



**Meegan v Lengeny (Environment & Land Case 9 of 2019)  
[2023] KEELC 20059 (KLR) (27 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20059 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 9 OF 2019  
MN GICHERU, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**THOMAS MICHAEL KEVIN MEEGAN ..... PLAINTIFF**

**AND**

**JOHN SARUNI OLE LENGENY ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff seeks the following reliefs against the Defendant.
  - a. A declaration that the property namely Kajiado/Ntashart/1900, 1921, 2015 and 2016 currently registered in the name of the Defendant is held in trust for the Plaintiff.
  - b. A mandatory injunction does issue to compel the Defendant to transfer the four parcels to the Plaintiff or his nominee and in the alternative, the Deputy Registrar of this court to sign all the instruments to effect the transfers.
  - c. Costs of the suit.
  - d. Any other relief the court may deem fit to grant.
2. The Plaintiff's case is as follows. He is a British Citizen holding Passport No. 09\*\*\*\*\*69. He has been resident in Kenya since 1983. In the year 1991 or thereabouts, he purchased LR Kajiado/Ntashart/1900, 1921, 2015 and 2016 respectively. They measure 23.04 hectares. The Plaintiff caused the land to be registered in the name of the Defendant. At the time of such registration, the Defendant was an employee of the Plaintiff and a trusted friend since 1983. He also lived in the neighbourhood and he could therefore look after the land. To keep the land occupied, the Plaintiff purchased 200 goats. It was no secret that the Plaintiff was the owner of the suit land and the Defendant merely a proxy of the Plaintiff and many people in the area were privy to this relationship between the Plaintiff, the Defendant and the land.



3. In addition to the above, the Defendant signed several statutory declarations dated 10/8/1991, 22/6/1992, 29/4/1991, 19/7/1991, 9/7/1992 and 29/6/1993 acknowledging that the true owner of the suit land was the Plaintiff and not the Defendant.
4. In support of his case, the Plaintiff filed the following evidence.
  - (i) His own witness statement dated 2/8/216.
  - (ii) Copies of title deeds for LR Kajiado/Ntashart/1900, 1921, 2015 and 2016, suit parcels.
  - (iii) Copies of statutory declarations dated 10/8/1991, 22/6/1992, 24/4/1991, and 19/7/1991.
  - (iv) Copy of agreement for sale dated 9/7/1992.
  - (v) Copy of statutory declaration by SamanCHA Ole Mopel dated 24/6/1993.
5. The Defendant, through counsel on record filed a written statement of defence dated 10/1/2022. In the defence, he denies the Plaintiff's claim generally and avers that title deeds for LR Kajiado/Ntashart/99 (sic), 2015 and 2016 have been handed to the Plaintiff save for 2016 (sic) which is in the custody of the Defendant. He prays for the dismissal of the Plaintiff's case.
6. In support of the defence, the Defendant filed the following evidence.
  - (i) Witness statements by the Defendant, Peter Linkato Ole Keitee and Philip Miisia Ole Sironka.
  - (ii) Copy of letter dated 30/5/2014.
  - (iii) Copy of payment voucher dated 28/5/2014.
  - (iv) Copy of agreement between the Defendant and Real Deals Properties dated 23/6/2018.
  - (v) Copy of letter dated 15/7/2013.
  - (vi) Copy of will and testament of the Plaintiff dated 24/10/1995.
7. At the trial on 5/12/2022, the Plaintiff testified on oath and adopted his witness statement and documents before he was cross-examined by the Defendant's counsel. Likewise the Defendant testified, adopted his evidence before he and his witnesses were subjected to cross-examination.
8. Counsel for the parties filed written submissions on 21/3/2023 and the Defendant's counsel identified the following issues for determination.
  - (a) Whether the Defendant is in possession of the original title deeds for the suit parcels?
  - (b) Whether the Plaintiff sold the above parcels of land to third parties?
  - (c) Whether an order of mandatory injunction should be issued against the Defendants to compel him to transfer the suit parcels?
  - (d) Whether the Defendant is entitled to retain the original title deed for LR 2016?
  - (e) Who should be awarded the costs?
9. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and the evidence at the trial.  
  
I have also considered the written submissions by both counsel and the issues raised therein. I find that the issues as identified by the Defendant's counsel will resolve the dispute.



10. On the first issue, I am not satisfied that the Defendant is in possession of all the title deeds for the suit parcels. This is because when the Plaintiff was cross-examined he stated as follows.

“...I sold some part of the land. I do not know if I sold three (3) parcels. It is my lawyers who did”.

If the Plaintiff's lawyers sold some of the land parcels in dispute, then the Defendant cannot be in possession of the same.

11. On the second issue which I find to be closely related to the first one, I find that the Plaintiff sold some of the parcels as per his own admission while under cross-examination.

12. On the third issue, I find that the Defendant should be compelled to transfer the suit parcels to the Plaintiff because the Plaintiff is the legal owner of the land while the Defendant is a mere nominee. There is no legal justification for the Defendant to keep the Plaintiff's land.

13. On the fourth issue, I find that the Defendant is not entitled to any of the Plaintiff's land for two reasons.

Firstly, he has not filed any counterclaim seeking for an order that he be declared the owner of any of the Plaintiff's land.

Secondly, he has not even in his defence or evidence adduced any evidence to prove that he is entitled to any of the Plaintiff's land.

14. On the fifth and final issue, I find that the costs must follow the event. The Plaintiff has succeed in his case against the Defendant. If the Defendant wished to settle the matter with the Plaintiff like he intimated when he was under cross-examination, he should have conceded to the Plaintiff's claim without filing a defence.

From the Defendant's witness statement dated 4/7/2022 it seems to me that it is only in 2018 that he accepted to surrender the title deeds to the Plaintiff. This case had been filed on 17/8/2016 which is two years earlier. The Defendant, having failed to surrender the title deeds in 2016 when he was served with the Plaintiff's pleadings cannot be heard to say that he should not be condemned to pay the costs. He had ample opportunity to admit the Plaintiff's claim then. He did not have to wait until he testified in December 2022 to admit the claim.

For the above stated reasons, I enter judgment for the Plaintiff against the Defendant as prayed for in the plaint.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27<sup>TH</sup> DAY OF SEPTEMBER, 2023.**

**M.N. GICHERU**

**JUDGE**

