



REPUBLIC OF KENYA



**Koisikir v Onkware (Environment and Land Appeal 5 of 2017)
[2023] KEELC 15909 (KLR) (7 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 15909 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT AND LAND APPEAL 5 OF 2017**

CG MBOGO, J

MARCH 7, 2023

BETWEEN

KARINO OLE KOISIKIR APPELLANT

AND

HELLEN KWAMBOKA ONKWARE RESPONDENT

(Being an appeal against the ruling of the learned magistrate Hon. A.T.Sitati at the Narok Senior Principal Magistrate Court in SPMCC No. 26 of 2014 Hellen Kwamboka Onkware versus Karino Ole Koisikir delivered on 20th February, 2014)

JUDGMENT

1. The appellant herein being aggrieved with the whole decision of the learned Hon TA Sitati, Senior Resident Magistrate Narok made on February 20, 2014 allowing the respondent's application dated January 30, 2014 in Narok SPMCC No 26 of 2014 appealed to this court vide a memorandum of appeal dated March 26, 2014 against the whole of the decision on the following grounds: -
 1. That the learned Senior Resident Magistrate erred in law and fact in failing to consider that the appellant was and still is a member of Oldonyo Rasha Group Ranch, the original registered proprietor of the suit land.
 2. The learned Senior Resident Magistrate erred in and fact in failing to consider that as at the time of dissolution of the Group Ranch and subdivision of its land to members, each member was allocated their respective portions of land they occupied and were in possession of.
 3. That the learned Senior Resident Magistrate erred in law and fact in failing to consider that when the said ranch was being subdivided to its members, the appellant's name was illegally and fraudulently deleted and replaced with the one of Maragwa Ole Njapit, at the instance of the said Maragwa Ole Njapit.



4. That the learned Senior Resident Magistrate erred in law and fact in failing to consider that there is a Criminal Case Number 803 /2011 Narok where the said Maragwa Ole Njapit has been charged with altering a document namely a list of members of Oldonyo Rasha Group Ranch by substituting the appellant's name to read Maragwa Ole Njapit without any authority from other members of the said ranch.
 5. The learned Senior Resident Magistrate erred in law and fact in failing to consider that Maragwa Ole Njapit then hastily sold and transferred the appellant's land that he illegally and fraudulently allocated to himself to the respondent to cover the fraud.
 6. The learned Senior Resident Magistrate erred in law and fact in failing to consider that the respondent subsequently acquired the title deed for the same through a fraudulent and illegal means and not being a first registration is not indefeasible.
 7. That the learned Senior Resident Magistrate erred in law and fact in failing to consider that the green card for the suit property indicates a transfer from Oldonyo Rasha group ranch to the respondent wherein the respondent was not a member of the ranch, being a further evidence of fraudulent transaction.
 8. The learned Senior Resident Magistrate erred in law and in fact in failing to consider that the Magistrates Court had no jurisdiction in the matter since the said title issued in the name of the respondent is registered under Registered Lands Act Cap 300 (repealed) where it is provided under Section 159 that suits and proceedings registered under the act (sic) shall be tried by the High Court.
 9. That the learned Senior Resident Magistrate gave an order in a suit she had no jurisdiction.
 10. The learned Senior Resident Magistrate erred in law and fact in failing to consider that therefore the court did not have statutory jurisdiction to hear and determine the suit.
 11. The learned Senior Resident Magistrate erred in law and fact in making an order against the appellant before first considering how the appellant's land was transferred to the respondent.
 12. The learned Senior Resident Magistrate erred in law and fact in failing to consider that the court did not have pecuniary jurisdiction to determine the suit therein owing to the value of the suit property. The suit land as evidenced in the title attached by the plaintiff is 39.65 Ha approximately 100 acres at Kshs 250,000 per acre is worth Kshs 25,000,000/- (Twenty-five million).
 13. The learned Senior Resident Magistrate erred in law and fact in failing to consider that the appellant has been and is still in the suit land for the last 15 years from the time he became a member of the Group Ranch and further that the transactions relating to the transfer of his land was done behind his back and without his knowledge.
2. The appellant prays that the Senior Principal Magistrate's decision made on February 20, 2014 be set aside and the suit and the application dated January 30, 2014 be struck out with costs.
 3. The respondent filed a replying affidavit which was sworn on November 15, 2022. The respondent deposed that she is the registered owner of land parcel number Cis-Mara/Oldonyo Rasha/170 and that out of illegal interference of the suit land by the appellant, she instituted the suit in the trial court on January 30, 2014 together with an application for injunction. Further, that she sought orders to temporarily restrain the appellant from trespassing and interfering with the land pending inter partes hearing which orders were granted on February 3, 2014. That the said application was heard



- and on March 26, 2014, the trial court granted the respondent injunction orders pending hearing and determination of the suit.
4. The respondent further deposed that the appellant has no arguable appeal in respect of grounds 1-11 of the memorandum of appeal for the reason that the trial court in the absence of a counter claim had no duty to consider the issues of fraud. Further, that the temporary order of injunction was not a determination of an interest over the registered land and the trial court had the jurisdiction to grant the said equitable remedy to preserve the respondent's interests. Also, that the orders appealed have been overtaken by time with the issuance of the orders issued on March 26, 2014.
 5. The appeal was canvassed by way of written submissions. The appellant filed written submissions dated December 15, 2022. The appellant raised three issues for determination as below:-
 - i. Whether the learned senior resident magistrate erred in law and fact in failing to consider that the magistrates court had no jurisdiction in the matter.
 - ii. Whether the learned senior resident magistrate erred in law and fact in failing to consider that the respondent acquired the title deed for the suit property illegally and fraudulently.
 - iii. Whether the senior resident magistrate's decision made on February 20, 2014 should be set aside.
 6. On the first issue, the appellant submitted that the rationale for creating the idea of jurisdiction in law is that a court should only be able to adjudicate in topics with which it has some connection or which fall within the geographical, political or monetary constraints of its authority and in this case, the trial court erred for the reason that as per the title, the suit land is 39.65 Ha approximately 100 acres which is worth Kshs 25,000,000/- with Kshs 250,000/- per acre. Therefore, the trial court had no pecuniary jurisdiction to hear and determine the suit owing to the value of the property. The appellant relied on the cases of [Republic versus Karisa Chengo & 2 Others \[2017\] eKLR](#) and [Joshua Sembei Mutua versus Attorney General & 2 Others \[2019\] eKLR](#).
 7. On the second issue, the appellant submitted that the issue of ownership of land has been explored in depth by many authorities and it is his contention that the respondent acquired the land illegally and fraudulently. The appellant relied on the cases of [Dennis Noel Mukbulo Ochwada & Another versus Elizabeth Murungari Njoroge & Another \[2018\] eKLR](#) and [Vijay Morjaria versus Nansingh Madhusingh Darbar & Another \[2000\] eKLR](#).
 8. The appellant did not submit on the third issue.
 9. The respondent filed written submissions dated February 9, 2023. The respondent raised three issues for determination as follows: -
 - a. Whether the respondent is the legal proprietor and/or owner of the subject parcel of land.
 - b. The court had jurisdiction to issue orders of injunction.
 - c. Who bears the costs of the suit.
 10. On the first issue, the respondent submitted that in view of Sections 24, 25 and 26 of the [Land Registration Act](#), it is clear that a title to land is indefeasible and can be challenged successfully on allegations of fraud where the proprietor is a party to the fraud. Further, that the appellant has not filed any pleadings before the lower court specifying acts of fraud on the part of the respondent in obtaining her title deed as required by law. The respondent submitted that the certificate of title in the name of the respondent is to be taken by court as prima facie evidence that the person named is the absolute



and indefeasible owner of the land. The respondent relied on the cases of *Ardhi Highway Developers Limited versus West End Butchery Limited & 6 Others [2015] eKLR* and *Joseph NK Arap Ng'ok versus Moijo Ole Keiwua & 4 Others [1997] eKLR*.

11. On the second issue, the respondent submitted that in any litigation, jurisdiction is central and a court of law cannot validly take any step without jurisdiction. The respondent further submitted that the trial court had jurisdiction as it was fully gazetted and there was no evidence to suggest that the suit land is valued at more than Kshs 20,000,000/-. The respondent further submitted that the respondent satisfied the requirements as per *Giella versus Cassman Brown* case in seeking the orders of temporary injunction and that in her view, the court rightly reached its decision that she would suffer irreparable harm by the appellant's actions as he inhibited her use and utilization of the land that could not be quantified.
12. On the third issue, the respondent submitted that costs may serve to regulate, indemnify and deter a party and in this case, the appellant's appeal lacks merit and as such he should bear the costs.
13. I have considered the grounds of appeal and the submissions and authorities filed by both parties and the issue for determination is whether the same is merited.
14. This is a first appeal and the law is that this court is entitled to revisit the evidence on record, evaluate it and arrive at its own conclusion. Often times, an appellate court will not interfere with the findings of fact by the trial court unless they were based on no evidence at all or were arrived at on a misapprehension of it or the trial court is shown to have acted on wrong principles in arriving at those findings as it was held in *Mwanasokoni versus Kenya Bus Service Ltd 1982 - 88 I KAR 278*. In addition, this court must also take into account the fact that it did not have the opportunity of seeing or hearing the witnesses and must therefore make due allowance in that respect - *Selle & Another versus Associated Motor Boat Co & Others (1968) EA 424*.
15. A perusal of the record of appeal and the trial court record indicates that the respondent filed a notice of motion application and plaint both dated January 30, 2014 in the Senior Principal Magistrates Court in Civil Case No 26 of 2014. The notice of motion application was before Hon TA Sitati-Resident Magistrate and on the same date ie January 30, 2014, the trial court allowed the application in terms of prayer 1,2 and 4.
16. Thereafter, on February 27, 2014 counsel for both parties argued the application and a ruling was delivered on March 20, 2014 by Hon AK Ithuku-Senior Principal Magistrate who allowed prayer 3 of the application by granting the respondent herein temporary orders of injunction restraining the appellant from interfering in any way with the suit land pending the hearing and final determination of the suit.
17. From the lower court record, it appears that the parties lost interest and failed to have the main suit heard and determined and on November 28, 2018, the suit was dismissed for want of prosecution by Honourable T Gesora-Senior Principal Magistrate.
18. Back to the appeal, the appellant sought that the application and plaint dated January 30, 2014 be struck out with costs and the orders made on February 20, 2014 be set aside. From the record, there are no orders that were issued on February 20, 2014 by Hon AT Sitati, Senior Resident Magistrate (sic). It is unfortunate and very sad for a party to approach this court for relief on grounds whose foundation cannot be seen and or traced. If at all there was an error in typing, how then was this error flowing from the memorandum of appeal all through to the written submissions. The appellant has not sought to clarify and rectify this grave error. I really doubt whether counsel for the appellant is keen in prosecuting the appeal on merit and it appears as though they are taking this court for a ride.



19. Even if this court was to look away and consider the appeal, it would be wasting its precious judicial time for the reason that vide a ruling delivered on March 20, 2014, the trial court allowed the application and issued temporary orders of injunction pending hearing and determination of the main suit.
20. Arising from the above, the memorandum of appeal dated March 26, 2014 is in my view overtaken by events and it is hereby dismissed. I make no orders as to costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 7TH DAY OF MARCH, 2023.

HON. MBOGO C.G.

JUDGE

7/3/2023.

In the presence of:

CA:Mr T. Chuma

