



**Peter v Muia & another (Environment & Land Case E043 of 2021)  
[2022] KEELC 15300 (KLR) (7 December 2022) (Judgment)**

Neutral citation: [2022] KEELC 15300 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI  
ENVIRONMENT & LAND CASE E043 OF 2021  
TW MURIGI, J  
DECEMBER 7, 2022**

**BETWEEN**

**CHRISTINE NDINDA PETER ..... PLAINTIFF**

**AND**

**JOSEPHINE NZULA MUIA ..... 1<sup>ST</sup> DEFENDANT**

**BENEDICT MBUVI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. By a plaint dated 15<sup>th</sup> of December, 2021, the plaintiff seeks for the following orders against the defendants jointly and severally:-
  1. An order compelling the 1<sup>st</sup> defendant to transfer land purchased by the plaintiff measuring four and half (4<sup>1</sup>/<sub>2</sub>) acres to be hived from land parcel No Makueni/Kiou/538 within 30 days of the judgment and in default the Deputy Registrar of this court do execute the requisite transfer documents.
  2. A permanent injunction restraining the 2<sup>nd</sup> defendant, whether by himself, his servants and or agents from entering, trespassing, grazing, cultivating or in any other manner from interfering with the plaintiff's portion of land comprised in land parcel LR No Makueni/Kiou/538.
  3. Costs of this suit.
  4. Any other order the court may deem just and fit to grant.
2. The defendants did not enter appearance or file their defence. On 9<sup>th</sup> of March, 2022, the plaintiff requested for judgment against the defendants. Interlocutory judgment was entered on 21<sup>st</sup> of March, 2022. The hearing of the formal proof proceeded on 28<sup>th</sup> of June, 2022.



3. The plaintiff testified as PW1. PW1 Christine Ndinda Peter adopted her statement dated 15<sup>th</sup> of November, 2021 as her evidence in chief. She produced the documents in the list as exhibit 1 to 6 respectively. It was her testimony that on 30<sup>th</sup> of August, 2013, the 1<sup>st</sup> defendant Josphine Nzula Muia sold to her three and a half acres comprised in land parcel number Makueni/Kiou/538. That later on 3<sup>rd</sup> of November, 2014, the 1<sup>st</sup> defendant sold to her one acre comprised in the suit property. That after she purchased the property, she took possession of her portion of land and constructed a permanent home.
4. It was her further testimony that the 2<sup>nd</sup> defendant purchased from the 1<sup>st</sup> defendant a portion of land comprised in the suit property. She further stated that she lives and cultivates on the suit property. She further stated that the 1<sup>st</sup> defendant has deliberately breached the terms of the agreement by failing to transfer to her the portion of the suit property. She urged the court to grant an order compelling the 1<sup>st</sup> defendant to transfer to her 4½ acres of the suit property to her. In addition, she sought for an order of eviction against the 2<sup>nd</sup> defendant.
5. PW2 Jackson Nzyoka Kioo adopted his statement dated 25<sup>th</sup> of March, 2021 as his evidence in chief. He told the Court that he witnessed the agreement for sale of three and half acres comprised in the suit property between the plaintiff and the 1<sup>st</sup> defendant. He went on to state that the plaintiff paid the full purchase price upon the execution of the sale agreement.
6. That later on, the plaintiff purchased one acre comprised in the suit property from the 1<sup>st</sup> defendant. It was his testimony that the 1<sup>st</sup> defendant had breached the terms of the agreement by failing to transfer the land to the plaintiff immediately upon the payment of the purchase price.
7. He further told the court that the 2<sup>nd</sup> defendant had encroached on the plaintiff's land and had ignored the existing boundaries.

### **The Plaintiff's Submissions**

8. The plaintiff submissions were filed in court on 18<sup>th</sup> of October, 2022 which I have considered.

### **Analysis and Determination**

9. Having considered the pleadings, the evidence on record and the plaintiff's written submissions, I find that the following issues arise for determination:-
  - i. Whether the plaintiff and the 1<sup>st</sup> defendant executed agreements for the sale of 4½ acres comprised in the suit property.
  - ii. Whether the plaintiff is entitled to the orders sought.

### **Whether there was a sale agreement between the plaintiff and the 1<sup>st</sup> defendant**

10. The plaintiff told the court that on 30<sup>th</sup> of August, 2013 she entered into a sale agreement with the 1<sup>st</sup> Defendant for the sale of 3½ acres to be hived from land parcel number Makueni/Kiou/538. She stated the purchase price for the 3½ acres was Kshs 280,000/- which she paid in full. In this regard she produced land agreement form (exhibit 1A) in support of her evidence.
11. That later on 3<sup>rd</sup> of November, 2015, she entered into a sale agreement with the 1<sup>st</sup> defendant for the sale of one acre to be hived from land parcel number Makueni/Kiou/538. She went on to state that the purchase price for the one acre was Kshs 130,000/- which she paid in full. She produced the sale



- agreement form (exhibit 1B) in support of her evidence. It was her testimony that she fully paid for the land measuring 4½ acres.
12. The first agreement was for the sale of 3½ acres comprised in land parcel number 538 Kiou Adjudication Section. It was executed on 30<sup>th</sup> of August, 2013 by the plaintiff and the 1<sup>st</sup> defendant and attested by their witnesses, the chairman, sub chief and chief who appended their signatures on the agreement in the presence of the parties to the agreement. From the sale agreement it is crystal clear that PW2 was amongst the witnesses who attested the sale agreement.
  13. The second agreement was for the sale of one acre comprised in land parcel number 538 Kiou Adjudication Section. The sale agreement was executed on November 3, 2014 by the plaintiff and the 1<sup>st</sup> defendant and attested by their witnesses, the assistant chief and the chief who appended their signatures on the agreement. Both agreements complied with the provisions of section 3 (3) of the [Law of Contract](#).
  14. From the evidence on record it is crystal clear that the plaintiff and 1<sup>st</sup> defendant did enter into a sale agreement for the sale of 3½ acres and one acre comprised in the suit property. It is also clear that the 1<sup>st</sup> defendant executed both agreements and was paid the purchase price in full. From the evidence on record, I find that the plaintiff has proved on a balance of probabilities that she purchased 4½ acres from the 1<sup>st</sup> defendant.

**Whether the plaintiff is entitled to the reliefs sought.**

15. The plaintiff is seeking for order compelling the 1<sup>st</sup> defendant to transfer of 4½ acres to be hived off from the suit property within 30 days of the judgment and in default the Deputy Registrar of the court to execute the necessary transfer documents. The plaintiff is also seeking for a permanent injunction restraining the 2<sup>nd</sup> defendant whether by himself, his servants or agents from entering, trespassing, grazing or in any other manner from interfering with the plaintiff's portion of land comprised in land parcel number Makueni/Kiou/538.
16. It was the plaintiff's testimony that the 1<sup>st</sup> defendant is the registered owner of the suit property. in this regard the plaintiff produced a certificate of official search (exhibit 2) to demonstrate that the land is registered in the name of the 1<sup>st</sup> defendant.
17. I have perused the certificate of official search dated December 9, 2021 and I find that it relates to land parcel number Makueni/Kiou/538 whose approximate area is 4.48 hectares. The property is registered in the name of the 1<sup>st</sup> defendant. From the certificate of official search it is clear that the 1<sup>st</sup> defendant was issued with the title deed on December 3, 2014.
18. The plaintiff averred that despite numerous demands, the 1<sup>st</sup> defendant has deliberately breached the terms of the agreement by refusing to transfer the portion to the plaintiff.
19. In the plaintiff's list of documents the plaintiff produced consent for the subdivision from the land control board(exhibit4) and a mutation form in respect to land parcel Makueni/Kiou/538. As per the documents, it is clear that the suit land has been sub-divided.
20. From the documents produced by the plaintiff it is clear that the parties applied for consent to transfer the portion in the plaintiff's name but the same did not go through. It was the plaintiff's testimony that despite several demands, the 1<sup>st</sup> defendant has refused to transfer to the plaintiff her portion of land. This demonstrates that indeed the 1<sup>st</sup> defendant is hesitant to transfer the portion to the plaintiff.
21. The plaintiff is seeking for a permanent injunction restraining the 2<sup>nd</sup> defendant whether by himself, his servants and or agents from entering, trespassing, grazing, cultivating or in any other manner from



interfering with the plaintiff's portion of land comprised in land parcel LR No Makueni/Kiou/53. The plaintiff further averred that the 1<sup>st</sup> defendant sold a portion of land to the 2<sup>nd</sup> defendant to be hived off from the same parcel of land. She further averred that the 2<sup>nd</sup> defendant has encroached onto her land and had ignored the existing boundaries.

22. The plaintiff produced the mutation form in respect to the suit property(exhibit 3). According to the mutation form, parcel number 538 has been sub-divided and the boundaries are clearly marked. The 2<sup>nd</sup> defendant did not adduce any evidence or file a defence to the suit.
23. In the end, I find that the plaintiff has proved her case against the defendants on a balance of probabilities. Accordingly I enter judgment for the plaintiff against the defendants jointly and severally as follows:-
  1. An order be and is hereby issued compelling the 1<sup>st</sup> defendant to transfer land purchased measuring four and half (4 ½) acres to be hived from land parcel No Makueni/Kiou/538 within 30 days of the judgment and in default the Deputy Registrar of this court do execute the requisite transfer documents.
  2. A permanent injunction be and is hereby issued restraining the 2<sup>nd</sup> defendant, whether by himself, his servants and or agents from entering, trespassing, grazing, cultivating or in any other manner from interfering with the plaintiff's portion of land comprised in land parcel LR No Makueni/Kiou/538.
  3. The plaintiff is awarded the costs of the suit.

.....

**HON. T. MURIGI**

**JUDGE**

**JUDGMENT SIGNED, DATED AND DELIVERED VIA MICROSOFT TEAMS THIS 7<sup>TH</sup> DAY OF DECEMBER, 2022.**

**IN THE PRESENCE OF: -**

Court Assistant – Mr. Kwemboi

Munyasya for the Plaintiff.

