be satisfied that the same are registered in the names of the Defendants or any of them. The burden was upon the Plaintiff to prove the ownership of these parcels of land which it claimed are registered in the names of the Defendants.

11. The Plaintiff produced in evidence copies of several title deeds and certificates of official search in proof of the ownership of the disputed land parcels. Among the title deeds produced by the Plaintiff, were the title deeds for land parcels, Kisumu/Tonde/91, 92 and 128 which were in the names of Harun Omom Okal, Harun Omom Okal Akeyo and David Okal Omom respectively. As mentioned earlier, the validity of the titles for these parcels of land has already been determined. There are also title deeds for Kisumu/Tonde/58 and Kisumu/Tonde/93 in the names of Alfred Buore Ngonga and Mackenzie Odada Rabach. Alfred Buore Ngonga and Mackenzie Odada Rabach are not defendants in this suit. Since the owners of the two parcels of land, according to the evidence adduced by the Plaintiff, are not parties to the suit, the court cannot consider and determine whether the titles held by the said owners are valid or not. That leaves land parcels, Kisumu/Tonde/59, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143. For these parcels of land, there is no evidence that the same are registered in the names of the Defendants or any of them. None of the title deeds and certificates of official search produced by the Plaintiff refer to any of these parcels of land.
12. Registration of land in the name of a person can only be established by a certificate of official search on the title or a certified copy of the register. In the case before me, none of these was produced in evidence. Even the copies of the title deeds that were produced in evidence by the Plaintiff did not relate to these parcels of land. The Plaintiff produced in evidence what it claimed to be a list of allottees of land in Tonde Squatter Settlement Scheme in Nyando District which list contained the names of some of the Defendants herein as beneficiaries of the allotment. The list is not signed and its source is not disclosed. Secondly, the fact that the names of some of the Defendants appeared amongst the allottees of land in the settlement scheme cannot be evidence of the registration of the land that was allocated in the names of the said Defendants.
13. It is, therefore, my finding that there is no evidence that land parcels, Kisumu/Tonde/59, 94, 95, 96, 97, 98, 99, 100, 101, 119, 120, 121, 122, 123, 124, 125, 126, 127, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 140, 141, 142 and 143 were registered in the names of the Defendants or any of them. In the circumstances, the court cannot be called upon to determine whether the said parcels of land were registered in the names of the Defendants lawfully or not as there is no evidence of such registration. It is instructive to note that the Plaintiff did not match each Defendant to a parcel of land whose title was challenged. There is a high possibility that these parcels of land are not registered in the names of the Defendants and this explains why they did not take the trouble of defending this suit. The court is aware that land parcels, Kisumu/Tonde/129 and 135 which are the some of the parcels of land the



subject of this suit were the subject of an earlier suit filed before this court namely; ELC No. 866 of 2015, Elias Obura Ndege v. Lake Basin Development Authority in which judgment was entered for the Plaintiff against Lake Basin Development Authority on 27<sup>th</sup> February 2025.

14. The finding that I have reached above is sufficient to dispose of this suit. I wish to add however that it is not enough to make allegations of illegality. An illegality alleged against a title to land must be pleaded with the necessary particulars and proved. The suit property was registered under the Registered [Land Act](#), Chapter 300 Laws of Kenya (now repealed). The Registered [Land Act](#) was repealed by the [Land Registration Act](#) 2012. Sections 27 and 28 of the Registered [Land Act](#), Chapter 300 Laws of Kenya (now repealed), provide as follows:

27. Subject to this Act-

- a. 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;
- b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease.

28. The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of 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 –

- a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
- b. unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:

“ Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.”

15. The two sections have been reproduced in Sections 24 and 25 of the [Land Registration Act](#) 2012 as follows:

“ 24. Subject to this Act—

- a. 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; and
- b. the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.

25.



- (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of 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—
  - a. to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
  - b. to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
- (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.”

16. Section 26(1) of the [Land Registration Act](#) 2012 provides as follows:

“26.

- (1) 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, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
  - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
  - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

17. I am not persuaded from the evidence on record that the titles for the disputed parcels of land were issued illegally as claimed by the Plaintiff. From the evidence on record, these parcels of land were registered in the names of the 1<sup>st</sup> Interested Party who allocated the same to the persons the Plaintiff claim to hold illegal titles in respect thereof. The Plaintiff has made conflicting claims in the plaint and the evidence as to the land that was given to it. In paragraph 9 of the plaint, the Plaintiff has averred that it surrendered land measuring 106 acres for the settlement of squatters leaving it with land measuring 224 acres. In paragraph 10 of the plaint, the Plaintiff averred that it was left with land measuring 106 acres. In paragraph 13 of the plaint, the Plaintiff averred that it was left with land measuring 118 acres.

18. In the minutes of the meeting held on 12<sup>th</sup> May 1994 over Muhoroni Settlement Complex at page 40 of P.EXH.1 at which Muhoroni Livestock Holding Ground (the suit property) was discussed, it was agreed that from the suit property that measured 345.4 acres, 130 acres would be reserved for the



Plaintiff, 130 acres for the squatters, 25 acres for public utilities and 60 acres for people who were allotted land within Plot No. 463 whose allotments were cancelled.

19. The Plaintiff was represented at the said meeting of 12<sup>th</sup> May 1994 which was chaired by the Deputy Provincial Commissioner, Nyanza Province and the Plaintiff was a party to the agreement that was reached at the meeting. Among those who were in attendance were; a representative of the Ministry of Land and Settlement, the Director of Land Adjudication and Settlement, District Commissioner, Kisumu District, Provincial Surveyor, Nyanza and Provincial Livestock Development Officer, Nyanza.
20. The Plaintiff has not produced any evidence showing that the Director of Land Adjudication and Settlement who allocated the disputed land parcels did so contrary to what was agreed at the said meeting of 12<sup>th</sup> May 1994. The Plaintiff has not produced any evidence showing that disputed land parcels fall within the 130-acre portion of the suit property that was reserved for its use. I am of the view that the Plaintiff's claim would only be justified if it demonstrated that the disputed land parcels were carved out of the 130-acre portion of the suit property that was reserved for its use and allocated to the owners thereof. The Plaintiff seems to be concerned about those non-squatters who benefited from the land that was reserved for the settlement of genuine squatters. As I stated in one of the previous judgments that concerned the suit, the Plaintiff has no business fighting for the interest of the squatters. The Plaintiff should focus on the 130-acre portion of the suit property that was reserved for its use. I am not convinced that the Defendants before me were allocated a portion of the said 130-acre portion of the suit property that was reserved for the Plaintiff's use.

#### **Whether the Plaintiff is entitled to the reliefs sought in the plaint**

21. In the final analysis and for the foregoing reasons, I find the Plaintiff's claim not proved. The suit is dismissed accordingly with no order as to costs since the suit was not defended.

**DATED AND DELIVERED AT KISUMU ON THIS 17<sup>TH</sup> DAY OF MARCH 2025.**

**S. OKONG'O**

**JUDGE**

Judgment delivered virtually through Microsoft Teams Video Conferencing Platform in the presence of;

Mr. Ojuro for the Plaintiff

N/A for the Defendants

N/A for the Interested Parties

Ms. J. Omondi-Court Assistant

