



REPUBLIC OF KENYA



**Oteba v Namahemba & 2 others (Environment & Land Case  
28 of 2016) [2022] KEELC 3007 (KLR) (22 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3007 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 28 OF 2016**

**AA OMOLLO, J  
JUNE 22, 2022**

**BETWEEN**

**CHRISPINUS EMOIT OTEBA ..... PLAINTIFF**

**AND**

**ELIZABETH NAMAHEMBA ..... 1<sup>ST</sup> DEFENDANT**

**JAMES ORIANG'A OKOROJI ..... 2<sup>ND</sup> DEFENDANT**

**MOSES OTIANGA ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. By way of a re-amended plaint dated April 9, 2018 and filed in court on April 10, 2018, the plaintiff prayed for judgment against the defendants for;
  - a. An order of permanent injunction and another one for eviction of the defendants, their agents, servants and or any person claiming through the defendants from L.R. No. South Teso/angoromo/2422.
  - b. Costs of this suit.
  - c. Any other relief this honourable court deems fit to grant.
2. The plaintiff impleaded that the defendants without authority and contrary to section 27 and 28 of the *Land Registration Act* 2012 invaded the 2<sup>nd</sup> plaintiff's land parcel No. South Teso/Angoromo/2422 and continues to purport that it is theirs by denying the 2<sup>nd</sup> plaintiff exclusive use thereof which action is illegal, improper and injuries to the registered rights of the holder.
3. The defendant entered appearance and filed a defence on 30<sup>th</sup> August 2013. They denied that the plaintiff bought L.R. No. South Teso/Angoromo/2422 from ALloys Okoroji and or any party thereof and stated that if the plaintiff bought the said piece of land which is denied, he did not consult



- them as they have been in occupation for over 30 years. They denied invading L.R. No. South Teso/ Angoromo/2422 and averred that the plaintiff fraudulently obtained title to the suit land.
4. The matter was set down for hearing on 21/7/2021 and it proceeded with Chrispinus Emoit Oteba testifying as PW1. He adopted his witness statement filed in court on 6/4/2018 as his evidence in chief. He testified that he is the absolute registered owner of L.R. No. South Teso/Angoromo/2422 measuring approximately 0.61HA which he bought from Vincent Ndege Shikanga at an agreed sum of Kshs.800,000/= and he paid in full. They appeared before the Land Control Board and got consent before getting a title. He denied knowing the defendants herein and he does not have any contractual obligation with them as they have never sold to him L.R. No. 2422. He prayed for an order of permanent injunction and eviction against the defendants from illegally putting to use his L.R. No. 2422. He stated that the use of L.R. No. 2422 by the defendants has been without his consent. He relied on the documents in his list dated 24/7/2015 and further list dated 16/7/2018 as his exhibits.
  5. Upon cross-examination by counsel for the defendants, he stated that Vincent Shikanga sold to him the suit land in the year 2015 and this suit commenced in the year 2012. When he was buying the land in 2015, the defendants were not living on the land and the case was initially filed by Vincent seeking eviction orders. In 2015, Vincent had not removed the defendants from the land. When he was purchasing the land, the defendants were still on the land. He admitted buying the land while the defendants were living on it, he did not serve the defendants any notice that he was buying the land. He said it was a lie that Vincent had purchased the land in 2010 while Alois died in the year 1990. By the time the original owner died, he had transferred the land to Vincent. He denied that he acquired his title through fraud. He did not know how long the defendants had been on the land and the person who sold him land died after he had transferred the land to him.
  6. On re-examination, the plaintiff stated that Vincent bought the land from Alois and Vincent got title to the land. He has never had any transactions with the defendants.
  7. The defence case was marked closed for want of attendance.
  8. The plaintiff sought an opportunity to file written submissions which was done on November 30, 2021. He submitted that the evidence of the plaintiff was not controverted and the defendants have not offered any explanation as to why they were occupying the plaintiff's land. He relied on section 26 of the *Land Registration Act* and article 60 and 64 of *the Constitution* of Kenya. He further relied on section 109 of the *Evidence Act* which provides that he who alleges must prove and there were numerous authorities which provide that allegations of fraud must be particularized in the pleadings and evidence must be led on the same by the party alleging and the defendants have failed the rigorous test.
  9. I have carefully looked at the parties' pleadings and submissions; the following questions do arise for the determination of this dispute;
    - i. Whether the plaintiff has proved ownership of the suit land;
    - ii. Whether the plaintiff is entitled to the orders of permanent injunction and eviction against the defendants;
    - iii. Who bears the costs of this suit?
  10. On the first issue of ownership of the suit land, the plaintiff provided documents to show how he acquired the suit land from Vincent Shikanga who initiated this suit. The documents produced are land sale agreement dated August 26, 2015 as PEX 4, the application for consent of Land Control Board as PEX 5, consent to transfer as PEX 6 and title deed for LR. No. South Teso/Angoromo/2422



bearing his name as PEX 7. The defendants pleaded that the plaintiff acquired his title through fraud, but failed to provide the particulars of fraud. Neither did they lead evidence to prove the allegations of fraud.

11. The plaintiff has admitted during cross-examination that he bought the land in 2015 while the defendants were in occupation of the suit land and he could not tell how long the defendants have been on the suit land. The defendants were under obligation to prove that their claim for acquisition of rights by operation of law as pleaded in paragraph 3 of the statement of defence had accrued. The proof of occupation is ascertainable by factual evidence which was not rendered by the defence. Thus their defence of being on the land for over 30 years does not vitiate the plaintiff's title for want of proof.
12. The plaintiff's evidence was not controverted by the defendant, I am inclined to find that the plaintiff has proved to this court that he is the registered proprietor as was envisioned by section 26 of the Land Registration Act. On the second issue, having found that the plaintiff is the registered proprietor of L.R. No. South Teso/Angoromo/2422 to the exclusion of all others, I find that the plaintiff is entitled to enjoy use of his land and the defendants' occupation of the suit land is hindering him from doing so and as such is entitled to the orders of permanent injunction and eviction as prayed for.
13. Since costs follow the event and the plaintiff is the successful party in this suit however in this case both parties did not give evidence so I award half ( $\frac{1}{2}$ ) costs to the plaintiff.
14. The upshot of the foregoing is that the plaintiff's re-amended plaint dated April 9, 2018 is merited and is allowed as follows;
  - a.
    - (i) The defendants are ordered to surrender vacant possession of the suit property within ninety (90) days of being served with the decree herein.
    - (ii) In default of (i) above, an order of eviction is hereby issued against the defendants, their agents, servants and or any person claiming through them from L.R. No. South Teso/angoromo/2422.
  - b. Once vacant possession is obtained, an order of permanent injunction is hereby issued against the defendants, their agents, servants and or any person claiming through the defendants from interfering with the plaintiff's user of L.R. No. South Teso/angoromo/2422.
  - c. The plaintiff is awarded half ( $\frac{1}{2}$ ) costs of this suit.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 22<sup>ND</sup> DAY OF JUNE 2022.**

**A. OMOLLO**

**JUDGE**

