



**Seke & another v Waswa Investment Company Limited & another;
Nyakwada & 49 others (Interested Parties) (Environment & Land Case
172 of 2010) [2023] KEELC 16431 (KLR) (8 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16431 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 172 OF 2010**

**A NYUKURI, J
MARCH 8, 2023**

BETWEEN

SAMUEL KAVOLOKO SEKE 1ST PLAINTIFF

FRANCIS NGIGE WAWERU 2ND PLAINTIFF

AND

WASWA INVESTMENT COMPANY LIMITED 1ST DEFENDANT

THE LAND REGISTRAR MACHAKOS 2ND DEFENDANT

AND

DR WILLIAM NYAKWADA & 49 OTHERS INTERESTED PARTY

JUDGMENT

1. By Complaint dated August 31, 2010, the Plaintiffs sought the following orders against the Defendants jointly and severally;
 - (a) A permanent injunction restraining the first Defendant by itself, its servants and/or agents from trespassing and/or otherwise interfering with Land Reference Number Mavoko Block 3/1973 and or the resultant Parcel Numbers 3617 to 3920.
 - (b) An order compelling the second Defendant to rectify the register by cancelling the Land Parcel Numbers 3617 to 3920.
 - (c) Costs of this suit.
 - (d) Interest on costs.
 - (e) Any other relief as this Honourable Court may deem fit and just to grant.



2. The Plaintiffs averred that they were the owners of Land Reference Number Mavoko Town Block 3/1973 measuring 16.61 Hectares (suit property). Further that by agreement dated December 30, 2005, the 1st Plaintiff sold to the 2nd Plaintiff the said land at a consideration of Kshs 4,000,000/-, and that they carried out subdivisions with intent to settle various individuals and groups on the land.
3. They stated that they had since established that the 1st Defendant purports to be the owner of the suit property and has fraudulently created Land Reference Number Mavoko Town Block 3/3617 to 3929 with a view to settling its members. They stated that the 1st Defendant had threatened to enter the suit property and interfere with the people settled on the property by the 2nd Plaintiff.
4. The 1st Defendant entered appearance on July 20, 2011. The 2nd Defendant filed defence dated May 10, 2022, where they denied the Plaintiffs' claim. The 2nd Defendant denied being party to any fraud and stated that any subdivision, transfer and registration of the suit property was based on documents presented and that he exercised due diligence.
5. Vide a Notice of Motion dated January 25, 2012, the 1st Plaintiff sought to have his name struck out from the suit alleging that he did not instruct the 2nd Plaintiff to file suit. The application was allowed vide this court's ruling of July 12, 2012. However, the 1st Plaintiff remained the 2nd Plaintiff's witness.
6. Subsequently, vide a Notice of Motion dated April 20, 2021, the 50 Interested Parties herein sought to be joined to this suit as Interested Parties. By the court's ruling delivered on February 16, 2022, the court joined them to these proceedings as Interested Parties.
7. Therefore the Interested Parties filed a reply to the plaint dated March 2, 2022. In that reply, they stated that in 2006, they purchased the suit property from the 2nd Plaintiff through his company Pan African Properties (K) Ltd as the 2nd Plaintiff had bought the property from the 1st Plaintiff. Further that they paid the entire purchase price.
8. They further averred that upon purchase, they subdivided the suit property into plots and have developed their respective plots by putting up residential houses which they occupy with their respective families, and that they have been in continuous occupation for more than 16 years.
9. The Interested Parties therefore sought the following orders;
 - (a) A permanent injunction restraining the Defendants from interfering with Land Reference No. Mavoko Block 3/1973 or the parcels resulting from the subdivision in any way.
 - (b) An order requiring the various plots to be registered in the names of the Interested Parties according to the sale agreements.
 - (c) Costs of this suit.
 - (d) Any other relief that this court may deem fit and just to grant.

Plaintiff's Evidence

10. PW1, Francis Ngige Waweru the Plaintiff herein adopted his witness statement dated May 20, 2019 as his evidence in chief. He testified that he deals in buying and selling land. That in 2015, he purchased parcel Mavoko Town Block 3/1973 from Samuel Kalovoto Seke and Morris Wilson Wambua at a consideration of Kshs 4,000,000/- which he paid in full.
11. According to PW1, upon purchase, he was given the original title deed and transfer documents duly executed by the vendors but that the vendors failed to obtain consent for the transaction. He testified that there was confusion as to whether the land sold was Mavoko Town Block 3/1973 or Mavoko



Town Block 3/1974. He stated that he had settled a big number of people on the land and some of whom were Interested Parties herein. He stated that Waswa Investment Limited had encroached on the land and brought trespassers on the land, purporting that the said land is known as Mavoko Town Block 3 (Waswa). His position was that there was no such land and that their claim was clearly a fraud. He prayed for the orders sought in the plaint. He stated that the Interested Parties are the people who purchased the suit land.

12. He produced documents attached to his list of documents dated March 11, 2019 as exhibits herein. He produced sale agreement dated December 30, 2005, as P-Exhibit 1, letter dated March 17, 2011 from Lukenya Ranching & Farming Cooperative Society as P-Exhibit 2 and a ruling of the court dated June 30, 2017 as P-Exhibit 3.
13. PW2, Samuel Kalovoto Seke adopted his witness statement dated June 4, 2021 as his testimony in chief. He testified that he was initially owner of Land Reference Mavoko Town Block 3/1973. That he sold the land to the Plaintiff by agreement dated December 30, 2005 and all the consideration was paid to him. That he executed all the requisite transfer documents and that therefore the land belong to the Plaintiff and he has no claim against the Plaintiff. He stated that he does not know the 1st Defendant. That marked the close of the Plaintiffs' case.
14. IP -1, Dr William Nyakwada the first Interested Party adopted his witness statement dated March 2, 2022 as his evidence in chief. He testified that in 2006, the Interested Parties herein bought plots from Parcel No 3/1973 from Francis Ngige Waweru through his company Pan African Properties Limited who had subdivided the property into many plots. He stated that at the time of purchase, the Plaintiff was in possession of the mother title, agreement and transfer documents from Samuel Kalovoto Seke and Hansbury Mutuku Wambua from whom he had purchased the suit property.
15. It was his further testimony that after they bought their plots from the Plaintiff and upon payment of the full purchase price, the Interested Parties developed the same with a majority putting up residential houses where they now occupy with their families. That later the 1st Defendant began alleging that they owned the suit property and they had subdivided it and obtained titles for the same. That the Interested Parties have been in occupation of the suit property for 16 years.
16. He produced a copy of title for Mavoko Town Block 3/1973, sale agreements dated April 24, 2006, May 30, 2006, July 25, 2006, January 15, 2010, February 16, 2010, March 16, 2010, receipts demonstrating payment of purchase price, document showing new allocated numbers for Mavoko Town Block 3/1973 Joska Phase 1, photographs of houses and perimeter walls on the property. That marked the close of the Interested Parties case. As the 1st Defendant's counsel had been in court on the morning of the hearing date when the matter was scheduled for hearing at noon, and since he was absent at the hearing, the defence case was marked as closed. The 2nd Defendant having been served to attend court, but being absent, their case was also marked as closed. Parties indicated that they did not intend to file submissions.

Analysis and Determination

17. I have carefully considered the pleadings and the evidence herein. The issues that arise for determination are;
 - (a) Whether the Plaintiff lawfully acquired the suit property by purchase.
 - (b) Whether the Interested Parties lawfully acquired the suit property by purchase from the Plaintiff.
 - (c) Whether the Plaintiff is entitled to the orders sought in the plaint.



- (d) Whether the Interested Parties are entitled to the orders sought.
18. The 1st Interested Party produced a title deed for Mavoko Town Block 3/1973 showing that the suit property was registered in the name of Samuel Kalovoto Seke and Hansbury Mutuku Wambua and that the registration was done on June 9, 2005. Section 27 of the Registered Land Act Cap 300 (repealed) upon which the land had been registered provided as follows;
- Subject to this Act –
- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto;
 - (b) the registration of a person as the proprietor of a lease shall vest in that person the leasehold interest described in the lease, together with all implied and expressed rights and privileges belonging or appurtenant thereto and subject to all implied and expressed agreements, liabilities and incidents of the lease. of the lease.
19. Section 28 of the said Act provided as follows;
- The rights of a proprietor, whether acquired on first registration or whether acquired subsequently for valuable consideration or by an order of court, shall not be liable to be defeated except as provided in this Act, and shall be held by the proprietor, together with all privileges and appurtenances belonging thereto, free from all other interests and claims whatsoever, but subject –
- (a) to the leases, charges and other encumbrances and to the conditions and restrictions, if any, shown in the register; and
 - (b) unless the contrary is expressed in the register, to such liabilities, rights and interests as affect the same and are declared by section 30 not to require noting on the register:
- Provided that nothing in this section shall be taken to relieve a proprietor from any duty or obligation to which he is subject as a trustee.
20. As the suit property which was registered under the Repealed Registered Land Act, vested in the registered proprietors thereof, namely Samuel Kalovoto Seke and Hansbury Mutuku Wambua, they had absolute ownership thereof with rights and privileges to deal in the land as they pleased within the parameters of the law.
21. The Plaintiff produced an agreement dated December 30, 2005 between him and the registered proprietors of the suit property. In view of the above provisions of the law, the vendors had the right and the requisite capacity to sell the suit property to the Plaintiff; the same fact having been confirmed by one of the registered proprietors thereof who was PW2. It is therefore my finding that the sale agreement dated December 30, 2005 was lawfully entered into.
22. From the above evidence on record, there is no dispute that the Plaintiff sold the suit property to the Interested Parties and that the Interested Parties upon payment of the entire consideration, took possession of their respective plots and have put up residential houses where they live as demonstrated by the photographs that IP-1 produced in court. I have considered the agreements and receipts produced by the Interested Parties, it is clear that they lawfully purchased the suit property and are therefore entitled to the same.
23. The evidence presented by the Plaintiff and Interested Parties herein was not rebutted or displaced in any way as the Defendants did not present any evidence in this matter.



24. Article 40 of the Constitution protects lawful acquisition and ownership of property. There is no suit challenging the initial ownership of the suit property by PW2.
25. In the premises, I am satisfied that both the Plaintiff and the Interested Parties have proved their case on the required standard and I enter judgment for the Plaintiffs and the Interested Parties as against the Defendants as follows;
- a. A permanent injunction be and is hereby issued restraining the 1st Defendant by themselves, their servants and/or agents from trespassing and/or otherwise interfering with the Land Reference Number Mavoko Block 3/1973 and or Parcels resulting from the subdivision thereof including the resultant Parcel Numbers 3617 to 3920.
 - b. An order is hereby issued compelling the 2nd Defendant to rectify the register by cancelling the said parcel numbers Mavoko Town Block 3/3617 to 3920.
 - c. An order requiring the various plots to be registered in the names of the Interested Parties according to their respective sale agreements.
 - d. Costs of the suit shall be borne by the 1st Defendant, to be paid to the Plaintiff and the Interested Parties.
26. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 8TH DAY OF MARCH 2023 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A NYUKURI

JUDGE

In the presence of:

Mr D K Thuo for Plaintiffs

Ms Musa for Interested Parties

Ms Josephine Misigo – Court Assistant

