



Parningu v Kononkoi & 2 others (Environment and Land Appeal E013 of 2024) [2025] KEELC 351 (KLR) (4 February 2025) (Judgment)

Neutral citation: [2025] KEELC 351 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E013 OF 2024
MN MWANYALE, J
FEBRUARY 4, 2025**

BETWEEN

NAREYIO PARNINGU APPLICANT

AND

DAVID KONONKOI 1ST RESPONDENT

MICHAEL TOMITO NAMPASO 2ND RESPONDENT

KILGORIS LAND REGISTRAR 3RD RESPONDENT

JUDGMENT

1. Being dissatisfied by the whole of judgment delivered on 25th April, 2024 by Hon. W.C Waswa SRM in Kilgoris CMEL NO. E030/2023, the Appellant Nareyio Parningu vide the Memorandum of Appeal dated 9th May 2024 penned down 9 grounds of Appeal as herefollows: -
 - i. That the Hon. Magistrate erred in law and in fact by failing to find that the Appellant is the lawful owner of whole property named Transmara/Olomismis/816 situated in Kilgoris, even after providing all the relevant documentation and records as proof of ownership.
 - ii. That the Hon. Trial Magistrate erred in law and facts to enter judgment in favour of the Respondents who failed to prove their claim nor support their case in any manner.
 - iii. That the Honourable Trial Magistrate erred in law and fact, by failing to acknowledge the documents and list of membership from Olomismis group ranch indicating the appellant as the allottee of land number Transmara/Olomismis/816 whose production was never objected.
 - iv. That the Honourable Trial Magistrate erred in law and in fact by failing to issue a permanent injunction to the Respondent, allowing them to continue intermeddling with the appellant's property causing more emotional damages.



- v. That the learned trial magistrate erred in law and fact when he failed to appreciate the importance of unregistered property, where the appellant provided documents from Olomismis group ranch membership register, land transfer forms duly signed and executed by parties, and Land Control Board consents duly signed by the leaders of the Olomismis group ranch to herself and adopted as evidence in chief.
 - vi. That the Honourable trial magistrate erred in law and in fact to address the circumstances under which the Respondents are the owners of the suit property, in their pleading they stated that they were the rightful owners but during the trial, they stated that they were purchasers.
 - vii. That the Honourable trial Magistrate erred in law and in fact in failing to accord due regard to the appellant's submissions and authorities on the issue of ownership, trespass and quantum on applicable principles on similar circumstances.
 - viii. That the Honourable trial magistrate erred in law and in fact by failing to evaluate properly the evidence on record thus reaching an erroneous decision.
2. On the strength of the above grounds of Appeal the Appellants sought for the following orders;
- a. That the appeal be allowed and the judgment in ELC E030/2023 Nareyio Parningu Vs. David Kononkoi and 2 others be either set aside or varied.
 - b. A declaration that the Appellant is the rightful and lawful owner of all that land parcel no. Transmara/Olomismis/816 situated in Kilgoris.
 - c. A permanent injunction restraining the Respondent, their servants, relatives, workmen and agents from entering and/or from in any way interfering with land parcel No. Transmara/Olomismis/816 situated in Kilgoris.
 - d. A declaration that the Respondent's actions amount to intermeddling and illegal trespass onto the appellant suit land.
 - e. An order compelling the 3rd Respondent to register and process a title in respect to land parcel No. Transmara/Olomismis/816 situated in Kilgoris in favour of the appellant.
 - f. General damages for trespass in private property.
 - g. Costs of this suit and the suit in the lower court.
 - h. Any other relief to the Honourable court may deem fit.
3. Directions were issued on disposal of the Appeal by way of written submissions.
4. The Appellant Advocates had not filed their submissions by 18.12.2024 when the matter was last mentioned and a judgment dated reserved, time was extended to allow them file their submissions and they complied.

Appellant's Submissions

5. The Appellant has framed and submitted on 4 issues for determination; Her submissions are summarized as follows: -
- a. Whether the learned magistrate erred in law and in fact by failing to appreciate and analyze all the documents as provided by the Appellant in support of unregistered land.



6. On this issue the Appellant submits that neither the Respondent nor herself had a title deed in respect of the suit property. She submits that she had already obtained the transfer documents from Olomismis group ranch committee in her favour, paid the prescribed registration fees and presented the documents to Kilgoris Land Registry where it was not registered due to a caution that had been lodged.
7. The Appellant submits that the Respondent gave two theories of how he owned the property, the 1st being a purchaser and the second being an allottee as a member of Olomismis group ranch.
8. The Appellant submits that parties are bound by their pleadings and that the Respondent could not bring evidence that was at variance with the pleadings. In support of this proposition, the Appellant cites the decision in the case of Daniel Otieno Migore Vs. South Nyanza Sugar Company Ltd (2018) eKLR as well as the decision in the case of Independent Electoral and Boundaries Commission and Another Vs. Stephen Mutinda Mule and 3 Others.
9. The Appellant submits that she produced the Olomismis membership Register, Land transfer forms duly signed and executed, Land Control Board consent forms as well as letters from the Ministry addressing the removal of caution and copy of search and green card, but that this evidence was not taken into account, by the trial court.
10. The Appellant further places reliance on the decision in the case of Caroline Awinja Ochieng and Another Vs. Jane Anne Mbithe Gitau and 2 Others (2015) eKLR on the issue of unregistered land.
11. The Appellant further submits that had there been no caution, the property would have been registered in her name, the transfers having been executed, thus grounds 1, 2 and 3 of the Appeal ought to be allowed.
12. On issue 2, whether the appellant is the rightful owner of all that parcel of land known as Transmara/Olomismis/816, the Appellant submits that she proved ownership as having being allocated the same by Olomismis group ranch and had had quiet possession since 1989 and she produced the group ranch register in support of claim of ownership and that her name appeared as Nareyio Paapai, in the said register.
13. That the executed transfer forms further lend credence to her claim of ownership. She supported this proposition while placing reliance of the decision in the case of Danson Kimani Gachina and Another Vs. Embakasi Ranching Company Ltd (2014), Wangui and 2 Others Vs. Wangui and Another as well as (KEELC 3755 eKLR) Augustine Thuo Vs. James Main Thuita and Another 2020 eKRL.
14. On the 3rd issue, as to whether the 1st and 2nd Respondent are trespassers on the said parcel of Transmara/Olomismis/816, the Appellant submits that Respondent was still living with her family on the suit property without her consent.
15. The Appellant submits that the Respondent is an intruder on the suit property without her permission.
16. On issue 4, the Appellant submits that she is entitled to reliefs sought in the Memorandum of Appeal; and places reliance on the decision in the case of Philip Ayaya Aluchio Vs. Crispinus Ngayo, where the court granted an award of general damages for trespass.
17. The Appellant submits that the Appeal be allowed with costs.



Respondent's Submissions

18. The Respondents submits that the Appeal before court is hopeless as it was filed by the firm of TLB Tuyia Advocaes who are not properly on record as the previous firm of Ms. Kimanga and Company Advocates were on record in the subordinate court, and that the firm of TLB Tuyia Advocates did not seek leave of the court to come on record after judgment pursuant to order 9 Rule 9 of the Civil Procedure Rules.
19. In support of this proposition, the Respondent places relies on the decision in the case of Nyeri ELCA NO. 17/2019 JAMES Ndonyu Njogu Vs. Muriuki Macharai.
20. The Respondent did not frame any issues for determination but submits that the Appellant Nareyio Parningu is different from Nareyio Paapi who was the one captured in the group ranch register and thus the Appellant Is not the Bonafide owner of the suit property.
21. On the denial of an injunction the Appellant submits that the learned Magistrate was right in denying the injunction since the conditions for the grant of the same were not met.
22. The 1st and 2nd Respondent urged the court to dismiss the appeal.
23. The 3rd Respondent represented by the office of the Attorney General did not file submissions did not participate in the Appeal.

Issues for Determination

24. Having analyzed the Record of Appeal, and the rival submissions the court frames the following as issues for determination: -
 - i. Whether or not the appeal is competent.
 - ii. Whether or not th appeal is merited.
 - iii. Who should bear the costs of the appeal?

Analysis and Determination

25. The 1st and 2nd Respondent have submitted that the appeal was filed by another firm of Advocates after judgment without leave hence filed by a stranger thus rendering it incompetent.
26. In their submission, the Appellant submits that they had filed a Notice of Appointment in the lower court hence they were properly on record.
27. It is common ground between the Appellant and the Respondent that the firm of TLB Tuyia Advocates came on record after judgment, this is because, the Notice of Appointment appearing at page 8 of the record of Appeal is dated 6th May 2024 while the judgment was delivered on 25th April 2024.
28. Order 9 Rule 9 of the Civil Procedure Rules, provides for change of Advocates after judgment in two scenarios: -
 - i. With the consent of the previous Advocates.
 - ii. Or with the leave of the court.



29. The record of Appeal does not show that a consent was obtained from the previous Advocates prior to filing of the Notice of Appointment neither was an application for leave to come on record after judgment exhibited in the record of Appeal.
30. It follows therefrom that the Notice of Appointment was filed irregularly without leave of the court and/or consent of the previous Advocates, which renders the appeal as filed incompetent.
31. Having found the Appeal incompetent, the same is struck out and the court shall not dwell on issue 2, to wit, its merits.
32. The upshot is that the appeal herein is struck out with costs.
33. The Appellant is at liberty to move the court appropriately if she is desirous of her appeal being heard and determined on merits.

DATED AND DELIVERED AT KILGORIS THIS 4TH DAY OF FEBRUARY 2025

HON. M.N. MWANYALE

JUDGE

In the presence of:

Mr. Tuyia for the Appellant

Mr. Ochwangi for the 1st and 2nd Respondent

Mr. Ndiritu for the 3rd Respondent

C/A Emmanuel/Sylvia

