



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mokaya v Kebaso & 4 others (Environment & Land Case 40 of 2021)  
[2022] KEELC 12615 (KLR) (28 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12615 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 40 OF 2021**

**JM KAMAU, J**

**SEPTEMBER 28, 2022**

**BETWEEN**

**DANIEL MAROKO MOKAYA ..... PLAINTIFF**

**AND**

**REUBEN MOKAYA KEBASO ..... 1<sup>ST</sup> DEFENDANT**

**ELIJAH OGOTI MOGIRE ..... 2<sup>ND</sup> DEFENDANT**

**GIDEON MWEBI KEBASO ..... 3<sup>RD</sup> DEFENDANT**

**JARED NYAMARI ..... 4<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR NYAMIRA COUNY ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiff sued the Defendants for an order of cancellation of Title Deeds numbers Central Kitutu/mwogeto/2216,2217, 2218 and 2219 which were all hived from Central Kitutu/mwogeto/1863 and a Declaration that the land Registrar, Nyamira by registering the aforesaid subdivisions without going through the normal succession process acted in a manner that in unlawful rendering the exercise null and void. The Parcel of land Central Kitutu/mwogeto/1863 is situated at Manga District in Nyamira County. The land measures 0.079 Hectares or thereabout.
2. The land was registered in the name of Agnes Kwamboka Negoti. It was then transferred to the 1<sup>st</sup> Defendant who later sub-divided it into the aforesaid 5 sub-units and sold the same to the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants. The Plaintiff claims that this act sparks of fraud brought about by collusion between the 5<sup>th</sup> Defendant on one hand and the 1<sup>st</sup> Defendant on the other. This led to the disinheritance of the Plaintiff who was hence rendered landless. The Plaintiff describes himself as the son of the late Michael Mokaya and an uncle to the original registered owner of the parcel of land. On 11/8/2020 the first 4 Defendants filed a Defence categorically denying all the contents of the Plaintiff and raising a point of



law to the effect that the suit is incompetent, and discloses no reasonable cause of action and offends the explicit provisions of the Civil Procedure Rules. They also averred that the Plaintiff has no *locus standi* to institute the suit. They finally urged the court to find that the suit offends the provisions of the Government Proceedings Act. The 4<sup>th</sup> insisted that they are bona fide purchasers for value without notice and consequently their Title Deeds cannot be faulted. They asked the court to dismiss the suit with costs. The 5<sup>th</sup> Defendant has so far never entered appearance nor filed Defence to deny the claim or an admission to own up to the claim.

3. On 26/7/2022 the 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants filed a Notice of Preliminary Objection on the grounds that:
  1. The suit property known as Land Parcel Central Kitutu/mwogeto/1863 was registered in the name of Agnes Kwamboka Negoti who is now deceased.
  2. The Plaintiff has not obtained the Grant of letters of Administration in order to bring proceedings for and on behalf of the Estate of Agnes Kwamboka Negoti (Deceased).
  3. Therefore, this entire suit is defective, misplaced, bad in law, frivolous and an abuse of the court process as the Plaintiff lacks the requisite locus standi.
4. I allowed counsel to address me on the above and Mr. Nyamari repeated the above grounds and the averments in the Defence to which Ms. Ndemo responded that the Plaintiff became registered as the Proprietor of the parcel of land L.R. No. Central Kitutu/mwogeto/1863 even before the Deceased Agnes Kwamboka Negoti died and that the Green Card bore her witness. The Deceased transferred the suit property to the Plaintiff on 30/11/1995 and that the Plaintiff therefore has capacity to file the suit but very interestingly none of the parties herein have told the court when the said Agnes Kwamboka Negoti died if at all.
5. For a Preliminary Objection to stand, the facts must not be in contention. On the Question as to whether the issue raised by the Defendant is really a Preliminary Objection I am obliged to revisit the all-important Decision by the Court of Appeal in the case of *Mukisa Biscuits Manufacturing Co. Ltd - v- West End Distributors Limited* (1969) EA. 696. A preliminary objection per Law J.A. was stated as: -

"So far as I am aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court, or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration."
6. Herein the facts are not only unclear but also in dispute. When did Agnes Kwamboka Negoti die if at all she is dead. Could it be because of the Plaintiff using the words that the Defendants want to disinherit him that the Defendants took it that the said Negoti is dead? From the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants list of documents dated 9/6/2022 the Title Deed in respect of LR. No. Central Kitutu/mwogeto/1863 was issued to one Reuben Mokaya Kebaso (1<sup>st</sup> Defendant) on 7/5/2009. Mutation forms were later processed to create subdivisions 2216,2217,2218 and 2219.
7. The same are dated 5/5/2010, at least this is evident from the rubber stamp and signature of the District Surveyor, Nyamira. On 18/12/1997 a letter of consent was issued by the Manga Land Control Board to Agnes Kwamboka Negoti consenting to her transfer of the suit property to Sibia Nyakoboke Kebaso. The subject is Central Kitutu/mwogeto/ 1863. It is not clear from the pleadings who Sibia Nyakoboke Kebaso is and whether the said transfer was ever effected or not. On 25/6/2009 the same Board issued consent to Reuben Mokaya Kebaso to sub-divide the property L.R. No. Central Kitutu/



Mwogeto/1863 into 4 subdivisions. From the Plaintiff's list of Documents dated 13/7/2022 and filed in court on the same date there is an Abstract of Title in respect to Central Kitutu/mwogeto/1863 which shows that the suit property measuring 0.272 Hectares was registered in the name of Agnes Kwamboka Negoti on 20/1/1993, then on 4/2/2008 the land was transferred to one Daniel Maroko of ID No. 3284238 and the Title Deed issued on 3/7/2009. I suppose the said Daniel Maroko is the Plaintiff herein. The 2 last entries were later cancelled with the remarks "Entry Nos. 2 and 3 above entered by Error". Then on 7/5/2009 the land was registered in the name of Reuben Mokaya Kebaso of P.O. Manga and ID. No. 22418903 (I suppose the 1<sup>st</sup> Defendant).

8. A Title Deed was issued the same day and which was then closed on 9/6/2010 when the land was subdivided to create sub-division numbers 2216,2217,2218 and 2219 respectively. None of the parties have explained how the original land left the hands of Agnes Kwamboka Negoti (the original land owner) and got into the hands of the 1<sup>st</sup> Defendant. We have also not been told when the said Agnes Kwamboka Negoti died. We cannot presume her death. The court cannot also be expected to order the Plaintiff to seek letters of administration in respect of one Agnes Kwamboka Negoti before it is clear that she is dead. This is an issue that ought to be addressed during the full hearing since the same is not clear.
9. The upshot of the above is that the Preliminary Objection dated 25/7/2022 is hereby dismissed. Costs to abide the outcome of the case.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 28<sup>TH</sup> DAY OF SEPTEMBER 2022.**

**MUGO KAMAU**

**JUDGE**

In the Presence of:-

Court Assistant: Sibota

Ms. Ndemo for the Plaintiff

Mr. Nyamari for the Defendant

The Plaintiff in person

