



REPUBLIC OF KENYA



**Bunde v Owuor & 3 others (Environment & Land Case 45 of 2022)  
[2023] KEELC 21448 (KLR) (8 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21448 (KLR)

***FORMERLY MIGORIE LC CIVIL NO. 11 OF 2019  
AND HOMABAY CMC LAND CASE NO. 62 OF 2018***

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY**

**ENVIRONMENT & LAND CASE 45 OF 2022**

**GMA ONGONDO, J**

**NOVEMBER 8, 2023**

**BETWEEN**

**JOSEPH ODHIAMBO BUNDE ..... PLAINTIFF**

**AND**

**SILPA AUMA OWUOR ..... 1<sup>ST</sup> DEFENDANT**

**FRANCISCA ADHIAMBO AGUTU ..... 2<sup>ND</sup> DEFENDANT**

**OCHIENG ONDEGO ..... 3<sup>RD</sup> DEFENDANT**

**JOASH OBUNGA OUKO ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. On 19<sup>th</sup> December 2023, the plaintiff Joseph Odhiambo Bunde through G.S Okoth and Company Advocates mounted this suit by way of a plaint (Multi-Track) of even dated against the defendants and sought:
  - a. A declaration that Land Parcels Nos. Kanyada/Kotieno-Katuma 'A'/1261,1262,1266,1267,1268 and 1226 were unlawfully and fraudulently excised from the Land of Bunde Odongo that he was awarded in HomaBay District Magistrates Court Land Case No. 26 of 1964.
  - b. An order of rectification of the registers for Land parcel No. Kanyada/Kotieno-Katuma 'A'/1261,1262,1266,1267 and 1268 by deleting the names of the registered proprietors and substituting therefore the names of the plaintiff.



- c. An order of eviction of any person found to be unlawfully occupying the said lands through the authority of the abovenamed defendants or any of their predecessors.
  - d. General damages together with interest thereon at the rate of 12% p.a from the date of judgment until payment in full.
  - e. Costs of this suit together with interest thereon at court rate.
  - f. Such further or other alternative relief as this Honourable Court deems fit to grant.
2. The defendants through H.O Mimba and Company Advocates denied the plaintiff's claim by their statement of defence dated 27<sup>th</sup> November 2015 and filed on even date. They stated at paragraphs 8 and 9 that:
    - a. The defendants deny the plaintiff's claim herein in toto and further state that they own Distinct Parcels of Land separate from the suit Land and that their Land does not form part of the Plaintiff's alleged parcel and that the allegations of fraud herein is misplaced and mere suspicion.
    - b. The defendants aver that the plaintiff's suit is misconceived, based on falsehood, has been brought to court in bad faith, vexatious, fictitious and an abuse of the court process and the same ought to be dismissed with costs.
  3. Initially, this suit was lodged at HomaBay Chief Magistrate's Court. Besides, the same was transferred to this court further to an application dated 19<sup>th</sup> June 2019 which was allowed on 25<sup>th</sup> November 2019.
  4. By consent of counsel for the respective parties struck on 18<sup>th</sup> October 2022, the court ordered and directed in part thus;
    - a. The Land Registrar and surveyor HomaBay to file a report herein further to orders made on 10<sup>th</sup> November 1992 in Kisii HCC Number 119 of 1991 within the next 60 days from this date.
    - b. The plaintiff to meet all the costs of the exercise as envisaged in the order regarding the boundary.
  5. Pursuant to the said order, HomaBay County Land Registrar filed a report in court on 10<sup>th</sup> February 2023. The report reads, *inter alia*:
    - a. The Plaintiff/Applicant had subdivided his entire land and sold all the resultant subdivisions.
    - b. When he was subdividing this land, the plaintiff/applicant had engaged the service of surveyor who did the measures of the portions meaning the boundaries of parcel Katuma A/1277 were/ had already been clearly defined.
    - c. Since plaintiff/applicant had subdivided his land and sold all portions, the original number Katuma A/1277 does not exist and the applicant's interest on the ground was extinguished.
    - d. The people on the ground are living peacefully with their neighbors and no one has complained.
    - e. The orders may have been implemented because the registrar had been there before. We were shown a report by the registrar, who fix the boundaries.
    - f. Finally, the orders cannot be implemented because it has been overtaken by events.



6. Mr. G.S Okoth learned counsel for the plaintiff has urged the court to adopt the report as Judgment of this court.
7. On the other hand, H.O Mimba learned counsel for the defendants has no objection to the proposed adoption except she requests that costs to be borne by the plaintiff.
8. In the foregone, has the Land Registrar's report finally determined the issues in the present dispute?
9. It is noted that the report was generated in consonant with sections 18 and 19 of the [Land Registration Act](#), 2016 (2012).
10. Therefore, the instant dispute has been resolved as discerned in paragraphs 5, 6 and 7 hereinabove.
11. This suit is aged ten years. The cardinal principal is that litigation has to come to an end.
12. I, would applaud the parties for resolving their disputes in line with Article 159(2) (b) and (c) of the [Constitution](#) of Kenya, 2010.
13. The defendant's counsel has sought costs of this suit. However, the plaintiff's counsel has urged the court to order each party to bear own costs in light of their amicable determination of this dispute.
14. This court is guided by section 13(7) of the [Environment and Land Act](#), 2015, (2012), the proviso to section 27(1) of the [Civil Procedure Act](#) (cap 21, Laws of Kenya) and the decision in [Samuel Kamau Macharia and another v Kenya Commercial Bank Limited and 2 others](#) (2012) eKLR on award of costs.
15. A fortiori, Judgement be and is hereby entered in terms of HomaBay Land Registrar's report filed in court on 10<sup>th</sup> February 2023 as stated in paragraph 4(a) to (f) hereinabove.
16. Indeed, parties have resolved their issues amicably thus, award of costs would be inappropriate herein. So, parties to bear their own costs of this suit.
17. It is so ordered.

**DATED, DELIVERED AND SIGNED AT HOMABAY THIS 8<sup>TH</sup> DAY OF NOVEMBER 2023.**

**G.M.A ONG'ONDO**

**JUDGE**

**PRESENT.**

- a. G.S Okoth learned counsel for the plaintiff.
- b. H.O Mimba learned counsel for the defendant.
- c. Court Assistant, Luanga.

