



REPUBLIC OF KENYA



KENYA LAW
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**Owuor v Angwenyi & 47 others (Environment & Land Case
E003 of 2021) [2025] KEELC 4268 (KLR) (5 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 4268 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE E003 OF 2021**

DO OHUNGO, J

JUNE 5, 2025

BETWEEN

DR JAPHETH OGENDO OWUOR PLAINTIFF

AND

EVANS ANGWENYI 1ST DEFENDANT

ISAAK PAUL OKELLO 2ND DEFENDANT

BENSON LUKWIRI KORONGO 3RD DEFENDANT

GILBERT AWUORI 4TH DEFENDANT

JAMES ADANJE KOLOTA 5TH DEFENDANT

ALBERT CHWEYA 6TH DEFENDANT

JOSEPH WAFULA 7TH DEFENDANT

RESBA ANALO 8TH DEFENDANT

JACOB IMBALI 9TH DEFENDANT

IBRAHIM-MIHESO KISENGWA 10TH DEFENDANT

ALICE ASHIHUNDU 11TH DEFENDANT

DAUD MULI KINTONYI 12TH DEFENDANT

ROSALIA LUMONE 13TH DEFENDANT

GIDEON ONZERE 14TH DEFENDANT

PIUS ALUMASA NDOLENDJE 15TH DEFENDANT

SABAN SHAKUSIA 16TH DEFENDANT

ELIKANA MUKASA 17TH DEFENDANT



LINET AYUMA	18 TH DEFENDANT
SOLOME AMGO	19 TH DEFENDANT
KENNEDY WAFULA	20 TH DEFENDANT
DAVID SIMIYU	21 ST DEFENDANT
KENNEDY ASAVA NYANZE	22 ND DEFENDANT
MOSES WAFULA	23 RD DEFENDANT
SUSAN ALOSA	24 TH DEFENDANT
TRUPLINA JUMA	25 TH DEFENDANT
HEZRON KUBWA	26 TH DEFENDANT
HENRY KEFA ONZEVE	27 TH DEFENDANT
AUMA ANYANGO	28 TH DEFENDANT
ASMIN MATINGA	29 TH DEFENDANT
DANIA ENOCK	30 TH DEFENDANT
EDWARD GIBUGONYI	31 ST DEFENDANT
FREDRICK IJIRANGWA	32 ND DEFENDANT
DAVID SHIKOKOTI	33 RD DEFENDANT
OTINGA INDECHE	34 TH DEFENDANT
AGNES LUSOI	35 TH DEFENDANT
JOAS SEKA	36 TH DEFENDANT
MAGRET MISIBO	37 TH DEFENDANT
NAOM MAZALENDO	38 TH DEFENDANT
JOHN MUTALI	39 TH DEFENDANT
NATHAN KWATENDWA	40 TH DEFENDANT
MANOA LIHASI	41 ST DEFENDANT
MARCY KHATIEVI	42 ND DEFENDANT
NYASOA ZAKAYO	43 RD DEFENDANT
ROSE CHADEKA	44 TH DEFENDANT
MARCY ATZANGALALA	45 TH DEFENDANT
GEORGE EWAMBA	46 TH DEFENDANT
GATHARINE	47 TH DEFENDANT
ELPHAS MUNYANGORI	48 TH DEFENDANT



JUDGMENT

1. The Plaintiff moved the Court through Plaint dated 1st February 2021 in which he averred that he is the registered proprietor of the parcel of land known as Kakamega/Sergoit/12 (the suit property) measuring approximately 29.5 hectares and that the Defendants had trespassed into the suit property and built structures thereon. He further averred that the First Defendant who was a caretaker had sold part of the suit property to the Defendants without his authority.
2. The Plaintiff therefore sought judgment against the Defendants for:
 - a. A permanent injunction restraining the defendants, their agents, employees, workers and/or any other person from entering into, occupying, encroaching, trespassing, fencing, subdividing, ploughing, planting crops and/or in any way dealing with the plaintiff's quiet possession, use and enjoyment of the suit land and stop them from doing any acts that are inconsistent with the plaintiff's right as the legal and/or rightful owner of all that parcel of land known as Kakamega/Sergoit/12 measuring 25.9 Ha. (75 Acres).
 - b. An order of Eviction forthwith removing the defendants, their agents, servants and/or assigns to vacate, move and leave vacant possession of all that parcel of land known as Kakamega/Sergoit/12 measuring 25.9 Ha. (75 Acres)
 - c. Costs of this suit
 - d. Any such other or further relief that the Honourable court may deem just and expedient.
3. The First Defendant filed Statement of Defence dated 6th June 2023 wherein he admitted that the Plaintiff is the registered proprietor of the suit property. He denied the Plaintiff's allegations of trespass and averred that being the Plaintiff's employee for a long period of time, he had personally witnessed the Plaintiff receiving money for various portions of the suit property that the Plaintiff had sold. He therefore urged the Court to dismiss the Plaintiff's case with costs.
4. The 2nd to 48th Defendants filed Statement of Defence dated 22nd February 2021 wherein they also admitted that the Plaintiff is the registered proprietor of the suit property. They also denied the Plaintiff's allegations of trespass and averred that they entered the suit property after acquiring portions thereof through valid sale transactions. They added that they had openly lived on the suit property and developed portions thereof with residential homes and farming activities. They also urged the Court to dismiss the Plaintiff's case with costs.
5. At the hearing, the Plaintiff stated that he is a Veterinary Doctor based in Sergoit. He adopted his witness statement which he filed on 9th February 2021 and produced copies of title deed, certificate of official search dated 30th May 2006 and photographs.
6. The Plaintiff stated in the statement that he is the proprietor of the suit property and that he employed the First Defendant as a caretaker of the suit property as soon as he acquired it on 10th November 1997. That the First Defendant sold portions of the suit property measuring between quarter of an acre and four acres to the 5th to 48th Defendants without his permission. He added that the 2nd, 3rd and 4th Defendants were claiming to have acquired between 4 acres to 10 acres without any proof of purchase. That the Defendants had trespassed onto the suit property and erected temporary structures thereon.
7. The Plaintiff went on to testify that he never sold the suit property to any of the Defendants and that he did not sign any of the agreements relied on by the Defendants. That the stamp used on some of the



agreements was his professional stamp which was in his office where the First Defendant had access. He also stated that the stamp was used without his permission and that the Defendants who are his neighbours went to the suit property for treatment or grazing of their animals.

8. The Plaintiff's case was then closed.
9. Evans Angwenyi Ongaki, the First Defendant, testified as the sole defence witness and stated that he is the Plaintiff's caretaker. He adopted his witness statement dated 27th March 2023 and also relied on the 2nd to 48th Defendants' witness statements. He also produced copies of the documents in the Defendants' list of documents dated 22nd February 2021 as well as photographs.
10. The First Defendant stated in his statement that the Plaintiff took various individuals to the suit property, showed them portions of it, demarcated it and received money as purchase price in his presence. He added that the Defendants had extensively developed their portions of the suit property and that the Plaintiff became evasive when they started demanding subdivision and transfer of titles to them.
11. The First Defendant also testified that he started living on the suit property in 1987 when the Plaintiff employed him and that the Plaintiff sold land to him without any sale agreement.
12. The defence case was then closed. Thereafter, directions were given that parties file and exchange written submissions. The Plaintiff filed submissions dated 6th November 2024 while the Defendants filed submissions dated 2nd December 2024.
13. I have carefully considered the pleadings, evidence and submissions. The only issue for determination is whether the reliefs sought should issue.
14. There is no dispute that the Plaintiff is the registered proprietor of the suit property. From the copies of the title deed and the certificate of search that were produced in evidence, the Plaintiff was registered as proprietor on 10th November 1977 and title deed issued to him on the same date. The suit property measures 29.5 hectares.
15. The law relating to the rights of a registered proprietor of land could not be any clearer. Such a proprietor's right to property is jealously guarded and guaranteed primarily through Article 40 of *the Constitution* as well as Section 24 of the *Land Registration Act* which provides as follows:
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.
16. Further, the registered proprietor's rights are also protected by Section 26 of the *Land Registration Act* which obligates the Court to accept his certificate of title as prima facie evidence of proprietorship unless the provisos under Section 26 (1) (a) or (b) are established. Thus, the grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party and where it is shown that the certificate of title has been acquired illegally, un-procedurally or through a corrupt scheme.



17. In this case, the Plaintiff has moved the Court seeking to assert his rights as a registered proprietor against the Defendants who have admitted that they are in occupation of portions of the suit property. While the Defendants have claimed that the Plaintiff sold portions of the suit property to them, the Plaintiff has emphatically denied that he did so. The Defendants have however not lodged any counterclaim seeking to challenge the Plaintiff's title in any way or even to uphold and enforce their alleged sale agreements.
18. Viewed against the Plaintiff's rights as a registered proprietor, the Defendants' alleged agreements can only materialise into rights against the Plaintiff if they establish those agreements and enforce any contractual rights. In the absence of counterclaims, the Plaintiff's proprietorship rights must be upheld against the Defendants who have admitted being in occupation of portions of the suit property.
19. In view of the foregoing discourse, I find merit in the Plaintiff's case. He is entitled to the reliefs sought. In the result, I enter judgment in favour of the Plaintiff as follows:
 - a. A permanent injunction is hereby issued restraining the Defendants, their agents, employees, workers and/or any other person from entering into, occupying, encroaching, trespassing, fencing, subdividing, ploughing, planting crops and/or in any way interfering with the Plaintiff's quiet possession, use and enjoyment of the parcel of land known as Kakamega/Sergoit/12 measuring 29.5 hectares or doing any acts that are inconsistent with the Plaintiff's rights as the proprietor of the said parcel.
 - b. The Defendants, their agents, servants and/or assigns to vacate the parcel of land known as Kakamega/Sergoit/12 within 90 (ninety) days of the delivery of this judgment. In default, an eviction order to issue against them.
 - c. The Plaintiff shall have costs of this suit.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 5TH DAY OF JUNE 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Ms Kosgei holding brief for Mr Omboto for the Plaintiff

1st and 32nd Defendants present

No appearance by 2nd to 31st Defendants and 33rd to 48th Defendants

Court Assistant: B Kerubo

