



**Leposo v Kuhiguka & 2 others (Environment & Land Case  
766 of 2017) [2023] KEELC 17244 (KLR) (8 May 2023) (Judgment)**

Neutral citation: [2023] KEELC 17244 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 766 OF 2017**

**MN GICHERU, J**

**MAY 8, 2023**

**BETWEEN**

**MARGARET KATIKO LEPOSO ..... PLAINTIFF**

**AND**

**DAVID GITOME KUHIGUKA ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO COUNTY ..... 2<sup>ND</sup> DEFENDANT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff's claim against the Defendants is as follows.
  - i. Permanent injunction against the first and second Defendants from trespassing, transferring, disposing, mortgaging and doing any other act on those parcels of land that mutated from LR Kajiado/Kitengela/8776 (suit land) and more particularly LR 52850-93 and 52895 all inclusive and any other resultant subdivision thereof.
  - ii. The court to cancel the transaction herein, order the cancellation of all resultant subdivisions of the suit land and a declaration the same be reverted to the estate of Samuel Lepose Muringe and in the Plaintiff's name.
  - iii. General damages.
  - iv. Costs of the suit.
2. The Plaintiff's case is as follows. She is the administratrix of the estate of her deceased husband Samuel Leposo Muringe. On December 18, 2010, she intended to sell the suit land. She entered into a sale agreement with the first Defendant at Kshs 450,000/- per acre. The total amount was Kshs 5.4 million.



3. On the date of the agreement the Plaintiff received Kshs 250 000/-. She received a sum of Kshs 680,000/- on 26/4/2012, Kshs 200,000/- on November 15, 2013 and Kshs 150,000/- on December 18, 2013. The total amount was Kshs 1, 280,000/-. The first Defendant then filed Petition No 91 of 2014 at the High Court of Kenya in Nairobi. In that suit, he was ordered to pay the balance of the purchase price within 45 days. He failed to comply with the court order. Some of the title deeds were deposited in court. The Plaintiff is ready to refund to the first Defendant the partly paid purchase price and get the land back.
4. In support of her case, the Plaintiff filed the following evidence.
  - a. Her witness statement dated 8/6/2017.
  - b. Copy of sale agreement dated December 21, 2010.
  - c. 21 copies of title deeds that resulted from the subdivision of the suit land.
  - d. Copy of Plaintiff's acknowledgment of receipt of Kshs 680,000/- dated 26/4/2012.
  - e. Copy of professional undertaking dated 9/8/2012.
5. The first Defendant, through counsel on record, filed a written statement of defence dated 2/7/2018 in which he blames the Plaintiff for reneging on the sale agreement after being advised to sell the suit land at Kshs. 1.5 million per acre instead of the earlier agreed price of Kshs 450,000/-  
The first Defendant adds that there was no fraud on his part as everything happened with the blessing of the Plaintiff. It is his case that the Plaintiff is not entitled to any of the title deeds and he is ready to pay the balance on the purchase price after the title deeds are all released to him.
6. In support of his case, the first Defendant filed the following evidence.
  - a. Witness statement dated 23/1/2020.
  - b. Copies of acknowledgment receipts, payment vouchers and Mpesa statements.
  - c. Copy of sale agreement dated December 21, 2010.
  - d. Copy of petition No 91 of 2014.
  - e. Other relevant documents.
7. The second and third Defendants did not file any defence in the suit.
8. At the trial, the Plaintiff testified and also called the Deputy Registrar to produce some court proceedings. She adopted her witness statement and documents as her evidence and was cross-examined by the first Defendant's counsel.
9. The first Defendant testified on November 25, 2021 by adopting his witness statement and documents. He said that he was to pay the balance of the purchase price upon the conclusion of the succession cause.
10. Counsel for the parties filed written submissions on 31/1/2022 and on 13/5/2022. In the submissions, the Defendant's counsel covered both this suit and petition No 91 of 2014 while the Plaintiff's counsel's submissions were on this suit alone.
11. I have carefully considered the evidence adduced by both sides and I make the following findings.



12. Firstly, both parties agree that the first Defendant was to buy 12 acres comprising of the suit land at Kshs 450,000/- per acre as per the sale agreement dated December 21, 2010.
13. Secondly, the Plaintiff has acknowledged receipt of Kshs 1, 280,000/- as at December 18, 2013.
14. Thirdly, the first Defendant subdivided the suit land into many parcels. I say many because the pleadings do not state exactly how many. In fact the witness statements are very short and it is the submissions that contain many unproven statements.
15. I have carefully considered the submissions by learned counsel for both parties and owing to the inadequacy of evidence regarding the transfer of the suit land to the first Defendant, I find that there is only one issue to be decided namely.

“What percentage of the suit land is the first defendant entitled to?”

I find that the first Defendant is entitled to a percentage of the suit land commensurate to the amount of money he paid to the Plaintiff. The amount proven is Kshs 1, 280, 000/-.  
 $\text{Kshs } 1, 280,000/- \text{ divide by Kshs } 5, 400,000/- \text{ multiply by } 12 \text{ acres equals } 2.84 \text{ acres.}$

This is the acreage that the first Defendant is entitled to. He cannot pay the balance of the purchase price more than twelve years down the line because the value of the land is no longer Kshs 450,000/- per acre today. It is not fair either to order that the Plaintiff refunds the paid purchase price because the refund would not buy today what it would have bought in December 2010.

16. There is evidence to prove that the first Defendant is in occupation of part, if not the whole of the suit land. This means that the equitable doctrines of constructive trust and proprietary estoppel as enunciated in the case of *Willy Kimutai Kitilit v Michael Kibet* [2018] eKLR apply in this case. The application of the two doctrines renders the absence of the consent of the Land Control Board immaterial.
17. In conclusion, I order as follows.
  - a. The first Defendant is awarded 2.8 acres of the suit land.
  - b. The balance of the suit land to revert to the Plaintiff.
  - c. No order as to costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 8TH DAY OF MAY, 2023.**

**M.N. GICHERU**

**JUDGE**

