



**Okari (Suing As the Administrator of the Estate of Prisca Nyanjoka Okari(Deceased)) v Nyairo (Environment and Land Case Civil Suit E002 of 2023) [2024] KEELC 3415 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3415 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND CASE CIVIL SUIT E002 OF 2023**

**JM KAMAU, J**

**APRIL 4, 2024**

**BETWEEN**

**MARGARET KERUBO OKARI ..... APPELLANT  
SUING AS THE ADMINISTRATOR OF THE ESTATE OF PRISCA NYANJOKA  
OKARI(DECEASED)**

**AND**

**PAUL OMURWA NYAIRO ..... RESPONDENT**

**JUDGMENT**

1. The Appellant filed a suit in the Chief Magistrate Court, Nyamira being Civil Suit No. 14 of 2018 on 14/5/2015 seeking Judgment for the following orders: -
  - i. The eviction of the defendant from the Land Reference Number East Kitutu/ Bonyamondo/11/162.
  - ii. A permanent injunction to prevent the defendant's agents, and/or servants, from reentering the said parcel of land.
  - iii. Costs of the suit.
2. She filed the suit in a representative capacity as the legal representative and Administrator of the Estate of Prisca Nyanjoka Okari the registered owner, of the above parcel of land which she claimed to have been trespassed into by the Defendant who had already occupied portions thereof to date, an unlawful act in spite of demands to vacate. She attached a copy of the certificate of official search thereby and a copy of the Grant of Letters of Administration intestate as proof that she is indeed the legal representative of the Estate of Prisca Nyanjoka Okari obtained from Chief Magistrate's Court, Kisii in Succession Cause No. 63 of 2016.



3. On 12/6/2018 the Defendant filed a Statement of Defence denying the plaintiff's claim and averred that the plaintiff was not the sole beneficiary of the Deceased's Estate and that she was not a trespasser to the suit property but that he was validly and lawfully on the suit land vide a sale agreement between himself and one of the beneficiaries, Kennedy Aminga Okari and Charles Moturi, husband to Mary Omariba. He said that he had undertaken substantial development on the land he bought measuring 499 by 74 feet in full view of the Plaintiff and other beneficiaries. He listed 22 witnesses with a probability of calling more. He also attached 3 copies of sale agreements and the death certificate of one Charles Moturi the Reply to Defence filed on 23/6/2018 repeated the contents of the Plaintiff and denied the contents of the Defence.
4. This being a first appeal, the law obliges me to analyze the evidence of the lower court.
5. The Appellant gave evidence in line with what is contained in her recorded statement to the effect that as the Administrator of the Estate of the late Prisca Nyanjoka Okari, the registered owner of L.R. No. East Kitutu/Bonyamondo 11/162 she had sued the Defendant for trespassing on part of the suit land.
6. She testified that the Defendant has trespassed onto the suit land and started picking tea thereon. She produced a copy of the Grant of Letters of Administration in respect to her mother, Banyweso's Estate. She said that the Defendant did not purchase land from her late mother. On cross-examination by Ms. Shilwatso for the Respondent, the Appellant said he knew Kennedy Aminga Okari who is his brother. She said that she did not know Anna Charles and Mary Omariba, the buyers of part of the suit land. On re-examination by her advocate, Mr. Momanyi, the Appellant said that the land was yet to be subdivided and that none of the alleged purchasers including the Respondent bought land from her late mother.
7. On his part, the Respondent, Daniel Omurwa Nyaribo said that he bought land from Mary Omariba and Ann Nyanchera who bought the same from Kennedy Aminga, a brother to the Appellant. This was in 2013 and 2017 respectively. He does farming on the suit land to date. He produced sale agreements dated 11/5/2010 between Kennedy Aminga Okari and Charles Moturi, 20/12/2010 between Aminga Okari and Mary Omariba the one dated 13/10/2013 between Mary Omariba and the Respondent and the last one dated 2/3/2017 between Anna Nyanchera Moturi and the Respondent. The Respondent also produced a copy of the death certificate of Charles Moturi husband to Anna Nyanchera Moturi who died on 24/2/2012.
8. On cross examination by Mr. Momanyi for the Appellant, the Respondent said that the Title Deed of the suit land was in the names of Prisca Nyanjoka (the late mother to the Appellant who passed on in 2012) and that Kennedy Aminga was not registered owner and also that Mary had no land in his name.
9. He finally said that the deceased mother of the Appellant did sell land to Kennedy Aminga DW2. Kennedy Aminga Okari said that the Appellant was his sister and both were children of the late Prisca. He also said that the Respondent is his uncle. He testified that he did sell his respective portion to Charles and Mary and he produced the agreements to that effect – dated 11/5/2010 and 20/12/2010 respectively. He said that the Appellant had also sold part of the land. On cross-examination by Mr. Momanyi for the Appellant Kennedy Okari said that the suit property is still in the name of the deceased Prisca. He said that it is not his late mother who sold the suit land to Charles or Mary. It was him. He also said that he had not been issued with a Title Deed and that he knew that the transaction was "wrong."
10. The last witness, Anna Nyanchera Moturi testified that she was the wife of the late Charles Moturi. She said that in 2010 her late husband bought a portion of the suit land measuring 50 x 130 feet part



of East Kitutu/Bonyamondo 11/622 from one Kennedy Aminga Okari, a beneficiary of the Estate of the late Prisca which he sold to the Respondent in 2017 who has been utilizing it to date.

11. She also admitted that the Appellant had filed a Succession Cause in Kisii where she had been identified as a beneficiary of the Estate of the late Prisca Nyanjoka Okari. On cross-examination by the Appellant Advocate Ms. Moturi said that she did not know who was the registered owner of the suit land and that it was and in her name. She said that the land belonged to the late Prisca and that Charles did enter into an agreement with Prisca. The land was not in Kennedy's name. She said that her late husband for whom she did not have a Grant of Letters of Administration but only a certificate of death bought the land.
12. These are the facts of the case from the evidence adduced in court.
13. Then followed the Judgment of the court dated and delivered virtually at Nyamira on 10/8/2023 and I wish to re-produce the pronouncement and reasoning in verbatim:

“ .....I have considered the above evidence and submissions. There is no dispute on the facts of the case. The issue is whether this is a land matter and a succession matter. The plaintiff is suing as an Administrator of the Estate of the deceased....

There is no evidence she had authority from other dependants or he made any efforts to finalize the succession matter since 2016. This is not a land matter but rather a dispute related to the succession of the deceased land and can only be handled by a Senior Succession. I do therefore find that the Plaintiff has not proved her case against the defendants on a balance of probabilities she is before the wrong court. I do therefore proceed to dismiss the suit with costs.....”

14. Consequently, the Appellant filed a Memorandum of Appeal on 25/10/2023 asking the court to set aside the decision of the Honourable Magistrate in Nyamira Chief Magistrate's Court Land Case No. 14 of 2018 and grant judgment in favour of the Appellant as per the final Complaint and grant him costs of this Appeal and of the lower court suit. The grounds cited to support the Appeal are as follows:-
  1. The Honourable Magistrate erred in law and fact in dismissing the suit
  2. The Honourable Magistrate erred in law and fact in holding that he had no jurisdiction to deal with the matter
  3. The Honourable Magistrate erred in law and fact in holding that the dispute was succession in nature
  4. The Honourable Magistrate erred in law and fact in holding that the grant of letters of administration was not sufficient to confer the appellant with the *locus standi* to sue the respondent
  5. The Honourable Magistrate erred in law and fact in holding that the appellant required concurrence and or consent of her siblings and or beneficiaries to the estate to file a suit
  6. The decision of the Honourable Magistrate is as a whole illegally and factually unsound and meant to sanction an illegality
  7. The Honourable Magistrate erred in law and fact in failing to hold that the respondent's conduct constituted intermeddling with an estate of a deceased person
  8. The Honourable Magistrate delved into issues which were not before him for determination.



15. From the pleadings of the case in the lower Court, the Appellant sued the Respondent on behalf of the Estate of her Deceased mother and in respect of which she had commenced a succession cause. She is indeed the legal representative of the Estate of Prisca Nyanjoka Okari *vide* a Grant obtained from the Chief Magistrate’s Court, Kisii in Succession Cause No. 63 of 2016. The case at hand is not between Dependants of the Estate *inter se*. It is what I would call foreign invasion. It can therefore not be said to be a Succession Cause. The cause of action is claimed to be trespass into the land parcel No. East Kitutu/Bonyamondo/11/162 registered in the name of the late Prisca Nyanjoka Okari by the Defendant. Under Article 162 (2)(b) of the Constitution of Kenya, 2010,
- (2) Parliament shall establish courts with the status of the High Court to hear and determine disputes relating to—
- (b) the environment and the use and occupation of, and title to, land.
16. Section 13 of the Environment and Land Court Act, 2012 on the Jurisdiction of the Court provides that:
- (1) The Court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.
- (2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the Court shall have power to hear and determine disputes—
- (a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
- (b) relating to compulsory acquisition of land;
- (c) relating to land administration and management;
- (d) relating to public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.
- (3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.
- (4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.
- (5) In exercise of its jurisdiction under this Act, the Court shall have power to make any order and grant any relief as the Court deems fit and just, including—
- (a) interim or permanent preservation orders including injunctions;
- (b) prerogative orders;
- (c) award of damages;
- (d) compensation;



- (e) specific performance;
- (f) restitution
- (g) declaration; or
- (h) costs.

17. Section 7 of the *Magistrate's Act*, 2015 provides that:

Civil jurisdiction of a magistrate's court

- (1) A magistrate's court shall have and exercise such jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter does not exceed—
  - (a) twenty million shillings, where the court is presided over by a chief magistrate;
  - (b) fifteen million shillings, where the court is presided over by a senior principal magistrate;
  - (c) ten million shillings, where the court is presided over by a principal magistrate;
  - (d) seven million shillings, where the court is presided over by a senior resident magistrate; or
  - (e) five million shillings, where the court is presided over by a resident magistrate.
- (2) The Chief Justice may from time to time, by notice in the Gazette, revise the pecuniary limits of jurisdiction set out in subsection (1), taking into account inflation and change in prevailing economic conditions.

18. The *Act* goes on to provide for jurisdiction of Environment and Land matters under Section 9:

A magistrate's court shall—

- a) in the exercise of the jurisdiction conferred upon it by section 26 of the *Environment and Land Court Act* (Cap. 8D) and subject to the pecuniary limits under section 7(1), hear and determine claims relating to—
  - (i) environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, mining, minerals and other natural resources;
  - (ii) compulsory acquisition of land;
  - (iii) land administration and management;
  - (iv) public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land; and
  - (v) environment and land generally;



19. The Appellant's cause of action is that of encroachment. She cannot be expected to wait until the succession cause is concluded so that she can protect it against external aggression. Someone has to rise to the occasion otherwise if the law were what the Trial Magistrate construes it, then there may be no succession cause to conclude and no Estate to distribute.
20. On the validity and enforceability of the agreements entered between the Defendant and some people said to be beneficiaries of the Deceased's Estate, the law does not allow such transactions until the Estate is distributed and each beneficiary is shown his entitlement. Such transactions amount to intermeddling under Section 45 of the *Law of Succession Act* (CAP 160 Laws of Kenya).
21. Since the Respondent entered on the suit land by virtue of Agreements with people who did not have capacity to dispose of the and, the Court finds that the said agreement is unenforceable and that he should vacate the suit land. I therefore allow this Appeal and overturn the Judgment of Honourable Mr. William Chepseba, Chief Magistrate dated and delivered virtually at Nyamira on 10/8/2023 and substitute the same with the following Judgment:
  - i. An Order of eviction be and is hereby issued against the Respondent from the Land Reference Number East Kitutu/Bonyamondo/11/162.
  - ii. A permanent injunction be and is hereby issued restraining the Respondent, his agents, and/or servants, from re-entering the parcel of land known as Land Reference Number East Kitutu Bonyamondo/11/162.

I will also award the costs of this Appeal and those of the suit in the lower Court to the Appellant.

**JUDGMENT READ AND DELIVERED IN OPEN COURT ON THE 4TH DAY OF APRIL 2024.**

**HON. MUGO KAMAU**

**JUDGE**

In the Presence of: -

Court Assistant: - Brenda

Appellant's Counsel – Mr. Momanyi

Respondent's Counsel – Ms. Shilwatso

