



**Ndovu Estate v Mahendrabhai (Environment & Land Case
234 of 2017) [2024] KEELC 1167 (KLR) (5 March 2024) (Judgment)**

Neutral citation: [2024] KEELC 1167 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 234 OF 2017**

CG MBOGO, J

MARCH 5, 2024

BETWEEN

NDOVU ESTATE PLAINTIFF

AND

KAUSHAL KUMAR MAHENDRABHAI DEFENDANT

JUDGMENT

1. The plaintiff herein filed a plaint dated 21st March, 2011 seeking judgment against the defendant for: -
 - a. Kshs. 2,381.740 as more particularly set out in paragraph 10 of the plaint.
 - b. In the alternative, a declaration that the plaintiff do remove the pre-fabricated house and electric perimeter fence from the defendant's land and the defendant do pay to the plaintiff all the charges set out in sib paragraph (a), (d), (e) and (f) of paragraph 10 of the plaint.
 - c. General damages for loss of use of the pre-fabricated house and electric perimeter fence.
 - d. Costs of the suit.
 - e. Interest on (a), (b) & (c) at court rates till payment in full.
 - f. Any other and further relief that this honourable court shall deem just and expedient to grant.
2. In the plaint, the plaintiff stated that through a deed of assignment dated 8th November, 2008, it took over subsisting leases from Vincent Augustinho Raphael Luis including one belonging to Saitabo Ole Kudate for the planting season that was to end in the year 2009. That in the said parcel of land owned by Saitabo Ole Kudate known as Cis-Mara/ Ololulunga/ 5096 measuring 72 acres, were developments which were acquired by the plaintiff to own.
3. The plaintiff further stated that on the expiry of the leases, they renewed the same for the planting season ending in the year 2010 directly with Saitabo Ole Kudate, save that the land leased out was



now 69 acres. The plaintiff stated that the defendant had advised that he had purchased 3 acres out of the original land known as Cis-Mara/Ololulunga/5043 from Saitabo Ole Kudate as per the agreement dated 3rd June, 2009. Further, that they conducted a search and established that Cis Mara/Ololulunga/5043 belongs to Masandare Group and not to Saitabo Ole Kudate. Further, it was established that the defendant is the registered owner of land known as Cis-Mara/Ololulunga/13522 measuring 5.46 acres and not 3 acres which parcel of land has been curved out of the main parcel of land known as Cis Mara/Ololulunga/5096 belonging to Saitabo Ole Kudate.

4. The plaintiff stated that upon request by the defendant, they allowed him to remain on the land in a pre-fabricated house and an electric perimeter fence which secured parcel known as Cis Mara/Ololulunga/13522 on the condition that the defendant would purchase the said house and fence. According to the plaintiff, this commitment was not honoured to date.
5. The plaintiff pleaded that the defendant has failed to make good any of the payments being charges and purchase sum and claims against the defendant a sum of Kshs. 2,381,740/-.
6. The plaintiff further disclosed that there is a suit pending between the plaintiff and defendant which is not similar to the subject matter but deals with the land on which the developments claimed therein are erected.
7. The defendant filed his defence dated 19th April, 2011. The defendant stated that he bought 15.5 acres from Saitabo Ole Kudate and paid the full purchase price which the plaintiff was aware of and the said Mr. Kudate transferred the land. The defendant admitted that he is the registered owner of parcel of land Cis Mara/Ololulunga/ 13522 measuring 5 acres and Cis Mara/Ololulunga/ 13864 measuring 10 acres which he bought in the year 2009.
8. The defendant denied engaging a confidant to make arrangements with the plaintiff, and further denied enjoying any accommodation or security of the electricity fence. He contended that he did not purchase the pre-fabricates house and electric fence from the original owner and that notwithstanding, he has never prevented the plaintiff from taking them.
9. The plaintiff's case proceeded for hearing on 8th June, 2023. Vinay Vyas (PW1), the Director of the plaintiff, adopted his witness statement dated 10th February, 2011 as his evidence in chief. He produced documents marked P. EX no. 1 to 7 respectively. PW1 testified that the land lease was paid and documented in a deed of assignment dated 8th November, 2008 produced as P. Ex. No. 3. He testified that the deed consignment contained 32 subleases with different landlords and that the sublease with Saitabo Ole Kudate was number 17 and relates to 72 acres. He testified that sometime in the year 2009, he learnt that Saitabo Ole Kudate had sold a piece of land to the defendant who was his manager despite a running lease agreement which the defendant had signed. According to him, 3 acres of land had been sold to the defendant by the time the lease assignment was made to him. Further, that he conducted various searches in the year 2010 and learnt that his manager, the defendant, had purchased more than 15 acres from its landlord. That part of the land the defendant purchased had a structure and he was forced to move the structure and the equipment save for the electric fence and the pre-fabricated house.
10. PW1 testified that the structures are as contained in the sale agreement and listed as improvements. It was his testimony that he did not move the items because the defendant was residing in the pre-fabricated house and his wife pleaded with him to let them occupy the house as they had nowhere to stay. He further testified that the defendant promised to pay the purchase price for the land as he was going to start a business of his own. That the said purchase price was what he had paid Luis and in the event of failure to pay, the defendant offered to pay him rent. Further, that the defendant proposed to pay rent of Kshs. 20,000/- and electricity at Kshs. 50,000/- per month and since then, the defendant



abandoned the place and he has never paid him any money. Further, that when he went to the suit property a year later, he found that the house had been taken away and the electric fence had been vandalized.

11. On cross examination, PW1 testified that he bought the immovables together with the movables but that he did not buy land from Kudate, but that he entered into a lease with Kudate which was to expire at the end of the year 2009. He admitted that the lease was subject to renewal and there was no term between Kudate and Vincent that the latter could not sell the land. According to him, the defendant did not have the right to purchase the land from Kudate.
12. He further testified that he renewed the lease with Kudate for the year 2010 and 2011 which included 72 acres but disagreed that the same included the acres bought by the defendant from Kudate. He however agreed that the defendant bought 15 acres from Kudate, which was part of the 72 acres, and that since the year 2010, he was using the 72 acres which included the acres that the defendant had purchased. He admitted that he has never had any lease agreement with the defendant and has never made a single payment to him. Further, he admitted that the defendant did not stop them from removing the equipment from the land and whereas he obtained injunction orders against the defendant in 2011, the defendant has never disturbed him since then.
13. PW1 further testified that he removed the structures from the land, and that the defendant stopped working for him in September, 2009 immediately after they removed the structures. It was his evidence that he gave the defendant a truck to move his items to Narok and that the defendant continued to stay at the place even after he stopped working for the plaintiff. According to him, he agreed with the defendant that the defendant could purchase the pre-fabricated house and electric fence, which agreement was oral and in front of witnesses.
14. PW1 further testified that he does not recall the date when they had the agreement, but that the negotiations between him and the defendant were held once. He admitted that his plaint does not indicate the purchase price and that the defendant is dishonest if he says that there was no agreement on the purchase price. Further, that there are witnesses who can confirm that the defendant did not pay for the house and electric fence. He further testified that he did not demolish the pre-fabricated house, but he only demolished one side of the house that was remaining and whatever was remaining of the electric fence and that the defendant was not there. He denied that he kept his farm equipment in the same yard between 2010 and 2011 and could not remember when the defendant moved out of the house.
15. PW1 further testified that he does not know what happened to the rest of the house when he went to demolish it but that he started managing the property with his junior supervisors. It was his evidence that his claim against the defendant is for Kshs. 2,381,740/- but he is not claiming the land. He admitted that he is using the defendant's parcel of land because the defendant allowed him to, besides the court order. Further, that the defendant did not allow him to use the land in writing. Further, that he has charged the fence from July, 2009 to February, 2011 because that is what the defendant was using. Also, that he removed a few posts and a wall because it was obvious that the defendant was not going to pay him.
16. PW1 admitted that he did not carry out any valuation after he removed what remained. That whereas he admitted in his plaint that he could not access the land as it amounted to trespass, he had an order of the court to use the land in whatever way he wanted, although he did not produce the said court order. He admitted that up to now, he is using the defendant's land, and that he has a problem with the defendant taking his land until he pays him what he owes him. He denied that there was no agreement between himself and the defendant over the purchase of his equipment.



17. On re-examination, PW1 testified that the lease agreement for the year 2010 was for 72 acres and it was prepared on 28th October, 2008 and that he excluded the three acres when he made the final payment on 31st October, 2009. Further, that he has been using the 15 acres belonging to the defendant, after the latter allowed him to vide a verbal agreement. Further, that he has a lien over the property because the defendant owes him.
18. On 18th October, 2023, Philip Kiprop Cheruiyot (PW2) adopted his witness statement dated 29th January, 2011 as his evidence in chief. PW2 testified that he knows PW1 after he met him with the owner of the farm known as Luis and that after PW1 who was his former boss bought the property, he hired the defendant as his farm manager.
19. On cross-examination, PW2 testified that he did not help the defendant to move from the farm to Narok when he left employment, and that the defendant is the one who informed him that he had purchased 3 acres and that he, was not involved in the sale transaction. PW2 further testified that he knew the fabricated store where the chemicals and pesticides were kept, which was part of what PW1 purchased. Further, that the defendant informed him that he would like to purchase the house, fence and posts which he was going to count. Further, that the defendant informed him that he had no interest of buying the entire fence and that he informed them in his presence, not to demolish the house where he used to live with his wife as he intended to purchase it. It was his evidence that PW1 had sent him to demolish the house but this information is not contained in his witness statement. He admitted that the defendant as well as PW1 were overseeing the demolition of the structures and that the store where the chemicals and pesticides were, was left standing.
20. PW2 testified that the defendant and his family resided on the land until about the year 2015 but that the defendant also did not move to Narok after the structures were demolished and they no longer reside on the farm. He testified that he knew that the defendant no longer resides on the farm when he visited and is not aware whether the defendant used to work in another farm. It was his testimony that the defendant's wife requested that where the chemicals and pesticides are kept should not be demolished. According to him, the defendant's family remained at the farm for a short period before vacating.
21. On re-examination, PW2 testified that he only heard once about the defendant's offer to purchase a house and this was as they were about to demolish the house where the defendant and his family used to reside in. He testified that he asked PW1 to listen to the proposal by the defendant and later on, PW1 informed him that they had reached an agreement, and hence they did not demolish the house that the defendant intended to buy. Also, that the defendant had informed him that he had purchased 3 acres in the farm and PW1 was to vacate the part that he had purchased.
22. David Serem (PW3) adopted his witness statement dated 14th June, 2023 as his evidence in chief.
23. On cross-examination, PW3 testified that he was not present when the structures were demolished as he was in Eldoret, but he knew of the camp where the defendant lived. He recanted his statement and informed the court that he was present when the structures were demolished and that they were together with Philip, Michael and others. He further testified that the store where the chemicals and pesticides were kept was not demolished, but the house where the defendant and his family resided were demolished and his household goods were moved to the store. It was his evidence that he did not do the actual moving of the household goods belonging to the defendant. According to him, the roof of the store had not been partially demolished when the defendant's wife protested that they had nowhere to live. According to him, the defendant agreed with PW1 on the purchase price of the store as he was present when they discussed but he does not know the purchase price. According to him, he



heard the defendant indicate that if PW1 would accept Kshs. 350,000/-, then he would pay him but that the two of them did not enter into any written agreement.

24. PW3 further testified that there was an electric fence surrounding the entire farm, including the defendant's farm and that the defendant was still working for the plaintiff when the structures were demolished. That after the demolitions, the defendant lived there for about a month before he moved his family to Narok town. Further, that PW1 gave him the vehicle to take his family to Narok town and he does not know when the defendant stopped working for the plaintiff. Also, that he does not know whether the defendant purchased more land to the 3 acres and he does not know who uses the defendant's parcel of land.
25. On re-examination, PW3 testified that his witness statement contains what he saw. After the testimony of PW3, the plaintiff rested its case.
26. The defendant adopted his witness statement dated 9th April, 2011 as his evidence in chief. The defendant testified that at no time did he enter into a sale agreement for the purchase of a house and an electric fence and that Philip, Michael, Serem and other workers supervised the demolition of the structures. Further, that he had no prior information regarding the demolition even though he was the manager. It was his testimony that there was a store where the chemicals and pesticides were kept where he used to reside. According to him, the land was about 2000 acres and that the main camp was almost 11 kilometers from where he used to live. That since the farm implements used to be kept in the store, the plaintiff said that he could occupy the store. Further, that he did not reside in the store as he had been housed by one R. M Patel and his family was in Narok town. It was his testimony that since his daughter was in school, he moved his family before the demolition commenced and that PW1 went to witness the demolition in the afternoon as the workers started to demolish the structures in the morning.
27. According to the defendant, he did not offer to buy the electric fence, but he bought the land in the year 2009 and he has never used it since he purchased the same. Further, that he later went to work for a neighbor named R.M Patel. The defendant produced his list of documents as D. Ex Nos. 1 to 3(a), (b), (c), 4 and 5 respectively.
28. On cross-examination, the defendant testified that he has not produced receipts to show payment of rent of a house from R.M Patel. He admitted that he bought 15.5 acres from Saitabao and that the first property to purchase being 2.5 acres was where he used to reside which he could remember the title number. He testified that he used to reside in a timber house belonging to the plaintiff. Further, that he purchased the land sometime in the year 2008 or 2009 through a sale agreement produced as D. Ex. No. 3 (a) and the second parcel of land he bought was on 20th August, 2009 whose size was 10 acres. Also, that he did not have a title as at the time when he entered into the sale agreement as he was still working for the plaintiff. Further, that he did not notify the plaintiff when he purchased the land as he had entered into a lease on behalf of the plaintiff with Saitabao but the lease did not include the parcel of land he purchased.
29. The defendant further testified that when he entered into a lease agreement with Saitabao for the 72 acres, he did not include what he purchased in the lease and that in the year 2009, he made a lease for 72 acres. Further, that in the year 2010, he made another lease for 69 acres and that the lease for the year 2011 does not bear his thumb prints unlike the other leases. It was his evidence that PW1 would leave him with the money to give to the vendor, whenever he needed and he would later account to PW1 who would then counter sign.
30. The defendant further testified that there were two camps and he used to reside in the smaller camp which he used to share with other employees who were more than ten. Further, that the compound



- they were living in had about 8 or 9 houses and he did not share his house with his family and, that his family would only join him during the holidays. It was his evidence that Michael who used to assist him, resided in the main camp and that other than the holidays, his family never shared the house with him. He testified that he was the one who had the keys to the main gate and when Michael arrived, he informed him that he intended to demolish the structures and that they took 2 days to demolish the said structures. Further, that the store where the chemicals were stored was not demolished and that he resided in the farm of R.M Patel and that his wife was not there when the demolition took place, and neither did she plead with the persons carrying out the demolitions not to pull down the house.
31. He testified that the structures were in the parcel of land that he had purchased and that he did not inform PW1 that the land was his, when PW1 directed that the structures be demolished. That PW1 had told him that he (PW1) had heard that he (Defendant) purchased the land which was not included in his witness statement. He admitted that the compound was surrounded by an electric fence which did not cover the entire 72 acres, but that he did not request PW1 and his co-workers that the parcel of land should remain unfenced. He testified that it was not true that his family was present when the demolition took place as per the testimonies of PW2 and PW3. Further, that he does not remember the motor vehicle registration number which he used to move his household goods to the house of R.M Patel but that he used a lorry.
 32. He admitted that indeed PW2 moved the household goods and that PW2 lied when he said that he did not know how he moved out of the compound as he did so during the second day of demolition. Further, that he ceased to be an employee of the plaintiff before Diwali and he did not require the electric fence and the house either. It was his testimony that he worked for Luis for about 12 years before the plaintiff bought the business and he resided in the same compound for those years he worked for Luis, and that his children were attending school in Narok town when the demolition took place. That at the time, his first-born daughter was in nursery school which was 7 kilometres from the camp. Further, that he used to drop her to school on his way to the main camp. It was his testimony that he used to live with his family when he worked for Luis and the plaintiff bought the business from Luis in the year 2008. According to him, he did not purchase the fixtures when he bought the land as indicated in his statement. Further, that PW1 was at liberty to remove the structures from the land that he had purchased.
 33. On re-examination, the defendant testified that the plaintiff had a lease for 72 acres in the year 2009 which he signed and that the figures in the agreement of the year 2009 are reflected in the agreement of the year 2010. It was his evidence that he got the leases from the plaintiff and they sued. Also, that he did not know that his failure to inform PW1 that he had bought land would make him annoyed. Further, that when the plaintiff bought the business, his family lived with him for a short while before moving to Narok town and that PW1 gave him his vehicle to move his family, as he was still working for the plaintiff. Further, that he moved his household goods to the camp of R.M Patel and he had no problem with PW1 taking away the structures as they were his.
 34. Further defence hearing proceeded on 1st November, 2023. Saitoti Kiok (DW1) adopted his witness statement dated 19th April, 2011 as his evidence in chief. He testified that the defendant has never made use of the land that he purchased as the plaintiff cultivates on the same.
 35. On cross-examination, DW1 testified that he knows that the defendant entered into a sale agreement before Mr. Onduso, advocate as he was present when the sale agreement was prepared. He testified that a title deed was issued although he does not have a copy. According to him, the defendant has never cultivated on the land as it is the plaintiff who cultivates the same.



36. On re-examination, DW1 testified that there was a sale agreement prepared before Mr. Onduso, advocate which was between the defendant and the late Saitabao Ole Kudate.
37. On the 29th January, 2024 the defendant filed his written statement dated 25th January, 2024. The defendant submitted that what is in dispute in this case is whether the plaintiff sold to the defendant a prefabricated house and electric fence as claimed or at all. He submitted that the evidence adduced does not support this claim as there is a lot of contradiction and lack of cogent evidence to sustain it.
38. The defendant submitted that there was no sale agreement for the pre-fabricated house and fence neither was there a verbal agreement. Further, that no evidence was placed before the court that any confidant of the defendant ever made any arrangement with the plaintiff's representatives as claimed or at all.
39. The defendant further submitted that there was no evidence indicating that the cost of electric fence was Kshs. 600,000/- as there were no receipts produced. Also, that this being special damages, the plaintiff had to strictly prove the same. Further, that the same applied with the pre-fabricated house as well. He further submitted that it was possible for the defendant to watch his house demolished and start to protest when the store was demolished. Also, that there was no agreement of the purchase of the house at Kshs. 900,000/- as was the evidence of PW1 and that PW2 testified that he proposed to buy the same at Kshs. 350,000/- if PW1 would agree.
40. In conclusion, the defendant submitted that the claim over payment of rent and electric fence cannot stand as the same is misplaced. Further, that prayer 1 is overtaken by events since the plaintiff informed the court that he had demolished both the pre-fabricated house and the electric fence.
41. The plaintiff did not file its written submissions. Be that as it may, I have considered the pleadings, the evidence tendered and the written submissions filed by the defendant.
42. The issue for determination is whether the plaint has merit.
43. As I have understood the parties in this case, the plaintiff purchased an existing business from one Vincent Augustinho Raphael Luis which was subject of a lease between the said Vincent Luis and one Saitabao Ole Kudate. The defendant herein was a farm manager of Vincent Luis and after selling the business, the plaintiff took over and employed the defendant as his farm manager. It happened that the defendant, being the farm manager, entered into a lease agreement with Saitabao on behalf of the plaintiff over the lease of 72 acres while working for the latter. It also emerged that the defendant entered into an agreement with Saitabo Ole Kudate for the sale and purchase of 15.5 acres on diverse dates, a fact which the plaintiff does not dispute.
44. However, the issue that seems to arise according to the plaintiff is that there was a verbal agreement with the defendant that he would pay for the pre-fabricated house and electric fence which has not been honoured upto date. The question then is, is the plaintiff entitled to the orders sought.
45. During the hearing, PW1 informed the court that when he learnt that the defendant had purchased the parcel of land, he sent his workers to demolish the structures and that during the demolition, the defendant requested that the pre-fabricated house and the electric fence to remain as he could purchase the same. PW2 evidence was that he heard the defendant inform him that if PW1 would agree to his proposal of Kshs. 350,000/-, then he would purchase the prefabricated house. What was clear in the course of the proceedings was that the plaintiff did not lead any evidence to show that the defendant used his confidants to approach PW1 with any proposal as was stated in the plaint.
46. Interestingly, is that the defendant since purchasing the parcel of land has never utilized the same and the plaintiff continues to cultivate it. Also, PW1 admitted to have demolished the structures save for



a store house where the chemicals and pesticides were kept. One would wonder why then the plaintiff would seek for compensation when he ordered the said demolitions. The defendant in his pleadings and evidence also made it clear that the plaintiff could as well remove the structures on the parcel of land as he was not interested.

47. My analysis of the above is that the verbal agreement if at all any, never crystallized and remained as a proposal as was the evidence of PW2. The plaintiff has also, over the years had an unfair advantage over the utilization of the parcel of land owing to a supposed existence of a court order which was also not provided through any documentary evidence. The evidence tendered by the plaintiff is not sufficient to conclude that a verbal agreement existed between the parties herein, and that the plaintiff is entitled to the orders sought.
48. Arising from the above, the plaintiff has not proved on a balance of probabilities that he has a cause of action against the defendant. In any case, the plaintiff has unfairly profited from the use of the parcel of land to the disadvantage of the defendant.
49. The plaint dated 21st March, 2011 is hereby dismissed with costs to the defendant.

DATED, SIGNED & DELIVERED VIA EMAIL this 5TH day of MARCH, 2024.

HON. MBOGO C.G.

JUDGE

5/03/2024.

In the presence of:

Mr. E. Meyoki – C. A

and in the presence of: -

The counsel for the Plaintiff/Applicant

The counsel for the Defendant/Respondent

