



**Kinuthia v Obuonji & 2 others (Land Case 94 of 2014)
[2022] KEELC 3938 (KLR) (11 August 2022) (Judgment)**

Neutral citation: [2022] KEELC 3938 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
LAND CASE 94 OF 2014
FM NJOROGE, J
AUGUST 11, 2022**

BETWEEN

JOHN PHILIP KINUTHIA PLAINTIFF

AND

WILLIAM ODERA OBUONJI 1ST DEFENDANT

BERNARD RATEMO 2ND DEFENDANT

LAND REGISTRAR, NAKURU COUNTY 3RD DEFENDANT

JUDGMENT

1. In the Plaintiff dated April 8, 2014, the plaintiff seeks the following prayers:
 1. An order of temporary injunction restraining the defendants by themselves, agents, assigns, employees and anyone else claiming through them, from interfering with the plaintiff's possession, occupation, use and development of land parcel no Njoro/Ngata Block 1/357.
 2. An order of permanent injunction restraining the defendants by themselves, agents, assigns, employees and anyone else claiming through them, from interfering with the Plaintiff's possession, occupation, use and development of land parcel no Njoro/Ngata Block 1/357.
 3. A declaration that the plaintiff is the sole, legal registered proprietor of land parcel no Njoro/Ngata/Block 1/357.
 4. An order of eviction do issue removing the 1st and 2nd defendants form land parcel no Njoro/Ngata Block 1/357.
 5. Costs of this suit.
2. The plaintiff's claim is that he is the registered proprietor of all that land known as Njoro/Ngata Block 1/357 (hereinafter "the suit land"; that the 1st and 2nd defendants have trespassed onto the suit land



and have committed acts of waste thereon under the misguided notion that the 1st defendant, who holds a certificate of lease dated February 7, 1995, is the proprietor thereof; that two different official searches of September 30, 2013 and December 11, 2013 in respect of the suit land yielded different results, with the first showing the 1st defendant and the 2nd the plaintiff as proprietor respectively; that however of the two search certificates issued the latter one showed that the plaintiff's title was issued earlier (February 21, 1986) than the 1st defendant's (February 7, 1995); that the 1st defendant's title was issued in error or by way of fraud and/or collusion with the 3rd defendant, hence the suit.

The 1st defendant's defence.

3. The 1st defendant never filed any defence to the suit despite being served with the summons by way of substituted service through the Daily Nation Newspaper of May 29, 2014 as ordered by court on May 20, 2014.

The 2nd defendant's defence.

4. The 2nd defendant filed his defence on May 19, 2014 denying the claim. He stated that the suit does not or does not sufficiently disclose the proper particulars of the claim or cause of action; that he is a bona fide purchaser for value without notice, having purchased the suit land from the 1st defendant; that the suit has been brought in bad faith and dishonest motives; that the suit is statutorily time barred and that no demand was ever served before suit.

Defence of the 3rd defendant.

5. The 3rd defendant filed his defence on May 9, 2014, denying the plaintiff's claim entirely. He stated that the suit is incurably bad in law and it fails to disclose a cause of action against him, and that it contravenes the mandatory provisions of section 13A of the *Government Proceedings Act*.

Hearing.

6. The plaintiff testified in his case on March 28, 2017. His evidence closely followed the facts stated in the plaint. The defendants called no evidence in the suit.

Submissions.

7. The plaintiff filed his written submissions on June 27, 2022. The defendants filed no submissions in the present suit.

Determination.

8. The plaintiff's claim is undefended as no evidence for the defence was called. I have considered the pleadings and the evidence of the plaintiff and his submissions in this case and I am persuaded that he has established his claim against the defendants on a balance of probabilities against all the defendants. I therefore enter judgment in his favour against all the defendants and I issue the following final orders:
 - a. A declaration is hereby issued declaring that the plaintiff is the sole, legal registered proprietor of land parcel no Njoro/Ngata/Block 1/357;
 - b. A declaration is hereby issued declaring that that the certificate of lease dated February 7, 1995 purportedly issued in the name of the 1st defendant, William Odera Abuonji, the 1st defendant in respect of land parcel no Njoro/Ngata/BLOCK 1/357 was obtained fraudulently;



- c. The purported certificate of lease dated February 7, 1995 purportedly issued in the name of William Odera Abuonji, the 1st defendant in respect of land parcel no Njoro/Ngata/Block 1/357 is hereby cancelled;
- d. An order of permanent injunction is hereby issued, restraining the defendants by themselves, agents, assigns, employees and anyone else claiming through them, from interfering with the plaintiff's possession, occupation, use and development of land parcel no Njoro/Ngata Block 1/357;
- e. The 1st and 2nd defendants shall remove themselves from the plaintiff's land parcel no Njoro/Ngata Block 1/357 forthwith and in default be forcibly evicted;
- f. The defendants shall jointly and severally bear the plaintiff's costs of this suit.

DATED, SIGNED AND DELIVERED AT NAKURU BY WAY OF ELECTRONIC MAIL ON THIS 11TH DAY OF AUGUST, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

