



**Aballa v Oracha (Environment & Land Case E005 of 2023)
[2023] KEELC 22576 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT SIIAYA
ENVIRONMENT & LAND CASE E005 OF 2023
AY KOROSS, J
DECEMBER 7, 2023**

BETWEEN

JOHN NOWEL OTIENO ABALLA PLAINTIFF

AND

MICHAEL OMONDI ORACHA DEFENDANT

RULING

1. After closing the parties' respective cases on 19/09/2023 and the plaintiff's counsel having filed written submissions on 2/10/2023, this matter was reserved for judgment today. However, I have to render a ruling instead of a judgment.
2. As this court was going through the record, it appears the register for North Gem/Siriwo/160 (mother parcel) which is the suit property was closed on 18/1/2006 to create land parcels no. '1054 and 1055'. Nonetheless, from the greencard of the mother parcel, an alleged transfer of the mother parcel to the defendant's name was made notwithstanding its closure. Considering the plaintiff's claim is hinged on adverse possession, this court is constrained from rendering a judgment.
3. For the reason this court has to carry out substantive justice and bearing in mind the provisions of Section 3A of the *Civil Procedure Act*, this court has inherent power to make such orders as may be necessary for the ends of justice to be met. Therefore it would only be fair if the Land Registrar- Siaya is given an opportunity to shed light on this issue.
4. In addition, Section 173 (1) of the *Evidence Act* gives this court a wide latitude in obtaining evidence before it renders its final determination. It can exercise such powers *suo moto* and may order the production of any document. This provision of law states as follows: -

“A judge or magistrate may, in order to discover or to obtain proper evidence, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact whether or not it is otherwise admissible; and may order the production of any document or



thing; and neither the parties nor their agents shall be entitled to object to any such question or order, nor, without leave of the court, to cross-examine the witness upon any answer given in reply to any such question:

Provided that judgment shall be based only upon facts which are otherwise admissible and which have been duly proved.” Emphasis added.

5. Further, by the provisions of Section 38 of the *Evidence Act*, public documents tendered by an official in his official capacity are by themselves admissible. This provision provides as follows: -

“An entry in any public or other official book, register or record, stating a fact in issue or a relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself admissible.”

6. Lastly, Section 22 (b) of the *Civil Procedure Act* confers this court with authority to summon persons whose attendance is required either to give evidence and produce documents. See *Manchester Outfitters Ltd v Pravin Galot & others* [2021] eKLR.

7. For the reasons stated above and pursuant to the provisions of law and judicial precedent cited, it would only be prudent for the Land Registrar- Siaya who is the custodian of public documents on registration of land to tender documents that appertain to the mother parcel and its subsequent subdivisions (if any). Since these public documents are admissible as of right, if parties so desire, they will be at liberty to cross examine the Land- Registrar. Consequently, I hereby issue the following orders: -

- a. That within 14 days hereof, the plaintiff do serve the Land Registrar-Siaya with witness summons for him to attend court on 20/02/2024.
- b. That on the said 20/02/2024, the Land Registrar-Siaya shall tender before this court green cards for land parcels no. North Gem/Siriwo/160, North Gem/Siriwo/1054 and North Gem/Siriwo/1055 together with greencards for any other subdivision that emanated from North Gem/Siriwo/160.
- c. That within 7 days from the date of this ruling, the plaintiff shall serve the Land Registrar – Siaya with the orders of this court.

It is so ordered.

DELIVERED AND DATED AT SIAYA THIS 7TH DAY OF DECEMBER 2023.

HON. A. Y. KOROSS

JUDGE

07/12/2023

**RULING DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO
CONFERRING PLATFORM IN THE PRESENCE OF:**

Mr. George Otieno for the plaintiff

The defendant acting in person.

Court assistant: Ishmael Orwa

