



**Ndungu (Suing as the administrator of the Estate of Charles Ndungu Kinuthia – Deceased) v Sempeke alias Naiponi Ene Kampei (Environment & Land Case 441 of 2017) [2023] KEELC 21017 (KLR) (25 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 21017 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 441 OF 2017  
MN GICHERU, J  
OCTOBER 25, 2023**

**BETWEEN**

**GEORGE CHEGE NDUNGU (SUING AS THE ADMINISTRATOR OF THE ESTATE OF CHARLES NDUNGU KINUTHIA – DECEASED) ..... PLAINTIFF**

**AND**

**NAIPONI ENE SEMPEKE ALIAS NAIPONI ENE KAMPEI ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff seeks the following reliefs against the Defendant.
  - a. An order compelling the Defendant to transfer to the Plaintiff 10 acres of land to be excised from LR Kajiado/Olchoro-Onyore/2342 or if he fails the district surveyor to do the same.
  - b. An order compelling the Defendant to sign all relevant documents and transfer the 10 acres to the Plaintiff as the legal representative of the deceased or if he fails the court to appoint one of its officers to sign the documents on behalf of the Defendant.
  - c. An order compelling the Land Registrar with the jurisdiction to register the transfer documents in favour of the claimant and issue him with a title deed.
  - d. Costs of the suit.
  - e. Any other relief the court may deem fit and just to grant.
2. The Plaintiff's case is as follows. He is a son to Joseph Charles Ndungu Kinuthia who is now deceased. On 17/12/1984 his father and the late Sampeke Ole Mutura entered into an agreement for sale of LR Kajiado/Olchoro-Onyore/1657 at a consideration of Kshs 30,000/-. The Plaintiff's father paid a total of Kshs 27,500/- on the date of the agreement and the balance of Kshs 2,500/- on 5/10/1985. The Plaintiff's father took possession of the land but in 1992 when the vendor Sampeke Ole Mutura died,



the land had not been transferred. The family of the purchaser lived on the suit land for a period of about 26 years until 2013 when they left due to post election violence. The land was later registered in the name of the vendor's wife who is the current Defendant who confirmed that she recognized the agreement between her husband and the Plaintiff's father.

However, after she subdivided LR 1659 into LR 2342 and other parcels, she refused to transfer LR 2342 to the deceased. The deceased filed a case at the Land Disputes Tribunal in Kajiado North. The tribunal ordered the Defendant to transfer 5 acres to the deceased. Dissatisfied with the award of the tribunal, the Defendant filed Judicial Review Case No. 243 of 2013 which quashed the tribunal's award on the basis that the tribunal lacked jurisdiction to make the orders for transfer. Since the correctness of the award was not challenged, the Plaintiff now claims the ten acres that his father purchased from the deceased's husband which is comprised in LR Kajiado/Olchoro-Onyore/2342.

3. In support of his case, the Plaintiff filed the following evidence.
  - i. Witness statement by Joseph Charles Ndungu Kinuthia, James Kariuki Thairu and Julius Muigai Chege and George Chege Ndungu.
  - ii. Copy of sale agreement dated 17/12/1984 and acknowledgment of final payment of consideration dated 5/10/1985.
  - iii. Copy of the decision by Kajiado North Land Disputes Tribunal.
  - iv. Copy of request for confirmation of the award by the Kajiado Magistrate's Court.
  - v. Copy of letter by Chief Olchoro-Onyore dated 2/2/2009.
  - vi. Copy of register for LR 1657.
  - vii. Copy of certificate of official search for LR 2342.
  - viii. Copy of mutation form for LR 1657.
  - ix. Copy of order issued in Miscellaneous Application No. 243/2010.
  - x. Copy of limited grant issued in succession cause No. 45 of 2018 at Kajiado Chief Magistrates' court.
  - xi. Copy of certificate of death of Joseph Charles Ndungu.
4. The Defendant, in an amended defence dated 24/7/2019 generally denies the Plaintiff's claim and avers as follows:

In the year 2004, the deceased Joseph Charles Ndungu Kinuthia approached the Defendant and requested for a portion of LR 2342 for cultivation. Since the Defendant was not using the land, she accepted his request. She denies that there was ever a sale agreement between her late husband and the deceased.

In addition to the above, she avers that the substratum of the suit is lost, the suit time barred and *res judicata*. Furthermore, there was no consent of the Land Control Board and LR 2342 having been subdivided into LR 20945 and 20946, the Plaintiff's suit should be dismissed with costs.

5. In support of her case, the Defendant filed the following evidence.
  - i. Her witness statement dated 16/8/2019.



- ii. Copy of certificate of death of Sampeke Mutura.
  - iii. Copy of green card for LR 1657 showing that it was closed on subdivision on 12/1/1989.
  - iv. Copy of title deed for LR 2342.
  - v. Copy of ruling and order in Miscellaneous Case No. 243/2010 Machakos.
  - vi. Copy of the sale agreement dated 17/12/1984.
6. At the trial the Plaintiff and Julius Muigai Chege testified on the part of the Plaintiff the Defendant testified as the only witness on her side. Both parties adopted what is in their witness statements and their pleadings as their evidence.
7. I have carefully considered all the evidence adduced by the parties in this case including their witness statements, documents and testimony at the trial. Unfortunately, at the time of writing this judgment in early September, I have not yet received the submissions from the learned counsel for the parties. I have therefore not considered what the submissions may contain. I identify the following issues for determination in this suit.
- a. Whether there was a valid agreement between Charles Ndungu Kinuthia and Sampeke Ole Mutura within the meaning of Section 3(3) of the [Law of Contract Act](#).
  - b. Whether the Plaintiff is currently in occupation of the suit land.
  - c. Whether the Plaintiff enjoys any overriding interest over the suit land in accordance with Section 28 of the [Land Registration Act](#).
  - d. Whether the mandatory consent of the land control board was obtained to enable transfer of the suit land to the Plaintiff.
  - e. Whether there is any remedy available to the Plaintiff.
8. On the first issue, I find that there was a valid contract for disposition of an interest in land because it is in writing and it is signed by both parties and it is witnessed by three (3) witnesses. It therefore complies with the law. Even though the Defendant denies it, I find that the agreement was executed by her late husband and that is why he allowed the late Charles Ndungu to occupy the land.
9. On the second issue, I find that the Plaintiff is not in occupation of the suit land. He has so said in his evidence and it is confirmed by the Defendant. I however find that it is not disputed that at one time, the family of the deceased Charles Ndungu occupied the land or part of it.
10. Since the Plaintiff and his family are not in actual occupation of the suit land, they do not enjoy any overriding interest within the meaning of Section 28 of the [Land Registration Act](#).
11. As for the consent of Land Control Board, I find that there is none in this case. Section 6(1) a of the [Land Control Act](#) provides as follows:
- " 1. Each of the following transactions that is to say –
    - a. “The sale ...or Other disposal of or dealing with any agricultural land which is situated within a Land Control Area is void for all purposes unless the Land Control Board for the control area or division in which the land is situated has given its consent in respect of that transaction in accordance with this Act”.



By the dint of the above provision, the transaction dated 17/12/1984 is null and void.

12. As to whether there is any remedy available to the Plaintiff, I find that there is one provided for by Section 7 of the *Land Control Act* (Cap 302).

“If any money or other valuable consideration has been paid in the course of a controlled transaction that becomes void whether under this Act, that money or consideration shall be recoverable as a debt by the person who paid it from the person to whom it was paid, but without prejudice to Section 22”

In accordance with the above provision, I order that the Defendant who is the beneficiary of the land that the Plaintiff’s father was buying from her husband refunds the paid consideration as follows.

- a. Kshs 27,500/- with interest at the rate of 14 per cent per annum with effect from 17/12/1984 till the date of payment in full.
- b. Kshs 2, 500/- with interest at the rate of 14 per cent per annum with effect from 5/10/1985 until the day of payment in full.
- c. Costs of the suit to the Plaintiff.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25<sup>TH</sup> DAY OF OCTOBER, 2023.**

**M.N. GICHERU**

**JUDGE**

In the presence of:

N/A for the Plaintiff.

Miss Gitau for the Defendant.

