



**Militsa v Sikoso (Environment & Land Case 75 of 2014)  
[2023] KEELC 21332 (KLR) (7 November 2023) (Judgment)**

Neutral citation: [2023] KEELC 21332 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 75 OF 2014  
DO OHUNGO, J  
NOVEMBER 7, 2023**

**BETWEEN**

**PHENAS AMBASI MILITSA ..... PLAINTIFF**

**AND**

**FRANCIS SIKOSO ..... DEFENDANT**

**JUDGMENT**

1. The plaintiff moved the court through plaint dated 13<sup>th</sup> March 2014 wherein he averred that he was the proprietor of land parcel number Kakamega/Soy/1413 (the suit property) and that sometime in the year 2009, he realized that the defendant had trespassed into the suit property and settled there. That despite demand to vacate, the defendant did not comply. The plaintiff therefore prayed for judgment against the defendant for:
  - a. An order to vacate the land.
  - b. Permanent injunction restraining the defendant or his agents from interfering with the plaintiff's peaceful enjoyment of the land.
  - c. General damages.
  - d. Costs of this suit.
  - e. Any other relief as the court thinks it just.
2. The defendant filed statement of defence and counterclaim dated 25<sup>th</sup> April 2014 in which he averred that he purchased the suit property from one Betty Asambu in the year 2007 and that although the plaintiff had purchased the property earlier, the plaintiff entered into an agreement with Betty Asambu pursuant to which the plaintiff exchanged the suit property with Betty Asambu. That he constructed on the suit property with the plaintiff's permission but was later surprised to learn that the plaintiff had fraudulently and maliciously processed the title in the plaintiff's name. He prayed for dismissal of



- the plaintiff's suit and for judgment against the plaintiff for cancellation of the plaintiff's title and a declaration that he was to be registered as the beneficial owner of the suit property.
3. The court referred the matter to mediation to give the parties an opportunity to amicably resolve the dispute. They however failed to reach an agreement and the matter was returned to the court for hearing and determination.
  4. The plaintiff testified as the sole witness and adopted his witness statement dated 13<sup>th</sup> March 2014. He stated that he purchased the suit property from one John Simiyu Murunga at a purchase price of KShs 95,000 through an agreement dated 11<sup>th</sup> February 2005. That he fully paid the purchase price after which the seller applied for the consent of the Land Control Board in February 2008 and that on 6<sup>th</sup> March 2008, Likuyani Land Control Board granted the consent. That thereafter, they lodged the transfer documents at the Kakamega Lands office and a title deed was issued to him on 17<sup>th</sup> December 2012.
  5. The plaintiff further stated that he did not live on the suit property since he had a home elsewhere and was planning to use the suit property only for farming. That sometime in the year 2009, he learnt that the defendant had trespassed into the suit property and settled there. That his efforts to get the defendant to vacate were futile and that the defendant became hostile to him, claiming that he (the defendant) had purchased the suit property. The plaintiff produced copies of his title deed dated 17<sup>th</sup> December 2012, sale agreement dated 11<sup>th</sup> February 2005, letter of consent dated 31<sup>st</sup> December 2008, and a demand letter dated 15<sup>th</sup> February 2013. He urged the court to grant him judgment and to dismiss the counterclaim. The plaintiff's case was then closed.
  6. Although the hearing date had been scheduled in court in the presence of counsel representing the defendant, the defendant neither attended court nor paid court adjournment fees which were imposed on him on the date the hearing date was set. Upon an application by counsel for the plaintiff, the defendant's case was closed for non-attendance.
  7. The plaintiff relied entirely on the material on record and urged the court to render judgment.
  8. I have considered the pleadings and the evidence on record. The issue that arises for determination is whether the reliefs sought should issue.
  9. The defendant did not offer any evidence to challenge the plaintiff's case. From the material on record, it is apparent that the plaintiff is the registered proprietor of the suit property. The defendant conceded as much in his defence. I note from the copy of the title deed that was produced that the plaintiff was registered as proprietor on 6<sup>th</sup> December 2012 and that title was issued to him on 17<sup>th</sup> December 2012.
  10. Being a registered proprietor of land, the plaintiff is entitled to the rights, privileges, and benefits under Section 24 of the [Land Registration Act](#). Further, Section 26 of the Act obligates the court to accept the plaintiff's title deed as conclusive evidence of proprietorship, unless the provisos under Section 26 (1) (a) or (b) are established.
  11. The grounds on which a title can be nullified are fraud or misrepresentation to which the registered proprietor is proved to be a party or where it is shown that the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme. The defendant pleaded that the plaintiff obtained his title fraudulently and maliciously. The defendant did not offer any evidence to support his counterclaim or even to challenge the plaintiff's case.
  12. I find that the plaintiff has established his case. On the other hand, the defendant's counterclaim is for dismissal. No submissions were made to support general damages and I will therefore not award any.



13. In the result, I make the following orders:

- a. The defendant's counterclaim is dismissed.
- b. The defendant to vacate land parcel number Kakamega/Soy/1413 within 90 (ninety) days upon service on him of this court's decree. In default, an eviction order shall automatically issue.
- c. A permanent injunction is hereby issued restraining the defendant or his agents from interfering with the plaintiff's peaceful enjoyment of land parcel number Kakamega/Soy/1413.
- d. The plaintiff shall have costs of the suit.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF NOVEMBER 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Mr Mondia holding brief for Mr Matete for the Plaintiff

No appearance for the Defendant

