



**Monyenye v Ouko & 4 others (Environment & Land Case
83 of 2021) [2022] KEELC 3003 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3003 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 83 OF 2021**

**JM KAMAU, J
JUNE 22, 2022**

BETWEEN

MANSON MOREKA MONYENYE PLAINTIFF

AND

DANIEL OMOKO OUKO 1ST DEFENDANT

JAMES MOGAKA OUKO 2ND DEFENDANT

THABITA NYABOKE OUKO 3RD DEFENDANT

ALBERT MWOCHA OUKO 4TH DEFENDANT

AGNES NYANGATE OUKO 5TH DEFENDANT

RULING

1. In the Originating Summons dated 12th October 2020 the Plaintiff seeks prayers against the Defendants for the following orders: -
 1. A Declaration that the Defendants' or the Estate of Sylvester Gichana Ouko, right to recover the portion of parcel of land otherwise known as EAST Kitutu/kibirichi/702, measuring 1.5 hectares (approximately 3.75 Acres), is barred under the Limitations of Actions Act CAP 22 of the Laws Of Kenya, and their Title (the deceased's Title) over the said parcel of land in occupation/use of the Plaintiff thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation/use and possession of the aforesaid parcel of land measuring 1.5 ha (3.75 Acres) for a period exceeding 28 years.
 2. That there be an Order that the Land Registrar (Nyamira-County) (sic) do register the Plaintiff as the proprietor of the portion of land measuring 1.5 HA (3.75 Acres) of East Kitutu/kibirichi/702, in place of the Defendants (or the Estate which they represent) and/or the



Register thereof be rectified to reflect the Plaintiff's ownership of the aforesaid 1.5 Ha (3.75 Acres) under his use and current continued occupation.

3. That the Defendant herein be ordered to execute all the requisite papers necessary to have the Plaintiff be registered as the owner of the portion of parcel measuring 1.5 Ha (3.75 Acres) of EAST Kitutu/kibirichi/702, decreed by the Court, in default, the Deputy Registrar and/or Court Executive Officer be at liberty to execute all such necessary documents to give effect to the Judgment and/or Decree of the Court.
 4. That this Honourable Court be pleased to issue permanent order of Injunction against the Defendants, any beneficiary of the Estate of the late Sylvester Gichana Ouko, their agents, servants and/or employees from whatsoever manner, interfering with the Plaintiff's occupation and/or use over portion of parcel of land otherwise known as East Kitutu/kibirichi/702, measuring 1.5 Ha (3.75 ACRES), under the Plaintiff's occupation.
 5. Costs of this Originating Summons be borne by the Defendant.
 6. Such further and/or other Orders be made as the Court may deem fit and expedient, in the circumstances of this case."
2. In their response through Daniel Omoko Ouko, the Defendants vide Replying Affidavit sworn on 2nd February 2021 denied that their late father Sylvester Gichana Ouko ever sold the suit land to the Plaintiff but that the latter had only leased part of the land for agricultural purposes which lease was terminated in 2003 and that no transfer was executed, nor consent given and no consideration ever paid. The Plaintiff's occupation of the suit land is also denied. The Defendants also allege that the Plaintiff unsuccessfully tried to sell the suit land by claiming to be a beneficiary of the same in Kisii High Court Succession Cause No. 3 of 2004. What is pending in the High Court Succession Cause No. 3 of 2004 is the distribution of the Estate.
 3. A Supplementary Affidavit by the Plaintiff sworn on 20th February 2021 reinstates what is contained in the Originating Summons.
 4. By an Application dated 16th May 2022 the court has been requested to order that Evans Nyangena Nyamwaka be allowed to participate in the suit as an Interested Party and that the Interested Party's Defence and Counter-claim attached to the Application be deemed as duly filed and served on all parties on record upon payment of the requisite fees. The Applicant claims to have purchased a portion of the suit land measuring 55 x 210 feet from one Lawrence Onkoba Ouko on 25th May 2013 who is said to have sold the land as a beneficiary of the Estate in his draft Statement of Defence. The Applicant has demonstrated that he has an interest in the suit land i.e. Lr No. East Kitutu/kibirichi/702.
 5. In his opposition to the Application, the Plaintiff states that the land in question never belonged to Sylvester Ouko. From the Originating Summons dated 12th October 2020 the main prayer for the Plaintiff is to have him declared the owner of 1.5 Hectares of East Kitutu/kibirichi/702, the property of the Estate of Sylvester Ouko Gichana who is now deceased. Unfortunately, Lawrence Onkoba Ouko is not a party in this suit. I would therefore not want to obfuscate this matter. I would advise the Applicant to sue the right person who allegedly sold the land he claims in a separate suit and should need arise the new suit can be consolidated with this one. Should the Applicant have a rightful claim in the suit land, the same measures 19 Acres. What the Plaintiff seeks here is 1.5 Hectares i.e. 3.75 Acres leaving behind in excess of 15 Acres. The prayers sought herein are therefore declined with no orders as to costs.

It is so Ordered.



RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 22ND DAY OF JUNE, 2022.

MUGO KAMAU

JUDGE

In the Presence of:

Court Assistant: Sibota

Appellant: N/A

Respondents: N/A

