



**Kangara v Mutunga & another (Environment & Land Case  
E077 of 2020) [2025] KEELC 348 (KLR) (31 January 2025) (Judgment)**

Neutral citation: [2025] KEELC 348 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE E077 OF 2020  
MD MWANGI, J  
JANUARY 31, 2025**

**BETWEEN**

**MARTIN MUTHII KANGARA ..... PLAINTIFF**

**AND**

**JOHN NJARIA MUTUNGA ..... 1<sup>ST</sup> DEFENDANT**

**PENINAH KARITA NJARIA ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

**Background**

1. This suit was instituted vide the plaint dated 19<sup>th</sup> August 2020. The Plaintiff claims to be the lawful and beneficial owner of all that parcel of land known as Nairobi/Block/136/1994 (hereinafter referred to as “the suit property”). He claims to have purchased the same from Teresa Otiso for valuable consideration. Teresa Otiso on her part had allegedly purchased the same from Embakasi Ranching Company Limited way back in 2006.
2. The Plaintiff alleges that he is not only in possession of the suit property but also holds the original ownership certificate and all the purchase receipts and a letter from Embakasi Ranching Company dated 23<sup>rd</sup> July 2020 confirming that he is the rightful owner.
3. The Plaintiff accuses the Defendants of constantly trespassing and interfering with his quiet possession purportedly claiming ownership of the suit property. They, sometimes in the year 2020 attempted to invade the suit property but were allegedly chased away by the Plaintiff. The Defendants claim to have a title to the suit property but have never shown it to the Plaintiff. Embakasi Ranching Company Limited has according to the Plaintiff denied issuing such title to the Defendants.



4. The Plaintiff asserts that the Defendants have no rights whatsoever over the suit property. Their actions therefore are irregular, illegal and unlawful calculated to unlawfully deprive the Plaintiff of his lawful possession of the suit property.
5. The Plaintiff therefore prays for an order of permanent injunction restraining the Defendants by themselves, agents, servants, employees or otherwise from entering, depositing materials, occupying, erecting structures or in any way dealing with, or interfering with all that parcel of land known as Nrb Block 136/1994. The Plaintiff too prays for costs and any other remedy the court may deem fit to grant.
6. The Plaintiff was accompanied by a witness statement of the Plaintiff reiterating the averments in the plaint. The Plaintiff further filed a witness statement by one Walter Kigera, who describes himself as the vice-chairman of Embakasi Ranching Company Limited. The witness states that according to the company's records, the Plaintiff was the lawful and beneficial owner of the suit property. The company was yet to issue title deeds in respect of the suit property but the process of issuance was ongoing. Registration at the lands office was complete and a search conducted confirmed the Plaintiff as the registered owner.
7. The Plaintiff further attached a list of documents in support of his case.

#### **Defence by the Defendants**

8. The Defendants filed a joint statement of defence dated 14<sup>th</sup> October 2021. They denied the Plaintiff's claim putting him to strict proof of all the allegations in his plaint.
9. The Defendants alleged that Teresa Otiso, from whom the Plaintiff alleged to have bought the suit property from has never been a member of Embakasi Ranching Company Limited and could not therefore in any capacity purport to sell the suit property. The Defendants assert that the 2<sup>nd</sup> Defendant is the true owner of the suit property. She holds a certificate of lease dated 30<sup>th</sup> May 2019. It is alleged that the Plaintiff has never occupied nor worked on the suit property. It is the Defendants who have been in occupation and use of the suit property all through.
10. The Defendants aver that the letters that the Plaintiff is relying on to claim ownership of the suit property was authored by an unauthorized person and was "manufactured" for purposes of this suit. The letter in any event cannot confer ownership of the suit property to the Plaintiff.
11. The Defendants insist that they are in occupation and have possession of the suit property. It is the Defendants' case that the police at Ruai Police Station investigated a report made by the Plaintiff against them and found the complaint to have no basis. The Defendants pray for the dismissal of the Plaintiff's suit.
12. The Defendants' statement of defence was accompanied by a witness statement of John Njaria Mutunga, the 1<sup>st</sup> Defendant herein dated 16<sup>th</sup> December 2021 and a list of documents in support of the Defendants' case.

#### **Evidence adduced at the hearing**

13. This case proceeded to full hearing. The Plaintiff testified in his case and further called one Robert Simiyu, Assistant Director of Land Administration from the Lands Office as his 2<sup>nd</sup> witness.
14. The Plaintiff adopted his witness statement of 19<sup>th</sup> August 2020 as his evidence in chief and further produced the documents listed on his list of documents as exhibits in support of his case.



15. Responding to questions in cross-examination, the Plaintiff stated that he has a title document showing that he is the owner of the suit property. He had a certificate of lease issued on 11/11/2020 and a certificate of search issued on 19/11/2020.
16. The share certificate he had produced as an exhibit in this case was in the name of Teresa Otiso, the person who allegedly sold the suit property to him. He claimed that he had made an agreement for sale of the land with the vendor but he had not produced it as one of his documents. He too had not produced a receipt or any acknowledgement confirming payment of the purchase price to the vendor.
17. The Plaintiff admitted that all the receipts that he had produced in this case were in the name of Teresa Otiso.
18. The lease document in his name was registered on 19<sup>th</sup> April 2020.
19. In re-examination by his own advocate, the Plaintiff explained that the reasons why the receipts he had produced were still in the name of Teresa Otiso was because he had not transferred the records to his name. Meaning that the records with Embakasi Ranching Company Limited were still in the name of Teresa Otiso.
20. The Plaintiff averred that he had not enquired from Teresa Otiso how and when she had bought the suit property. He had however confirmed that Teresa Otiso was the owner of the land before purchasing it from her.
21. His title was issued in the year 2021 though the certificate of lease indicates 2020. The title was issued at Embakasi Ranching Company Offices by the Ministry of Land Official.
22. The Plaintiff testified that the suit property is two plots away from where he lives. It is 100 x 100 feet, equivalent of a quarter of an acre. It is undeveloped but there is a concrete fence all around it with a gate.
23. The 2<sup>nd</sup> Plaintiff's witness was one Robert Simiyu, Assistant Director Land Administration, from the Ministry of Lands Headquarters at Nairobi. PW2 testified that when a land buying company wishes to issue titles to its members, it takes to the lands office a list for that purpose. It is sent to the Director Land Administration to process the leases to the members.
24. He confirmed that the office of land administration had received a list from Embakasi Ranching Company Limited. The suit property herein appears on that list. The beneficiary of the suit property according to PW2 is indicated as Martin Muthii Kangara. The Parcel measures 0.1296 hectares. The witness produced the list as an exhibit in this case, it was an extract from the original list. He was the one who had certified it as a true copy of the original. He could not however tell who had forwarded the list to the office of Director Land Administration. He had not come with the correspondence file to court. The name of the plaintiff appears on the list but does not show his national identity card number nor his contacts.
25. Responding to questions in cross-examination by the counsel for the Defendants, PW2 admitted that from a mere look at the extract he had produced as an exhibit, it was impossible to tell where it originated from. It was not on a letterhead of Embakasi Ranching Company. He did not have the survey plan to cross-reference with the exhibit. The name Teresa Otiso does not appear on the extract.
26. The witness could not tell the original block number from which the various parcels including the suit property originated from. Neither did he have the area list with him that was used by the Director Land Administration for purposes of preparing leases for the members.



27. Regarding the lease in favour of the Plaintiff, PW2 stated that it was registered in the year 2020. It was processed on 19<sup>th</sup> November 2020. The execution part of the lease does not bear the signature of the Land Registrar. The Plaintiff though had signed on 24<sup>th</sup> May 2021. It was impossible according to the witness to tell exactly when the lease was registered.
28. PW2 further confirmed that the search produced by the Plaintiff as PE6 showed that the certificate of lease was issued on 11<sup>th</sup> November 2020. It was apparently issued before assessment of stamp duty.
29. The certificate of lease on the other hand was issued to the Plaintiff on 11<sup>th</sup> November 2020.
30. The search did not show when it was generated. Ordinarily, it would show.
31. Looking at the Defendants' lease, in the name of the 2<sup>nd</sup> Defendant, Peninah Karuta, the witness admitted that the same was stamped on 30<sup>th</sup> May 2019. It bears the Land Registrar's signature and stamp as well as the signature of the lessee. It is indicated as having been registered on 30<sup>th</sup> May 2019.
32. In re-examination by the counsel for the Plaintiff, PW2 affirmed that both the Certificates of title by the Plaintiff and the 2<sup>nd</sup> Defendant had originated from his office. He could not tell which one between the two was genuine.

#### **Case for the Defence.**

33. The Defendants called one witness in their defence, one John Njaria Mutunga, the 1<sup>st</sup> Defendant and husband to the 2<sup>nd</sup> Defendant. He adopted his witness statement dated 16<sup>th</sup> December 2021 as his evidence in chief. He further produced the documents on the Defendants' list of documents of even date as exhibits in support of his case.
34. DW1 told the court that he knew one Walter Kigera, the person who had written the letter on behalf of Embakasi Ranching Company purporting the Plaintiff to be the owner of the suit property. The said Walter Kigera had been removed as a director of Embakasi Ranching Company Limited in 2019. He did not have the authority to write on behalf of Embakasi Ranching Company Limited as he purported to. The letter was dated 23<sup>rd</sup> July 2020.
35. Responding to questions in cross-examination by counsel for the Plaintiff, DW1 insisted that he had produced his authentic Certificate of title as an exhibit and proof of ownership of the suit property. He stated that the title by the Plaintiff was not authentic. It was not even accompanied by a lease. It was signed before the lease was issued.

#### **Court's directions.**

36. The court's directions upon close of the hearing was that parties file written submissions. From the record of the court only the Plaintiff filed submissions which the court has had occasion to read and consider in writing this judgment.

#### **Issues for determination.**

37. The Plaintiff in this case prays for only one order; an order of permanent injunction restraining the Defendants whether by themselves, agents, servants or employees, from entering, depositing materials, occupying, erecting structures or in any way dealing with or interfering with the suit property. The sole issue for determination then is whether the Plaintiff has made a case for the grant of an order of permanent injunction.



38. A permanent injunction is granted upon the merits of a case to perpetually restrain the commission of an act by the Defendant in order for the rights of the Plaintiff to be protected. In the case of Kenya Power & Lighting Company Limited –versus- Sheriff Molana Habib (2018) eKLR, the court held that;
- “ A permanent injunction also known as a perpetual injunction is granted upon the hearing of the suit. It fully determines the rights of the parties before the court and is thus a decree of the court. The injunction is granted upon the merits of the case after evidence in support of and against the claim has been tendered. A permanent injunction perpetually restrains the commission of act by the Defendant in order for the rights of the Plaintiff to be protected.”
39. From the evidence adduced before the court, at the point of the Plaintiff filing his case, the 2<sup>nd</sup> Defendant already had a certificate of title and lease in her name. The Plaintiff acquired his title later and in the course of the hearing of the case. Apparently, the Plaintiff was aware of that the 2<sup>nd</sup> Defendant already had a certificate of title and lease in her name only that he had not seen the title in the name of the 2<sup>nd</sup> Defendant. In spite of that knowledge, the Plaintiff did not make a prayer for the cancellation of the title. The existence of a certificate of title should have rang a bell in the mind of the Plaintiff as a diligent litigant because Section 26 of the *Land Registration Act* is explicit that the certificate of title is to be taken by all courts as prima facie evidence of ownership of the land.
40. The 2<sup>nd</sup> Defendant’s title was first in time. It is also clear that, contrary to the allegations in the plaint, it is the Defendants who have possession and occupation of the suit property. That informed the Plaintiff’s application dated 20<sup>th</sup> July 2023 where he accused the Defendants of commencing a construction in the suit property.
41. Further, the evidence by the 1<sup>st</sup> Defendant which was not contradicted as per his witness statement is that he is the one who has been in occupation of the suit property with his wife. He too was the one who had put up the perimeter fence around the suit property and which has been in existence for a long time. His testimony was that he has also dug a well in the plot from where they get water to irrigate the vegetables they grow in the suit property.
42. Aspersions were cast on the Plaintiff’s title. PW2, who is an Assistant Director in charge of land administration, produced what he referred to as an extract of a list of beneficiaries sent to the lands office by Embakasi Ranching Company Limited. In cross-examination by the Advocate for the Defendants, PW2, stated that the name of the Plaintiff appeared on it without indicating the Plaintiff’s identity number or his contacts.
43. That statement alone raises a serious question. The Plaintiff in his testimony explained that all the records with Embakasi Ranching Company including receipts were in the name of one Teresa Otiso from whom he had purchased the land since they had not been transferred to his name. One then would expect that the list of beneficiaries submitted to the Lands Office by Embakasi Ranching Company Limited would still show the name of Teresa Otiso as the beneficiary.
44. It is noteworthy that Teresa Otiso was not called as a witness in this case by the Plaintiff to explain how and when she had acquired the suit property and if she had actually sold it to the Plaintiff. I say so because the Plaintiff did not produce an agreement confirming that he indeed purchased the suit property from Teresa Otiso as alleged.
45. It also did not escape the court’s attention that the Plaintiff did not call the author of the letter purporting to have been written by Embakasi Ranching Company that confirmed that he was the owner of the suit property. The author had been listed as one of the witnesses for the Plaintiff. This gives credence to the averment by the 1<sup>st</sup> Defendant in his testimony that the said Walter Kigera was



not a director of Embakasi Ranching Company Limited at the time he wrote the letter. He had no authority to write on behalf of the Company as he was no longer a director.

46. In regard to the certificate of lease in the name of the Plaintiff, the search produced as an exhibit indicates that the certificate of lease was issued on 11/11/2020 before the assessment of stamp duty. PW2, an officer from the Lands office admitted that fact. Another query that was not satisfactory answered is how the certificate of lease in favour of the Plaintiff was issued prior to the issuance of the lease.
47. The lease too does not bear the signature of the Land Registrar.
48. The lease in favour of the 2<sup>nd</sup> Defendant on the other hand bears the Land Registrar's signature and stamp. It bears the signature of the lessee as well as that of the Land Registrar.
49. Finally, the suit by the Plaintiff is premised upon a contract for disposition of an interest in land. Section 3(3) of the *Law of Contract Act* is explicit that no suit shall be brought upon a contract for a disposition of an interest in land unless the contract is in writing, and executed by the parties thereto and the signature of each party signing the contract is attested by a witness who is present when the contract is signed by such party.
50. The Plaintiff claims to have bought the suit property from one Teresa Otiso. He did not produce a written agreement between him and the vendor duly executed and attested as required under Section 3(3) of the *Law of Contract Act*.
51. Besides non-compliance with Section 3(3) of the *Law of Contract Act*, the evidence presented before the court does not prove the Plaintiff's case on a balance of probabilities.
52. It was upon the Plaintiff to prove his case. He was under legal duty to do so. The court of Appeal in the case of Sumer Singh Bachu –versus-Nicholas Wainaina Kago Waweru (1976) eKLR, stated that;  
  
“When the suit was heard ex parte, the Plaintiff was under a legal duty to prove his case against both Defendants. This he failed to do in respect of the 2<sup>nd</sup> Defendant. In my view, the fact that the proceedings were described or referred to as “formal proof” did not lessen the Plaintiff's burden of proof required in a Civil Case. It was not sufficient to expect the court to act on the allegations in the plaint when the evidence adduced indicated clearly by that the second Defendant was not connected with the accident. In my judgment the judge was justified on the material before him to dismiss the application to review his judgment.”
53. In this case, the Plaintiff has surely not proved his case on a balance of probabilities. It is hereby dismissed with costs to the Defendants.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 31<sup>ST</sup> DAY OF JANUARY 2025.**

**M.D. MWANGI**

**JUDGE**

**In the virtual presence of:**

Mr. Waweru Wanjau for the Plaintiff

N/A by the Defendants

Court Assistant: Mpoye



**M.D. MWANGI**  
**JUDGE**

