



**Koech v Langat (Environment & Land Case 264 of 2014)
[2023] KEELC 20666 (KLR) (12 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20666 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 264 OF 2014
A OMBWAYO, J
OCTOBER 12, 2023**

BETWEEN

DAVID KIPRONO KOECH PLAINTIFF

AND

RAYMOND KIBET LANGAT DEFENDANT

JUDGMENT

1. David Kiprono Koech, (hereinafter referred to as the Plaintiff) commenced this suit vide a plaint dated 22nd September, 2014 and stated that he is the legal and absolute owner of the parcel of land known as Olenguruone/chepakundi/895. (Hereinafter referred to as the suit property) and that Raymond Kibet Langat (hereinafter referred to as the Defendant) without any justifiable right trespassed into his land and put up structures. The Plaintiff sought for judgment to be entered against the Defendant as follows:

An order for eviction from the plaintiff's Parcel of land No.Olenguruone/chepakundi/895.

Permanent injunction order restraining the defendant by himself his agents, servants, employees, or whosoever from encroaching, entering, trespassing destroying or otherwise and or doing any act prejudicial to enjoying quite possession of land known as Olenguruone/chepakundi/895. Costs the suit. Interest on items (a) and (b) above at court rates. Any other or further relief that honorable court may deem fit and just to grant.

2. The Defendant herein entered appearance filed his Amended Defence and Counter claim and prayed for the following orders:

This Honourable court makes a declaration that the Defendant being the purchaser of the land known as Olenguruone/chepakundi/835 is the legal owner.

An order for cancellation of the Plaintiff's title deed and the same be restored in the name of Wambura Itundu Mukanda. Costs of this suit



3. On 26th July, 2023 the case came up for hearing but the Plaintiff was absent. The court dismissed the Plaintiff's case with costs and proceeded to hear the Defendant's now Plaintiff's Counter-claim.

Plaintiff's Case

4. Andrew Johnson Kamau herein testified as PW1 where he produced his statement filed on 14/7/2015 and the same was adopted as his evidence in chief. He stated that he had a lot of documents which he produced as PEX 1-PEX 6. PEX 2 - original title, PEX 3 -sale agreement dated 31/10/2014, PEX 4 - authority to sell, PEX 5-ID, PEX – 6 – chief's letter and PEX 7-Authority note as well as IDs PEX 9 (i)-(VII). PW1 stated that he lives in Nyari and knows the Defendant as he sold him land at Olengurone. He further testified that David's title is fake and should be cancelled. He testified that his mother did not give any title to anybody. He added that their mother is alive and is 105 years old.
5. William Ndiu Itundu testified as PW2. He produced his statement filed on 14/7/2015 and the same was adopted as his evidence in chief. He testified that he sold the land to the Defendant. Raymond Kibet Langat the Defendant testified ad PW3. He testified that he is a farmer and lives at Olenguruone. He produced his witness statement dated 14/7/2015 which was adopted as his evidence in chief. He testified that the Plaintiff does not live on the land as the land is in the name of Wambura. He testified that there is a caveat and he had seen the original title. That marked the close of the Plaintiff's Counter-claim.

Submissions

6. The Plaintiff did not file any submissions.

Analysis and Determination

7. I have considered the pleadings and the evidence on record and I am of the view that the following issues need to be determined:
 - a. Whether the Plaintiff is entitled to the orders sought in the Counter-claim.
 - b. Which party should bear the costs of the suit?
8. The Plaintiff gave evidence as to how he acquired the suit property. He explained how he purchased the same from PW1. He produced copies of the sale agreements dated 12th March, 2014 and 31st October, 2014 respectively, authority to sell land from the proprietor Wambura Itundu Mukanda and the Certificate of Title. In the case of *National Bank of Kenya Ltd Vs Pipeplastic Samkolit (K) Ltd & Another*, Civil Appeal No.95 of 1999 (2001) KLR 112 (2002) EA 503, the Court held that:

“A Court of law cannot re-write a contract between the parties. The parties are bound by the terms of their contract unless coercion, fraud or undue influence are pleaded and proved”.
9. From the evidence produced, this court finds that the Plaintiff indeed purchased the suit land. The sale agreements dated 12th March, 2014 and 31st October, 2014 respectively as well as the authority note dated 6th March, 2014 by the proprietor of the suit land is sufficient evidence that that the sale was valid. The sale agreement was never challenged and thus remains the only legal proof that the Plaintiff bought the suit property.
10. The Plaintiff now Defendant was given an opportunity to advance his case suit but he chose not to and therefore the Plaintiff's Counter-claim remains uncontroverted.



11. In the case of *Shaneebal Limited Vs County Government of Machakos* [2018] eKLR, the Learned Judge cited with approval the decision in *Karuru Munyororo Vs Joseph Ndumia Murage & Another* Nyeri HCCC No. 95 of 1988, wherein it was held that;

“The Plaintiff proved on a balance of probability that she was entitled to the orders sought in the plaint and in the absence of the Defendants and or their counsel to cross-examine her on the evidence, the Plaintiff’s evidence remained unchallenged and uncontroverted. It was thus credible and it is the kind of evidence that a court of law should be able to act upon”.

12. In the circumstance having established that the Plaintiff indeed purchased the suit property coupled with the fact that his evidence remained uncontroverted, nothing is easier than to declare that the Plaintiff having legally purchased the land known as Olenguruone/chepakundi/835 is now the legal owner.

13. Having then carefully considered the available evidence, this court finds that the Plaintiff has proved his case on the required standard of balance of probabilities and is therefore entitled to the orders sought.

14. Consequently, this court allows the Counter-claim and enters Judgment for the Plaintiff against the Defendant in the following terms:-

- a. The Plaintiff is the legal owner of the suit property Olenguruone/chepakundi/835
- b. An order for cancellation of the Plaintiff now Defendant’s title deed and rectification of the register to read the name of Wambura Itundu Mukanda.
- c. The Plaintiff is awarded costs of the suit.

It is so ordered.

JUDGMENT DATED SIGNED AND DELIVERED ON THE 12TH OF OCTOBER 2023.

A.O. OMBWAYO

JUDGE

