



Omondi (Suing as the Administrator of the Estate of Abisaye Ogutu Odumba, Deceased) v Land Registrar, Kisumu & another (Sued as the Administrator of the Estate of Yala Marongo, Deceased) (Environment & Land Case 267 of 2016) [2025] KEELC 424 (KLR) (4 February 2025) (Judgment)

Neutral citation: [2025] KEELC 424 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE 267 OF 2016
SO OKONG'O, J
FEBRUARY 4, 2025**

BETWEEN

**BENTA ACHIENG OMONDI PLAINTIFF
SUING AS THE ADMINISTRATOR OF THE ESTATE OF ABISAYE OGUTU
ODUMBA, DECEASED**

AND

**THE LAND REGISTRAR, KISUMU 1ST DEFENDANT
JOHN OREMO MARONGO 2ND DEFENDANT
SUED AS THE ADMINISTRATOR OF THE ESTATE OF YALA MARONGO,
DECEASED**

JUDGMENT

1. The Plaintiff brought this suit against the Defendants on 10th October 2016 through a plaint of the same date. The Plaintiff brought the suit as the administrator of the estate of Abisaye Ogutu Odumba, deceased (hereinafter referred to only as “the deceased”). The plaint was amended on 26th February 2020. The Plaintiff averred that at all material times, the deceased was the registered owner of all that parcel of land known as Kisumu/Seme Kadero/164 (hereinafter referred to only as “the suit property”). The Plaintiff averred that Yala Marongo, deceased (hereinafter referred to only as “the 2nd Defendant”) acting in collusion with the 1st Defendant and using forged and false documents caused the suit property to be registered in his name on 24th April 2014. The Plaintiff averred that the purported transfer and registration of the suit property in the name of the 2nd Defendant was illegal, null and void and as such incapable of conveying any interest in the suit property to the 2nd Defendant. The Plaintiff sought the following reliefs against the Defendants;



- a. A permanent injunction restraining the 2nd Defendant by himself or through his agents, servants and/or anybody acting under the Defendant from interfering with, entering, trespassing onto, disposing and/or otherwise interfering with the Plaintiff's quiet enjoyment of the suit property.
 - b. An order cancelling the title deed that was irregularly issued to the 2nd Defendant for the suit property.
 - c. A declaration that the Plaintiff was the rightful owner of the suit property and should be issued with a title deed in respect thereof.
 - d. An order for the eviction of the 2nd Defendant from the suit property.
 - e. Damages/Mesne profits.
 - f. Costs of the suit.
2. The 1st Defendant filed a defence on 10th November 2016 in which it denied the Plaintiff's claim in its entirety. The 1st Defendant averred that it was not privy to the alleged acts of forgery by the 2nd Defendant. The 1st Defendant averred further that it did not collude with the 2nd Defendant in the alleged fraudulent transfer and registration of the suit property in the name of the 2nd Defendant.
 3. The 2nd Defendant filed a defence on 12th January 2017 which was amended on 16th June 2020. The 2nd Defendant averred that he was the registered owner of the suit property. The 2nd Defendant averred that he acquired the suit property from the deceased, Abisaye Ogutu Odumba through purchase while the deceased was still alive. The 2nd Defendant averred that he took possession of the suit property from the time of purchase and had remained in occupation since then. The 2nd Defendant averred that after purchasing the suit property he lodged an objection against the registration of the suit property in the name of the deceased on 10th May 1982 and requested that his name be entered in the register as the owner of the suit property. The 2nd Defendant averred that he was the lawful owner of the suit property and urged the court to dismiss the Plaintiff's suit.
 4. At the trial, the Plaintiff told the court that she was the administrator of the estate of the deceased who was his father. The Plaintiff adopted her witness statement dated 3rd December 2020 as her evidence in chief. She produced a Grant of Letters of Administration issued to her and a Certificate of Confirmation of the said Grant as P.EXH. 1 and P.EXH. 2 respectively. He also produced a copy of the Certificate of Official Search on the title of the suit property as P.EXH.3. On cross-examination, the Plaintiff admitted that the 2nd Defendant had occupied the suit property for 32 years. She stated that the 2nd Defendant did not purchase the suit property from the deceased.
 5. The Plaintiff's second witness was Zablon Otieno Odumba (PW2). PW2 adopted his witness statement filed on 10th December 2016 as his evidence in chief. He stated that the deceased was his elder brother and owned the suit property. He stated that according to the register of the suit property, the property was transferred to the 2nd Defendant on 12th January 2010 through succession proceedings. He stated that the 2nd Defendant was not related to his family and that the 2nd Defendant used forged documents to obtain a Grant of Letters of Administration in respect of the estate of the deceased. He stated that the Grant issued to the 2nd Defendant was revoked and the Plaintiff was appointed as the administrator of the deceased's estate. He produced a copy of the extract of the register of the suit property as P.EXH.4, a copy of the Limited Grant in his favour as P.EXH. 5, a copy of the application for revocation of the Grant in favour of the 2nd Defendant as P.EXH. 6, a copy of the letter from the



- Assistant Chief as P.EXH. 7, a copy of the Certificate of Confirmation of Grant in favour of the 2nd Defendant as P.EXH.8 and a copy of the Death Certificate for the deceased as P.EXH.9.
6. On cross-examination by the advocate for the 1st Defendant, he stated that the fraud alleged against the Defendants was not reported to the Police. On cross-examination by the advocate for the 2nd Defendant he stated that the agreement for sale relied on by the 2nd Defendant was entered into between the 2nd Defendant and the deceased's mother. He stated that their mother was not the registered owner of the suit property. He stated that the deceased died in 2009. He stated that he did not know when the 2nd Defendant entered and settled on the suit property.
 7. The 1st Defendant closed its case without calling evidence. In his evidence, John Oremo Marongo (DW1) the administrator of the estate of the 2nd Defendant, Yala Marongo adopted his witness statement filed on 1st July 2020 as his evidence in chief. He produced the documents in the 2nd Defendant's list of documents also filed on 1st July 2020 as D.EXHS. 1 to 4 respectively. DW1 told the court that the suit property was purchased by the 2nd Defendant from the deceased and his mother Phelgona Omedo. He stated that after purchasing the property, the 2nd Defendant put up his homestead thereon in 1986. He stated that when the 2nd Defendant died, he was buried on the suit property. He stated that the 2nd Defendant transferred the suit property to his name after the death of the deceased, Abisaye Ogutu Odumba. He stated that he did not know how the 2nd Defendant managed to effect the transfer of the suit property through succession while the 2nd Defendant was not related to the deceased. He urged the court not to issue an order for the eviction of the family of the 2nd Defendant from the suit property.
 8. On cross-examination, DW1 told the court that the 2nd Defendant moved into the suit property after the deceased and his mother Phelgona Omedo vacated the same after selling the same to the 2nd Defendant. On examination by the court, DW1 stated that the suit property was occupied by the 2nd Defendant's widow who had her home on the land and was also cultivating the same. He stated that the 2nd Defendant occupied the suit property after the deceased vacated the property in 1986. He stated that he had learnt that the Grant of Letters of Administration on the basis of which the 2nd Defendant was registered as the owner of the suit property had been revoked.
 9. The parties made closing submissions in writing. The Plaintiff filed submissions dated 25th April 2024. The Plaintiff submitted that the 2nd Defendant acquired the suit property through an illegally obtained Grant of Letters of Administration which was subsequently revoked by the court. The Plaintiff submitted that the 2nd Defendant acquired the title to the suit property irregularly and as such his title was impeachable under Section 26 of the [Land Registration Act](#) 2012. The Plaintiff submitted on a without prejudice that in any event there was no valid agreement for sale of the suit property between the 2nd Defendant and the deceased that was capable of enforcement. The Plaintiff submitted that the agreement produced by the 2nd Defendant in evidence was entered into between the 2nd Defendant and the deceased's mother Phelgona Omedo who was not the owner of the suit property. The Plaintiff submitted that the agreement offended Section 3(3) of the [Law of Contract Act](#), Chapter 23 Laws of Kenya. The Plaintiff urged the court to grant the reliefs sought in the plaint as prayed.
 10. The 1st Defendant filed submissions dated 8th May 2024. The 1st Defendant submitted that the Plaintiff did not prove her case against the 1st Defendant. The 1st Defendant submitted that it was at all material times discharging its statutory duty and that the Plaintiff did not prove her allegation that the 1st Defendant colluded with the 2nd Defendant in the illegal registration of the 2nd Defendant as the owner of the suit property. The 1st Defendant submitted that it was the 2nd Defendant who was liable to the Plaintiff for damages if any that she had suffered.



11. The 2nd Defendant filed submissions dated 1st July 2024. The 2nd Defendant submitted that the Plaintiff failed to prove that the 2nd Defendant acquired the suit property fraudulently. The 2nd Defendant averred that the Plaintiff did not prove the allegation of forgery and falsification of documents pleaded against the 2nd Defendant. The 2nd Defendant submitted that the Plaintiff did not also prove that she was entitled to damages. On the issue of costs, the Plaintiff submitted that costs are in the discretion of the court and that in the exercise of that discretion, the primary concern of the court is to do justice to the parties.
12. I have considered the pleadings, the evidence tendered by the parties and the submissions of counsel. In my view, the issues arising for determination in this suit are; whether the 2nd Defendant acquired the suit property lawfully and as such holds a valid title, whether the Plaintiff is entitled to the reliefs sought in her amended plaint, and who is liable for the costs of the suit. It is common ground that the 2nd Defendant purportedly acquired the suit property through a Grant of Letters of Administration that was issued in Kisumu High Court Succession Cause No. 89 of 2010. It is also common ground that the said Grant was subsequently found to have been obtained by the 2nd Defendant illegally and the same was revoked and a new Grant of Letters of Administration in respect of the estate of the deceased issued to the Plaintiff.
13. The suit property was registered under the Registered [Land Act](#), Chapter 300 Laws of Kenya (now repealed). When the suit properties were transferred to the 2nd Defendant and registered in his name, the Registered [Land Act](#) had been repealed and replaced by the [Land Registration Act](#) 2012.
14. Sections 24, 25, and 26 of the [Land Registration Act](#) 2012 provide as follows:
 24. Subject to this Act—
 - (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; and
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied or expressed agreements, liabilities or incidents of the lease.
 25.
 - (1) The rights of a proprietor, whether acquired on first registration or subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject—
 - (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) to such liabilities, rights and interests as affect the same and are declared by section 28 not to require noting on the register, unless the contrary is expressed in the register.
 - (2) Nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which the person is subject to as a trustee.



26.

- (1) The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject to challenge, except—
 - (a) on the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - (b) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.

15. Under Section 26 of the [Land Registration Act](#) 2012, a title to land can be challenged on the ground that it was obtained illegally, unprocedurally or through a corrupt scheme. I am satisfied from the evidence on record that the 2nd Defendant acquired title to the suit property unlawfully through a Grant of Letters of Administration found by the court to have been wrongly issued. I agree with the Plaintiff that a land title that has been acquired illegally is a nullity and cannot confer any proprietary interest on the holder. It follows therefore that the 2nd Defendant does not hold a valid title to the suit property.
16. On the second issue, I am satisfied that the Plaintiff has proved her case against the 2nd Defendant and as such entitled to the reliefs sought in her amended plaint save for damages that was not proved. From the evidence on record, I am persuaded that the 2nd Defendant was put in possession of the suit property by the deceased and his mother and that explains why this suit was brought almost 30 years after the 2nd Defendant took possession and 7 years after the death of the deceased. The 2nd Defendant's only fault was to cause the suit property to be transferred to his name using an illegally obtained Grant of Letters of Administration instead of pursuing the administrators of the estate of the deceased for the transfer or applying to court to be registered as the owner of the suit property through adverse possession. I wish to state that I would not have hesitated to dismiss the Plaintiff's suit if the 2nd Defendant had pleaded time bar under the [Limitation of Actions Act](#), Chapter 22 Laws of Kenya. I am of the view that the Plaintiff is not entitled to damages in the circumstances.
17. I have also found the allegations made against the 1st Defendant not established. The 1st Defendant could not have known that the Grant of Letters of Administration that the 2nd Defendant held in respect of the estate of the deceased had been obtained irregularly. The Plaintiff has therefore failed to prove that the 1st Defendant colluded with the 2nd Defendant to cause the suit property to be registered in the name of the 2nd Defendant fraudulently.
18. On the issue of costs, I am of the view that each party should bear its costs of the suit. As I have stated earlier the deceased and his mother gave the 2nd Defendant possession of the suit property. This suit was brought 30 years after the 2nd Defendant took possession of the suit property in 1986 following the relocation of the deceased's family from Seme to Kano and 7 years after the death of the deceased in 2009. I would in the circumstances not condemn the 2nd Defendant to pay the costs of the suit.
19. In the final analysis and for the foregoing reasons, I hereby enter judgment for the Plaintiff against the 2nd Defendant as follows;
 - a. I declare that the estate of Abisaye Agutu Odumba is the lawful owner of all that parcel of land known as Kisumu/Seme Kadero/164 (the suit property).



- b. The Land Registrar Kisumu County County shall within 45 days from the date of service of the decree extracted from this judgment upon him cancel the registration of the deceased, Yala Marongo as the proprietor of the land parcel Kisumu/Seme Kadero/164 and the title deed that was issued to him, and shall restore the property to the name of the deceased, Abisaye Agutu Odumba as the proprietor thereof.
- c. The Land Registrar Kisumu County shall remove all the restrictions registered against the title of the suit property once the property is restored to the name of the deceased, Abisaye Agutu Odumba as the proprietor thereof.
- d. The 2nd Defendant shall vacate and hand over possession of the land parcel Kisumu/Seme Kadero/164 to the Plaintiff on or before 31st December 2025 in default of which the Plaintiff shall be at liberty to apply for warrants for the forceful eviction of the estate of Yala Marongo from the property.
- e. Each party shall bear its costs of the suit.

DELIVERED AND DATED AT KISUMU ON THIS 4TH DAY OF FEBRUARY 2025

S. OKONG'O

JUDGE

Judgment delivered through Microsoft Teams Video Conferencing Platform in the presence of:

N/A for the Plaintiff

N/A for the Defendant

Ms. J. Omondi-Court Assistant

