



**Otieno & another v Ayako & another (Environment & Land Case  
10 of 2013) [2023] KEELC 19890 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19890 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 10 OF 2013**

**EO OBAGA, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**MICHAEL OMONDI OTIENO ..... 1<sup>ST</sup> PLAINTIFF**

**ERICK ONYANGO ORWA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**HILDA AYAKO ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGSIRTAR, UASIN GISHU COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Introduction**

1. The Plaintiffs brought this suit against the Defendants in which they sought the following reliefs:-
  - a. A permanent injunction to restrain the Defendants whether by themselves or by servants or agents from applying for consent to subdivide, and/or subdividing or in any other manner dealing with land parcel known as Pioneer/Ngeria Block 1 (EATEC)/951 without the consent of the Plaintiff.
  - b. A declaration that the said parcel of land can only be partitioned and subdivided in 3 portions proportional to each person's contribution towards its purchase consideration/price.
  - c. That the 2<sup>nd</sup> Defendant be and is hereby directed to partition the said parcel of land and to issue title deeds to the Plaintiffs and the 1<sup>st</sup> Defendant respectively as the court hereby directs, in accordance with each person's contribution towards the purchase price.
  - d. That any action already taken by the Defendants, and any subdivision that may have been made and any titles that may have been made and any titles that may have been issued pursuant to the said illegal subdivision be and hereby declared null and void and is hereby cancelled.



- e. Costs of the suit.

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

2. The Plaintiffs testified that in or about the year 2000, they and the 1<sup>st</sup> Defendant decided to purchase plot numbers F773 and F808 measuring 3 acres at a consideration of 228,000/= The Plaintiffs each paid 91,000/= and the 1<sup>st</sup> Defendant 46,000/= Plot F808 was later registered as LR No Pioneer/Ngeria Block 1 (EATEC) 951 in the joint names of the three of them.
3. The Plaintiffs and the 1<sup>st</sup> Defendant agreed that each of them was to get a share proportionate to the contribution made towards the purchase. The 2<sup>nd</sup> Plaintiff paid Kshs 91,000/= in five installments into the account of Lonrho Agribusiness East Africa Limited at Barclays Bank now known as Absa Bank. The 1<sup>st</sup> Plaintiff also paid a similar amount.
4. In 2006, the Plaintiffs discovered that the 1<sup>st</sup> Defendant had processed title which was issued on January 20, 2003 in the joint names of the three. On or about February 8, 2006, the Plaintiffs received summons requiring them to attend the District Land Registrar's office for purposes of determining the mode of partition of the land. The Plaintiffs attended the District Land Registrar's office on February 20, 2006. The District Land Registrar did not hear them as required. He instead told them that they were each entitled to half an acre and that the 1<sup>st</sup> Defendant was to get 2 acres.
5. The Plaintiffs claim that the District Land Registrar was biased against them and that it is the 2<sup>nd</sup> Plaintiff who has been paying rates and they want the land subdivided according to the amount each of them paid towards the purchase price.

### **1<sup>st</sup> Defendant's Case;**

6. The 1<sup>st</sup> Defendant testified that she was working as a secretary for East African Tanning and Extract Company (EATEC) until the year 2000 when she was declared redundant. EATEC then was disposing its properties through Lonrho Agribusiness East Africa Limited. She opted to have 4 acres in lieu of her redundancy dues. EATEC told her that her redundancy dues were not enough to have 4 acres. she was told that if she wanted 4 acres, she had to raise an additional sum of Kshs 182,000/=
7. The 1<sup>st</sup> Defendant was given until August 31, 2000 to raise the additional Kshs 182,000/=. As at August 31, 2000 she had not raised the Kshs 182,000/= she was given a final extension upto September 30, 2000 to raise the money. As she was unable to raise the amount, she approached the 2<sup>nd</sup> plaintiff and offered him one acre at Kshs 182,000/= The 2<sup>nd</sup> Plaintiff was unable to raise the Kshs 182,000. He was forced to bring in the 1<sup>st</sup> Plaintiff. The two Plaintiffs raised Kshs 91,000/= each and the 1<sup>st</sup> Defendant was able to secure the 4 acres. She was duly given a letter authorizing her to occupy the 4 acres.
8. The 1<sup>st</sup> Defendant later went and processed title for the three acres comprised in plot F808 in the joint names of the three of them. She later asked the 2<sup>nd</sup> Plaintiff to look for a surveyor to partition the land into 0.5 acres for 1<sup>st</sup> Plaintiff, 0.5 acres for 2<sup>nd</sup> Plaintiff and 2.0 acres for herself. The 2<sup>nd</sup> Plaintiff brought in a surveyor who curved out slightly over one acre for the two of them. The 1<sup>st</sup> Defendant who was not present during the subdivision wrote a letter to the 2<sup>nd</sup> Plaintiff protesting at what he had done.
9. The two plaintiffs later went to the offices of Nyairo & Company Advocates who were EATEC lawyers. When they were shown what amount EATEC had sold the land to its former staff, they felt that she had exploited them. It is at this time that they started claiming that they had jointly purchased the three acres hence the filing of this suit.



## **Analysis and Determination;**

10. I have carefully gone through the evidence adduced by the Plaintiffs and that of the 1<sup>st</sup> Defendant. The 2<sup>nd</sup> Defendant neither filed defence nor testified in these proceedings. I have also considered the submissions by the Plaintiffs and those of the 1<sup>st</sup> Defendant. The first issue for determination is whether the Plaintiffs and the 1<sup>st</sup> Defendant jointly purchased the three acres and if so whether upon partition, the three were to get land proportionate to what each contributed. The second is which order is to be made on costs.
11. The undisputed facts are that there was no sale agreement signed in respect of the 3 acres forming the suit property. There is also no dispute that the three acres were comprised in plot F808. There was also one acre which was comprised in plot F773. The title which was processed and issued on January 20, 2003 did not specify each of the three person's share in the three acres.
12. The Plaintiffs claim that they jointly purchased the three acres together with the 1<sup>st</sup> Defendant from EATEC. There is no evidence which was tendered by them to show that this was the case. A critical analysis of the evidence shows that the 1<sup>st</sup> Defendant was working at EATEC as secretary until 2000 when she was declared redundant. The 1<sup>st</sup> Defendant requested to be given 4 acres in lieu of her redundancy dues as well as her pension. The 1<sup>st</sup> Defendant produced a letter dated July 4, 2000 Defence exhibit 9 from EATEC which confirms that she had requested for 4 acres in lieu of her redundancy dues. In this letter, she was advised that her redundancy dues were not sufficient to have her allocated 4 acres. She was advised that there was a shortfall of Kshs 182,000/= which she was expected to clear by August 31, 2000.
13. The 1<sup>st</sup> Defendant also produced letter from EATEC dated September 28, 2000 Defence exhibit 10 which acknowledged receipt of Kshs 182,000/= and which letter authorized her to occupy plot F773 and F808 measuring 4 acres. It is therefore not true that the Plaintiffs and the 1<sup>st</sup> Defendant jointly purchased the 3 acres from EATEC. The Plaintiffs produced five receipts which they used to deposit money in the account of Lornho Agribusiness East Africa Limited totaling to Kshs 162,000/=. The amounts were deposited between August 3, 2000 and September 23, 2000. The 1<sup>st</sup> Defendant who was the beneficiary of the 4 acres would then go to EATEC where she would be issued with receipts for the amount the Plaintiffs were depositing in the account of Lonrho Agribusiness East Africa Limited. When the Kshs 182,000/= was cleared on or about September 23, 2000, EATEC wrote a letter to 1<sup>st</sup> Defendant dated September 28, 2000 acknowledging receipt of Kshs 182,000/= and giving her possession of the 4 acres. There is therefore no way the Plaintiffs can claim that they jointly purchased the 3 acres with the 1<sup>st</sup> Defendant.
14. The Plaintiffs and the 1<sup>st</sup> Defendant jointly made an application for consent of the Land Control Board on March 5, 2001. This application for consent of the Land Control Board was produced as Defence exhibit 2. The application for consent of Land Control Board was signed by the Plaintiffs and the 1<sup>st</sup> Defendant and clearly indicated that the Plaintiffs were entitled to 0.5 of an acre each whereas the 1<sup>st</sup> Defendant was entitled to 2.0 acres.
15. The Plaintiffs and the 1<sup>st</sup> Defendant signed a transfer which was witnessed by A K Nyairo who is their lawyer in this case. This is the transfer which was used to process title which was issued on January 20, 2003. The Plaintiff cannot therefore turn round and claim that the 1<sup>st</sup> Defendant processed title without their knowledge. The transfer was produced as defence exhibit 7. The same transfer was produced by the plaintiffs as plaintiffs exhibit 1. The plaintiffs had also given copies of their ID cards which were produced as Defence exhibit II.



16. The 4 acres were given to the 1<sup>st</sup> Defendant in lieu of her redundancy dues. She was not purchasing the 4 acres. She only decided to sell one acre to the Plaintiff in order to raise Kshs 182,000/= to enable her get 4 acres. The issue of sharing the 3 acres proportionately does not therefore arise. I therefore find that there was no joint purchase of the 3 acres by the Plaintiffs and the 1<sup>st</sup> Defendant.
17. The three acres cannot therefore be shared proportionately as suggested by the Plaintiff. The Plaintiffs are only entitled to their one acre which they purchased from the 1<sup>st</sup> Defendant and no more.

**Disposition;**

18. From the above analysis, it is clear that the Plaintiffs have failed to prove their case on a balance of probabilities. The same is dismissed with costs to the 1<sup>st</sup> Defendant.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**

