



**Okuba v Odongo (Environmental and Land Originating Summons  
131 of 2018) [2024] KEELC 1224 (KLR) (6 February 2024) (Judgment)**

Neutral citation: [2024] KEELC 1224 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 131 OF 2018**

**MN KULLOW, J  
FEBRUARY 6, 2024**

**BETWEEN**

**DAVID ONYANGO OKUBA ..... PLAINTIFF**

**AND**

**ARTHUR MARK OKEYO ODONGO ..... DEFENDANT**

**JUDGMENT**

1. The Plaintiff herein commenced this suit by way of an Originating Summons dated 30<sup>th</sup> October, 2018 against the Defendant seeking a determination of the following issues: -
  - i. A declaration that the Defendant knowingly made false statements, orally and in writing in connection with the disposition and/or acquisition of parcel No. Kamagambo/ Kanyamamba/255 from the traditional family land of Onyango Olela (Deceased) contrary to section 103(1) (a) of the Land Registration Act No. 3 of 2012 and be punished accordingly.
  - ii. A declaration that the Defendant fraudulently procured the registration and issue of certificate of ownership (Title Deed for parcel Nos. Kamagambo/ Kanyamamba/607 & 255 contrary to section 103 (1) (c) of the Land Registration Act 2012 and be punished accordingly.
  - iii. The court be pleased to order the rectification of the register of the register by directing that the registration of parcel Nos. Kamagambo/ Kanyamamba/607 & 255 be cancelled and/or amended, having been obtained or made by fraud or mistake contrary to section 80(1) of LRA 2012.
  - iv. Costs of the Originating Summons be borne by the Defendant.
2. The Originating Summons is premised on 8 grounds thereon and on the Plaintiff's Supporting Affidavit sworn on even date. It is his claim that the Defendant fraudulently and arbitrarily acquired the suit parcels of land Nos. Kamagambo/ Kanyamamba/607 & 255 from the family of Onyango Olela.



- He averred that despite making verbal agreements with one Samuel Okuba Onyango and his brother Omuono Onyango over the sale of a portion of the suit land in acres, the Defendant reduced the said verbal agreement into writing and knowingly falsified the acreages from acres to Hectares; with each hectare being equivalent to 2.47 acres.
3. It is therefore his contention that the Defendant's claim of ownership over the suit land is defective ab initio as the acquisition and issuance of title deed in respect of the suit parcels, was not authorized by the said vendors and is thus fraudulent.
  4. He further deposed that the terms and conditions surrounding the sale of the suit parcels were fraudulent and mixed up by the defendant and there was therefore no valid sale of land. That the documents allegedly authorizing the sale of the land are defective, incomplete, incoherent and doctored by the Defendant contrary to the provisions of section 103(1) & 90 of the Land Registration Act.
  5. In his Supplementary Affidavit; he maintained that there were several irregularities, illegalities and fraud designed and committed by the Defendant in the process of his fraudulent acquisition of the suit parcels. That there is no complete or valid sale agreement, expressly and directly involving the sale of parcel Nos. 255 of 607.
  6. It was his claim that there is nothing in the alleged sale agreements showing that the sale was intended to be in Acres or Hectares or whether the Defendant had discharged his part of the agreement by performance. He dismissed the alleged payments made by the Defendant as being fraudulent and not referring to any particular identified sale agreement.
  7. The Defendant entered Appearance and filed a Replying Affidavit sworn on 15<sup>th</sup> January, 2021. It is his claim that sometimes in February, 1971, he entered into a verbal/oral agreement with one Samuel Okuba Onyango, for the sale of a portion of land No. 255 measuring 5 acres at a consideration of Kshs. 1500/=
  8. Later, in the year 1980; the said Samuel Okuba Onyango and Angila Onyango further agreed to sell an additional piece of land No. 254 measuring 1 acre at a consideration price of Kshs. 1200/=. It is his contention that the additional 1 acre of parcel No. 254 was combined with a portion measuring 2.5 acres that was initially sold and the same became parcel No. 607. He maintained that he paid the agreed purchase price in full and was issued with the title deed of the suit land upon a valid and procedural transfer by the late Samwel Okuba.
  9. He maintained that he has been staying on the suit land for over 48 years and thus urged the court to dismiss the Plaintiff's suit with costs.

## **Trial**

10. The Plaintiff's case proceeded for hearing on 05.11.2023, the Plaintiff testified as PW1. He adopted his supporting affidavit as his evidence in chief. It was also his testimony that the Defendant had taken 2 portions of their land measuring 1.52 Ha and 0.84Ha respectively.
11. It was his contention that the Defendant had since returned one of the portions measuring 1.52Ha and his claim against the Defendant was in respect of the remaining portion measuring 0.84Ha which the Defendant continued to hold without any authority.
12. He produced the documents annexed to the Supporting Affidavit as Plaintiff Exhibits 1 - 10, copy of Originating Summons in Misc. Application 42 of 1977 dated 10/6/1977 as Pexh. 1, copies of land sale agreements dated 26/7/1972 & 28/8/1972 as Pexh. 2 (a) & (b), Defendant's statement in relation to parcel No. 255 as Pexh. 3, copy of the Defendant's witness statement as Pexh. 4 and copy of the 2<sup>nd</sup>



- Defendant's witness statement as Pexh. 5, copy of the Originating Summons and Affidavit purportedly authorizing the sale of land to the Defendant as Pexh. 6, copy of the evidence of payments of balance dated 10/12/1980 as Pexh. 7, copy of an Affidavit as Pexh. 8, copy of the title deed for parcel No. 607 as Pexh. 9 and copies of the Green Card, official searches for parcels 254, 255, 606 & 607 as Pexh. 10 in further support of his case.
13. On cross-examination; it was his testimony that the Defendant took the land in the year 1974 during the adjudication process. He denied any sale of the suit parcel to the Defendant by his late father.
  14. He further stated that he was not aware that the land was jointly owned by his late father and one Michael Angila but maintained that he is the son of the owner of the suit land. He thereafter closed his case.
  15. The Defence case proceeded for hearing on same date; the Defendant testified as DW1. He adopted his Replying Affidavit as his evidence in chief. It was further his testimony that he purchased the suit land in the year 1971 from Samuel Okuba and Michael Angila. He paid the 1<sup>st</sup> instalment and later paid the balance on 8/2/1971. He outlined the various payments made in instalments on diverse dates of the total consideration price of the suit parcel.
  16. He also produced the documents annexed to his Replying Affidavit as Defence Exhibits 1 – 4 as follows: - title deed issued on 15/8/1974 as Dexh. 1, copy of a sale agreement/ acknowledgement for payment dated 10/12/1980 as Dexh. 2, copy of a sale agreement/ acknowledgement for payment dated 19/12/1980 as Dexh. 3 and copy of Affidavit dated 10/6/1977 as Dexh. 4 in further support of his case.
  17. On cross-examination; he reiterated that he purchased the suit parcel and paid the agreed purchase price of Kshs. 300 per Acre in instalments, paying a total of Kshs. 1500/-
  18. It was his testimony that he has never been evicted from suit parcel and has lived on the land upon the purchase for 48 years. It was his claim that he summoned the Plaintiff's father in court sometimes in the year 1977 and he was ordered to execute the various transfer documents in his favor. He thereafter closed his case.
  19. Upon close of the defence case, I issued directions on the filing of submissions. Both parties filed their rival submissions and authorities which I have read and considered.

### **Analysis and Determination**

20. After a careful review of the pleadings herein, the respective exhibits and parties' rival submissions in totality; it is my considered opinion that the following issues arise for determination: -
  - a. Whether the Plaintiff has the legal capacity to institute the proceedings herein;
  - b. Whether this court can order the cancellation of the title deed for Kamagambo/ Kanyamamba/ 255 & 607 issued to the Defendant.

### **I. Whether the Plaintiff has the Legal Capacity to Institute the Proceedings Herein**

21. *Locus standi* is defined in *Black's Law Dictionary*, 9th Edition (page 1026) as  
“the right to bring an action or to be heard in a given forum”.



In the case of *Law Society of Kenya v Commissioner of Lands & Others*, Nakuru High Court Civil Case No.464 of 2000, the Court held that; -

“*Locus standi* signifies a right to be heard, A person must have sufficiency of interest to sustain his standing to sue in Court of Law”.

22. From a careful analysis of the pleadings herein, it is clear that the suit land previously/originally belonged to one Samuel Okuba Onyango. It is the Plaintiff's claim that the land solely belonged to his late father and the larger family of Onyango Olela while the Defendant contends that that the land was jointly owned by the said Samuel Okuba Onyango and Angila Onyango, who validly sold a portion of the land in dispute to him.
23. It is therefore common ground that the Plaintiff has instituted the instant suit in respect to the suit land which forms part of his late father's estate. The question that follows is whether he has the requisite capacity to file the suit and deal with the estate of a deceased person; either as a representative of the estate of his late father Samuel Okuba Onyango or as a representative of the family of Onyango Olela as alluded at paragraph 3 of his Supporting Affidavit, in the form of a limited Grant *Ad Litem*.
24. Justice A. Mrima in the case of *Julian Adoyo Ongunga v Francis Kiberenge Abano* Migori Civil Appeal No.119 of 2015, stated as follows on the filing of a suit without obtaining the requisite limited grant: -

“Further, the issue of *locus standi* is so cardinal in a civil matter since it runs through to the heart of the case. Simply put, a party without *locus standi* in a civil suit lacks the right to institute and/or maintain that suit even where a valid cause of action subsists. *Locus standi* relates mainly to the legal capacity of a party. The impact of a party in a suit without *locus standi* can be equated to that of a Court acting without jurisdiction. Since it all amounts to null and void proceedings. It is also worth noting that the issue of *locus standi* becomes such a serious one where the matter involves the estate of a deceased person since in most cases the estate involves several other beneficiaries or interested parties.”
25. Further, section 45 of the *Law of Succession Act* (Cap 160) provides that: -

“Except so far as expressly authorized by this *Act*, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.”
26. It is a well settled that for a party to have *locus standi* and appear in a case involving a deceased person, he must obtain a limited grant for that purpose. In the instant case, nothing has been adduced by the Plaintiff to show that he is the legal representative of the estate of the late Samuel Okuba Onyango or the family of Onyango Olela. Consequently, it is my finding that the Plaintiff is not vested with the requisite capacity (*locus standi*) to institute the present suit, for failure to obtain a limited grant for that purpose.
27. Having held that the Plaintiff herein lacks the requisite capacity and as held in the above case; capacity goes to the root of this court's jurisdiction to determine the suit as filed; I thus find that discussing the remaining issues at the centre of the suit would amount to an academic exercise since the suit cannot be sustained.



**Conclusion**

28. In the premises thereof, the Plaintiff's Originating Summons dated 30<sup>th</sup> October, 2018 is hereby struck out with no Orders as to costs. It is so ordered!

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI ON 6<sup>TH</sup> DAY OF FEBRUARY, 2024.**

**MOHAMMED N. KULLOW**

**JUDGE**

In presence of:-

Plaintiff present in person

Defendant present in person

Court Assistants - Tom Maurice/Victor

