



**Shiramba & another v Odwogo & another (Environment & Land Case
18 of 2015) [2025] KEELC 4167 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4167 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 18 OF 2015**

DO OHUNGO, J

MAY 29, 2025

BETWEEN

RESTUTA FLORA KHAVERE SHIRAMBA 1ST PLAINTIFF

TITUS LUSESO SHIRAMBA 2ND PLAINTIFF

AND

WELINGTON AKHONYA ODWOGO 1ST DEFENDANT

PATRICK LUMUMBA ODWOGO 2ND DEFENDANT

JUDGMENT

1. The Plaintiffs moved the Court on 24th February 2015 when they filed Plaint dated 22nd July 2014. They averred in the Plaint that they were joint registered proprietors of the parcel of land known as Butsotso/Shikoti/15827 (the suit property) and that the Defendants had without any lawful authority and/or consent trespassed onto the suit property and constructed illegal structures therein denying them access and use of their legally acquired property.
2. The Plaintiffs therefore prayed for judgment against the Defendants jointly and severally for:
 - a. An order of eviction to issue against the Defendants jointly and severally from the Plaintiff's parcel of land No. Butsotso/Shikoti/15827 and all illegal structures constructed therein by the defendants be demolished forthwith and they be restrained by an order of permanent injunction from ever laying claim to, trespassing, constructing, depositing building materials and/or in any other manner whatsoever from interfering with the Plaintiff's peaceful use and occupation of their parcel of land No. Butsotso/Shikoti/15827.
 - b. Costs of the suit and interest.
 - c. Any other relief this Honourable court may deem fit and just in the circumstances to grant.



3. The Defendants filed Statement of Defence dated 10th March 2016 through which they stated that the suit property was hived off land parcel No. Butso/2835 which was the subject of *Kakamega High Court Succession Cause No. 358 of 2010* and *Kakamega HCCC No 80 of 2011* which were still pending in Court. That the suit property was created pursuant to a grant of letters of administration in respect of which an application for revocation was subsequently filed. They denied the allegations of trespass and stated that the Plaintiffs had obtained title to the suit property fraudulently and that the suit property was family land where they had lived from birth. They prayed that the suit be dismissed with costs.
4. At the hearing, the First Plaintiff (PW1) adopted her witness statement dated 22nd July 2014. She stated in her said witness statement that she jointly purchased the suit property with her brother the Second Plaintiff from one Caleb Temba Odwogo through an agreement dated 17th April 2012 at a consideration of KShs 600,000. That they processed title in their names and that when they went to take possession, the Defendants violently chased them away and constructed illegal structures on the suit property.
5. In her oral testimony, she stated that the consideration was KShs 600,000 and that they purchased the suit property from Caleb Temba Odwogo and his mother. That when she inspected the suit property at the point of purchase it was vacant without any structure and that the sale agreement was entered into in the presence of the family and a village elder by the name Ismael.
6. The Second Plaintiff (PW2) adopted his witness statement dated 21st May 2018. In the statement, he restated the details of the sale transaction and subsequent events as recounted by PW1.
7. Caleb Temba Odwogo (PW3) adopted his witness statement which he filed on 24th February 2015. He stated in his said statement that he sold the suit property to the Plaintiffs on 17th April 2012 at a consideration of KShs 600,000 and that he transferred the suit property to them after attending Lurambi Land Control Board where he obtained consent. That the Defendants who are his brothers have no interest in the suit property and that he owned the suit property together with his mother.
8. PW3 stated in his oral testimony that he was paid the whole consideration, and that the agreement was witnessed by his late brother, his sister, his wife and neighbours. That the Defendants had prevented the Plaintiffs from using the suit property and had erected structures on it. He also stated that he filed *Case No. 80 of 2011* against the Defendants when they started building upon the suit property but later withdrew the case when they stopped. That there was no objection when he filed *Succession Cause No. 358 of 2012* through which he and his mother obtained title. He further stated that he was the Applicant in *Miscellaneous Application No. 50 of 2017* and the Defendants were Respondents and that the matter was still pending as of the date of his testimony.
9. Plaintiffs' case was closed on 30th May 2018.
10. After several adjournments as well as dismissal of the Plaintiffs' case for non-attendance and its subsequent reinstatement, Defence hearing started on 13th February 2024. The First Plaintiff informed the Court on the said date that the Second Plaintiff passed away 10th May 2020. Considering that he had not been substituted, his case was marked abated.
11. Wellington Ekhuya Oduogo (DW1) adopted his witness statement dated 16th March 2016 and produced copies of documents listed in the statement as his exhibits. He stated in the statement that the suit property was hived off Butso/2835 through *Succession Cause No. 356 of 2010* which was contested and pending as of the date of the statement.



12. DW1 stated in his oral testimony that the succession cause was concluded on 26th July 2022. He produced a copy of Certificate of Confirmation of Grant issued jointly to him and Caleb Temba Odwogo and in which Butso/so/Shikoti/2835 was to be shared equally among the listed beneficiaries. He stated that the First Plaintiff was not given any share of Butso/so/Shikoti/2835 in the distribution and that he did not sell any portion of the said parcel to the First Plaintiff. He added that he still had the original title in respect of Butso/so/Shikoti/2835 with him and that there was no other succession cause besides *Succession Cause No. 358 of 2010*.
13. The Defence case was thereafter closed.
14. Directions were then given that parties file and exchange written submissions. The Plaintiffs filed submissions dated 22nd May 2024, the Defendants filed submissions dated 17th May 2024.
15. The Plaintiffs submitted that Caleb Temba Odwogo conducted succession proceedings in respect of the estate of his late father, wherein parcel number Butso/so/Shikoti/2835 was sub-divided into various derivatives which included the suit property which he disposed to the Plaintiffs who are now the registered proprietors. That the estate having transmitted to third parties through the succession proceedings by Caleb, the title held by the plaintiffs could only be challenged before this Court, yet no counterclaim had been preferred by the Defendants. The Plaintiffs argued that a party who wishes to have matters of ownership of properties resolved ought to file a substantive suit in this Court and added that they hold a valid title which entitles them to the orders sought.
16. The First and Second Defendants submitted that the Plaintiffs fraudulently obtained title deed for the suit property before conclusion of Kakamega High Court Succession Cause No. 358 of 2010 and that in view of the Certificate of Confirmation of Grant which they had produced, they were in the process of obtaining title deeds in terms of the said grant. That the Plaintiffs are not beneficiaries of the estate of the late Daniel Odwogo Amaholo according to the Certificate of Confirmation of Grant and that their case is without merit.
17. I have considered the pleadings, evidence, and submissions. The issue that arises for determination is whether the reliefs sought should issue.
18. There is no dispute that the Plaintiffs are the registered proprietors of the suit property. According to the copy of the title deed that was produced in evidence, they were registered as proprietors on 24th April 2012 and title deed issued to them on 16th May 2012. As registered proprietors of land, the Plaintiffs are entitled to the rights, privileges, and benefits spelt out by the law including Article 40 of the Constitution which secures protection of right to property and Sections 24 and 26 of the [Land Registration Act](#).
19. Further, pursuant to Section 26 of the [Land Registration Act](#), the Court is obligated to accept the Plaintiffs' certificate of title as prima facie evidence of proprietorship, unless the provisos under Section 26 (1) (a) or (b) are established. The only grounds upon which the title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title was acquired illegally, un-procedurally or through a corrupt scheme.
20. In this case, the Defendants did not challenge the Plaintiffs' title. They did not file any counterclaim. As has been severally held by the courts, parties are bound by their pleadings. The Court too is in a sense bound by the parties' pleadings since pleadings circumscribe the issues for determination and reliefs sought. See [Independent Electoral and Boundaries Commission & another v Stephen Mutinda Mule & 3 others](#) [2014] eKLR.



21. The Defendants' claims of fraud are hollow in the absence of a counterclaim that expressly seeks cancellation of the Plaintiffs' title and satisfies the requirements of Section 26 (1) (a) or (b) of the Land Registration Act. The Defendants' reliance of the Certificate of Confirmation of Grant which was issued on 26th July 2022, over ten years after the Plaintiff had obtained title to the suit property, is of no consequence. I suspect that the Defendants did not provide to the Succession Court an updated copy of the register in respect of Butsotso/Shikoti/2835. Had they provided the latest register, the Succession Court would have appreciated that the said parcel did not exist as of 26th July 2022, was not part of the estate of Daniel Odwogo Amaholo and was not therefore available for distribution. Indeed, Caleb Temba Odwogo who is indicated in the Certificate of Confirmation of Grant as one of the joint administrators testified in support of the Plaintiffs' case as PW3 and stated that the suit property belongs to the Plaintiffs.
22. The Defendants made it clear in their evidence that they are in occupation of the suit property. Their stand is that they are entitled to the suit property. In those circumstances, the Plaintiffs' complaints and plea for eviction as well as permanent injunction are merited.
23. In view of the foregoing, I find merit in the First Plaintiff's case. I make the following orders:
 - a. The Defendants to vacate the parcel of land known as Butsotso/Shikoti/15827 within 90 (Ninety) days from the date of delivery of this judgment. In default, an eviction order to issue against them for their eviction and demolition of all their structures constructed therein.
 - b. A permanent injunction is hereby issued restraining the Defendants from ever laying claim to, trespassing upon, constructing on, depositing building materials and/or in any other manner whatsoever interfering with the Plaintiffs' peaceful use and occupation of the parcel of land known as Butsotso/Shikoti/15827.
 - c. The First Plaintiff shall have costs of the suit and interest thereon at Court rates.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 29TH DAY OF MAY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

The First Plaintiff in person

Mr Orute holding brief for Mr Manyoni for the Defendants

Court Assistant: B Kerubo

