



**Soiyantet & another v Keturet (Environment and Land Appeal  
E005 of 2022) [2023] KEELC 21764 (KLR) (28 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21764 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND APPEAL E005 OF 2022  
CG MBOGO, J  
NOVEMBER 28, 2023**

**BETWEEN**

**KOWUA SOIYANTET ..... 1<sup>ST</sup> APPELLANT**

**NOLARI SOIYANTET ..... 2<sup>ND</sup> APPELLANT**

**AND**

**SONKOI OLE KETURET ..... RESPONDENT**

**JUDGMENT**

1. On 12<sup>th</sup> May, 2022, the appellants herein being aggrieved by the judgment of the Hon. G.N. Wakahiu in Narok Chief Magistrates' Court ELC Case No. 113 of 2019 delivered on 11<sup>th</sup> April, 2022, appealed to this court vide the Memorandum of Appeal dated 9<sup>th</sup> May, 2022 against the judgment on the following grounds: -
  1. That the learned Hon. Chief Magistrate erred in law and in fact by entering judgment against the defendants (now) appellants when the evidence tendered in whole did not support the claim of the respondent.
  2. That the learned Hon. Chief Magistrate erred in law and fact in failing to hold that the appellants never participated in any legal undertakings.
  3. That the learned Hon. Chief Magistrate erred in law and fact in holding that the documents produced by the respondent were enough to confer authority and ownership to the parcel herein the subject of this suit.
  4. That the learned Hon. Chief Magistrate erred in law and fact by declaring the respondent as the owner of the parcel of land herein Cis-Mara/Oleleshwa/367 despite lack of proper and legal documentation to warrant the same.



5. That the learned Hon. Chief Magistrate erred in law and fact by making a finding that the respondent is the owner of the said parcel of land in total disregard of the defense and issues raised therein.
  6. That the learned Hon. Chief Magistrate erred in law and fact by relying on exhibits produced but failed to address the actual contested facts from the appellants.
  7. That the learned Hon. Chief Magistrate erred in law and fact by not interrogating the agreement as produced.
  8. That the learned Hon. Chief Magistrate erred in law and fact by making a finding that the remedy for the respondent herein lay as against the appellants.
  9. That the learned Hon. Chief Magistrate erred in law and fact in ignoring the appellants submissions and authorities cited in support of the submissions.
  10. That the learned Hon. Chief Magistrate misapprehended the law and facts and arrived at an erroneous conclusion.
  11. That the learned Hon. Chief Magistrate erred in law in relying on facts which were not corroborated by the maker.
  12. That the learned Hon. Chief Magistrate went on in disregarding pleadings, evidence and submission and as a result arrived at an erroneous conclusion.
2. The appellants therefore pray that:-
- a. The instant appeal be allowed.
  - b. The judgment delivered by the trial court on the 11<sup>th</sup> April, 2022 in Narok Chief Magistrate Court ELC No. 113/2019 be set aside, varied and or vacated.
  - c. That the respondent be condemned to pay costs of this appeal.
3. The appeal was canvassed by way of written submissions. On 22<sup>nd</sup> September, 2023, the appellants filed their written submissions dated 18<sup>th</sup> August, 2023. The appellants raised four issues for determination as listed below: -
1. Whether the court erred in law and fact in upholding the respective agreements to warrant it reach out to the judgment now on record.
  2. Whether in deed the land in issue followed the due process in law as per the Land Control Board Act, *Land Registration Act* and any other law entailing land.
  3. Whether the lower court internalized the issues raised by the appellants in law and fact.
  4. Whether the respondent rebutted the issues raised by the appellants at the lower court as per the Supreme Court judgment herein above referenced.
4. The appellants submitted that they do not dispute selling land to the respondent but the contest lies with the payments made to warrant the subsequent actions to which the title herein was issued. That the agreement produced as exhibit 1 was suspicious and that it does not conform to the tenets of the law since the way it is drawn and kept is more or less a rough paper that was used in calculation hence



- cannot be authenticated. They relied on the case of Samuel Kamere versus Lands Registrar, Kajiado Civil Appeal No. 28 of 2005 [2015] eKLR.
5. The appellants further submitted that the agreement did not adhere to the provisions of Section 3 (3) of the *Law of Contract Act* and whereas they do not object to selling the land to the respondent, they object to payment in full while the 2<sup>nd</sup> appellant objects to having knowledge of the agreement and witnessing the same.
  6. The appellants submitted that in view of the queries brought forth, it was factual that the court should have considered and internalized the same by interrogating the agreement which is a mathematical script. They submitted that the process of subdivision and transfer has been contested with the non-attendance of the 1<sup>st</sup> appellant to the Land Control Board meetings. Further, that the onus of proof as to the authenticity of a title is on the title holder and not the objector hence in this case the respondent herein. They relied on the case of Dina Management Limited versus County Government of Mombasa & 5 Others (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR) (21 April 2023) (Judgment).
  7. On 17<sup>th</sup> October, 2023 the respondent filed his written submissions of even date where they raised two issues for determination as follows: -
    - a. Whether the respondent legally purchased the suit property and thus a lawful proprietor of that property known as CisMara/Oldonyo Rasha/367; and
    - b. Whether fraud was sufficiently proved by the appellants and whether the respondent's ownership to the suit property should be revoked.
  8. On the first issue, the respondent submitted that the agreements dated 20<sup>th</sup> September, 2005 and 1<sup>st</sup> December, 2009 are enforceable in law since they are written, witnessed and executed by the parties herein pursuant to the provisions of Section 3 (3) of the *Law of Contract Act*. He relied on the case of Sammy Some Kosgei versus Grace Jelal Boit [2013] eKLR. The respondent further submitted that the claim that the signatures are forgeries is unfounded since no expert report was produced. Reliance was placed in the cases of Daniel Gachanja Githaiga versus Credit Reference Bureau Africa Limited & 2 Others [2020] eKLR and Rubo Kipngetchi Arap Cheruiyot versus Peter Kiprop Rotich [2013] eKLR.
  9. The respondent further submitted that the application from the Land Control Board and the letter of consent to transfer were produced as exhibits 3,4 and 5 which were certified as true copies of the original by the District Land Registrar. The respondent relied on the cases of Willy Kimutai Kitilit versus Michael Kibet [2018] eKLR and Aliaza versus Saul (Civil Appeal 134 of 2017) [2022] KECA 583 (KLR) (24 June 2022) (Judgment).
  10. On the second issue, the respondent submitted that the appellants did not avail any documentation to substantiate their claim of fraud and that fraud was not particularized in the plaint. To buttress this submission, the respondent relied on the cases of Dakianga Distributors (K) Limited versus Kenya Seed Company Limited [2016] eKLR, Raila Amolo Odinga & Another versus IEBC & 2 Others [2017] eKLR, Mutsonga versus Nyati [1984] KLR, Vinesh Emporium Gudka versus Keshavji Jivraj Dodhia [1982] eKLR and Demutila Nanyama Pururmu versus Salim Mohamded Salim [2021] eKLR.
  11. I have considered the grounds of the appeal, the rival submissions including the authorities cited by both parties and in my view, the issue for determination is whether the memorandum of appeal has merit.
  12. This being a first appeal, I am mindful that the duty of this court as set out in the decision of Selle & Another versus Associated Motor Boat Co. Ltd & Others (1968) EA 123 is to reconsider the evidence, evaluate it and draw its own conclusion of facts and law, and this court will only depart from the



findings by the trial court if they were not based on evidence on record; where the said court is shown to have acted on wrong principles of law as was held in *Jabane versus Olenja* (1968) KLR 661, or where its discretion was exercised injudiciously as held in *Mbogo & Another versus Shah* (1968) EA 93.

13. The respondent filed a plaint dated 9<sup>th</sup> September, 2019 seeking judgment against the appellants for the orders that: -
  1. A declaration that the plaintiff is the absolute registered owner of all that parcel of land known as CisMara/Oldonyo Rasha/367 and therefore the 1<sup>st</sup> and 2<sup>nd</sup> defendants are trespassers thereof hence in total breach of the plaintiff's appurtenant and exclusive ownership rights.
  2. A permanent injunction do issue, restraining the defendants herein themselves, their servants, agents or anyone acting under them or under their authority, or otherwise whosoever from trespassing on plaintiff's parcel of land CisMara/Oldonyo Rasha/367 situate in Narok South within Narok County.
  3. An order of mandatory injunction ordering the defendants to remove their fence from the plaintiff's land CisMara/Oldonyo Rasha/367.
  4. Costs of the suit.
  5. Any other or further orders as the court deems fit, just and expedient to grant.
14. In the plaint, the respondent contended that he was the sole registered proprietor of CisMara/Oldonyo Rasha/ 367 having purchased the same from the 1<sup>st</sup> appellant in the years 2005 and 2009. The respondent contended that the consideration was paid in accordance with the sale agreement. That sometime in November 2018, the 1<sup>st</sup> appellant entered into the suit land, grazed animals on the same and fenced it and further interfered with the boundary by removing the beacons.
15. The appellants filed their statement of defence dated 1<sup>st</sup> November, 2019. In their defence, the appellants while denying the contents of the plaint, they stated that the 1<sup>st</sup> appellant denied ever attending the Land Control Board for either subdivision or transfer nor has he ever witnessed any subdivision of the suit property. The 1<sup>st</sup> appellant further denied ever having been paid the entire purchase price and any interference on the suit property.
16. The matter proceeded for hearing before the trial court when the respondent and PW2 testified. The appellants testified and judgment was subsequently delivered on 11<sup>th</sup> April, 2022.
17. In their submissions, the appellants agreed to have sold land to the respondent but denied having been paid the entire purchase price. The appellants further questioned the authenticity of the agreement by stating that it was not drawn as per Section 3 (3) of the *Law of Contract Act*.
18. I have looked at the judgment delivered by the trial court and I note that the trial court raised three issues for determination as follows: -
  1. Whether there was a valid contract between the plaintiff and the defendant.
  2. Whether the subdivision of LR. CisMara/Oldonyo Rasha/ 367 was done illegally and unprocedurally.
  3. Whether the plaintiff is entitled to the relief sought in the plaint.
19. On the first issue, the trial court observed that even though the appellants contested the signatures in the contract dated 1<sup>st</sup> December, 2009, they never filed any expert report to confirm the same. I have



perused the documents filed and I concur with the trial court that indeed no expert report was filed to counter the argument. It is trite law that he who alleges must prove and whereas the appellants argued issues of fraud and unprocedural issuance of the process of acquiring title by the respondent, again, the appellants did not provide evidence to support such claims.

20. On the second issue, the trial court observed that the appellants sought to rely on allegations that he did not sign the land consent yet he was aware of the survey and measurements process. Further, that in the absence of concrete evidence to disapprove the transfer, I find that the land was legally transferred. I have perused the proceedings of the lower court and there is no evidence showing that indeed the transfer was illegal. The 1<sup>st</sup> appellant testified that he gave the title deed to the respondent for security reasons because he lived in a mud house and the respondent in a permanent house. However, this evidence does not seem credible for the reason that the appellants did not report any fraudulent transactions with the police to confirm that transfer of the suit property was obtained without their knowledge.
21. On the third issue, the trial court noted that having accorded both parties an opportunity to present their case, the appellants failed to poke holes on the respondent's case and proceeded to grant the orders as prayed.
22. My analysis of the above, is that the trial court in arriving at its determination did so fairly and reasonably and I see no reason why this court should interfere with the judgment of the trial court.
23. The upshot of the foregoing is that the memorandum of appeal dated 9<sup>th</sup> May, 2022 lacks merit and it is hereby dismissed with costs to the respondent.

It is so ordered.

**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 28<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HON. MBOGO C.G.**

**JUDGE**

**28/11/2023.**

**In the presence of: -**

CA:Meyoki

