



**Solitei v Muhuri & 2 others; County Government of Kajiado & another  
(Interested Parties) (Environmental and Land Originating Summons  
E006 of 2021) [2023] KEELC 20007 (KLR) (21 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 20007 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E006 OF 2021  
LC KOMINGOI, J  
SEPTEMBER 21, 2023  
IN THE MATTER OF THE ESTATE OF THE LATE AMOS  
MUHURI KORIA (DECEASED)**

**BETWEEN**

**JOSEPH LEMAYIAN SOLITEI ..... PLAINTIFF**

**AND**

**MARGARET KANYI MUHURI ..... 1<sup>ST</sup> DEFENDANT**

**JAMES KORIA MUHURI ..... 2<sup>ND</sup> DEFENDANT**

**GEORGE MUCHIRI ..... 3<sup>RD</sup> DEFENDANT**

**AND**

**THE COUNTY GOVERNMENT OF KAJIADO ..... INTERESTED PARTY**

**THE NATIONAL LAND COMMISSION ..... INTERESTED PARTY**

**JUDGMENT**

1. By the Originating Summons dated May 29, 2021 and Amended on October 6, 2021 brought pursuant to Order 1A, 1B,3,3A,31 Rule 1 &2, 37 Rule (1) (3) 14 & 20 of the *Civil Procedure Act* Cap 21 Laws of Kenya and all other enabling Provisions of the Law) the plaintiff raises the following issues for determination;

1. Did the said John Lemayian Solitei and the late Amos Muhuri Koria (deceased) enter in a sale agreement on May 19, 2015 for a purchase consideration of Kshs 330,000/= payable on execution or soon thereafter?



2. Did the plaintiff pay in full the said purchase consideration and take possession as per the agreement?
  3. Was the sale agreement approved by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties?
  4. Did the applicant take possession and construct thereon with the approval of the deceased and the 1<sup>st</sup> and 2<sup>nd</sup> interested parties?
  5. Has the applicant continuously paid rates and observed all terms and conditions appertaining to the said ownership as regards compliance with Development plans, Public Health, District Commissioner, Physical Planning Ministry of Lands (building) and the clerk to the 1<sup>st</sup> and 2<sup>nd</sup> interested parties?
  6. Is the transfer awaited from the 1<sup>st</sup> and 2<sup>nd</sup> interested parties subject to the validation exercise in progress?
  7. Whether the estate have any interest in the said plot?
  8. Whether the 1<sup>st</sup> and 2<sup>nd</sup> interested parties can now issue the new generation letters of allotment/ title in the name of the applicant directly?
  9. Who should pay the costs of this Originating Summons?
2. The Originating Summons is supported by the affidavit of Joseph Lemayian Solitei, the applicant herein sworn on the May 29, 2021.
  3. Despite being served, the Respondents neglected to file any responses.  
They were however represented by Mr Getange, who appeared only once, on November 23, 2021.
  4. Directions on the Originating Summons were taken that the same do proceed by way of *viva voce* evidence.
  5. When the matter came up on hearing on the February 27, 2023, the Respondents despite being served were absent and the matter proceeded *ex parte*.
  6. PW1 Joseph Lemaiyan Solitei, the Applicant told the court that he bought the suit property from Amos Muhuri Kuria (the deceased) on May 19, 2015 for Kshs 330,000/= A sale Agreement was reduced into writing. He told the court the transfer could not be effected on good time due to the verification exercise being undertaken at the County Government of Kajiado (the 1<sup>st</sup> Interested Party).
  7. He thus stated that he paid Kshs 250,000/= being a transfer from his account and the balance of Kshs 80,000/= was paid through MPesa over time.
  8. It is his case that he took possession and put up eighteen (18) single rooms and a stone toilet. He prays that the Respondents who are the Administrators of the estate of Amos Muhuri Kuria (the deceased) be compelled to effect transfer in his favour.
  9. Upon conclusion of the oral testimony the Applicant put in written submissions.
  10. Counsel submitted that the Applicant is entitled to ownership of Plot NO 77 Residential Olchoro/ Onyori Trading Center or such other registration as the Interested Parties shall allocate and/or assign a letter of allotment or issue a title.



11. It is also submitted that the suit property is not among the inventory of the assets belonging to the deceased in Succession Cause No 3 of 2019 (In the matter of the Estate of Amos Muhuri Kuria) at the Kajiado High Court.
12. Counsel further submitted that the Originating Summons being unopposed, the Applicant has proved his case as per the required threshold in Section 109 of the *Evidence Act*. The applicant took possession of the suit property after paying the full purchase to the deceased. He has since developed the suit property and has been paying land rates. She urges that the prayers in the Amended Originating summons be allowed.
13. I have considered the Amended Originating Summons, the evidence tendered and the written submissions. The issues for determination are;
  - i. Whether the Applicant purchased the suit property for valuable consideration, took possession and has undertaken developments thereon.
  - ii. Whether the Applicant is entitled to be issued with the new generation letters of Allotment and or title by the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties.
  - iii. Who should bear costs of this suit?

14. The Applicant's case is uncontroverted.

Order 37 Rule 3 of the *Civil Procedure Rules* provides that;

“A vendor or purchaser of immovable property of their representatives respectively may, at any time or times, take out an Originating Summons returnable before the Judge sitting in Chamber, for determination of any question which may arise in respect of any requisitions or objections, or any claim for compensation; or any other question arising out of or connected with the contract for sale.....”

15. Section 107 of the *Evidence Act* provides that;

“Whoever deserves any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”

Section 109 of the *Evidence Act* provides that;

“The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided for by law that the proof of that fact shall be on any particular person”.

16. The applicant produced a sale agreement dated May 19, 2015. He also produced the transfer of funds to the deceased, payment receipts, and photographs showing the developments on the suit property.

17. There is no doubt that he's in possession of the suit property.

In the case of *Charter House Block Limited (Under Statutory Management) Vs Frank NKamau* (2016) eKLR , the Court of Appeal stated thus;

“.....We would therefore venture to suggest that before the trial court, can conclude that the plaintiff's case is not controverted or is proved on a balance of probability by reason of the defendants failure to call evidence, the court must be satisfied that the plaintiff has adduced



some credible and believable evidence, which can stand in the absence of rebuttal evidence from the defendant.....”

In the instant suit I am satisfied that the Applicant has proved his case as against the Respondents on a balance of probability.

18. The upshot of the matter is that the Amended Originating summons is merited.

19. Accordingly judgment entered for the Applicant as follows:

- i. That the Applicant is entitled to ownership of plot No 77 Residential Olchoro/Onyori Trading Centre.
- ii. That the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties are hereby directed to allocate and/or assign a Letter of Allotment or any such registration of ownership of Plot NO77 Residential Olchoro/Onyori Trading Centre to the Applicant forthwith.
- iii. That costs of this suit shall be borne by the Respondents.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 21<sup>ST</sup> DAY OF SEPTEMBER 2023.**

**L. KOMINGOI**

**JUDGE.**

