



**Wafula v Okasiba (Environment & Land Case 156 of 2016)  
[2022] KEELC 2786 (KLR) (14 July 2022) (Judgment)**

Neutral citation: [2022] KEELC 2786 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE 156 OF 2016**

**AA OMOLLO, J  
JULY 14, 2022**

**BETWEEN**

**CHRISTOPHER OKUTOI WAFULA ..... PLAINTIFF**

**AND**

**JOHN OKASIBA ..... DEFENDANT**

**JUDGMENT**

1. Through a plaint dated November 15, 2016, the plaintiff sought judgment against the defendant as follows;
  - a. An order to revoke the title deed/current status of the defendant as the registered owner of L.R. Bukhayo/lupida/2017.
  - b. Costs of these proceedings.
2. The plaintiff averred that the defendant has encroached on L.R. No. Bukhayo/lupida/1988, the property of the plaintiff's deceased father without any lawful excuse. He stated that the defendant is purporting to be the proprietor of L.R. No. Bukhayo/lupida/2017 fraudulently forged documents and processed the said title without the knowledge of the deceased next of kin.
3. The defendant entered appearance and filed a statement of defence dated December 15, 2016. He averred that he had purchased the suit land parcel from one Ezekiel Opuko who had purchased the same from the plaintiff and denied that the plaintiff is the son of Opama Okutoi Alukubut a distant cousin hence he has no right whatsoever to make any claim over this suit land parcel.
4. The matter was set down for hearing on November 10, 2020 with Christopher Okitoi Wafulatestifying as PW1. He said that he sued the defendant because he got a title before succession of his father's estate was done and he bought land from the person he had sold to. He testified that the defendant asked that they give him money to subdivide the land for them and he wondered on what account he was



subdividing the land on their behalf. He said that the defendant beat him up and he reported the matter to the police and wanted to kill him because of the suit land. He stated that they therefore contributed money and filed succession proceedings. He prayed that the defendant's title be cancelled.

5. The plaintiff was put to cross examination and stated that his father is called Osilingi Okitoi and though he had documents regarding the administrator he had not filed them. He said that the land parcel in dispute is L.R. No. Bukhayo/lupida/102 map sheet No. 49 and it was the defendant who told him that he had processed the title. He learnt of the agreement between the defendant and Ezekiel when the defendant brought the title and wanted to subdivide.
6. The second plaintiff witness was Grace Nasongawho said that the plaintiff is her husband and the defendant is a neighbour. She said that the land belongs to her father-in-law and the defendant came as a buyer and later claimed that he is the one to share the land to the plaintiff yet the land belongs to the plaintiff's father. She testified that William Omuse is the one who sold the land to the defendant and the plaintiff was assaulted because of the land dispute. She said that she is suffering because the road was blocked by the defendant yet that road is always there. She now has to pay to access when she is harvesting cane and when she returns home late after the neighbour has locked his gate, it is difficult to access her home.
7. On cross-examination she stated that the plaintiff has sued the defendant over land owned by father-in-law Osilingi Okutoi being L.R. No. 102 and her father-in-law passed on in 1993. She denied knowing Opama Okutoi. She said that the plaintiff had taken out succession proceedings in L.R. No. 102 and if there was a sub-division of L.R. No. 102 then it was done illegally. She denied knowing about L.R. No. 1988.
8. The defendant's first witness was John Okasibawho adopted his witness statement made dated December 15, 2016. He testified that he has stayed on the suit land parcel No. Bukhayo/lupida/2017 since he bought the same on October 21, 2007 from one Ezekiel Opuko who had purchased the same from the plaintiff and had completed payment of the said parcel in dispute. On the said land sale agreement dated October 21, 2007, the drafter of the said agreement mistakenly indicated the land being sold as L.R. No. Bukhayo / lupida/2018 instead of L.R. No. Bukhayo / lupida/2017 as the transaction was being done by the late William Barasa on behalf of Ezekiel Opuko as a brother and the said late William Barasa happened to be the owner of L.R. No. Bukhayo/lupida/2018. At the time he bought the suit land parcel, Ezekiel Opuko was staying there and had built a semi-permanent house which he still occupies up to date. He said that when he was purchasing the suit land parcel, the same was still in the name of the late Opama Okutoi Aluku and he was still alive then and had attended Nambale Land Control Board for sub-division and new numbers had been obtained. The suit land parcel is one of the five parcels of land originating from the original number Bukhayo/Lupida/1988 and the plaintiff was among the witnesses in the said agreement dated 21/20/2007 yet he is challenging his lawful ownership of the dispute land parcel. He continued that on 14/1/2010 the late Opama Okutoi Aluku attended the Nambale Land Control Board to be re-issued with another Letter of Consent as the owner. On 31/5/2010, the late Opama presented Mutation form prepared on 20/10/1998, renewed letter of consent for subdivision, application for consent for subdivision to the Land Control Board which had been approved on 3/8/1999 and Letter of Consent for Transfer dated 8/4/2010 for L.R. No. Bukhayo/lupida/2017 and Application for consent for transfer of said land to the Land Control Board which had been approved on 8/4/2010 at Busia Land Office for registration. The said documents were registered on the same date and on 25/3/2015, he was issued with a title deed. He told the court that he has lived there since 2007 and on 8/7/2009 when his mother passed away he buried her there and the plaintiff never objected and in fact it was the plaintiff who had approached him and showed him that one Ezekiel Opuko was selling this suit land parcel. He relied



9. He was put to cross examination and stated that he said that William sold him land belonging to Ezekiel and Ezekiel is alive while William is deceased. He said his land is L.R. No. 2017 and he got his title from the lands office. They went to the Land Control Board meeting with Mzee Opoma who was the owner of the land. He testified that the surveyor did not come to the land when he bought because the owner had finished the process of subdivision. On re-examination he stated that he bought land No. 2017 which was a subdivision of L.R. No. 1988 owned by Opoma and Ezekiel had sent William to sell the land on his behalf.
10. The defendant's second witness was Patrick Emaiwho said that he knows both the plaintiff and defendant as he was one of the witnesses during the same of the suit parcel and the agreement was between the defendant and Ezekiel. Ezekiel had earlier bought the suit land from the plaintiff. The plaintiff signed as a witness for Ezekiel while he was a witness to the defendant and the land was L.R. No. 2017. He testified that the defendant lives on that land to date and Opoma Okuta was the administrator of the suit lands. He informed the court that Opoma is the cousin to the plaintiff and he knew that the defendant has a title to the land.
11. When put to cross examination, he stated that although William bought on behalf of Ezekiel, Ezekiel was still the owner of the land. He said that Opoma was the administrator of both parcels of land belonging to Osilingi and he did not know if succession had been taken in respect of Osilingi.
12. Ezekiel Omuse was the last defendant's witness and he adopted his witness statement dated November 16, 2021 as his evidence. He testified that he knows the plaintiff herein and that through his late brother William Barasa Omuse, he bought the said parcel of land 2 acres from Christopher Okitoi Wafula and paid the price of Kshs.93,000/= in full. On October 21, 2007 he decided again through his late brother to sale the same piece of land to John Kasiba who paid the agreed buying price in full. He had bought the land between 1993-1994 and as he was working in Narok, his shamba boy took care of it. He said he is aware the defendant stays on the land that he sold to him.
13. On cross-examination, he stated that he was living far but his caretaker told him there was an access road provided for. He said that the plaintiff had not taken him before the Land Control Board and it was his brother who was dealing with cultivating of sugarcane so he did not know if he had any arrangements with the plaintiff on harvesting of the cane. He said he did not know if the defendant approached the wife to William to get him a title or if the defendant had received a title.
14. The parties thereafter filed written submissions between February and June 2022 which submissions I have read and considered. From the pleadings and submissions, the following questions are framed for determination;
  - a. Whether or not the plaintiff has proved fraud against the defendant in regard to L.R. No. 2017;
  - b. What orders ensue?
15. The issue for determination is whether the plaintiff has proved the fraud he has alleged against the plaintiff. It is trite law under Section 107 and 109 of the *Evidence Act* that whoever alleges a fact must prove it. In the case of *Urmila w/o Mahendra Shah v Barclays Bank International Ltd & another* [1979] eKLR, this Court took the view that the onus to prove fraud in a matter is on the party who alleges it.



16. Similarly, in cases where fraud is alleged, it is not enough to simply infer fraud from the facts. In *Vijay Morjaria v Nansingh Madhusingh Darbar & another* [2000] eKLR, Tunoi JA (as he then was) stated as follows:

“It is well established that fraud must be specifically pleaded and that particulars of the fraud alleged must be stated on the face of the pleading. The acts alleged to be fraudulent must of course be set out, and then it should be stated that these acts were done fraudulently. It is also settled law that fraudulent conduct must be distinctly alleged and as distinctly proved, and it is not allowable to leave fraud to be inferred from the facts.”

17. The plaintiff has alleged that the defendant’s title is fraudulent as the title was processed after the proprietor, who is his father, passed on and therefore the documents were forged. However, he failed to produce the said forged documents. The defendant on the other hand has stated that he followed due process in obtaining his title which was issued in the year 2010. The defendant stated that when he bought the suit land it was in the name of the late Opama Okutoi Aluku who was alive at that time and he took him to the Land Control Board to facilitate the transfer of the suit parcel to his name. The defendant did not produce his documents to show that he indeed followed due process.

18. Further, from the pleadings filed by the plaintiff and I do note that he failed to particularize the allegations of fraud as is required by law. The plaintiff also failed to produce the documents in his list of documents as exhibits and therefore his suit against the defendant has a shaky foundation. The defendant also failed to produce any documents to show that he followed due process in being registered as the proprietor of L.R. No. Bukhayo/lupida/2017. In paragraph 6 of his plaint he stated as follows;

“That the defendant purporting to be the proprietor of L.R. Bukhayo/lupida/2017 fraudulently forged documents and processed the said title without the knowledge of the deceased next of kin.”

19. Under Order 2 rule 4 of the *Civil Procedure Rules* it was incumbent upon the plaintiff to plead fraud specifically if that was one of his grounds against the defendant. That rule provides as follows: -

4. A party shall in any pleading subsequent to a plaint plead specifically any  
(1) matter, for example performance, release, payment, fraud, inevitable accident, act of God, any relevant Statute of limitation or any fact showing illegality -
  - (a) which he alleges makes any claim or Defence of the opposite party not maintainable;
  - (b) which, if not specifically pleaded, might take the opposite party by surprise; or
  - (c) which raises issues of fact not arising out of the preceding pleading.
- (2) ....

20. The plaintiff has testified that he has sued the defendant because he got a title before they had done succession of his father’s estate. He said that they contributed money and filed succession proceedings but during cross-examination, he admitted that the documents regarding the administrator was not filed in court. The defendant submitted that the plaintiff has not produced any letters of administration allowing him to act on behalf of the deceased estate nor has the plaintiff alluded evidence to show or prove that he is actually the administrator or son to the deceased Opoma Okutoi Aluku.



21. This begs the question of whether the plaintiff had the locus standi to bring the suit on behalf of his deceased father. Locus standi is defined in *Black's Law Dictionary*, 9<sup>th</sup> Edition (page 1026) as “the right to bring an action or to be heard in a given forum.”

In the case of *Law Society of Kenya vs Commissioner of Lands & others*, Nakuru High Court Civil Case No. 464 of 2000, the Court held that; -

“*Locus Standi* signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”

22. The failure by the plaintiff to produce letters of administration or a limited grant in this suit renders it fatal. The upshot of the foregoing is that the plaintiff's suit is unmerited and is hereby dismissed with costs to the defendant.

**DATED, SIGNED AND DELIVERED AT BUSIA THIS 14<sup>TH</sup> DAY OF JULY 2022.**

**A. OMOLLO**

**JUDGE**

