



**Matipei v Muema & 2 others (Environment & Land Case
906 of 2017) [2022] KEELC 2892 (KLR) (20 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 2892 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 906 OF 2017
MN GICHERU, J
JUNE 20, 2022**

BETWEEN

KONE OLE MATIPEI PLAINTIFF

AND

ANDREW MUEMA 1ST DEFENDANT

FRANCIS MUANGE NDIVO 2ND DEFENDANT

MUNYAO MUTUA 3RD DEFENDANT

JUDGMENT

1. Kone Ole Matipei, the Plaintiff seeks the following reliefs against Andrew Muema, first Defendant, Francis Muange Ndivo, second Defendant and Munyao Mutua, third Defendant;
 - a. An eviction order directed to the Defendants ordering them to forthwith vacate the Plaintiff's land parcel No. Kajiado/Kaputiei-Central/ 2525, suit land.
 - b. A permanent injunction restraining the Defendants, their families, kin, agents, employees, servants or anyone claiming under them from trespassing upon, ingressing into, cultivating, selling, disposing off or in any other manner interfering with the Plaintiff's quiet possession and ownership of the suit land.
 - c. Costs of this suit.
 - d. Any other relief that the Court may deem just and fair.
2. The Plaintiff's case is as follows. He is the registered owner of the suit land which measures 25 acres. He purchased the land from the previous owner Allan Mbotela Kuyan through an agreement for sale dated 17th September, 2011. At the time of purchase, the land was vacant.

In 2015, a resurvey of the suit land took place and it showed that the Defendants occupied the land.



The first Defendant had sued the Plaintiff and the original owner Allan Mpotela Kuyan in Land Disputes Tribunal Case No. 86 of 2011 whereby the first Defendant obtained a decree to the effect that one (1) acre of land reference No. Kajiado/Kaputiei-Central/124 be transferred to him. The decree is dated 29/3/2021. Then on 3/11/2012, the three Defendants had agreed to move out of the suit after they were shown one acre each by Allan Mpotela.

They all agreed that the land they occupied belonged to the Plaintiff. The first Defendant was to pay Kshs. 15,000/= by 4th December, 2011.

This agreement was reached in an out of Court Settlement before Assistant Chief Raphael Kisarei, village elder J.K. Mututua, eight other witnesses and the three Defendants.

The Defendants have therefore no reason whatsoever for remaining on the suit land.

3. In support of his case, the Plaintiff filed the following documents;
 - a. Copy of title deed dated 2/5/2012.
 - b. Copy of certificate of official search of the suit land dated 4/9/2012 in the Plaintiff's name.
 - c. Copy of demand letter dated 10th October, 2017.
 - d. Copy of agreement for sale of the suit land dated 17/9/2011.
 - e. Copy of acknowledgment of receipt of full purchase price by the original owner from the Plaintiff.
 - f. Witness statement by the Plaintiff dated 31/10/ 2017.

4. The three Defendants in a joint written statement of defence and counterclaim dated 5/2/2017, aver that they entered into three separate agreements with Alan Mpotela for sale of 10, 7 and 4 acres of land between 1998 and 2004. They then took possession of their respective parcels. They have lived on the land and built homes thereon in which they live with their families.

Further to the above, the Defendants have alleged fraud on the part of the Plaintiff in acquiring title to the suit land. They accuse the Plaintiff of being part of the fraud aimed at disposing them of their land.

In addition, the Defendants in their counterclaim claim to be entitled to the suit land by way of adverse possession as they have occupied it for more than twelve (12) years.

They pray for the following orders in the counterclaim;

- a. A declaration that they are the beneficial owners of the respective parcels of land they occupy now comprised in the suit land.
- b. In the alternative, they pray for a declaration that they have acquired prescriptive rights of ownership by way of adverse possession having lived on their respective parcels now comprised in the suit land for an uninterrupted period of over 12 years.
- c. An order directing the Land Registrar Kajiado to cancel the certificate of title for the suit land and issue new certificates in the names of the Defendants for their respective parcels comprised in the suit land.
- d. An order of permanent injunction against the Plaintiff restraining him and those claiming under him from interfering with the Defendants use and occupation of the parts of the suit land that they occupy and a list of both Defendants witness.



5. Even though the Defendants counsel filed a list of documents and a list of two Defendants witnesses which are dated 5/2/2017, the documents themselves and the statements too, do not appear on record.

The only documents that the Defendants filed were as follows;

- i. Copy of documents dated 1/9/2001.
- ii. Copy of document dated 20/7/2011.
- iii. Two photographs both dated 1/2/2018 showing a homestead and a maize plantation.
- iv. Copy of document dated 28/8/2004.
- v. Two photographs both dated 1/2/2018 one showing a homestead with children and goat's kid and other vacant land with two structures, a child and some crops growing on the land.
- vi. Two photographs one dated 1/2/2018 showing a homestead with a child outside and a motorcycle and the undated one showing a maize crop which is about to tassel.

These documents were filed in reply to an affidavit by the Plaintiff dated 3/1/2018.

6. At the trial on 14/3/2022, only the Plaintiff testified. The Defendants' counsel appeared and cross-examined the Plaintiff. No evidence was adduced by the Defendants. The Court deemed their defence as closed.

Only the Plaintiff's counsel filed written submissions within the set timelines. The issues raised in the submissions are as follows;

- a. Whether the Plaintiff is a bonafide purchaser of the suit land for value.
 - b. Whether the prayers sought in the plaint should be granted.
 - c. Whether the Defendants have any lawful claim against the Plaintiff.
7. I have carefully considered all the evidence adduced in this case by the parties including the pleadings, documents and the witness statement by the Plaintiff. I make the following findings;

On the first issue, I find that the Plaintiff is a bonafide purchaser for value. In this regard, I rely on his witness statement and documents. They are all supported by his evidence at the trial which is not controverted by other evidence from the Defendants.

In addition to the above, there is the evidence that the Defendants were allocated alternative land and they committed themselves to vacate the suit land. This was on 3/11/2012. The Defendants cannot therefore be heard to say that they occupy part of the Plaintiff's land lawfully.

Regarding the second issue, I find that the Plaintiff is entitled to the prayers in the suit. This is because [Land Registration Act](#) 2012, it is provided as follows;

Subject to this Act

- a. the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”

The prayers sought in the plaint dated 31/10/2017 are in agreement with the rights of a proprietor recognized by Sections 24 and 25 of the [Land Registration Act](#).



On the third and final issue, I find that the Defendants have no lawful claim against the Plaintiff because they have no privity of contract with him. Their agreement, if any, was with the Allan Mpotela Kuyan who sold the suit land to the Plaintiff.

Secondly, it has been proved that in the proceedings before the Lands Disputes Tribunal, the plaintiffs were awarded land measuring one acre each. That decision has not been appealed against.

For the above reasons, I find that the Plaintiff has proved his claim against the Defendants jointly and severally in terms of prayers (a), (b) and (c) of paragraph 20 of the plaint dated 31/10/2017.

I therefore enter judgment for the Plaintiff against the Defendants as per those three (3) prayers.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

