



**Andingli v Miyogi (Sued as the Legal Administrator of the Estate of
Yunia Aoko Miyogo- Deceased) (Environment & Land Case 212 of 2017)
[2022] KEELC 12830 (KLR) (21 September 2022) (Judgment)**

Neutral citation: [2022] KEELC 12830 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT & LAND CASE 212 OF 2017
MN KULLOW, J
SEPTEMBER 21, 2022**

BETWEEN

SAMWEL OKACH ANDINGLI PLAINTIFF

AND

ODODA ERICK MIYOGI DEFENDANT

**SUED AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF YUNIA AOKO
MIYOGO- DECEASED**

JUDGMENT

1. The plaintiff herein commenced this suit by way of a plaint dated March 29, 2010, amended on May 29, 2013 and re-amended on April 28, 2020; seeking the following orders against the defendant: -
 - i. Declaration that the plaintiff is the registered and/or lawful owner of the LR No's Kamagambo/ Kabuoro/ 1485 & 1486, respectively, to the exclusion of all and sundry.
 - ii. Declaration that the decisions of Rongo Land Disputes Tribunal and the senior resident magistrate's court at Rongo dated August 13, 2009 and November 23, 2009 respectively, ordering amalgamation and/or merging of the suit lands and transfer of a portion measuring 2 acres thereof to the defendant, was/is illegal, null and void.
 - iii. An order of eviction against the defendant herein, together with his agents, servants and/or any other person acting and/or claiming under the defendant herein from LR No's Kamagambo/ Kabuoro/ 1485 & 1486 and/or any portions thereof.
 - iv. Permanent injunction restraining the defendant by himself, agents, servants and/or anyone claiming under the defendant from acting on, implementing, enforcing and/or giving effect to the illegal and void decisions of Rongo Land Disputes Tribunal and/or trespassing onto,



building structures, cultivating, interfering with and/or in any other manner dealing with the suit land, that is, LR No's Kamagambo/ Kabuoro/ 1485 & 1486 respectively.

- v. The honourable court be pleased to direct and/or order rectification of the registers in respect of LR No's Kamagambo/ Kabuoro/ 1485 & 1486, in the event that the decision of the Rongo Land Disputes Tribunal, in favor of the defendant, has been implemented and/or enforced.
 - vi. Costs of this suit be borne by the defendant.
 - vii. Such further and/or other relief as the Honourable court may deem fit and expedient so to grant.
2. The plaintiff contends that he was and still is the registered proprietor of the suit parcel numbers LR No's Kamagambo/ Kabuoro/ 1485 & 1486 measuring approx. 0.2Ha having been registered on November 27, 1985 and is thus entitled to exclusive rights to the parcels to the exclusion of all and sundry.
 3. He avers that on or about July 2009; Yunia Aoko Miyogi who is since deceased, filed a complaint at the Rongo Land Disputes Tribunal, claiming ownership rights and interests over a portion of the suit parcels measuring approx. 2 Acres. The complaint was heard by the said Tribunal and a decision delivered on the August 13, 2009. The defendant thereafter filed a case at the senior resident's magistrate's court at Rongo vide Rongo SRMCC Misc Application No 36 of 2009 for purposes of having the decision of the Rongo Land Disputes Tribunal adopted.
 4. It is his claim that the senior resident's magistrate's court at Rongo; without according him an opportunity to be heard, proceeded and adopted the said decision of the Rongo Land Disputes Tribunal on November 23, 2009.
 5. It is further his claim that the Rongo Land Disputes Tribunal was not vested with the requisite jurisdiction to entertain, deliberate and adjudicate upon the defendant's claim of ownership rights over the lands registered under Land Registration Act and therefore; the proceedings and decision of the Rongo Land Disputes Tribunal and the subsequent adoption of the said proceedings and decision by the senior resident magistrate's court at Rongo vide Rongo SRMCC Misc Application No 36 of 2009 was illegal thus null and void ab initio.
 6. Consequently, it is his claim that he has been deprived and denied his ownership rights over the said suit parcels as a result of the said decision and decree and further that the defendant is likely to execute the said decree and obtain a title in his name. He thus seeks an order of eviction and permanent injunction, restraining the defendant from enforcing the decree arising from the illegal decisions and from trespassing onto the suit parcels.
 7. In his reply to the statement of defence dated April 13, 2010, he denied selling the suit parcels measuring 2 acres as alleged or that the defendant, either by herself or through one Ignatio Miyogi took possession of the said portion of land in 1980 or at all as claimed by the defendant.
 8. On whether the suit was time barred, it was his contention that that the defendant only entered and/or trespassed onto the suit parcels on/or about July, 2009 upon filing a complaint before the Rongo Land Disputes Tribunal and thus the same is not barred by the provisions of the Limitation of Actions Act.
 9. The defendant (who is since deceased) filed a memorandum of appearance and a statement of defence both dated April 9, 2010 denying all the claims made by the plaintiff. It is her contention that even though the plaintiff was the first registered owner of the original parcel No Kamagambo/ Kabuoro/ 503 measuring 3.8Ha; in 1974, the plaintiff sold a portion measuring 2 Acres to the late Ignatio Miyogi



for consideration of Kshs 6,000/= and 3 heads of cattle and they thereafter took possession of the said portion in the year 1980 and have enjoyed peaceful occupation to date.

10. It was her claim that in the year 1985; the plaintiff caused the 2 acres sold to them to be subdivided into parcel No's 1485 & 1486. However, despite the subdivision of the parcel into the 2 parcel no's, the defendant maintained that she continued occupying and enjoying peaceful possession of the said portion.
11. In the alternative, it was her contention that she has acquired rights over the parcel no's 1485 and 1486 by virtue of adverse possession and stated that at the appropriate time she would file a claim on adverse possession against the plaintiff. It was further her claim that the plaintiff's suit is barred by the statute of limitation and urged the court to dismiss the plaintiff's suit with costs.

Trial

12. On February 22, 2022; upon the court being satisfied that the defendant was served with the hearing date and an affidavit of service filed to that effect, the matter proceeded for hearing ex-parte. The plaintiff; Samwel Okach Andingli testified as PW1. He adopted his witness statement dated October 1, 2016 as his testimony.
13. He also produced the list of documents dated/filed on December 16, 2013 and a supplementary list of documents dated/filed on November 16, 2015 as plaintiff exhibits 1 to 9 in support of his case as follows;
 - i. Mutation form dated August 28, 1985 - PExhibit 1
 - ii. Copy of the title deed dated June 19, 2008 – PExhibit 2
 - iii. Copy of certificate of official search in respect to LR No Kamagambo/ Kabuoro/ 1485 dated March 6, 2007 - PExhibit 3
 - iv. Copy of certificate of official search in respect to LR No Kamagambo/ Kabuoro/ 1486 dated March 6, 2007 - PExhibit 4
 - v. Copy of proceedings and decision of the Rongo Land Disputes Tribunal and the senior resident magistrate's court at Rongo - PExhibit 5
 - vi. Copy of decree from the Rongo magistrate's court - PExhibit 6
 - vii. Copy of grant of letters of administration ad litem - PExhibit 7
 - viii. Bundle of photographs of the offensive activities undertaken by the defendants - PExhibit 8 and 9
14. The plaintiff thereafter closed his case.
15. Since the matter proceeded ex-parte; upon close of the plaintiff's case, I issued directions on the filing of final written submissions to be filed within 21 days. The plaintiff filed his submissions dated February 23, 2022, which I have read and taken into account in arriving at my decision as hereunder.

Analysis and disposition

16. It is this court's considered view that the issues arising for determination are: -
 - a. Whether the suit herein is res judicata.



- b. The validity of the Rongo Land Disputes Tribunal decision dated August 13, 2009 and subsequently adopted by the senior resident magistrate's court vide the judgment issued on November 23, 2009.
- c. Who is the lawful owner of suit parcel No's LR Kamagambo/ Kabuoro/ 1485 & 1486.
- d. Whether the plaintiff is entitled to the reliefs sought in the re- amended complaint dated April 28, 2020.

A. Whether the suit herein is res judicata

17. A court on its own motion may raise an issue of res judicata if it deems it fit for the reason that, res judicata significantly touches on the jurisdiction of a court and the same goes to the root of a case. This was held in the Court of Appeal case in [Isaak Aliaza vs Samuel Kisiavuki \[2021\] eKLR](#) where Nambuye J held as follows: -

' I wish to reiterate that the position in law is therefore that a jurisdictional issue is a fundamental issue whether it is raised either by the parties themselves or the court suo motu, it has to be addressed first before delving into the interrogation of the merits of issues that may be in controversy in a matter'.

18. Section 7 of the [Civil Procedure Act](#) on res judicata defines what amounts to res judicata as follows: -

' No court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such court.'

19. The elements that must be proved in a claim of res judicata are that; the issues raised in the present suit must be directly and substantially in issue as the issues raised in the former suit that has been heard and finally determined by a competent court. The same must be between the same parties.
20. The defendant in the instant suit lodged a complaint with the Rongo Land Disputes Tribunal sometimes in July, 2009; claiming ownership rights and title over the suit parcels on a portion measuring approx 2 acres. The tribunal heard the complaint and rendered its decision on the August 13, 2009 whose effect was that the defendant was entitled to the said portion of land in dispute. The defendant subsequently filed an application at the senior resident magistrate's court at Rongo vide SRMCC Misc App No 36 of 2009 for purposes of adopting the decision of the Rongo Land Dispute Tribunal. The same was done and the court issued its judgment and decree on the November 23, 2009.
21. The plaintiff on the other hand contends that the Rongo Land Disputes Tribunal lacked the requisite jurisdiction to entertain the defendant's claim of ownership rights over the suit parcel. It is his position that the proceedings and decision by the tribunal and which was subsequently adopted by the SRMCC at Rongo is null and void.
22. From the above, it is clear that the dispute between the parties herein has been entertained in different fora; the complaint was first heard by the Rongo Land Dispute Tribunal and a decision thereof rendered on the August 13, 2009. Subsequently, the defendant herein then filed a misc application at the senior resident magistrate's court at Rongo for purposes of adopting the decision of the land tribunal. The same was done on the November 23, 2009 and decree issued to that effect. All these facts have not been contested by the plaintiff herein.



23. What however appears to be in contention according to the plaintiff is the validity of the said decision by the Rongo Land Dispute Tribunal and which was subsequently adopted by the senior resident magistrate court at Rongo. It is his position that the said tribunal acted in excess of its powers in determining an ownership claim and ordering for the merging of the suit parcels and transfer of a portion measuring 2 acres to the defendant. Thus the decisions are illegal, null and void and the defendant cannot enforce the same.
24. It is however important to note that despite being aggrieved by the decision of the land tribunal, the plaintiff herein did not take the necessary/ available steps under the act to appeal the said decision to the appeals committee or at all, within the stipulated timelines. Further, it is my understanding that upon the adoption of the said decision of the tribunal by the senior resident magistrate's court at Rongo, the same became a valid court judgment capable of execution pursuant to the Civil Procedure Rules, the plaintiff at this point again had an option to institute an appeal against the said decision. Moreover, looking at the plaint carefully, I do note that the same has raised issues of jurisdiction of the Land Disputes Tribunal; the plaintiff maintains that the tribunal acted in excess of its powers in determining claim of ownership when it has no such powers. To this end, the plaintiff was at liberty to institute judicial review proceedings for purposes of quashing such decision if need be. He further claims that the rules of natural justice were not followed, again these are matters that can be adequately and exhaustively determined in a judicial review claim.
25. What is at the center of the present suit is the ownership of the suit parcel No's 1485 & 1486. From a look at the proceedings and decision of the Land Disputes Tribunal; what was at the center of the complaint lodged by the late Yunia Aoko Miyogi was the ownership of a portion of the suit parcel measuring 2 acres, which at the time had been subdivided into parcel No's 1485 & 1486. It is therefore evident that the main issue in the present suit was directly and substantially in issue in a previous suit/ claim. The tribunal conducted its proceedings and rendered its decision in determining the matter and further that the dispute has been between the same parties even though the initial defendant is since deceased.
26. The upshot of the above is that the matter herein has already been determined and is therefore res judicata. The validity of the said decision or otherwise is a matter that cannot be addressed at this point and is thus res judicata. The issues raised in the suit are matters that can only be determined by this court sitting as an appellate court and not at this stage. There indeed has to be an end to litigation.
27. In view of the foregoing, having held that the instant suit is res judicata, I accordingly find that it would be an academic exercise to determine the remaining issues.

Conclusion

28. The upshot of the above is that the plaintiff's claim against the defendant is not merited and the re-amended plaint dated April 28, 2020 is hereby struck out with no orders as to costs.

It is so ordered.

DATED, SIGNED and DELIVERED in open court at IGORI on 21ST day of SEPTEMBER, 2022.

MOHAMMED N KULLOW

JUDGE

In presence of:-

Mr Kisera holding brief for Ochwangi for the Plaintiff



Nonappearance for the Defendant

Tom Maurice – Court Assistant

