



**Oboko v Nyangweso & 2 others (Environment & Land Case  
456 of 2015) [2025] KEELC 3194 (KLR) (9 April 2025) (Judgment)**

Neutral citation: [2025] KEELC 3194 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT & LAND CASE 456 OF 2015**

**M SILA, J**

**APRIL 9, 2025**

**BETWEEN**

**ROBERT OBWOCHA OBOKO ..... PLAINTIFF**

**AND**

**MARGARET NYANGWESO (SUED AS MARGARET KWAMBOKA  
NYANGWESO) ..... 1<sup>ST</sup> DEFENDANT**

**KAREN KWAMBOKA OKARI (SUED AS MARGARET KWAMBOKA  
OKARI) ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KISII ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff commenced this suit vide a plaint filed on 6 October 2015. He pleaded that in the year 2012, he purchased from one James Ogega Magucha, the land parcel Bassi/Bogetaorio II/4072 measuring 0.31 Ha (the suit land). He averred that he became registered as proprietor on 20 February 2014, was issued with a title deed, and that he took possession. He pleaded that in July 2015, the 1<sup>st</sup> and 2<sup>nd</sup> defendants, who were strangers to him, came to the suit land, and the 1<sup>st</sup> defendant claimed to have bought the land from the 2<sup>nd</sup> defendant. He pleaded that he did a search which showed the 1<sup>st</sup> defendant as proprietor. He contended that this title was fraudulently obtained inter alia on the grounds : that the Land Registrar, Kisii (the 3<sup>rd</sup> defendant), created a fraudulent title on 23 June 2015 in favour of the 1<sup>st</sup> defendant in disregard to his title issued on 20 February 2014, and that the 3<sup>rd</sup> defendant caused the removal of his records and created a parallel title. In the plaint he asked for a declaration that he is the rightful proprietor of the suit land and rectification of the records to show that he is the registered owner thereof.
2. The 1<sup>st</sup> and 2<sup>nd</sup> defendants filed a joint statement of defence and counterclaim. They first mentioned that their correct names are respectively Margaret Nyangweso and Karen Kwamboka Okari, and



not Margaret Kwamboka Nyangweso and Margaret Kwamboka Okari as described in the title of the plaint. They pleaded that the suit land never belonged to James Ogega Magucha and he was therefore not capable of selling it to the plaintiff in the year 2012. They pleaded that the land was previously registered in the joint names of Lydia Kemunto Magucha, Nyambati Magucha, and El-Moraa Magucha who got registered on 1 September 2011. They admitted visiting the land in 2015 as the 1<sup>st</sup> defendant wished to buy it and they were conducting a physical search. They averred that during the physical inspection the suit land did not have any occupation save for two lessees who had been permitted to cultivate subsistence crops by the registered proprietors. They pleaded that the suit land was lawfully sold and transferred to the 1<sup>st</sup> defendant. They denied forging any documents or interfering with the land records. They contended that now that plaintiff has discovered that he was defrauded by the said James Ogega Magucha, he wants to defeat the lawful title of the 1<sup>st</sup> defendant. The counterclaim is filed by Margaret Nyangweso against the plaintiff. She pleaded that the plaintiff undertook activities geared towards forcibly taking possession of the suit property and maliciously damaged her fence of cedar posts and barbed wire which cost her Kshs. 56,500/=. She wished to have orders of a declaration that the suit land belongs to her; cancellation of the title held by the plaintiff; eviction of the plaintiff; permanent injunction against the plaintiff; the amount of Kshs. 56,500/=; general damages for trespass, and interest.

3. The plaintiff filed a reply to defence and defence to counterclaim. He joined issue with the defendants and asserted that it was James Ogega Magucha who had ownership of the suit land.
4. The Land Registrar, 3<sup>rd</sup> defendant, did not file defence, but filed documents relating to the suit land. They included a green card for the suit land, consent from the Land Control Board, and a transfer instrument.
5. Hearing commenced on 8 February 2018 before Mutungi J, when the plaintiff testified. He introduced himself as a Professor in the University of Nairobi, School of Computing. He testified that he purchased the land from James Ogega Magucha in 2012 for Kshs. 1.1 million. He produced a sale agreement dated 18 June 2012 and another 28 December 2012. He stated that he had carried out due diligence and established that the seller was one of the owners of the original land parcel No. Bassi/Bogetoario II/2263 as per a mutation form. He stated that his uncle, one Robert Nyabuto Obwacho, processed the title on his behalf. He stated that the seller would be one of his witnesses. Before he finished his evidence in chief, his counsel, Mr. Mose Nyambega, applied to stand him down so that he can introduce some additional documents. He was stood down, not on the reason given by Mr. Nyambega, but because time had run out. The court gave a date for further hearing on 23 May 2018.
6. On 23 May 2018, Mr. Nyambega sought adjournment because his client was not present. The case was adjourned. The next hearing date was 23 October 2019, before Onyango J, as Mutungi J had been transferred from the station. Counsel for the plaintiff yet again applied for adjournment on the reason that the plaintiff was unwell. The adjournment was granted on account of illness and the case fixed for hearing on 18 February 2020. On that day, the plaintiff again applied for adjournment on the reason that he is out of the country. The adjournment was given. The next time the case came up for hearing was 8 February 2021. There was no appearance on the part of the plaintiff and the case was adjourned to 20 September 2021. There was again no appearance on the part of the plaintiff. Soon thereafter Onyango J was transferred from the station and I took up the matter.
7. The case first came before me on 6 February 2023 when Mr. Nyambega was present but he stated that the case was for mention not hearing. I gave the date of 5 July 2023 for hearing. On 5 July 2023, Mr. Nyambega applied for adjournment on the basis that he had not served the hearing notice and also he wanted to file an additional witness statement to include the person who sold the land to the plaintiff. I adjourned and gave 14 days to file any supplementary documents. I directed the case to be heard on



- 11 December 2023. On 11 December 2023, the plaintiff applied for adjournment on the basis that Mr. Nyambega was unwell. I adjourned for that reason and directed the case to be heard on 10 June 2024.
8. On 10 June 2024, the plaintiff was absent and Mr. Nyambega applied for adjournment on the basis that his client was in Ethiopia attending a seminar. I was not persuaded to adjourn, given the numerous adjournments granted to the plaintiff in the past. Since his evidence was not tested in cross-examination, I proceeded to vacate it. After I declined to adjourn, Mr. Nyambega walked out of the court. We thereafter proceeded with the counterclaim whereby Margaret Nyangweso, the counterclaimant testified.
  9. She introduced herself as a retired teacher. Her evidence was that her husband was approached by Karen Kwamboka (2<sup>nd</sup> defendant) who was selling the land on behalf of her nephews and nieces. She had a Power of Attorney from them which she produced. She met Karen Kwamboka and carried out due diligence including a search carried out on 18 June 2015. She produced the search as her exhibit. Thereafter she wrote a sale agreement which she produced as an exhibit. They went to the Land Control Board and did the transfer. She then got title in her name. She had the original title deed with her in court when she testified and she displayed it. She testified that she fenced the land with cedar posts and barbed wire at a cost of Kshs. 56,000/= but it was destroyed. She commented on the documents shown by the plaintiff. Among the documents was a title deed in his name dated 20 February 2014. She pointed out that the persons who sold to her the land already had a title on 27 February 2012 and they never sold the land to the plaintiff. She also testified that there is no green card indicating the name of David Ogega James Magucha as proprietor. She referred to the documents filed by the Land Registrar among which is the green card showing that the proprietors before her were Lydia Kemunto Magucha, Nyambati Magucha, and El-Moraa Magucha.
  10. DW – 2 was Karen Kwamboka Okari, the 2<sup>nd</sup> defendant. She testified that Lydia Kemunto Magucha, Nyambati Magucha and El-Moraa Magucha, are her nieces and nephew and they live in the United States of America (USA). They gave her a Power of Attorney and authority to sell the suit land. Based on that, she sold the suit land to the 1<sup>st</sup> defendant. She testified that they went to the Land Control Board and the sale was approved.
  11. With the above evidence, the defence closed their case.
  12. I invited counsel to file submissions and gave a mention date, but before that date, the plaintiff filed an application to set aside the proceedings of 10 June 2024, and be allowed to reopen his case. I allowed the application subject to some conditions which were not met thus the orders and proceedings of 10 June 2024 remained. Part of the order was that the plaintiff's evidence was set aside for not availing himself for cross-examination. It would mean that the plaintiff never provided evidence to prove his case. Even if we maintain that evidence on record, it is insufficient to show that the person who sold the land to the plaintiff had any title to it which he could transfer to the plaintiff. Either way, it cannot be said that the plaintiff has proved being the rightful owner of the suit land. His case is for dismissal and it is hereby dismissed.
  13. The 1<sup>st</sup> defendant has a counterclaim. The first part of her counterclaim relates to a declaration that she is the owner of the suit land and for the title held by the plaintiff to be cancelled. There is overwhelming evidence that as against the plaintiff it is actually the 1<sup>st</sup> defendant who holds good title to the suit land. From the records, I discern that the suit land arose from a subdivision of the land parcel Bassi/Bogetaorio II/2263. That land was partitioned into the parcels No. 4070, 4071, 4072, 4073, 4074 and 4075. Upon partition, the suit land, i.e parcel No. 4072, came to be registered in name of Lydia Kemunto Magucha, Nyambati Magucha, and El-Moraa Magucha. That is discernible from the green card on record and is confirmed from a search dated 18 June 2015. The registered owners donated a



power of attorney to the 2<sup>nd</sup> defendant and instructed her to sell the suit land. I have seen the power of attorney and the sale agreement dated 22 June 2015 vide which the 2<sup>nd</sup> defendant sold the suit land to the 1<sup>st</sup> defendant/counterclaimant. I have seen that consent for this transaction was duly given by the Land Control Board and the 1<sup>st</sup> defendant/counterclaimant obtained registration in her name on 23 June 2015 and was issued with a title deed on the same day. The 1<sup>st</sup> defendant/counterclaimant had the original title deed with her and the same was seen by the court. I see nothing untoward with the manner in which the 1<sup>st</sup> defendant/counterclaimant obtained title. I have not seen the suit land being registered in name of James Magucha so that he could have an interest to sell to the plaintiff and the plaintiff cannot purport to be holding a good title to the land.

14. Given the foregoing, it is my holding that the rightful proprietor of the suit land is Margaret Nyangweso, the 1<sup>st</sup> defendant/counterclaimant. Any title purporting to be in the name of the plaintiff, Robert Obwocha Oboko, is a fraudulent title. The Land Registrar, Kisii is hereby directed to expunge any record indicating Robert Obwocha Oboko as proprietor of the land parcel Bassi/Bogetoario II/4072 and he/she should not register any disposition flowing from such title.
15. There is a claim for special damages of Kshs. 56,500/= for destruction of the fence erected by the 1<sup>st</sup> defendant/counterclaimant . I have seen two receipts each of Kshs. 27,000/= and a receipt of 13,500/= for poles. I have also seen an invoice of Kshs. 16,000/= for barbed wire and nails and a delivery note for the same. The total of these comes to Kshs. 83,500/=. The 1<sup>st</sup> defendant/counterclaimant testified that she had fenced the land and the plaintiff pulled it down. No evidence was called by the plaintiff to refute this. I am persuaded that the 1<sup>st</sup> defendant/counterclaimant deserves to be compensated for this cost. She pleaded Kshs. 56,500/= , and though she brought documentation for Kshs. 83,500/=, she can only get what is pleaded. I will therefore enter judgment for the plaintiff for the sum of Kshs. 56,500/= for the damage caused by the plaintiff to her fence. This amount will attract interest at court rates from the time of filing of the counterclaim i.e 11 November 2015 until settlement in full
16. There is a claim for general damages for trespass. The plaintiff had no good title to the suit land and his attempts at entry amounted to trespass. I will award Kshs. 100,000/= to the 1<sup>st</sup> defendant/counterclaimant against the plaintiff as general damages for trespass. This amount will earn interest from the date of this judgment.
17. Having no title the plaintiff ought not to enter, be upon, utilize, deal, or in any way interfere with the quiet possession of the 1<sup>st</sup> defendant/counterclaimant of the suit land and I issue an order of permanent injunction to that effect against him.
18. The final issue is costs. The plaintiff's suit is dismissed with costs to the defendants. The plaintiff will also bear the costs of the counterclaim.
19. Judgment accordingly.

**DATED AND DELIVERED THIS 8 DAY OF APRIL 2025**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Ms. Nyaboke h/b for Mr. Mose Nyambega for the plaintiff

No appearance on part of Mr. Ochwangi for the 1<sup>st</sup> & 2<sup>nd</sup> defendants



Mr. Wabwire present for the 3<sup>rd</sup> defendant

Court Assistant – Michael Oyuko.

