



Okero & 2 others v Bichange & another (Environment & Land Case E005 of 2023) [2023] KEELC 22285 (KLR) (29 November 2023) (Judgment)

Neutral citation: [2023] KEELC 22285 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E005 OF 2023**

JM KAMAU, J

NOVEMBER 29, 2023

BETWEEN

FRANCIS ONGWENYI OKERO 1ST PLAINTIFF

GODFREY SIBOTA OKIBO 2ND PLAINTIFF

RONALD OSANO OMARI 3RD PLAINTIFF

AND

EUNICE KEMUNTO BICHANGE 1ST DEFENDANT

NICHOLAS NYANGARESI GETATE 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs sued the Defendants claiming that since 29/8/2022 the Defendants were registered proprietors by transmission of Land parcel No. Isoge Settlement Scheme/199 in Kisii High Court Succession cause No 492 of 2015. The land belonged to one Moraa Nyagechanga Okongo (deceased). Before her demise she had sub divided the same from the original Title No. Isoge Settlement Scheme /187. She then sold portions of the subdivision known as Isoge Settlement Scheme/199 way back in 1991 and 1993 respectively. They also aver that they had been in occupation of Isoge Settlement Scheme/199 in a well defined and demarcated portion since they took possession of the same which they have developed with permanent mansions for residence and commerce. They aver that the Defendants while applying for Letters of Administration in respect of the Estate of Moraa Nyagechanga Okongo deliberately and fraudulently failed to include the Plaintiffs as purchasers and therefore creditors. The said Title had already been cancelled in Kisii CMCC No.420 of 2002. The Plaintiffs therefore urge this court to declare that they have acquired Title by being in continuous possession of the land without interruption since 1991.
2. The Plaintiffs therefore prayed for the following; -



- a. A Declaration that the Plaintiff's having been in continuous and uninterrupted occupation of their portion of the suit land Isoge Settlement Scheme/199 since 1991 have acquired Titles to the portions so occupied.
 - b. An injunction restraining them from in anyway dealing with the suit land i.e. transferring, charging or leasing the same until this suit is heard and decided.
 - c. Costs of this suit.
 - d. Any other or further relied as the Court may deem fit to grant.
3. The Plaintiffs gave the 3rd Plaintiff Ronald Osano Omari authority to act on their behalf in this case. The authority is dated 25/4/2023 and is in writing. Just before the Hearing of the case commenced on 31/10/2023, the Defendants filed their Defence on 2/10/2023. The same is dated 20/7/2023 in which they denied that Moraa Nyagechanga Okongo has ever been the registered proprietor of Isoge Settlement Scheme /199. They also denied that the Plaintiffs are in possession of the suit land or any portion thereof. They further disowned the sale agreement between the late Moraa Okongo and the Plaintiffs and that any occupation of the suit land by the Plaintiffs amounts to trespass. Finally, that the Plaintiffs have not met the threshold of adverse possession.
 4. On 31/10/2023, the 2nd Plaintiff gave evidence on behalf of himself and his Co-Plaintiffs. He testified that each of the Plaintiffs together with others who are not parties to this suit have lived on separate parcels of land on Isoge Settlement Scheme/199 since 1991. In 1991 the suit land was registered in the name of Moraa Nyagichanga Okongo. The entire land is 17.5 acres. Godfrey occupies 3 Acres, Francis occupies 50 by 100 feet while the 2nd Plaintiff occupies $\frac{3}{4}$ Acres or thereabout. The Plaintiffs bought their parcels of land from Moraa in 1991 who later died in 2005.
 5. The Defendants then took the land without seeking any permission and lived thereon uninterrupted and in quiet possession of the said parcels of land for a period of more than 12 years now. He did produce evidence of the ownership of the land i.e. a certificate of official search as evidence of the ownership of the property they are challenging. The same shows that the property is jointly registered in the names of the Defendants.
 6. The evidence of the Plaintiffs having not been controverted, I have no choice but to proceed to order that the Title Deed in respect Isoge Settlement Scheme/199 in the joint names of the Defendants, Eunice Kemunto Bichange and Nicholas Nyangaresi Getate be cancelled, the land be sub-divided forthwith in order to create Title Deeds for the Plaintiff s, Francis Ongwenyi Okero, Godfrey Sibota Okibo and Ronald Osano Omari as follows: -

Francis Ongwenyi Okero 50 by 100 feet.

Godfrey Sibota Okibo 3 Acres.

Ronald Osano Omari $\frac{3}{4}$ of an Acre.

I will also award the Plaintiffs the costs of this suit.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 29TH DAY OF NOVEMBER, 2023.

MUGO KAMAU

JUDGE

In the Presence of: -



Mr. Masese for the Plaintiff.

N/A for the Defendants.

