



Saeni & another v Seme & 3 others (Environment and Land Appeal E004 of 2024) [2025] KEELC 3014 (KLR) (1 April 2025) (Judgment)

Neutral citation: [2025] KEELC 3014 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL E004 OF 2024**

MN MWANYALE, J

APRIL 1, 2025

BETWEEN

JOHN MOSIANTET SAENI 1ST APPELLANT

ODUPOI OLE SAENI 2ND APPELLANT

AND

SAMWEL PARSOILAL SEME 1ST RESPONDENT

LAND REGISTRAR TRANSMARA WEST SUB-COUNTY .. 2ND RESPONDENT

**LAND ADJUDICATION AND SETTLEMENT OFFICER, KILGORIS 3RD
RESPONDENT**

THE ATTORNEY GENERAL 4TH RESPONDENT

*(Memorandum of Appeal dated 1st February 2024 appealing against
the judgment of Hon. C.W. Waswa (Senior Resident Magistrate)
delivered on 18th January 2024 in Kilgoris ELC No. E037/2021.)*

JUDGMENT

1. The Appellants John Masiantet Saeni and Odupoi Ole Saeni their Memorandum of Appeal dated 1st February 2024 appealing against the judgment of Hon. C.W. Waswa (Senior Resident Magistrate) delivered on 18th January 2024 in Kilgoris ELC No. E037/2021.
2. In their Memorandum of Appeal they penned 14 grounds of Appeal. In a nutshell the grounds of Appeal revolved around failure by the trial court to recognize the decision of the Land Adjudication officer Transmara West, and the determination of the Respondent as the Bonafide owner.
3. The Appellants sought for; -



- i. The Appeal to be allowed.
 - ii. The judgment of the Honourable Magistrate together with any other inconsequential orders therefrom be set aside, varied and/or reviewed.
 - iii. Costs to the Appeal.
4. Directions were issued for the matter to proceed by way of written submissions. The parties did file their submission; the 2nd to 4th Respondents however did not participate in the Appeal and opted to await the judgment.

Appellant's Submissions

5. The Appellant framed and submitted on 3 issues for determination; to wit,
 - a. Whether the Defendant acquired title to the suit property lawfully?
 - b. Whether the transactions culminating into registration of the suit property in the name of the Defendants herein were fraudulent?
 - c. Whether the plaintiff has proved her case on the balance of probability and therefore entitled to the prayers sought?
 - d. Who should bear the costs of the suit?
6. On issue 1, the Appellant submits that they are the rightful owners of the suit parcel as it was allocated to them by the adjudication committee.
7. That the 1st Respondent altered the adjudication record and cancelled the 1st Appellant's name and inserted that words that the objection had been withdrawn which was not true, no proceedings to confirm that the proceedings were withdrawn.
8. They placed reliance on the decision of *Munyu Maina Vs. Hiraru Gathiha Maina* on the proposition that a fraudulent instrument of title cannot be upheld as well as the decision in *Zacharia Wambugu Gathimu and David Wangari Maina*, where the court held inter alia, that

“ the protection can be removed and title impeached when the same is obtained by fraud or misrepresentation to which the person must be proved to be a party and where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
9. On issue number whether the transactions culminating into the registration of the suit property in the name of the defendant were fraudulent?
10. The Appellant submits that he pleaded and proved fraud; that the Defendant registered himself fraudulently through forged documents.
11. On issue No. 3, the Appellant submits that they discharged the burden of proof as required under Sections 107 – 109 of the *Evidence Act*.
12. On costs, the Appellant submits that he as the successful litigant be awarded the costs.

Respondent's Submission

13. The Respondent did not frame any issues for determination but generally submitted on the Appeal, it was the Respondent's submission that DW2, the Land Adjudication officer.



14. the 1st Respondent submits that the outcome of the objection proceedings was withdrawal of the objection No. 107.
15. The 1st Respondent cited many decisions to support the fact that fraud was not proven, hence they submit that the appeal lack merit and ought to be dismissed.

Issues For Determination

16. Before framing issues for determination, the court notes;
 - i. That the proceedings in relation to the objection No. 107/1990 were not availed before the trial court as they could not be traced.
 - ii. That the Plaintiffs and Defendants both produced a copy of Adjudication record certified on 28.05.2021.

Analysis And Determination

17. Having analysed, the record of Appeal, the trial court record, the submissions of the parties and considered the law, the court frames the issues for determination;
 - i. Whether or not the trial court considered the outcome of the objections proceedings No. 107/1990?
 - ii. Whether or not the appeal is merited?
 - iii. What reliefs ought to issue?
 - iv. Who should bear the costs of the Appeal?
18. Before proceeding to the issues for determination, this court as a first Appellate court has to perform the duties summarised in *Selle Vs. Associated Motor Boat Co.* (1968) EA 123, which held inter alia

“An appeal to this court from a trial by the High Court is by way of retrial by and the principles upon which this court is such an appeal are well settle. Briefly put they are that this court must reconsider the evidence evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowances in this respect.....”

19. I have considered and perused the copy of the Adjudication record which was relied upon by the Appellants as plaintiffs and the 1st Respondent as the 1st Defendant at the trial court. Both parties produced the same document which had two pages.

20. At entry 14 the following words are cancelled “Due to the above findings this objection is allowed. The names of the defendant deleted from the record. The land is awarded to the objector John Masiantet Saeni.”

21. Below the said words

It is indicated

“Objection No. 107 submitted by John Masiantet Saeni

Date 21.05.2015 Adjudication Officer

F.M. Muiruri.”



22. Entry No. 15 is Blank as it relates to an appeal to the Minister.
23. Then there are words written near the bottom of the page
“Objection 107 is withdrawn with a signature and initials L.A.O and date 20.08.20
24. It is important to set out the above details on the adjudication record as the case before the trial court as well as this Appeal largely depend on it.
25. That Appellant’s case and submission is that entry No. 14 communicated the outcome of the objection proceedings with the result that the objection was allowed and the land was awarded to the 1st Appellant, while the 1st Respondent submits that the outcome of the objection proceedings was the same was withdrawn.
26. The court finds the 1st Respondents position difficult to comprehend because if indeed the objection 107 was withdrawn for the following reasons: -
- i. firstly, the same would have been indicated at entry No. 14 not on the place that it was indicated, since they would have been no need to consider withdrawn case,
 - ii. secondly, the date below entry No. 14 was made on 21.05.2015 while the date below words objection 107 is withdrawn was made on 20/08, and the year is not clear but it could be 2020,
 - iii. thirdly the Land Adjudication officer who made entry No. 14’s name is clearly indicated as F.M. Muiruri while the other officer only signed with his official designation LAO and;
 - iv. Fourthly, by cancelling the entry No. 14, it means that the same had been entered before the notes “case withdrawn” and that being the case an outcome had been made which could be challenged by an appeal to the Minister.
 - v. Fifthly, the second objection no 729/90 with regard to the subdivision was resolved on the strength of the first objection having been allowed and the property having been transferred to the 1st appellant. If indeed the objection 107 of 1990 had been withdrawn the it would have been impossible to entertain the second objection whose proceedings were produced before the trial court.
27. From the above analysis, the court finds that the outcome of the objecting proceedings 107/1990 was that the same was allowed and that the suit property was awarded to the objector, the 1st Appellant herein.
28. In arriving at the above conclusion, I am further persuaded by the examination in chief of DW2 appearing at pages 261 and 262 of the Record of Appeal. DW2 indicates that at time of demarcation the 1st Respondent was recorded as one but the property had 2 objections, objection No. 107/1990 and No. 729/1990. The first objection was allowed and property transferred to the objector and the second objection was allowed and property subdivided into two portions, he confirmed that there was no appeal to the Minister.
29. In cross-examination he indicated that he did not know who was the registered proprietor since the proceedings were missing.
30. Further the extracts from the Extract Objection proceedings of No. 107 and 729 produced as D. Exhibit 6 and 7 confirmed appearing at pages 160 – 163 of the record confirmed to dame.



31. According in answer to issue number 1 the court finds that the outcome of the objection proceedings was that the objection was allowed and that the trial court did not consider this said outcome hence grounds 1, 3, 4, 5, 6 and 7 of the Appeal are merited.
32. On issue number 2, having found that the grounds 1, 3, 4, 5, 6 and 7 are merited, it follows then that the registration of the 1st Respondent by virtue of the “withdrawn” objections was a nullity.
33. A nullity because once the objection proceedings were concluded in favour of the objector, the same could not be withdrawn. Thus, the withdrawal comment was made in vacuum as there was a nullity as was held in the case of Mcfoy Vs. United Africa Co. Ltd 1961 3ACC ER 1169.

Where the court observed as follows;

“if an act is void, then it is in law a nullity, it is not only bad, but incurably bad. There is no need for an order of the court to set it aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to say there it will collapse”.

34. Consequently, the registration of the first Respondent having been made on the basis of an illegality cannot be protected and the title belonging to the 1st Respondent is impeachable as cited by the various decisions cited by the Appellants including the decision in the case of Munyu Maina vs Hiram Githaka Maina where the court held inter alia as follows” we wish to state that when a registered proprietors title is under challenge , it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument that is in challenge and the registered owner must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be registered on the register’
35. From the above and having noted that the entry giving rise to the registration of the 1st Respondent as the proprietor of Transmara/ Nkararo/773 was a nullity ab initio, it follows that the registration of the 1st Respondent was done unprocedurally and on the basis of an illegal entry with regard to the outcome of Objection proceedings in 107/1990 and the provisions of section 26(1) (b) of the [Land Registration Act](#) the 1st Respondent title is impeached and the Land register ought to rectify the register under section 80(1) of the [Land Registration Act](#) to reflect the Appellants as the Registered owner.
36. The Appellant has thus proven that his Appeal is merited and the same is herewith allowed; in terms that the judgment of the Honourable C.W Waswa is hereby set aside and that Judgment is entered as prayed for in the Plaint together with costs of the suit and this Appeal are awarded to the Appellants.

Disposition

37. For avoidance of doubt Judgment is entered as follows:
 - i. An order hereby issues directing the 2nd Respondent to cancel the Title deed in respect of Transmara/ Nkararo/773 issued in favour of the 1st Respondent Samuel Parsoilal Seme and rectify the register of Transmara/Nkararo/773 by Registering the same in the name of the Appellants Taking into account the subdivisions authorised in objection No. 729/1990.
 - ii. Permanent injunction is hereby issued against the Respondents from interfering with the proprietary rights and interests of the Appellants.
 - iii. Costs of the suit in Kilgoris E037 OF 2021 and this Appeal together with interests at court rates are awarded to the Appellants.



DATED AT KILGORIS THIS 1ST DAY OF APRIL, 2025.

HON. M.N MWANYALE

JUDGE

In the presence of

CA – Emmanuel

Mr. Miruka for the Appellant

Ms. Kithinji h/b for Ms. Mireri for the Respondent

