



**Kavula ((Suing as the Administrator Of the Estate of Nduume Kavila Nthuku)) v Maundu
(Environment & Land Case 375 of 2017) [2025] KEELC 3618 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3618 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND CASE 375 OF 2017**

**TW MURIGI, J
APRIL 30, 2025**

BETWEEN

**BERNADETTE KOKI KAVULA PLAINTIFF
(SUING AS THE ADMINISTRATOR OF THE ESTATE OF NDUUME KAVILA
NTHUKU)**

AND

PETER MAUNDU DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit vide a Plaint dated 14th December 2017 and further amended on 25th March, 2019, seeking the following orders: -
 1. An order of permanent injunction to restrain the interference of the suit parcel of land Makueni/Unoa/1892 by the Defendant herein.
 2. A declaration that the Plaintiff herein is the bona fide owner of the suit piece of land Makueni/Unoa/1892.
 3. Costs of this suit plus interest.
 4. Any other or further relief as this Honourable Court may deem fit and just to grant.
2. The Defendant filed a further amended Defence and Counterclaim dated 21st April, 2021 seeking the following orders: -
 1. An order compelling the Plaintiff to transfer 8 acres from Makueni/Unoa/1892 to the Defendant.



2. An order compelling the Land Registrar and Surveyor of Wote Lands Registry to first curve out and identify the parcel Makueni/Unoa/601 before the subsequent sub-division of other properties can be mapped out.
 3. A declaration that 8 acres sold by Teresiah Ndume Kavila from the suit parcels of land belongs to the Defendant herein.
 4. An order restraining the Plaintiff and her agents from trespassing on the Defendant's 8 acres of land.
 5. Any other order this Honourable Court deems just to grant.
 6. Costs of this suit.
3. The Plaintiff filed a reply to the further amended defence and a defence to the amended counterclaim on 13th July, 2021.

The Plaintiff's Case

4. The Plaintiff Bernadette Koki Kavila testified as PW1 and called one witness in support of her case. She adopted her witness statement filed in court on 29/03/2019 as her evidence in chief. She also produced the documents in her list of even date as PEX 1 – 3.
5. PW1 testified that in the year 1992, the Defendant purchased 3 acres from her late father Jacob Tuna Nthuku and was subsequently issued with a title deed for land Parcel No. Makueni/Unoa/601. That after the death of her mother, the suit property was transmitted to her name. PW1 explained that no other transaction took place between her late mother and the Defendant. It was her testimony that there was no evidence that the Defendant purchased an additional 8 acres from her late mother. She stated that she would have known if any transaction took place between her late mother and the Defendant.
6. On cross-examination by Ms. Kilonzo, she testified that her late mother sold some portions of the suit property and the title deeds were yet to be issued to the purchasers. She further testified that the subdivisions arising from parcel No. Makueni/Unoa/1892 are indicated in the mutation form dated 20/07/2015.
7. She testified that she was present when the surveyor prepared the mutation form and confirmed having attended the Land Control Board meeting.
8. She asserted that the Defendant did not purchase any other parcel except land Parcel No. Makueni/Unoa/601. She further asserted that she was not present when the funds changed hands between the Defendant and her late mother. She testified that she was not aware whether her mother or Kyalo used to receive funds from the Defendant towards payment of the purchase price. Although she admitted that one of the receipts shows that she received Kshs 25,000/= from the Defendant towards the sale of land, she denied having received the same.
9. PW2, Paul Mutisya Kavila adopted his witness statement dated 29/03/2019 as his evidence in chief. He told the court that he was surprised to learn that the Defendant was claiming 8 acres other than the 3 acres he had purchased from his late father. He went on to state that the Defendant did not claim any interest in the suit property during Nduume Kavila's life time.
10. That sometime in the year 2017, he visited the suit land and found the Defendant having fenced a portion which did not belong to him.



11. On cross-examination, he testified that Nduume Kavila would not have sold the suit property without informing him or other family members as the land initially belonged to his late father.

THE DEFENCE CASE

12. The Defendant Peter Maundu testified as DW1 and called two witnesses in support of his case. He adopted his witness statement dated 13/5/2019 as his evidence in chief. He also produced the documents in his list dated 11/1/2019 as DEX 1 – 8.
13. DW1 testified that he purchased a total of 11 acres from the suit property. That out of 11 acres, he acquired a title deed for 3 acres in the year 1992.
14. It was his testimony that he purchased eight acres progressively from the Plaintiff's late mother. He further testified that his wife represented him at the Land Control Board meeting. He explained that the mutation form prepared by the surveyor in the presence of Nduume Kavila and his wife shows 8 acres that he had purchased and which are yet to be registered in his name.
15. He went on to state that Nduume Kavila and her grandson Kyalo used to receive money from him towards payment of the purchase price. He further stated that the Plaintiff also received money from him towards payment of the purchase price on instructions from her mother. That after the sale was concluded, he took possession and cleared/cultivated the suit property without any interference from the Plaintiff or her mother. He further testified that the Plaintiff restrained them from fencing off the land on the grounds that it was not part of their land. Concluding his evidence, the Defendant urged the court to allow his counter claim as prayed.
16. On cross-examination by Mr. Kithuka, he testified that he signed an agreement with Nduume Kavila for the sale of 2½ acres. He further testified that the agreements for sale of 8 acres were oral and would be done progressively. It was his testimony that they started purchasing the land in the year 2002 and that every acre or half acre would be offered at a different price. He relied on the acknowledgements to assert that he had paid the entire purchase price for 8 acres. DW1 explained that he developed the suit property during Nduume Kavila's lifetime.
17. In re-examination, he testified that the documents produced in support of his case had the names and the amount given to the Plaintiff, Nduume Kavila and Kyalo towards payment of the purchase price. He reiterated that the Plaintiff had on several occasions received money from his office towards payment of the purchase price
18. DW2, Phoebe Mumo Kyenze, the wife to the Defendant adopted her witness statement dated 15/05/2019 as her evidence in chief. She informed the court that her husband initially purchased 3 acres from the Plaintiff's family and was issued with a title deed thereof. She further testified that she was present during the negotiations of the purchase price for 8 acres and added that the land was purchased in smaller portions.
19. It was her testimony that she made payments towards the purchase price to Nduume Kavila, the Plaintiff and her grandson on behalf of the Defendant. She further testified that she was present when the Defendant purchased one acre from Nduume Kavila and confirmed having written the acknowledgement of payment.
20. That upon payment of the full purchase price, the late Nduume Kavila identified eight acres to the Defendant in the presence of her grandson, the surveyor and their neighbour, one Solomon. She further testified that she attended the Land Control Board meeting and that subsequently, the Plaintiff



registered a caution against the subdivision of the suit property. She explained that they were carrying out farming activities on the 8 acres within the suit property.

21. On cross-examination, she testified that she could not remember the acreage that was verbally agreed upon between the Defendant and the deceased. She reiterated that she attended the LCB meetings on behalf of the Defendant and added that she did not have the minutes of the meeting. She identified the acknowledgments that she and her secretary had written.
22. On re-examination, she reiterated her evidence as above. She explained that the summary of payment totalling to Kshs. 105,000/=, shows that the purchase price for one acre was Kshs. 700,000/=. She further explained that the summary of payment shows that the balance of the purchase price had not been paid.
23. DW3, Bernard Munywoki Wambua, adopted his witness statement dated 13/05/2019 as his evidence in chief. It was his testimony that on instructions of Nduume Kavila, he subdivided the suit property into ten plots as per the mutation form dated 20/07/2015. He further testified that the Defendant had purchased Plot No. Makueni/Unoa/3695 which is indicated as Plot No. K on the mutation form.
24. It was his testimony that on instructions of Nduume Kavila, he subdivided land parcel No. Makueni/Unoa/600 which gave rise to Parcel No. Makueni/Unoa/1892. He went on to state that Parcel No. Makueni/Unoa/1892 belongs to the Defendant and added that he identified the beacons to the Defendant.
25. On cross-examination by Mr. Kithuka, he reiterated his evidence as above. He further testified that after he subdivided Parcel No. Makueni/Unoa/1892 into 10 plots, he allocated Plot No. K measuring 3.40 hectares or about 9 acres to the Defendant.
26. On re-examination, he asserted that the Defendant is entitled to 10.4 acres from the suit property.
27. After the close of the hearing, parties agreed to file and exchange their written submissions.

THE PLAINTIFF'S SUBMISSIONS

28. The Plaintiff filed her submissions dated 15th August, 2024. On behalf of the Plaintiff, Counsel identified the following issues for the court's determination: -
 - i. Whether the Plaintiff has proved her case on a balance of probabilities;
 - ii. Whether the transactions for sale of land entered into by the Defendant herein and the late Teresiah Ndume Kavila for the sale of 6 acres out of the Plaintiff's land are valid.
29. On the first issue, Counsel submitted that the Defendant is the registered proprietor of parcel No. Makueni/Unoa/601 having purchased the same from the late Jacob Nthuku, the Plaintiff's father. Counsel further submitted that the Defendant has no right to trespass on the Plaintiff's land on the grounds that he had purchased the same from the late Nduume Kavila since she was not the owner of the suit property.
30. With regards to the second issue, Counsel submitted that the Defendant did not produce a sale agreement to show that he had purchased a further eight acres from the Plaintiff's deceased mother. From the foregoing, Counsel contended that this court cannot enforce a non-existent sale agreement.
31. Counsel submitted that the essential requirements of a valid contract of sale were not met since the owner of the suit property was not involved in the sale. Counsel further submitted that neither the signature nor the presence of the deceased can be attested in the documents produced by the Defendant. Counsel contended that the evidence of the surveyor was not credible. Counsel further



contended that the Plaintiff had proved her case on a balance of probabilities and urged the court to grant the orders sought in the Plaintiff.

The Defendant's Submissions

32. The Defendant filed his submissions dated 4th December, 2024. On behalf of the Defendant, Counsel outlined the following issues for the court's determination:-
- i. Did the Plaintiff's mother, Nduume Kavila Nthuku sell her land before her demise?
 - ii. Did the Plaintiff's mother, Nduume Kavila Nthuku receive actual payment for the land sold?
 - iii. Did the Plaintiff's mother, Nduume Kavila Nthuku have the right to sell the land to the Defendant?
 - iv. Did the Defendant purchase eight acres of land from the Deceased?
 - v. Was the land Makueni/Unoa/601 properly demarcated by Wote land registry?
 - vi. Should the Defendant and or the Plaintiff be restrained from trespassing on eight acres of land?
33. On the first issue, Counsel submitted that the dispute herein arises from a transaction between the Defendant and the Plaintiff's deceased mother. Counsel further submitted that the suit property was registered in the name of the Deceased in the year 2008 and therefore she could sell any portion of the land prior to her demise.
34. It was submitted that the deceased attended the Land Control Board meeting held on 25th May, 2012 to obtain consent to subdivide the suit property. It was further submitted that on 10th July, 2015, the deceased signed the mutation form in preparation to transfer land that she had already sold. Counsel further submitted that the Plaintiff was aware of the sale agreement between the Defendant and her mother as she signed for monies given by the Defendant.
35. Counsel contended that the Plaintiff transferred the suit property to herself in a bid to deny the Defendant land that was already purchased from her late mother. Counsel further contended that Title No. Makueni/Unoa/601 registered in the name of the Defendant had not been carved out in the survey department. Counsel contended that prayer 3 of the Plaintiff and the counterclaim are similar and ought to be allowed as prayed.
36. Counsel contended that Defendant together Nduume Kavila placed beacons and fenced the suit property thereby confirming his possession thereof. Concluding her submissions, Counsel urged the court to grant the orders sought in the counterclaim.

Analysis And Determination

37. Having considered the pleadings, the evidence on record and the submissions by the parties, the following issues fall for determination: -
- i. Whether the Plaintiff is entitled to the orders sought in the Plaintiff.
 - ii. Whether the Defendant is entitled to the orders sought in the counter claim.
- From the pleadings and the evidence on record, the following facts are not in dispute: -
- i) The Plaintiff is the registered owner of the suit property Parcel No. Makueni/Unoa/1892 measuring 6.325 hectares.



- ii) The Defendant is the registered proprietor of Parcel No. Makueni/Unoa/601 measuring 1.21 hectares.
38. The Plaintiff is seeking a declaration that she is the absolute owner of the suit property. The record shows that the suit property initially registered in the name of Nduume Kavila, was transmitted to the Plaintiff upon her demise. It is the Plaintiff's case that besides land Parcel No. Makueni/Unoa/601, the Defendant did not purchase any other land comprised within the suit property.
39. The Defendant on the other hand contended that he purchased a further 8 acres comprised in the suit property from Nduume Kavila in gradual stages between the years 2004 to 2015. To verify his claim, the Defendant produced a sale agreement dated 22/11/2002(DEX-2), a schedule of payment and acknowledgment slips(DEX- 3). The sale agreement shows that Nduume Kavila sold one acre to the Defendant for Kshs 30,000/= . The agreement also shows that she received Kshs 10,000/= upon the execution of the agreement. The acknowledgment slips show that she received the balance of the purchase price. From the foregoing, it is crystal clear that the Defendant purchased one acre from Teresia Nduume Kavila.
40. The Defendant testified that the agreement for the sale of 8 acres between him and Nduume Kavila was oral in nature.
41. Section 3 (3) of the Law of Contract Act outlines the essential requirements of a valid contract for the sale of land as follows: -
- No suit shall be brought upon a contract for the disposition of an interest in land unless—
- (a) the contract upon which the suit is founded—
- (i) is in writing;
- (ii) is signed by all the parties thereto; and
- (b) the signature of each party signing has been attested by a witness who is present when the contract was signed by such party:
42. Section 3(7) of the Law of Contract Act excludes the application of Section 3(3) of the said Act to contracts made before the commencement of the subsection.
43. Section 3 (3) of the Law of Contract Act came into effect on 1st June 2003 and does not apply to oral contracts for sale of land concluded before Section 3 (3) of the Act came into force. The Defendant testified that he purchased 8 acres progressively from the late Nduume Kavila. It is not clear from the evidence on record when the Defendant negotiated with the late Nduume Kavila to purchase an additional 8 acres. The Defendant did not adduce any evidence to show that he entered into an oral agreement with Nduume Kavila for the sale of 8 acres.
44. Although DW2 testified that she was present during the negotiations for the sale, it was her testimony that she could not remember the acreage agreed upon. It is crystal clear that the terms of the offer to purchase eight acres from the Plaintiff's deceased mother were ambiguous and uncertain from the documents produced by the Defendant.
45. The Defendant testified that his wife represented him at the LCB meeting. He produced an application for consent of the LCB Makueni to subdivide Parcel No. 1892(DEX 5) and the mutation form DEX 6. In his pleading and evidence, the Defendant is claiming 8 acres located within the suit property. DW3 testified that upon subdivision of parcel No. Makueni/Unoa/1892, he allocated the Plot No. Makueni/Unoa/3695 marked as Plot No. K in the mutation form measuring 3.40 ha or 9 acres. The



sale agreement produced as PEX-2 shows that the Defendant purchased one acre from Nduume Kavila. Clearly there is a contradiction on the acreage that the Defendant is entitled to. The court is inclined to award one acre which was proved.

46. The Plaintiff produced the title deed to show that she is the registered proprietor of the suit property.
47. The pleadings and evidence of the parties herein confirms that the Defendant is entitled to an order of excision of Parcel No. 601 which has not been regularized in the area map as per the land records at Makueni Registry.
48. In the end, both the Plaintiff's claim and the Defendant's counterclaim partially succeed in the following terms: -
 1. A declaration is hereby issued that the Plaintiff herein is the bona fide owner of the suit parcel of land Makueni/Unoa/1892 subject to one acre belonging to the Defendant.
 2. An order of permanent injunction is hereby issued to restrain the interference of the suit parcel of land Makueni/Unoa/1892 subject to one acre belonging to the Defendant herein.
 3. An order is hereby issued compelling the Plaintiff to transfer one acre from Makueni/Unoa/1892 to the Defendant.
 4. An order is hereby issued compelling the Land Registrar and Surveyor of Wote Lands Registry to first curve out and identify the parcel Makueni/Unoa/601 before the subsequent subdivision of other properties can be mapped out.
 5. A declaration is hereby issued that one acre sold by Teresia Nduume Kavila from the suit parcel of land belongs to the Defendant.
 6. An order is hereby issued restraining the Plaintiff and her agents from trespassing on the Defendant's one acre of land.
 7. Each party shall bear its own costs.

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HON. T. MURIGI

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 30TH DAY OF APRIL, 2025.

IN THE PRESENCE OF:

Kithuka for the Plaintiff

Ms Kilonzo for the Defendant

Court Assistant - Susan

