



**Ondieki v Saisi (Environment & Land Case E001 of 2023)
[2024] KEELC 4194 (KLR) (11 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 4194 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE E001 OF 2023**

JM KAMAU, J

APRIL 11, 2024

BETWEEN

DANIEL ONDIEKI PLAINTIFF

AND

JOSEPH MAISIBA SAISI DEFENDANT

JUDGMENT

1. This suit was canvassed by way of an Originating Summons dated 27/6/2023 which was later amended on 24/10/2023. In the said summons the Plaintiff sought for the following prayers:-
 1. Declaration that the Defendant's right to recover a portion of LR No. Mwangori Settlement Scheme/1181, measuring 0.75 Acres (hereinafter referred to as the suit property) is barred under the *Limitation of Actions Act* Cap 22 Laws of Kenya, and his Title thereto extinguished on the grounds that the Plaintiff herein has openly, peacefully and continuously been in occupation and possession of the entire suit property for a period of more than 18 years and thus exceeding the statutory timeline for recovery of immovable property.
 2. There be an Order that the Plaintiff be registered as the Proprietor of a portion of LR NO. Mwangori Settlement Scheme/1181, measuring 0.75 Acres in place of the Defendant and/or the Register thereof be rectified to reflect the Plaintiff as the lawful and legitimate owner thereof.
 3. The Honourable court be pleased to order and/or direct the Defendant herein to execute, the Application for Land Control Board consent, the Transfer Instrument and/or such other Transfer instruments, as may be necessary and/or appropriate, to facilitate the transfer and registration of the suit property in the name of the Plaintiff.
 4. In the alternative and without prejudice to prayer 3 hereof, the Deputy Registrar/Executive officer of the Honourable court, be mandated and/or authorized to execute the transfer



instrument/documents, touching on and/or concerning the suit property, to facilitate the transfer in respect of the suit property.

5. There be granted an Order restraining the Defendant by himself, agents, servants and/or employees from interfering with the Plaintiff's peaceful possession and occupation of the suit property and/or any portion thereof, in any manner whatsoever and howsoever.
 6. Costs of this Originating Summons be borne by the Defendant.
 7. Such further and/or other orders be made as the court may deem fit and expedient, in the circumstances of this case.
2. He supported the summons with the following depositions in an Affidavit sworn on 24/12/2023. He deponed that he entered into a sale agreement with the Defendant's, brother John Kebaso Saisi which was reduced in writing on 12/12/2022 where he was to buy ½ hectare out of LR. NO. Mwangori Settlement Scheme/1181 at a consideration of kshs. 250,000/= after which he took possession of the land with the Defendant's permission. Later on his son and the Defendant's daughter differed and their marriage broke down. He therefore pleaded that he has acquired adverse possession over the suit land. On his part, the Defendant swore a Replying Affidavit on 3/10/2023 where he deponed that the land belongs to him and that he has never sold the same to the Plaintiff or any part of the entire 0.75 Acres. No consent was sought from the Land control Board and that the Plaintiff and his family have never settled on any part of the suit land but that the latter are settled on their ancestral land elsewhere.
 3. When the case came up for hearing, the Plaintiff adopted his Supporting Affidavit and said that he has been on the suit land for the last 23 years - ¾ Acres. On cross examination by Mr. Onsarigo for the Defendant, he said that he did not sue the Vendor, a brother to the Defendant because it was the latter who had the Title Deed to the land. He said that he has put up a permanent house and a fence around the land and that he has been on the land since 7/10/2000. On re-examination he told the court that he has asked John Kebaso Saisi to transfer the land to him but he has always insisted that he has no Title Deed to the land which is in the hands of the Defendant herein.
 4. He produced the following documents to prove his case;
 1. Copy of official search of Mwangori Settlement Scheme/977
 2. Copies of sale agreements dated 7/10/200, 12/12/200 and 13/12/2000
 3. Copy of sale agreement 10/6/2001
 4. A copy of application for consent of the Land Control Board (Borabu) in respect of Mwangori Settlement Scheme /1181 for sub division.
 5. Letter from the Defendant.
 5. The Defendant, Joseph Maisiba Saisi testified that he is aware that the Plaintiff bought a piece of land from his brother, John Kebaso Saisi. The entire land was transferred to him after his mother's (Agnes Moechi's) death in 1982 and a Succession Cause concluded in 1998. He also admitted that he was always there when the transaction was taking place and witnessed the money, kshs. 250,000/= changing hands. He is also aware that the Plaintiff had put up a fence on the suit land in 2003 and has lived there all these years. It is the Plaintiff's 2nd wife who brought the animosity.
 6. He concluded his evidence in chief by saying that John Kebaso has always told him to transfer the land to the Plaintiff.



7. On cross examination by Mr. Gichana for the Plaintiff Joseph said that he was a witness to the transaction and that the occupation of the Plaintiff has never been interrupted. He concluded his response to cross examination by saying that he had no objection in transferring the suit land $\frac{3}{4}$ acre out of Mwangori Settlement Scheme/1181 to the Plaintiff which he also repeated in re- examination.
8. These being the facts of the case, there is no objection to the transfer of Mwangori Settlement Scheme/1181 by the Defendant to the Plaintiff and the Plaintiff having bought the same from John Kebaso Saisi at an agreed consideration but failed to transfer the same to the Plaintiff because of objection coming from the Vendor's wife and having been on the suit land for a period of over 12 years continuously, uninterruptedly and openly this court grants the Plaintiff's prayers as contained in the amended Originating Summons dated 24/10/2023. Although costs follow the event, I will not condemn the Defendant to pay costs since his efforts were thwarted by frustrations from his sister in law, the 2nd wife to the Vendor.

**JUDGMENT DATED, SIGNED AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS
THIS 11TH DAY OF APRIL, 2024.**

MUGO KAMAU

JUDGE

In the presence of : -

C/A: Brenda

Plaintiff: Online

Defendant: Online

