



**Peroh v Peroh & 3 others (Environment & Land Case 89 of 2019)
[2023] KEELC 21813 (KLR) (28 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21813 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 89 OF 2019
MN GICHERU, J
NOVEMBER 28, 2023**

BETWEEN

MICHAEL PEROH PLAINTIFF

AND

ISHMAEL MOSHI PEROH 1ST DEFENDANT

WINIFRED MUKAI PEROH 2ND DEFENDANT

ISAAC PEROH 3RD DEFENDANT

STEPHEN PEROH 4TH DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendants both jointly and severally.
 - (a) An order that the 1st and 2nd defendants do render an account for all the rental income collected from LR No B 409 formerly known as Plot No 65/Residential, suit land, situated within Ongata Rongai Trading Centre from the month of February 2019 until such a date as this court will order together with all rent deposit and deposit on water and electricity paid by the tenants.
 - (b) An order that the first and second defendants do release to the plaintiff all income collected from the suit land from February, 2019 until such date as the court will order together with all rent deposit and deposit on water and electricity paid by the tenants.
 - (c) An order that the 1st and 2nd defendants unconditionally release to the plaintiff the original letter of allotment dated 25/9/2017 for the suit land and all related documents.
 - (d) An order to permanently restrain the 1st and 2nd defendants whether by themselves, their agents, employees or servants or anybody claiming through them or anybody acting under



their mandate, authority or direction from selling, transferring, offering for sale, disposing or, charging, mortgaging, trespassing, leaving, renting out or in any way howsoever from interfering with the plaintiff's quiet possession, use and ownership of the suit property together with the developments and improvements thereon.

- (e) The Land Registrar Kajiado to remove the caveat and or caution placed against the suit land.
 - (f) The OCS Rongai police station do ensure compliance with the orders of the court.
 - (g) Any other relief that the court deems fit and just to grant.
2. The plaintiff's case is as follows. He is the lawful owner of LR B 409 Ongata Rongai formally known as Plot 65/Residential situated in Ongata Rongai Trading Centre. He bought the land in the year 2006. He paid Kshs 1, 150,000/- and he was issued with an allotment letter by Kajiado County Government.
3. Immediately after purchasing the suit land, the plaintiff embarked on its development. Between the years 2006 and 2008 he built the first phase and completed phase two between the years 2012 and 2013. The source of funds for the development was the plaintiff's earning from his salary. He works for gain in the states of Jersey within Channel Islands. Other sources were a HFCK loan and rental income generated from the section of the suit property completed in phase one. From June 2006 to December 2008, the plaintiff sent a total of Great Britain Pounds 36,800 equivalent to Kshs 4, 943, 137.60 from Jersey to Kenya.
- In May 2008, he obtained a loan of Kshs 1.2 million from Housing Finance Company of Kenya (HFCK). In July 2009, the plaintiff contributed over 80% of the Kshs 3.7 million used to purchase LR Ngong/Ngong/6311 which is registered in the names of the third and fourth defendants who are his brothers. Part of his contribution to the development of LR 6311 was rent collected from the suit property. The monthly rent generated from the suit property was Kshs 200,000/=. In total Kshs 7.2 million was collected between January 2009 and December 2011. He made another direct injection of GBP 36, 030/- which is Kshs 4, 680, 785.35/- making his total contribution towards LR 6311 Kshs 11,880,785/-. A court order stopped the development of LR 6311.
4. On halting development on LR 6311, the plaintiff resumed funding development of the suit land using his salary. Between January 2012 and December 2013, he remitted GBP 77,350 equivalent to Kshs 10,350,093.70/- to Kenya. This was enough to complete the project together with the rent collected from the occupied section of the suit property which amounted to Kshs 200,000/- per month.
5. Upon completion of the building on the suit land, the plaintiff disagreed with the third defendant and the second defendant who is his mother over further purchase of land in Kitengela and the demotion of his parents' home into a block of flats. In January 2019, he informed his parents who are the first and second defendants that he would be taking over the management of the suit land as it was his property. They refused to talk to him. They became cold and unfriendly.
- In May 2019, the plaintiff visited Kenya and he was shocked to find a caveat placed against the suit property as well as his other land in Kiserian known as Ngong/Ngong/32057. These caveats were based on unfounded allegations that the two land parcels are jointly owned. The two parcels belong to the plaintiff alone. In total, the plaintiff has invested over Kshs 78 million in various projects and he is undisputed owner of the suit land, LR 32057, half of the Kitengela plot and 80% of LR 6311. It is for the above stated reasons that he seeks for seven (7) prayers in the plaint.
6. In their written statement of defence dated 4/6/2020, the first and second defendants deny the plaintiff's claim its entirety and aver as follows.



Firstly, the suit land does not belong to the plaintiff because it is a joint venture owned by the plaintiff and the defendants. The plaintiff owns only 33% of the total investment of the suit land.

Secondly, the two defendants deny that LR 6311 is majorly owned by the plaintiff as the funds used for its construction were sourced from the Bank, Sacco and friendly loans obtained by the third and fourth defendants.

Thirdly, the two defendants aver that they paid Kshs 150,000/- towards the purchase of LR 32057 out of the total purchase price of Kshs 300,000/- so the land does not belong to the plaintiff alone.

Fourthly, since the plaintiff and the defendants share several parcels jointly, the current business model where the plaintiff benefits from all the properties and shares the current and future risks, in proportion to his investment, in the same way as all the defendants is the only way that this matter can be resolved equitably and based on justice to all the partners in the joint venture. The defence by the third and fourth defendants dated 25/10/2021 is similar in all the material particulars to that of the first and second defendant.

7. The defendants' case is as follows. The cost of the suit land was Kshs 1, 150,000/-. The plaintiff contributed Kshs 956, 896, the second defendant Kshs 90,000/- and the third defendant Kshs 106, 853. The first and second defendants are the ones who identified the land, negotiated with Colonel Abdirahman and it was registered in the name of the plaintiff only because he happened to be in Kenya otherwise it was to be registered in the name of the first defendant on behalf of all his sons who include the plaintiff and the third and fourth defendants. The total investment by the plaintiff and the defendants towards Nafrom Phases 1 and 2 is Kshs 40, 625, 342. The Plaintiff contributed Kshs 6, 403, 301.73 towards phase 1 and Kshs 14, 005, 810.74 towards phase 2. The defendants admit that out of the net contributions of Kshs 35,036,110.32 towards the purchase and development of LR 6311, the plaintiff's contributions amount to Kshs 11, 236, 832.26. For the Catholic Land, he has contributed 8, 761, 171.53/- while the total contribution by all the parties is Kshs 33, 549, 406/-.
8. At the trial on 6th and 7th March, 2023, the plaintiff testified on oath and produced the following exhibits.
 - (i) Copy of letter of allotment dated 25/9/2017.
 - (ii) Copy of certificate of official search dated 20/6/2019.
 - (iii) Copy of map.
 - (iv) Copies of email correspondence.
 - (v) Other relevant documents.

On the other hand, only the second and third defendants testified at the trial and they produced various exhibits.

9. The directions that the court gave on 7/3/2023 as to the filing of submissions were not adhered to by the defendants' counsel. Had they been adhered to, the plaintiff's counsel would not have filed submissions at variance with those of the defence. Under Order 18 Rule 2(2) *Civil Procedure Rules*, it is always the defendant who begins in submissions when the defendant adduces evidence.

The issues identified were as follows. Plaintiff's issues.

- (a) Who is the registered proprietor of the suit property?
- (b) Whether there was any partnership for acquisition and development of the suit property?



- (c) What were the terms of the investment by the defendants in the suit property?
- (d) Whether advancing funds for construction creates a beneficial joint tenancy or trust?
- (e) Which party is entitled to collect rental income over the suit property?

The defendants' counsel identified the following issues.

- (a) Whether the plaintiff is a credible witness?
- (b) Did all the parties contribute towards the purchase and development of the property?

10. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and their testimony at the trial. I have also considered the submissions by Learned Counsel for the parties, the issues raised therein and the law cited. In my view, there is only one issue for determination namely,

Whether the suit land is owned by the plaintiff alone or jointly with the defendants?

Once that issue is decided, there will be nothing else left to decide. All the prayers in the plaint seek that the plaintiff alone be allowed to collect rent and the defendants be enjoined from any dealings with the suit premises.

11. I find that the suit plot is owned by the plaintiff and all the defendants jointly for the following reasons.

Firstly, even though the allotment letter is in the name of the plaintiff, we have been given good reasons by his father, his mother and his two brothers why he does not own the suit land alone. I believe this evidence that the suit land was the first joint venture to be developed in a series of projects. The plaintiff's parents are not ordinary witnesses. They are his own biological parents. I saw the mother testify here in court. I have read her witness statement. I believe every word that she told the court and every word she wrote in her witness statement. Her evidence is corroborated sufficiently in all the material particulars by the evidence of the third defendant Isaac who has kept good records which he explained clearly when called upon to do so in cross examination.

The plaintiff was not consistent in his testimony about the purchase of the suit land or its development. He admitted in cross-examination that he did not pay the full purchase price. He could not explain the cost of the development either. He had no drawings of the project, the approved plans or the receipts to show the cost of the materials and labour.

12. Secondly, the plaintiff was not able to prove how much money he remitted and on which date and how it was used. He did not point out the amounts in the bulk bank statement that he produced. He did not call his brother in law Charles Kinyua as his witness to explain how much he withdrew from the Plaintiff's Forex Bank Account and who he gave the money to. In the absence of such evidence, the only available evidence is the one admitted by the defendants and I believe that this is the true evidence on the amounts and their purpose.

13. Thirdly, the plaintiff's evidence on the amount of rent collected from the completed section of phase 1 of the suit land and plowed back to support phase 2 and the other projects is very speculative. The plaintiff was away in Jersey and not at all involved in the project management. His projected figures did not take into account the period when the units were vacant. The credible and reliable evidence is the one adduced by his mother and Isaac, the third defendant. This is the hard evidence of those on the ground and making things happen. They and the other defendants were the project managers. Their evidence prevails over that of the plaintiff who was away and who relied on the same defendants that he now seeks to discredit.



14. Finally, the defendants have adduced credible, consistent and candid evidence which shows that the funds remitted by the Plaintiff as well as those they pooled together were put into prudent and economic use hence the success of project on the suit land.

For the above stated reasons, I find no merit at all in the plaintiff's suit and I dismiss it with costs. All interlocutory orders are vacated.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 28TH DAY OF NOVEMBER 2023.

M.N. GICHERU

JUDGE

