



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kebaso v Omoso & another (Environment & Land Case 32 of 2021)  
[2022] KEELC 14814 (KLR) (16 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14814 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 32 OF 2021**

**JM KAMAU, J**

**NOVEMBER 16, 2022**

**BETWEEN**

**JEREMY NYAKWARA KEBASO ..... PLAINTIFF**

**AND**

**SIMION ONGERI OMO SO ..... 1<sup>ST</sup> DEFENDANT**

**FRED MORURI OMO SO ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff *vide* a copy of plaint filed on October 10, 2012 sued the defendants in his capacity as the Donee of a Power of Attorney from Joel Moses Kebaso, the registered owner of Matutu Settlement Scheme/619. The donor of the power of attorney is one of the beneficiaries of the estate of the late Kebaso Onsongo after a successful succession cause in Kisii High Court Succession Cause No 104 of 1999. The suit emanates from wrongful and unlawful occupation and possession by the defendants and the 1<sup>st</sup> defendant was arrested, arraigned in court and charged with the offences of trespass contrary to section 91 and 3 (1) of the [Penal Code](#) and forceful detainer contrary to section 3 (1) of the [Trespass Act](#) in Keroka Resident Magistrate's Court Criminal Case Number 598 of 2002 where he was convicted of the said offence and sentenced to serve a 5 months' imprisonment. The 2<sup>nd</sup> defendant is said to have ran away to escape arrest by the police. The 1<sup>st</sup> defendant's appeal against the said conviction and sentence was not successful because the Appeal, in Kisii High Court Appeal Number 211 of 2003 was dismissed for want of prosecution. The plaintiff therefore claims damages for loss, permanent injunction, eviction and costs of the suit as follows: -
  - a. A declaration that the plaintiff is entitled to exclusive and unimpeded right of possession and occupation and user of all that piece of land known as LR No Matutu Settlement Scheme/619.



- b. A declaration that the defendants whether by themselves or their servants, agents assigns or otherwise howsoever are unlawful and wrongfully in occupation, possession and user of the suit property and are accordingly trespassers on the same.
  - c. A permanent injunction restraining forever the defendants whether by themselves or their servants, agents assignees or otherwise howsoever from remaining or continuing in occupation, possession or user of the suit property.
  - d. Eviction from and/or surrender of vacant possession of their suit property.
  - e. Costs of this suit together with interest thereon at court rates.
  - f. Any other or further relief (s) as this honourable court may deem appropriate to grant in the circumstances of this suit.
2. Accompanying the plaint are the list of the plaintiff's documents as well as his witnesses' statements.
  3. The defendant filed his defence on November 13, 2012 and, while claiming that the power of attorney used is a forgery, also denied the plaintiff's claim and further claimed that they have been in the suit land for over 40 years and have enjoyed uninterrupted quiet possession and occupation of the suit land for a period of over 12 years before the filing of the suit which they took over from their late father. They therefore seek that the suit be dismissed with costs. Issues for determination were filed by the plaintiff on March 21, 2013 as follows: -
    1. Whether or not the power of attorney is a forged document or a valid document.
    2. Whether or not the suit property is registered in the name of Joel Moses Kebaso.
    3. Whether or not the suit property of the deceased was distributed as per the certificate of confirmation and title deeds issued.
    4. Whether or not the District Land Registrar and District Surveyor demarcated and fixed physically the boundaries on the suit land before issuance of title deeds.
    5. Whether or not the defendants wrongfully and unlawfully moved to the suit land in November, 2002.
    6. Whether or not the defendant(s) were/was arrested and charged in a court of law due to trespass.
    7. Whether or not the defendant erected permanent structures on the suit land during the proceedings of the said criminal proceedings.
    8. Whether or not the plaintiff has suffered the loss and damage outlined in his defence.
    9. Whether or not the defendants were served with demand notices.
    10. Whether or not this court has jurisdiction to hear and determine this matter.
    11. Whether or not the plaintiff is entitled to his prayers set out in his plaint.
  4. In the lifetime of the suit, the donor of the power of attorney, Joel Moses Kebaso died on March 7, 2015 and the donee applied for letters of administration ad litem in order to proceed with the suit in his personal capacity and the same was granted after which the plaint was accordingly amended on December 5, 2016.



5. On October 22, 2020 the plaintiff died. On October 28, 2021 David Moses Kebaso, Charles Moses and Evans Maosa Mose applied to substitute the deceased and the same was granted on January 10, 2022 with a further amended plaint being filed on February 10, 2022. A further or alternative written statement was filed by the 1<sup>st</sup> plaintiff on October 11, 2022. After very many instances of the defendant not turning up for the hearing of the same, the hearing commenced on October 25, 2022 with the first plaintiff giving evidence on behalf of the other plaintiffs who are his brothers. He testified that the parcel of land known as Matutu Settlement Scheme/154 belonged to his grandfather Kebaso Onsongo who died in 1996. After Succession and sub division, his late father Joel Moses Kebaso got a share of the land. He and his Co-plaintiffs are from the lineage of the 1<sup>st</sup> wife of their grandfather which house got Matutu Settlement Scheme/619 measuring 2.87 Hectares which was registered in the name of his father. The second wife got Matutu Settlement Scheme/620 and the 3<sup>rd</sup> wife got Matutu Settlement Scheme/621. The 2<sup>nd</sup> defendants are the sons of the plaintiff's grandfather through the 3<sup>rd</sup> wife, Sabiri Nyabonyi. The two moved from their land Matutu Settlement Scheme/620 around 2009/2010 after Succession and came to live on MATutu Settlement Scheme/619. The 1<sup>st</sup> defendant was even arrested and convicted in Keroka Principal Magistrate's Criminal Case Number 596 of 2002. He was convicted of trespass and forceful detainer contrary to section 91 and 3 (1) of the Penal Code and Trespass Act respectively and sentenced to 5 months' imprisonment and his Appeal against conviction and sentence dismissed for want of prosecution. He summed up his evidence by producing the following documents to beef up the plaintiffs' case:

1. Certified copy of the register of Land Parcel No Matutu Settlement Scheme/619.
2. Certified copy of the Mutation Form in respect to Land Parcel No Matutu Settlement Scheme/154.
3. Certified Copy of the Registry Map Sheet No 2 (131/121).
4. Copy of the Proceedings in respect of Kisii HC SUCC No 104 of 1999.
5. Copy of the certificate of confirmation of grant.
6. Copy of the proceedings and judgment in respect of Keroka RMCR No 598 of 2002.
7. Copy of the petition of appeal in Kisii HCCRA No 211 of 2003.
8. Copies of demand notices dated July 12, 2012.
9. A copy of the Title Deed in respect of Land Parcel No Matutu Settlement Scheme/619.
10. Copy of the power of attorney.
11. A copy of the court order dated May 6, 2003.
12. A copy of the court order dated October 16, 2000.
13. A copy of the RL 7.
14. A copy of the court order dated February 12, 2002.
15. A copy of the court order dated March 14, 2002.
16. A letter of the district surveyor dated October 11, 2001.
17. Copies of letter of consent to sub-divide and transfer Land Parcel No Matutu Settlement Scheme/154.



18. Certificate of death of the late Joel Moses Kebaso.
  19. Copy of grant of letters of administration intestate.
6. He explained that his grandfather worked for the Colonial Government in the White Highlands and after the latter left the country he was allocated Matutu Settlement Scheme 154 measuring 24 Acres having been a squatter on that land but for which he had to pay through the Settlement Fund Trustees. He said that the 3<sup>rd</sup> wife to his grandfather, Sabiri Nyabonyi Omoso claimed the entire land upon demise of his grandfather in 1996 but that in Succession Cause number 104 of 1999, the Court ordered that the land be sub-divided equally among the 3 co-wives with each getting a piece of land measuring 2.87 Hectares with an access road measuring 0.44 Hectares set aside. Since then the families have been warring over this Estate.
  7. The 2<sup>nd</sup> witness Thomas Mamba Omoso Kebaso testified and said that he is a brother to the late Joel Moses Kebaso and a son to the late Omaso Onsongo who died in 1986. He said that the plaintiffs in this case are his nephews. He said that he came to court to testify that his father had 3 wives and had expressed his desire that his parcel of land LR No Matutu Settlement Scheme/154 be shared equally among his 3 wives and which was eventually done through the Succession Cause in Kisii.
  8. Having had the case closed and the plaintiffs having failed to file any written submissions I now proceed to deliver my Judgment which I am under duty to do.
  9. The evidence given in this case has not been shaken and the same is in conformity with the averments in the plaint as well as the statements recorded by the 2 witnesses who testified in the case. The defendants were accorded an opportunity to controvert the evidence and give any alternate version of the case but they failed to do so. The title deed in respect to the suit property i.e. LR No Matutu Settlement Scheme/619 is registered in the name of Joel Moses Kebaso, a beneficiary of his father's Estate, the late Kebaso Onsongo by virtue of the confirmation of Grant arising from Kisii High Court Succession Cause No 104 of 1999. The confirmation formula followed was that of the houses. Each of the 3 wives to the Deceased got a third of what used to be LR No Matutu Settlement Scheme/154 after which a confirmation of grant was issued. The grant was confirmed by consent on October 16, 2000 after an objection to the mode of confirmation was abandoned in the High Court, Kisii Succession Cause No 104 of 1999. Each of the 3 houses (wives) got 3 Hectares and Title Deeds were accordingly issued to Sabiri Nyabonyi Omoso's house, Priscah Moraa Kebaso's house and Joel Moses Kebaso on behalf of his kin. The latter got Matutu Settlement Scheme/619 measuring 2.87 Hectares. This title deed can only be challenged in the succession cause which confirmed the grant. I have not been told that this has been successfully done. In the absence of such a recourse the holder of the title deed holds a sanctit title deed which must be respected at whatever cost. Any intruder must also be kept off and I have no hesitation to do so. In the premises, I hereby give Judgment to the plaintiff against the defendants as prayed for in the following words: -
    - a. A declaration be and is hereby issued that the plaintiffs are entitled to exclusive and unimpeded right of possession and occupation and use of all that piece of land known as LR No Matutu Settlement Scheme/ 619.
    - b. A declaration be and is hereby issued that the defendants whether by themselves or their servant's agents' assignees or otherwise howsoever are unlawfully and wrongfully in occupation, possession and user of the suit property and are accordingly trespassers on the same.



- c. A permanent injunction be and is hereby issued restraining the defendants whether by themselves or their servant's, agents', assignees or otherwise howsoever from remaining on or continuing in occupation, possession or user of the suit property.
- d. The defendants are hereby ordered to give vacant possession of the suit property LR No Matutu Settlement Scheme/619 to the plaintiffs forthwith failure to which eviction to follow.
- e. The costs of this suit together with interest thereon at court rates are awarded to the plaintiff against the defendants jointly and severally.

As to the prayer for damages, I will spare the defendants since the same were not proved though pleaded. No evidence was led in that direction.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 16TH DAY OF NOVEMBER 2022.**

**MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: Sibota

plaintiff: Ms Nyandoro holding brief for Mr Bosire

defendants: Mr Wanyama

