



**Wambugu v Yoshino (Environment & Land Case 33 of 2023)
[2025] KEELC 4175 (KLR) (22 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 4175 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 33 OF 2023
JM KAMAU, J
MAY 22, 2025
(FORMERLY NYAHURURU ELC NO 58 OF 2019)**

BETWEEN

CHARLES MAINA WAMBUGU PLAINTIFF

AND

TSUYOSHI YOSHINO DEFENDANT

JUDGMENT

1. In this suit commenced by way of a plaint dated 30/1/2019 and amended on 7/3/2024, the Plaintiff avers that in 2016, the Plaintiff and the Defendant got into a joint venture to establish an Athletics Running Camp in the name of Hadashi Running Camp within Ol-Joro-Orok Division of Nyandarua County. The 2 jointly acquired Title No Nyandarua/Ol-Joro-Orok Salient /1230 measuring 2.2 Hectares and constructed permanent structures to accommodate the runners. The land is Agricultural land . The Plaintiff was to be in charge of the day to day management of the running camp since the Defendant was not a Kenyan Citizen.
2. The suit land was then transferred into the joint names of the two because the Defendant a non-Kenyan did not seek from the President of Kenya exemption under section 23 of the *Land Control Act*, cap 301 Laws of Kenya. The Plaintiff contends that he substantially contributed towards the acquisition of the land from one Eunice Gatheri Wang'ombe and also its development. In January 2018, the Defendant allegedly unlawfully stopped the Plaintiff from entering or running the Camp. The Plaintiff issued him with a demand letter dated 3/1/2018 but in a reply dated 4/1/2018 the Defendant was adamant and in September, 2018 he was thrown out of the camp. And that at the behest of the Defendant, the outlawed Mungiki gang has been in control of the land. This was in spite of a suit in Nyahururu C.M ELC No, 209 of 2018 between the parties herein which case sought to restrain the Defendant from changing the management of the Athletics Camp. The Plaintiff consequently prays for:-



- a. A declaration that the inclusion of the Defendant as a proprietor of the suit property i.e Nyandarua/Ol-Joro-Orok Salient/1230 is unlawful, null and void for want of the exemption of the sale by the President of Kenya under Section 24 of the Land Control Act.
 - b. An order that the Land Registrar do remove forthwith the name of the Defendant from the title deed in respect of Nyandarua/Ol-Joro-Orok Salient/1230.
 - c. An order that the Defendant do account to the Plaintiff a half of the revenues earned from the agricultural and business activities after the eviction of the Plaintiff from the suit property.
 - d. An order do issue requiring the Defendant , his agents and servants to give the Plaintiff vacant possession of the said property forthwith.
 - e. A permanent injunction restraining the Defendant whether by himself , his agents and servants from interfering with his quiet of the said Nyandarua/Ol-Joro-Orok Salient/1230.
 - f. An order for the discontinuation of the partnerships business known as Hadashi Athletics Camp and sale of all assets belonging to the partnership including Title No. Nyandarua/Ol-Joro-Orok Salient/1230 together with all improvement effected therein by private treaty or public auction.
 - g. An order for equal sharing of the parcel of the partnership assets between the Plaintiff and the Defendant forthwith.
 - h. Costs of the suit plus interest thereon at current rates.
 - i. Any other suitable relief.
3. In his Defence and counter-claim, the Defendant avers that the Plaintiff was his employee with no reputable interest over L.R No. Nyandarua/Ol-Joro-Orok Salient/1230 or Hadishi Running Camp. He also avers that the Plaintiff's prayer for injunction in Nyahururu CMELC No 209 of 2018 was denied and the suit herein is *res judicata* and an abuse of the Court process and should be struck off. The Defendant also denies that there is in existence any Partnership to be dissolved.
 4. In his counter-claim the Plaintiff avers that in January, 2016, the 2 came to be introduced to one another and later they met in February, 2016. There was no agreement for a partnership and/or buying land jointly. But that it is the Defendant who bought the suit land and finalized its development fully. The purchase price of the suit land being Ksh 2,225,000/-. The Defendant also cleared a loan of Ksh 200,000/- that the Plaintiff had.
 5. On 5/4/2016 and 17/5/2016, the Defendant transferred a total of Ksh 4,750,000/= from his account to that of the Plaintiff to enable the Plaintiff purchase the suit land on his (Defendant's) behalf and also build up the Training Camp. The suit land was eventually registered in the joint names of the Plaintiff and the Defendant and that the Defendant signed the transfer forms through trickery, chicanery and deception.
 6. The Defendant concludes by saying that the Plaintiff never financed the purchase of the suit land nor its development and that the Plaintiff was only his Manager. At some time in January, 2018 their differences in fact turned physical. He therefore prays for Judgement against the Plaintiff for:
 - a. An order for the cancellation of the Plaintiff's name from the registration of L.R No. Nyandarua/Ol-Joro-Orok Salient/1230 to enable the Plaintiff to substitute the same with a person of his choice.



- b. Costs of the suit plus interest of court rates.
 - c. Any other or further ruling that this court may deem just and fit to grant.
7. It is important to state from the onset that this suit had been initially filed in the High Court at Nyahururu as HCCC No. 2 of 2019 before Lady Justice Wendoh R.P.U ruled that from the pleadings and prayers , the same brought to this court. This was on 23/7/2020. The said honourable judge ordered that the case be withdrawn and filed in this court within 14 days failure to which it stand struck out with costs. And on 17/12/2020 the orders of Lady Justice Wendoh were reviewed by Mr Justice Charles Kariuki varying the said orders and in lieu thereof transferring the suit to the ELC Court at Nyahururu (now Nyandarua) for hearing and determination of the same.
 8. The hearing of the case commenced on 28/1/2025 where the Plaintiff testified by adopting his statement recorded and dated 29/1/2019 in which he described himself as an athlete and that he started talking to a Mr Hiro via facebook and later WhatsApp and Skype.
 9. In the conversation, he was introduced to the Defendant whom he first met in February 2016 at Eldoret later Iten and then they travelled to the Plaintiff's home in Nyahururu. The Plaintiff, on enquiring told the Defendant that his future plans were to put up a Running Camp and they too agreed to partner in the Running of the Camp. They both contributed with the Plaintiff selling his business in Maralal town in order to get his share of the contribution. They also bought land after the Plaintiff advised the Defendant that foreigners were allowed to own land in Kenya. The sale agreement was done as well as the transfer forms executed while the Defendant was away in Japan and the latter sent the documents after executing the same on his part. For this, the Defendant paid Ksh 3,000,000/= which included money for construction. After the money ran out, the Plaintiff used his money and that of his wife to develop the Running Camp. But later the Defendants refused to put in more money for the expenses of 12 athletes and the Plaintiff had to do it alone.
 10. On 1/1/2018, the Defendant ordered the Plaintiff to keep off the Camp and in September 2018 with the authority of the Defendant Mungiki gang took over the Camp and started cultivating it, the land was bought in 2016. He said that by the time he sold his business at Maralal, the land had already been bought. He produced the following documents in court:-
 1. Screen shots of messages exchanged on messenger application between the Plaintiff and Defendant.
 2. Agreement for purchase of L.R No. Nyandarua/Ol-Joro-Orok Salient/1230.
 3. Application for Land Control Board Consent and Transfer forms.
 4. Agreement for sale of Plaintiff's business in Maralal Town.
 5. Title Deed for L.R No. Nyandarua/Ol-Joro-Orok Salient/1230
 6. Photographs of improvements effected on the suit land.
 7. Invoices and receipts for building materials and other expenses of the running camp.
 8. Agreements for trees purchase.
 9. Receipt for installation of biogas.
 10. Application for water connection and payment receipts.
 11. Plaintiff's demand letter dated 3rd January,2018.



12. Defendant's reply to Plaintiff's demand letter dated 4th January, 2018.
13. Relevant pleadings filed in Nyahururu CMELC No. 209 of 2018 (Formerly CMELC No 10 of 2018).
11. On cross-examination by Mr Waichungo, the Plaintiff said that it is the Defendant who contributed the money to buy the suit property Ksh, 2.5 Million. They also paid Ksh 80,000 for the transfer. He said that they didn't have a written agreement for the joint partnership. He also said that the value of the building on the land is about Ksh 2.3 million or 2.4 million which was the Plaintiffs' contribution and that the Defendant only sent him Ksh 200,000/= for fencing and planting trees. He claimed that he didn't have the receipts for the construction because he sent all of them to the Defendant for a refund.
12. PW2 , Ann Goiri Wagara wife to the Plaintiff also adopted her recorded statement of 4/10/2023 as her evidence in chief. She said that she met the Defendant for the first time in February, 2016. She said that her husband and the Defendant agreed to buy a piece of land to establish a Running Camp. She testified that they sold their businesses at Maralal for Ksh 300,000/- in order to start the Athletics Camp and they also had a savings of Ksh 80,000/=. The Athletics Camp was a joint project. The witness said that the Plaintiff received from the Defendant the purchase price of the suit property and also the money for the construction of the building but that he, the Defendant did not play any role in the planning and construction of the Camp, neither did he recruit the athletes. But that in 2017, differences arose between the Plaintiff and Defendants. On cross-examination, PW2 said that when the Defendant stopped sending money into the business , she was forced to buy food for the athletes but she could not tell how much she spent on the food and that her husband the Plaintiff never used to get a refund of this money. She never kept any receipt of the expenses. On re-examination she said that the Plaintiff got money from the Defendant for building the camp and that he also was paid for the research work he did.
13. PW3 Benjamin Mbuthia, a businessman relied on his statement recorded on 4/10/2023 in which said that he knew the Plaintiff since 2004 and that he used to supply him with meat at his athletes camp about 9 kilograms a day.
14. The Plaintiff having closed his case. The Defendant gave his testimony online on 19/3/2015. He said he was relying on his statement dated 13/1/2015 in support of his Defence as well as the counter-claim. He said that he met the Plaintiff in February,2016 at the Jomo Kenyatta International Airport. He asked the Plaintiff to help him look for a suitable land to set up a Camp to house athletes. He did purchase the suit land by authorizing transfer of funds from his Barclays Bank Nyahururu Branch Account No 2035827229 to the Plaintiffs' Account in diverse dates.
15. The purchase price was Ksh 2,225,000/-. He also finished the construction of the premises and employed the Plaintiff as manager. He advanced the Plaintiff the sum of Ksh 200,000.- and the manager had received a total of over Ksh 1,000,000/= for his stewardship.
16. He further stated that he sent to the Plaintiff a total of Ksh 4,750,000/= for the purchase of the land and the Plaintiff was tricky, chicanery and deception to have the suit land registered in their joint names. He said that as manager , the Plaintiff was not his partner. He started seeing mismanagement of the Camp and when he asked the Plaintiff what was going on, it turned out physical when the Plaintiff attacked and assaulted him. He insisted that L.R No Nyandarua/OI-Joro-Orok/1230 is his property and that he bought it solely. There is a house standing on it. He said that he finalized its development and that nobody helped him to build the house. He insists that he never got into a partnership called Hadashi Athletic Camp. He then produced the following documents:-
 1. Sale agreement dated 27th April, 2016.



2. Bank statements for Zidisha Bonus Account from period 1st January, 2016 to period 16th January, 2018.
 3. Bank statement Pepea Bank Account for period 1st February, 2016 to 24th September, 2018.
 4. Bank Statements Zidisha Bonus Account for period 1st February, 2016 to 24th September 2016.
 5. Bundle of receipts.
 6. Extract of messages between Plaintiff and Defendant on messenger.
 7. Photograph of Motor Vehicle Reg No. KBQ 097X.
 8. List of missing items from the camp.
 9. Power of Attorney dated 1st October, 2018.
17. On cross-examination, the Defendant said that he did not get any authorization from the Government to set up the Training Camp and that he came to Kenya to learn about the Country and to learn about barefoot athletes who he wanted to help. It was a voluntary venture and that he did not want to make it a commercial business.
 18. The witness said that he involved the Plaintiff in the registration because he did not have a PIN certificate and he could therefore use the Plaintiff's documents. He testified that he did not know at that time that as a foreigner he could not own agricultural land and that he knew nothing about Land Control Board.
 20. He also did not get the title deed of the land . It was given to the Plaintiff since he trusted him. It took him a long time to know that the land was registered in the name of the Plaintiff however he is the one who made all the payments and that he transferred Ksh 4,750,000/= to the Plaintiff.
 21. On re-examination , the Defendant said he was not in Kenya when the sale agreement was prepared. He did not consent that the name of the Plaintiff be inserted in the title. He was also not in Kenya around 27/4/2016 and so he did not participate in the processing of the title deed. It is the Plaintiff who did it and that in the transfer forms given to him by the Plaintiff, the latter's name was not there.
 22. Having gone through the evidence adduced on behalf of both parties, I wish to state that the ELC court is mandated by *constitution of Kenya, 2010* under Article 162 in the following terms:-
 1. The superior courts are the Supreme Court, the Court of Appeal, The High Court and the courts referred to in clause (2).
 2. Parliament shall establish Courts with the status of the High Court to hear and determine disputes relating to
 - a. The Environment and the use and occupation of, and title to land.
 3. Parliament shall determine the jurisdiction and functioning of the Courts contemplated in clause (2).

And under Section 13: of the *Environment and Land Court Act*,

 - (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) Deleted by *Act No. 12 of 2012*, Sch.
- (6) Deleted by *Act No. 12 of 2012*, Sch.
- (7) 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;
 - (g) restitution;
 - (h) declaration; or
 - (i) costs.

[*Act No. 12 of 2012*, Sch.]

23. Being guided by the above provisions, this court has no business hearing and determining matters to do with the partnership known as Hadashi Running Camp as prayed for in the plaint dated 30/1/2019 where Plaintiff prays for judgement against the Defendant for:-
- a. An order for dissolution of the Partnership business known as HADASHI ATHLETICS CAMP and sale of all assets belonging to the partnership including TITLE NO. Nyandarua/Ol-Joro-Orok Salient/1230 together with all improvements effected thereon by private treaty or public auction.



- b. An order for equal sharing of the proceeds of Sale of the Partnership assets between the Plaintiff and the Defendant forthwith.
24. The same belong elsewhere and therefore, I will disallow these prayers with costs. That leaves me with the singular duty of determining the ownership of the parcel of land L.R No Nyandarua/Ol-Joro-Orok Salient/1230 and whether the Plaintiff's name should be cancelled to enable the Defendant to substitute the same with a person his choice.
25. It is not in dispute that the suit property is registered in the name of the Plaintiff. However, all the monies used to purchase the said land come from the Defendant. The same was bought for Ksh 2,250,000/- and although the sale agreement refers to the Plaintiff as one of the purchasers together with the Defendant, the Plaintiff together with PW2 , his wife admit that all the purchase money came from the Defendant. I would believe the Defendant that since he is a foreigner and did not understand that being not a Kenyan citizen, he could not be registered owner of agricultural land in Kenya. Although ignorance of the Law is no excuse, the Plaintiff seems to have tricked him into registering the land in his (Plaintiff's) name. The fact that all the monies were paid for by the Defendant, the Plaintiff has no interest whatsoever on the suit land and I need say no more.
26. The Plaintiff therefore holds the land in constructive trust for the Defendant and the Defendant succeeds in his counter-claim and this court finds in favour of the Defendant and gives him judgement as prayed for in the counter-claim. As indicated earlier, the Plaintiff's claim in the Plaint is hereby dismissed with costs.

JUDGMENT READ AND DELIVERED AT NYANDARUA THIS 22ND DAY OF MAY, 2025.

MUGO KAMAU

JUDGE

In the presence of:

C/A Samson.

Mr Kuria for the Plaintiff.

Mr Gakenia for the Defendant.

