



**Mia v Kinuthia & 3 others (Environment and Land Case Civil Suit
668A of 2017) [2022] KEELC 13489 (KLR) (12 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13489 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 668A OF 2017
MN GICHERU, J
OCTOBER 12, 2022**

BETWEEN

ELIZABETH KAVINDU MIA PLAINTIFF

AND

**JACKSON KINUTHIA (BEING THE LEGAL REPRESENTATIVE OF
KOINOSYA PARSAOTI (DECEASED) 1ST DEFENDANT
JOSEPHAT NCHAKO KOINOSYA 2ND DEFENDANT
AMOS NATIDIE KINUTHIA 3RD DEFENDANT
JACKSON KINUTHIA 4TH DEFENDANT**

JUDGMENT

1. Elizabeth Kavindu Mia and Christine Paul Lari Nthenya (the plaintiffs), seek the following reliefs against the defendants, namely; Jackson Kinuthia (first defendant, sued as the legal representative of the estate of Kinosia Parsaoti (deceased), Josephat Nchako Kinosia (second defendant), Amos Natidie Kinuthia (third defendant), and Jackson Kinuthia (fourth defendant).
 - a. A declaration that the transfer of LR Kajiado/Kaputiei/Central/2284 to the third defendant was fraudulent and thus null and void.
 - b. A declaration that the subdivision of LR Kajiado/Kaputiei Central/2075 was fraudulent thus null and void.
 - c. A declaration that the plaintiffs' are the *bona fide* owners of land measuring 5 acres each out of LR Kajiado/Kaputiei Central/2075.
 - d. An order directing the defendants herein to subdivide LR Kajiado/Kaputiei Central 2075 or any resultant subdivision thereof and transfer 5 acres of land to each of the plaintiffs.



- e. An order that the defendants do execute all necessary documents that shall enable the plaintiffs acquire titles to 5 acres of LR 2075 or any resultant subdivisions thereof and in default, the deputy registrar of this court shall sign the necessary documents on behalf of the defendants, and in favour of the plaintiffs.
 - f. A permanent injunction against the defendants jointly and severally restraining them from trespassing or interfering with the plaintiffs quiet possession over their respective parcels of land.
 - g. Costs of the suit.
 - h. Any other order that the court may deem fit to grant.
2. The plaintiffs' case is as follows. Both of them occupy a total of ten (10) acres of what used to be LR Kajiado/Kaputiei Central/2075. Each one of them occupies 5 acres.
- The first plaintiff was the first to occupy the suit land on June 5, 1997 after she entered into a sale agreement with the late Koinosia Parsaoti. She purchased five (5) acres which was to be hived off the suit.
- Each acre cost Kshs 13,000/=, and the purchase price was payable by instalments. She paid the final instalment on August 21, 2003.
- The second plaintiff entered into an agreement with the late Koinosia Parsaoti on January 8, 2002. It was for sale of five (5) acres at Kshs 20,000/= per acre. The payment was done by instalments. The last instalment was on March 6, 2010.
- The plaintiffs have developed the land. When they asked the seller to transfer their respective parcels, he declined. Instead he subdivided the parcel No 2075 into ten (10) parcels numbering 2275-2284. He then transferred the resultant parcels to the second, third and fourth defendants.
- It is for the above reasons that they filed the current suit. All that they want is to have the land they bought transferred to them.
3. In support of their case, the plaintiffs filed the following evidence.
- a. Their witness statements dated April 24, 2017.
 - b. Nine (9) copies of the agreements for sale of land and acknowledgment between them and the seller of the land.
 - c. Copy of proceedings dated December 4, 2012 between the first plaintiff and the seller before the chief of Ilmunkush location.
 - d. Copy of letter dated November 16, 2012, written by Nyandieka Advocate on behalf of the second defendant asking the plaintiffs to vacate the land which is LR 2284.
 - e. Copies of letters written by the plaintiffs advocate dated June 11, 2014 asking for title deeds for the land that they occupied after having bought the same.
 - f. Copy of a letter dated April 7, 2017 written to the seller, the second and the third defendants by the plaintiffs' advocate seeking for transfer of their land failing which a suit would be instituted.
4. The defendants filed three written statements of defence which are similar in several features. They deny entering into any agreements with the plaintiffs, owning LR 2075, committing any fraud, the



existence of LR 2075, the existence of any consents from the land control board, and any lawful occupation of the land by the plaintiffs.

They aver that the plaintiffs attempted to forcefully encroach on the third defendant's land in the year 2012.

5. Further to the above, the third defendant avers that he is the registered owner of LR Kajiado/Kaputiei/2284, which registration was obtained lawfully and which land he has never sold to the plaintiffs. He adds that the plaintiffs did not object when the survey, subdivision, erection of beacons and registration took place in 2011.

Moreover, even if there were any agreements between the plaintiffs and the first defendant, they would be null and void for lack of consent by the Land Control Board.

The third defendant has, in addition to the defence filed a counterclaim in which he prays that the plaintiffs be evicted from LR Kajiado/Kaputiei Central /2284, and secondly, that they be restrained by an order of injunction from trespassing or in any other manner interfering with the third defendant's quiet possession and ownership of the same. He also prays for costs.

6. In support of their defences, the defendants filed the following evidence.
 - a. Witness statements by the deceased, second defendant and third defendant all dated September 25, 2017.
 - b. Witness statement by the fourth defendant dated August 7, 2019.
 - c. Copy of title deed for Kajiado/Kaputiei Central/2284.
 - d. Copy of mutation form for LR Kajiado/Kaputiei Central/2075 dated 30/11/2011.
7. At the trial, the plaintiffs testified and called one witness while the defendants testified without calling any witness. All the witnesses adopted their witness statements and documents as their evidence. They were then cross-examined by counsel for the adverse party.
8. Counsel for the parties filed written submissions on April 12, 2022 and June 8, 2022 respectively. They raised the following issues.
 - i. Whether there were agreements for sale of land between the late Koinoisa Parsaoti and the plaintiffs and if so what were the terms and did the plaintiffs fulfil their end of the bargain?
 - ii. Are the plaintiffs in occupation of the parcels of land as shown to them by deceased?
 - iii. Is any of the defendants wrongly joined in this suit?
 - iv. Is the counterclaim by the third defendant merited?
 - v. What orders should the court make?
 - vi. Who should bear the costs?
9. On the other hand, the defendants' counsel identified the following issues for determination;
 - i. Whether the third defendant is the *bona fide* owner of Kajiado/Kaputiei/2284?
 - ii. Whether the plaintiffs have any legal claim in the suit property?
 - iii. Whether the plaintiffs should be evicted from the suit property?



10. I have carefully considered the evidence adduced in this case as well as the submissions by both sides. I agree that the issues as identified by counsel for both sides will determine the dispute. I therefore make the following findings;

On the issue of agreements between the plaintiffs and the late Koinosia Parsaoti, I find that the two agreements exist. In this regard, I find that copies of the agreements were produced as exhibits. They have details that include the full names of the parties and their identity card numbers. There is no explanation by the defendants as to how the plaintiffs came to be in possession of such personal details of the late Koinosia Parsaoti.

Secondly, I am satisfied that the plaintiffs paid the agreed purchase price. In this regard, I believed the evidence by the plaintiffs which is corroborated sufficiently by the documents produced which include the letter from the chief of Ilmunkush location.

On the second issue of occupation of the five acres by each of the two plaintiffs, I find that the plaintiffs have been in occupation since June 5, 1997, and January 8, 2002 respectively.

In this regard, I believe the evidence by the two plaintiffs. This evidence is corroborated by the letter by the second defendant's advocate dated November 16, 2012. This letter was produced as an exhibit by the plaintiffs. The defendants have nothing reasonable to say about how the plaintiffs came to the occupation of the ten (10) acres of land.

On the issue of joinder of the defendants, I find that they are properly joined as they seek to own land the plaintiffs bought and occupy. They are therefore necessary parties.

Regarding the counterclaim by the third defendant, I find that it has no merit. Under section 28 (b) of the [Land Registration Act](#), it is provided as follows;

“Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on register –

(b) Trusts including customary trusts”

When the defendants obtained their title deeds to the suit land, the plaintiffs were already in occupation of the same land. This means that there was already an existing trust. This is the trust that overrides the title deed. The title deeds that the defendants have are not absolute. They are subject to the trusts created when the plaintiffs occupied the land with the authority of the person who transferred the land to the second, third and fourth defendants.

The plaintiffs cannot be evicted as the counterclaim seeks when they enjoy that trust created by the late Koinosia Parsaoti, when he allowed them to occupy the land in exchange for money.

I will skip the last two of the plaintiffs' issues but I will come back to them at the conclusion.

11. When it comes to the defendants issues, I make the following findings;

On the first issue, I find that the third defendant is the *bona fide* owner of LR 2284 but subject to any overriding interests enjoyed by the plaintiffs as earlier stated.

On the second issue, I find that the plaintiffs have a legal claim in the suit property as recognized by section 28 (b) of the [Land Registration Act](#).

Finally, on the defendants' issue, I find that the plaintiffs should not be evicted because I have already found that they counterclaim that seeks to have them evicted from the suit land has no merit.



12. Finally, on the absence of the Land Control Board consent as required by section 6 of the [Land Control Act](#), it is now settled that the equitable doctrines of constructive trust and proprietary estoppel are applicable to and supersede the [Land Control Act](#), where a transaction relating to an interest in land is void and unenforceable for lack of consent of the Land Control Board.

This is because equity has been elevated to a constitutional principle by virtue of article 10 (2) of the [Constitution](#) of Kenya.

This was the holding in the case of [Willy Kitilit Kimutai v Michael Kibet](#) (2018) eKLR. In that case, the court held that a party in possession of land did not require the consent of the Land Control Board because of the two doctrines of constructive trust and proprietary estoppel.

I now come back to the plaintiffs' fifth and sixth issues.

On the orders that the court should make, I find that the plaintiffs have proved that they are entitled to all those they prayed for in the amended plaint dated May 22, 2019.

Accordingly, I enter judgment for the plaintiffs against the four defendants jointly and severally as prayed for in the plaint.

I dismiss the third defendant's counterclaim with costs to the plaintiffs.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 12TH DAY OF OCTOBER, 2022.

M.N. GICHERU

JUDGE

