



**Moturi v Nyakundi (Environment & Land Case 200 of 2010)
[2025] KEELC 4011 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4011 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 200 OF 2010**

M SILA, J

MAY 22, 2025

BETWEEN

MICHAEL BOSIRE MOTURI PLAINTIFF

AND

JEREMIAH SALIMO NYAKUNDI DEFENDANT

JUDGMENT

(Plaintiff filing suit claiming that the suit land was purchased from the father of the defendant, by one Stephen, who in turn sold the land to him; plaintiff claiming that they proceeded to the Land Control Board and obtained consent; defendant on the other hand disputing any sale, asserting that his father transferred the land to him as a gift, that they also obtained consent of the Land Control Board, and the title was transferred to him; evidence provided being very clear that the purported sale agreement between the said Stephen and the father of the defendant is an obvious forgery; in face of that the said Stephen could not have had any land to sell to the plaintiff; plaintiff's suit dismissed)

1. This suit was commenced through a plaint filed on 13 July 2010. It is the plaintiff's case that through a sale agreement dated 10 March 1991, he purchased the land parcel West Kitutu/Bomatara/138 from one Stephen Nyangau Nyakundi. It is averred that the said Stephen Nyangau Nyakundi (Mr. Stephen Nyangau) had previously bought the land from the registered proprietor, one Charles Nyakundi Onsongo (Charles Nyakundi) but the transfer had not yet been effected to Stephen. He averred that Stephen introduced him to Charles, and informed him of the sale of the land to him, and that Charles agreed to sign the requisite documents to have the land transferred to the name of the plaintiff. It is the plaintiff's case that Charles, accompanied by Stephen, took him to the Manga Land Control Board and consent to transfer was issued. He averred that he then took possession of the land and planted trees and crops through his employee, one Wilfred Makana, while he worked and resided in Nairobi. Charles died before the transfer could be effected to him and he approached Charles' family to inform them of the sale and requested them to include his name as purchaser while undertaking succession.



Later, he discovered that the defendant, a son of Charles, had effected transfer into his name and he sued him before the Mosocho Land Disputes Tribunal which decided in his favour. This decision was however challenged in Judicial Review Kisii High Court Miscellaneous Application No. 36 of 2010. He averred that in February 2010, the defendant made attempts to take possession of the suit land and cut his crops. This move made him file this suit seeking the following orders (slightly paraphrased for brevity) :

- a. An order directing the rectification and/or cancellation of the defendant as registered proprietor of land parcel West Kitutu/Bomatara/138 and in its place the plaintiff be registered as proprietor.
 - b. A permanent injunction restraining the defendant from the land parcel West Kitutu/Bomatara/138.
 - c. Costs of the suit.
 - d. Interest at court rates.
 - e. Any other relief deemed just to grant.
2. The defendant filed a Statement of Defence and pleaded that his late father, Charles, never mentioned to the family that he had sold the suit land. He wondered why the transfer was not effected to the plaintiff if at all consent from the Land Control Board had been obtained in 1991 and that the suit is thus time barred. He contended that any documents of consent purporting to be from Manga Land Control Board were forgeries. He asserted that his late father transferred the suit land to him in the year 2003 after following all requisite procedures including obtaining consent of the relevant Land Control Board. He pleaded that prior to the transfer the suit land was being used by the family and after the transfer in 2003, he took vacant possession and continued occupation until May 2010, when the plaintiff trespassed into it, destroyed his house, and cut down his trees and crops. He asked that the plaintiff's suit be dismissed.
 3. Together with the suit, the plaintiff filed an application for injunction seeking to restrain the defendant from the suit land pending hearing of the case. The application was heard by Makhandia J (as he then was) and dismissed in a ruling delivered on 15 November 2010.
 4. Hearing commenced on 23 June 2014 when the plaintiff testified before Okongo J. He testified that he comes from Manga, Mwabosire Sub-Location, in Nyamira County and works as an accountant in Nairobi. He testified that he purchased the suit land from Stephen at a consideration of Kshs. 200,000/= through the sale agreement dated 10 March 1991. He stated that Stephen had earlier purchased the suit land from Charles, the then registered proprietor, through a sale agreement dated 22 January 1988 which he produced. They went to Charles who approved of the sale between himself and Stephen. An application for consent dated 28 May 1991 was then made to Manga Land Control Board which application he stated was signed by Charles. They then proceeded to Manga Land Control Board accompanied by Stephen and his (plaintiff's) father one Samson Moturi. The consent was issued on 30 May 1991 allowing transfer of the suit land from Charles to the plaintiff. He stated that Charles was now to bring the original title deed to Kisii so that the transfer may be effected but he never did. He stated that Charles informed him that he could not find the title where he kept it and he told him to come back later for the transfer. He stated that by this time he had already taken possession of the suit property and planted trees and seasonal crops through his employee Wilfred Makana. He stated that he kept following on the transfer, but Charles gave one reason or another why the property could not be transferred to him, and thus the suit land was never transferred until Charles died. He approached his family who told him that they will sort out the issue later but they never fulfilled their promise. On



- 9 February 2010, he did a search which showed that the suit land had been transferred to the defendant on 23 June 2003 and issued with a title deed in the year 2010. He lodged his complaint before the Land Disputes Tribunal which ordered the cancellation of the title of the defendant and for the land to be transferred to him but this decision was quashed by the High Court.
5. He testified that he carried out investigations on how the defendant got title using the documents that the defendant had annexed in the judicial review proceedings. One was a consent dated 12 May 2000 said to have been issued by the Mosocho Land Control Board giving consent for transfer of the suit land from Charles to the defendant bearing reference No. 511047. He made inquiries from the Clerk of the said Mosocho Land Control Board and the Clerk told him that the reference did not relate to the defendant nor the suit land but that the reference was for a transaction done on 16 October 2000 for the land parcel West Kitutu/Bomatara/2742 with the applicant being one Philip Moses Otundo seeking to transfer land to one Kefa Obwocha. He produced a consent said to have been issued under that reference. He stated that he also requested for the minutes of the Land Control Board of 12 May 2000 which he obtained. He elaborated that there was a Minute No. 179/2000 in the agenda but it related to an application by one Mary Kemunto Omayio who wished to transfer the land parcel Mwamosioma/1820 to one Truphena Morangi Kwaba and that there was no agenda discussed for an application by Charles to transfer the suit land to the defendant. He stated that the minutes of 12 May 2000 ended at Minute No. 40. He testified that he then proceeded to the Kisii Land Registry and found that the title to Charles was issued on 18 May 1973 under the name of Charles Nyakundi but the transfer to the defendant reflected the name Charles Nyakundi Onsongo.
 6. This information was presented to the police who preferred charges of forgery against the defendant. At the time he was testifying the criminal case against the defendant was still pending. He testified that there was no room for another consent to be issued.
 7. Cross-examined, he affirmed that Charles was not a party to the 1991 sale agreement between himself and Stephen. At the time of this sale agreement, the suit land had not yet been transferred to Stephen. The consideration shown in the consent issued by Manga Land Control Board showed Kshs. 10,000/= . He testified that he left Manga Land Control Board with two consents, one from Stephen and the other from Charles. He stated that the consent he was to use for purposes of transfer was the one from Charles and explained that the consent from Stephen was just for his comfort and was not necessary. He did not have minutes for the consent from Stephen. The minutes were restricted to the consent of the transfer from Charles to him. He denied that the consents from Manga Land Control Board were forgeries. He testified that he saw an application for correction of name from Charles Nyakundi to Charles Nyakundi Onsongo at the land registry dated 26 August 1991 but he stated that the document was not registered as it was to be surrendered together with the original title and they had not paid for it. He was questioned on the minutes relied upon by the defendant.
 8. The next hearing of the case was on 20 November 2018 before Mutungi J (as Okong'o J had been transferred from the station) when PW-2 Peninah Barongo Nyakundi testified.
 9. PW-2 testified that she is wife of the late Charles and that he had two wives. She is the step-mother of the defendant. Her evidence was that she was the one cultivating the suit land and she had a house on it where she resided with her children. She testified that this land had been bought by her and her husband. Her husband proposed to sell the land in order to raise school fees and the land was sold to Stephen which money she stated helped pay school fees for the defendant. She testified that Stephen later sold the land to the defendant. She testified that the house that was on the land was demolished and the iron sheets used to build another house for her children. She testified that at no time did her husband call a meeting where he announced that he had given the land to the defendant.



10. Cross-examined, she could not recall when they bought the suit land. She could also not recall when her children completed school. She could not tell how much they sold the land for though she recalled that it was her sister who counted the money. She was not present when the land was sold to Stephen and was not a witness to the sale agreement. She did not know if they went to the Land Control Board. She now testified that she never consented to the sale of the land. She knew Stephen as he came from the same locality but they were not neighbours. She stated that her husband was a civil servant but had challenges raising school fees for her children and the children of her co-wife. She stated that she had no problem with her co-wife while her husband was alive but after his death she claimed that her co-wife started causing problems with her husband's property and she sued her. She testified that she was married in church and had accepted when her husband took in another wife. She lived with her co-wife (Neriah) on the same homestead but in different houses (presumably the ancestral land at Sensi Location, Kisii, which she said had been divided into two). Her co-wife was buried in Manga and not on the ancestral land. After the death of her husband she claimed that the children of her co-wife did not wish for her to bury him and that they buried him at night.
11. PW – 3 was Stephen Nyangau Okundi. He testified that he comes from Manga, Kitutu Central and he previously worked as a Labour Inspector in the Ministry of Labour before he retired to peasant farming. His evidence was that Charles came to him wishing to sell to him the suit land. They entered into an agreement in 1988 for him to buy the suit land at Kshs. 175,000/=. On 10 March 1991, he sold the suit land to the defendant for Kshs. 200,000/= They later went to the Manga Land Control Board accompanied by Charles so that consent could be issued in favour of the defendant.
12. Cross-examined, he testified that Charles died in 2006 at which time he had not yet transferred the land to the defendant. He reiterated that the agreement he had with Charles was dated 22 January 1988 and it was witnessed by Samson Moturi Nyabando, George Omwenga, and Benard Momanyi. Their IDs were put to him and he could see that George got his ID in 1999 and Benard in 1996. It was put to him that the sale agreement was actually prepared in 2010 which he denied. He denied that he was paid Kshs. 10,000/= by the defendant as shown in the Land Control Board application. He testified that on 30 May 1991, two consents were issued, one from himself to the defendant and another from Charles to the defendant. An application for Land Control Board consent in his name to the plaintiff, was put to him but he denied making it. He was also questioned on minutes of the Land Control Board.
13. PW – 4 was Momanyi Nyakundi. He testified before Onyango J on 7 October 2021 as Mutungi J had since transited from the Station. He lives at Sensi Location in Kisii. He described himself as the eldest son of Charles and that the defendant is his step-brother. His evidence was that they stayed on the suit land when they were young and later moved to the ancestral home. He stated that his father told him that he sold the suit land to Stephen who later sold it to the plaintiff. He denied that his father transferred the suit land to the defendant.
14. Cross-examined he testified that he was born in 1962 hence 26 years in 1988. He was not a witness to the alleged sale agreement to Stephen, said to have been prepared in 1988. His father never showed him the sale agreement. He did not know those who witnessed the sale agreement. He stated that his father told him that they went to Manga Land Control Board. He was aware that upon the death of his father, his mother (Peninah, PW-2) filed a burial dispute being Kisii CMCC No. 69 of 2006 against his co-wife (Neriah). He was a witness in that case on behalf of his mother. He testified that before his death, his father spent most of his time in his step-mother's house. He claimed that his father was buried secretly by his step-mother. On the transfer of the land to the defendant, he testified that his father never told him that he had transferred the land to him during his lifetime and he never convened a family meeting.



15. PW-5 was Steve Mokaya, the then Land Registrar, Kisii. He had the land parcel file for the suit land. He could see a transfer form from Charles Nyakundi Onsongo to the defendant. He had an application for consent to Mosocho Land Control Board. He did not have the original letter of consent in his file but what he had was a photocopy dated 12 May 2000. He did not have a copy of the transferor's ID though the ID number was indicated. At this juncture, Mr. Nyariki, learned counsel for the plaintiff applied for the witness to be stood down to produce some documents he had referred to. He was duly stood down. The next time the matter came up for hearing was on 2 May 2023, before me, as Onyango J had since been transferred from the station. Mr. Nyariki mentioned that PW-5 had been transferred to Kwale. He never came back. Instead the new Land Registrar, Osvera Cecilia Harriet, now testified.
16. She affirmed that the suit land was first registered in name of Charles Nyakundi. On 23 June 2003, the land was transferred to the defendant. The transfer form shows the name Charles Nyakundi Onsongo. She elaborated that ordinarily a change of name should be done but she could not say that the transfer was illegal for the parties could have presented their ID cards. She had a copy of the consent for the transfer and she explained that the original is left with the owner. Regarding its minutes she elaborated that they do not keep them as these are kept by the Land Administration Officer, who is the Secretary of the Land Control Board. The consent showed consideration as 'gift' and she did not know if stamp duty was paid though there was an assessment of Kshs. 600/=.
17. Cross-examined, she testified that the original Certificate of Title was returned for purposes of the transfer and is in their record. The defendant was issued with a title deed on 23 June 2003. She did not have receipts in her file but stated that they could have gotten lost. Regarding the consideration of Kshs. 30,000/= she testified that it could have been the value put for stamp duty purposes. There was also cross-examination on the minutes of the Land Control Board.
18. With the above evidence the plaintiff closed his case.
19. DW – 1 was Boaz Onchwari, a Registrar of Persons, Manga Sub-Location, Nyamira County. His evidence was on the identities of the persons said to have witnessed the sale agreement presented by the plaintiff. Of interest is his evidence that one of the alleged witnesses, George Osoro Omwenga has an ID issued on 15 July 1999 and it shows that he was born in 1979 meaning that he was 9 years old in 1988. Regarding Benard Magari Momanyi, he testified that he was issued with his ID on 26 August 1996 and that he was born in 1973. He was 15 years old in 1988.
20. DW-2 was George Osoro Omwenga. His evidence was that he was born in 1979 and that he got his ID on 15 June 1999. The alleged sale agreement of 22 January 1988 was put to him. He could see his name and his ID number in the agreement. He could also see a signature. He testified that this was not his signature and that he was 9 years old in 1988. He testified that he never witnessed the alleged agreement. He testified that in 1988 he was in Standard 2 and did not have an ID. He could see the other names in the sale agreement which he could identify. He testified that they are in a merry-go-round 'chama' with some of them and they were required to avail ID cards. He thought that this is how his name and ID came to be inserted in the agreement. He stated in cross-examination that he did not know Charles Nyakundi Onsongo but knew Benard Momanyi and Thomas Motuka noted in the sale agreement. They are from his clan.
21. DW-3 was Joseph Ford Monyancha a retired Senior Chief of Bogusero North Location. He testified that he is the one who certified as true copies of the original, the Minutes of the Land Control Board, Mosocho of 12 May 2020. He stated that the Minutes are kept by the Mosocho District Officer (D.O), who served as the Chairman of the Land Control Board. When he certified the minutes, he was acting as the D.O since the substantive D.O was on leave. He stated that the defendant came seeking certified copies of the minutes, that he got them from the file, and certified them for him. He stated that at that



- time the Minutes had not yet been signed and he certified what he got from the file. In issue was the Minute No. 41 showing consent issued to Charles Nyakundi to transfer land to the defendant by way of gift. He stated that he gave evidence in the criminal case No. 1449 of 2012 where the defendant had been charged. Cross-examined, he could see that the minutes were not dated nor signed. He explained that he was not the one who typed the minutes but he only copied the minutes as they were in the file. The D.O then was Agnes Osore. He did not know that she testified in the criminal case and denied the minutes. According to him Agnes gave false evidence in the criminal matter. What he gave out were not handwritten but typed minutes. He did not sit in the Board.
22. DW-4 was Mary Kemunto Omayio. Her evidence was that she sold her land parcel Central Kitutu/Mwamosioma/1821 and she made an application to the Mosocho Land Control Board for consent. Her application was No. 170 of 2000. She testified that during the Land Control Board meeting, she met Mr. Nyakundi, the father of the defendant, who was known to her and they exchanged greetings.
 23. DW – 5 was Alex Mwangera, a Superintendent of Police and a document examiner based at the DCI Headquarters in Nairobi. He had a forensic document examination report prepared by his colleague one Michira Ndege.
 24. DW – 6 was Edward Ondieki Nyambega, an Agricultural Extension Officer in Mosocho. His evidence was that he visited the suit land on 29 June 2010 and saw maize and banana stems destroyed by cutting. He valued the damage at Kshs. 62,737.20/= and prepared a report which he produced.
 25. DW – 7 was George Nyangau Nyakundi. He is the older brother to the defendant. He testified that his father was polygamous and the suit land was mainly being tilled by his mother. He testified that after the death of his father, a burial dispute ensued regarding where he was to be buried. According to him, his father wished to be buried in Manga but Peninah, the first wife wanted him buried elsewhere. The disputed land is not among the two parcels of land disputed in the burial dispute. He testified that in the year 2000, his father was ailing and he wanted one of them to go and take charge of the land. At that time he was working in Nairobi (as he was a banker) and his other brothers were also away. Only the defendant was available and he made proposal that he could secure a loan with the land as security in order to undertake some activities. This, he explained was the background leading to the transfer of the suit land to the defendant. He stated that their father never informed him or the family that he has sold the land. He testified that in his wisdom his father appointed him as Chairman of the family and he would know of any transaction his father had. He seemed to suggest that this case was borne out of bitter burial dispute that they had with the first family after the death of his father.
 26. DW – 8 was the defendant. He is an Administration Police Officer. His evidence was that his father retired in 1995. He was not in good health, and so too his mother, and they could not continue farming the suit land. He testified that the two families of his father lived in harmony. On 1 January 2000 his father called a meeting which was held at Manga and he brought up the issue that one of them needs to take over the land. His siblings were working in Nairobi and he was the only one who took up the offer. He stated that he was to cultivate the land as he takes care of two of his brothers. On 12 April 2000 his father applied for consent from the Mosocho Land Control Board for a meeting that was scheduled for 12 May 2000. He stated that they went to the Board accompanied by some family members and consent No. 179 of 2000 was given. On 23 June 2003 he stated that they went to the Lands office and transfer to him was effected. He testified that after the meeting of 1 January 2000 he took occupation and built a house. His father died on 30 January 2006. He stated that the land was given to him to enable him secure a loan but he did not take one. He used his own salary to take care of his younger brothers. He testified that the issue regarding the land arose in 2010. They had earlier been sued over the burial dispute. He testified that the first time he met the plaintiff was at the Land Disputes Tribunal. Regarding the sale agreement, his view was that it was written at the time of the



case before the Tribunal then rubbed with soil to make it look old. The tribunal decided in favour of the plaintiff and after its decision, the land was invaded. He was charged in Criminal Case No. 1449 of 2012 for forging documents but he was acquitted.

27. Cross-examined, his opinion was that the LCB consents he produced were the genuine ones whereas what the plaintiff produced are forgeries. He also refuted the change of name of his father produced by the plaintiff. He explained that the transfer was as a gift and the amount of Kshs. 30,000/= was put in the transfer for purposes of stamp duty. He refuted that the suit land belonged to the first house and that after his father sold it they moved out of it. In his view, the suit land belonged to the 2nd house. He also refuted that his father put his mother in a market centre and never took her to his ancestral home.
28. With the above evidence the defendant closed his case.
29. I invited counsel to file their submissions and I have seen the submissions filed by both counsel for the plaintiff and defendant. I have factored the same in my disposition.
30. This is a case where the plaintiff seeks to cancel the title of the defendant and in place the same be issued to him. The plaintiff's case is hinged on the contention that the suit land had earlier been sold to one Stephen in the year 1988 and in turn, the said Stephen in the year 1991 sold the suit land to him. He claimed to have been in possession from the year 1991 to the year 2010 when he alleged that the defendant forcefully evicted him.
31. To succeed, the plaintiff must demonstrate that the suit land was actually sold to the said Stephen, because if it was not sold to him, then there is no way it can be said that Stephen had any land to sell to the plaintiff. In my view therefore, it is the alleged sale agreement dated 22 January 1988, said to have been between Stephen Nyangau Onkundi and Charles Nyakundi Onsongo, which is the most critical document in this dispute. In as much as the plaintiff asserts that this is a genuine document, the reality of the matter, from the evidence produced, is that this is a totally fake document. It is certainly a fraudulent document for it alleges to have been signed inter alia by Thomas Motuka and George Omwenga as witnesses which cannot be true. The evidence is stark that George Osoro Omwenga was only 9 years old at the time and he could not have had an identity card. The identity card number that is inserted next to his name in that purported sale agreement is an identity card that was prepared in the year 1999 and could not have been there in the year 1988 as alleged. George Omwenga, himself testified that he could not possibly have witnessed that sale agreement, and that he never did. The same applies to Benard Magari Momanyi who was born in 1973. He was about 15 years at the time, could not have had an identity card, and could not have signed that sale agreement as a witness. DW-1 indeed testified that the ID card shown in the sale agreement is an ID card that was issued in the year 1996. It is therefore crystal clear that there was never any sale agreement between Charles Nyakundi and Stephen Nyangau Onkundi as claimed by the plaintiff.
32. Now, if there was no sale agreement between Stephen Nyangau Onkundi and Charles Nyakundi, which we have established above, it follows that Stephen Nyangau Onkundi could not have had any land to sell to the plaintiff. He could only have had something to sell if he had first purchased and we are sure that there was no such purchase.
33. The fact that the plaintiff could have the audacity to cause a sale agreement to be manufactured and to be passed off as a genuine document calls to doubt the whole of his evidence and even the evidence of his witnesses. They certainly have no credibility and this court cannot believe their evidence. These are persons who have an agenda to steal the suit land by hook or by crook, more likely the latter. If they actually came to court, so as to support a fraudulent sale agreement, then I ask myself what aspect of their evidence I ought to believe and what I ought not to. I would think that anything contended by them that the suit land was sold by Charles Nyakundi cannot be believed.



34. Having failed to prove any sale agreement between Charles Nyakundi and Stephen Nyangau, it is not even necessary for me to give any indepth analysis of the contestation over what was approved by the Land Control Board and what was not approved. It does not matter what I find so long as it is clear that the purported sale agreement is a forgery, which we have already seen that it is. I cannot bring myself to allow a person to obtain title through forged documents that are being passed off as genuine.
35. It is apparent that I am not impressed by the plaintiff's case and it must fail. It hereby fails and is dismissed with costs.
36. Judgment accordingly.

DATED AND DELIVERED THIS 22 DAY OF MAY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Nyariki for the plaintiff

Mr. Momanyi Aunga for the defendant

Court Assistant – Michael Oyuko

