



**Siringet v Amusi & another (Environment & Land Case
266 of 2017) [2022] KEELC 3450 (KLR) (2 June 2022) (Judgment)**

Neutral citation: [2022] KEELC 3450 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 266 OF 2017
MN GICHERU, J
JUNE 2, 2022**

BETWEEN

SAYATON ENE MUTUTUA SIRINGET PLAINTIFF

AND

PHILIP AMUSI 1ST DEFENDANT

CHRISTOPHER KYENDI NDAMBUKI 2ND DEFENDANT

JUDGMENT

1. Sayaton Ene Mututua Siringet (The Plaintiff) seeks the following reliefs against Philip Amusi (the first Defendant) and another;
 - a. An eviction order directed to the Defendants ordering them forthwith to vacate the Plaintiffs parcel of land namely Kajiado/kaputiei-central/2303.
 - b. A permanent injunction restraining the Defendants from trespassing, ingressing into, cultivating, selling, disposing off or in any way interfering with the Plaintiffs quiet possession and ownership of the suit land.
 - c. General damages.
 - d. Mesne profits from the date of filing.
 - e. Costs of the suit.
 - f. Interest on (c), (d) and (e) above until payment in full
 - g. Any other relief.



2. The Plaintiffs case is as follows. She is the registered owner of the suit land after she was issued with the title deed thereto by the Land Registrar Kajiado in the year 2012. The land measures 28 hectares and she resides therein together with her family.

A few months after obtaining the title deed to the land, she noticed that the Defendants had encroached upon her land without her consent. The Defendants after encroachment went on to plough part of the land and to plant. They exhibited arrogance and highhandedness telling off the Plaintiff and telling her that she had no money or connections and she could do nothing as they were protected by people in high places.

On 8th March, 2012, the Plaintiff wrote the Defendants a letter asking them to cease their illegal activities but they did not heed or respond. They went on felling of trees, bushes and other vegetation with which they made charcoal with for economic gain.

For the above reasons, the Plaintiff prays that the Defendants be evicted from the suit land and that they pay her damages for the time that they have been on her land.

3. In support of her case, the Plaintiff filed the following evidence;
 - a. Her own witness statement dated 17/3/2015.
 - b. Copy of the title deed to the suit land dated 18/1/2012.
 - c. Copy of the demand notice dated 8th March, 2012.

4. In his written statement of defence, the first Defendant, through counsel on record denied the Plaintiff's claim in its entirety.

His defence is that on 25th May, 1993, he bought 6 acres out of L.R. Kajiado/Kaputiei Central/448 from Mututua Siringet Sapokenya who is the deceased husband of the Plaintiff.

He occupied the land immediately and he has over the years built a permanent house in which he lives with his family. He has planted trees and food crops thereon and the land is his home. His defence is that he is entitled to the suit land through the doctrine of adverse possession.

In addition to the defence, the first Defendant avers in a counterclaim that he bought 6 acres from the Plaintiff's husband at Kshs. 22,000/- which he paid in full. Unfortunately, the deceased died before he could transfer the land to him. Soon after the death of the deceased, the family filed succession cause number 564 of 2010 at the High Court at Machakos. Following the orders issued by the Court in the succession cause, the original land number 448 was subdivided into parcels 2303, 2304, 2305, 2306, 2307 and 2308.

The Plaintiff was registered as the proprietor of L.R. 2303 and this is where the first Defendant's land is situated. He has made every effort to have his portion surveyed but he has not been successful.

The first Defendant therefore prays for judgment against the Plaintiff as follows;

- i. An order of injunction restraining the Plaintiff by herself, agents or servants from alienating, transferring, disposing, charging, mortgaging or interfering with the counterclaimant's quiet enjoyment of his portion of the suit land.
- ii. An order that the counterclaimant has been living on his portion of the suit land openly, peacefully and uninterrupted for over 20 years as a matter of right.
- iii. An order that the Plaintiff has no right to recover the portion occupied by the counterclaimant having been so barred by the Limitation of Actions Act.



- iv. An order that the counterclaimant is the lawful owner of the portion of 6 acres that he occupies within the suit land.
- v. An order that the counterclaimant be registered as the owner of the portion in (iv) above.
- vi. An order authorizing the Deputy Registrar to execute all the necessary documents to effect survey and transfer of the portion occupied by the counterclaimant to him.
- vii. That the costs of the counterclaim should be borne by the Plaintiff.
- viii. Any other relief that the court finds fit to grant.

In support of his defence and counterclaim, the first Defendant filed the following evidence;

- a. Copy of sale agreement dated 25/5/1993.
- b. Copy of grant in Machakos High Court Succession Cause No. 564 of 2010
- c. Certificate of confirmation of grant dated 19/8/2011 issued in succession cause no. 564 of 2010.
- d. Copy of caution against the suit land dated 19/12/2011.
- e. Copy of the letter of consent for L.R. 448 dated 2/11/2011.
- f. Copy of the first defendant's letter to Land Registrar dated 19/12/2011.
- g. Copy of receipt dated 18/8/2004.
- h. Copy of title deed for L.R. 448 dated 13/12/1995.
- i. Copy of letter dated 22/12/2021 written by the Seneti Advocates on behalf of the first Defendant claiming 4 acres out of L.R 448.
- j. Copy of title deed for the suit land dated 18/1/2012.
- k. Copy of demand letter dated 8/3/2012.
- l. Other documents.

5. At the trial only the Plaintiff and her witness Masengot Ole Mututua Siringet testified. They generally reiterated what is in their witness statements and documents.

The Defendant even though availed every opportunity to testify in this case, did not testify. On 13/10/2021, the court deemed the defence case as closed.

6. Counsel for the parties filed written submissions and raised the following issues;
- i. Whether the agreement relied upon by the first Defendant has any probative value?
 - ii. Whether the first Defendant is guilty of laches?
 - iii. Inconsistence on the part of the first Defendant as regards the acreage.
 - iv. Whether the first Defendant ever applied for a vesting order as an adverse possessor?
 - v. Whether the Honorable Judge of the High Court erred in law by failing to allow the Defendant participate in succession casue no. 47 of 2015.



7. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and oral evidence adduced at the trial. I have also considered the submissions by learned counsel for the parties. I agree that the issues as identified by both sides will determine the dispute.

I make the following findings. On the first issue, I find that the sale agreement has probative value because it explains how the first Defendant came to occupy the land that he does. It is worth nothing that the Plaintiff herself is not very informative on how the first Defendant came to occupy the land and exactly when.

Secondly, the proviso in Section 3 of the [Law of Contract Act](#) exempts resulting, implied or constructive trusts from the provisions of subsection (3).

On the second issue, I find that the first Defendant is not guilty of laches. He was in occupation of the suit land when the seller of the land died. This may explain why he was not in a hurry to have the land transferred to him.

His possession of the land was a step into ownership. Section 116 of the [Evidence Act](#) 116 provides that he who is in possession is presumed to be the owner and the burden of proof is on the one who avers that the one in possession is not the owner.

There is evidence that the first Defendant attempted to join the succession cause as a purchaser but the Plaintiff and other relatives of the deceased would not let him join. This is sufficient proof that he not guilty of laches. They cannot be heard to say that he is guilty of laches and they are the ones who stopped him from laying claim to the suit land at the earliest possible opportunity.

The Plaintiff is seeking to approbate and reprobate by pleading laches on the part of the first Defendant. This is not fair.

Regarding the third issue, I find that the first Defendant is inconsistent on the size of the land that he bought from the deceased. In the agreement dated 25/5/1993, he is buying 4 acres. In the letter dated 22/10/2011 he is claiming 4 acres. It is only in the counter claim dated 29/12/2014 that he suddenly claims 6 acres. I find that it is 4 acres that was agreed upon and not 6 acres.

On the issue of adverse possession, it is not in dispute that the first Defendant is in occupation. That is why the Plaintiff wants him evicted. She has accused him of ploughing the land, cutting trees and burning charcoal. It is therefore a contradiction for her to say he is not in possession. There is also the first Defendant's evidence that he is in occupation and he has a house on the suit land.

On the issue of the first Defendant's failure to join Succession Cause No 47/2015, it is not for me to say whether the Honourable Judge erred or not. It is not in my power to fault the Honourable Judge because him and I are of equal status.

However, it is clear that what was in issue in the Succession Cause is different from what is in issue in this case. The High Court and this Court do not have concurrent jurisdiction. The jurisdiction of this Court is different from that of the High Court. The two jurisdictions are mutually exclusive. The High Court has no jurisdiction to deal with Environment and Land Cases by virtue of articles 165 5 (1) (b) and 162 (2) (b) of the [Constitution of Kenya](#).

I find that the Plaintiff has not proved her case against the first Defendant because I believe that he bought four acres from her deceased husband and that he occupied the suit land long before the Plaintiff inherited it.

I also find that it was the intention of the first Defendant and the deceased that they would eventually regularize the sale through obtaining the consent of the Land Control Board to subdivide and transfer



the agreed acreage to the first Defendant. The death of the deceased affected the completion of the transaction.

In the case of Willy *Kimutai Kitilit v Michael Kibet* Civil Appeal No 51 of 2015 (Eldoret), the Court of Appeal held that the absence of the consent of the Land Control Board where the purchaser is in possession of the land is not fatal to the transaction because the agreement could still be enforced under the doctrine of constructive trust and proprietary estoppel.

This is what the Court had to say at paragraph 24 of the Judgment;

There is another stronger reason for applying the doctrines of constructive trust and proprietary estoppel to the *Land Control Act*. By article 10 (2) (b) of *the Constitution* of Kenya, equity is one of the national values which binds Courts in interpreting any law (article 10 (1) (b)). Further by article 159 (2) (e), the Courts in exercising judicial authority are required to protect and promote the purpose and principles of *the Constitution*.

8. Moreover, as stated before, by virtue of clause 7 of the Transitional and consequential provisions in the sixth schedule to *the Constitution*, the *Land Control Act* should be construed with the alterations, adaptations and exceptions necessary to bring it into conformity with *the Constitution*.”

The facts in this case are similar to those in Kitiliti’s case because the Plaintiff was in occupation after having purchased the land but the Land Control Board Consent was missing.

The Court of Appeal found the doctrines of Constructive Trust and Proprietary estoppel applicable in spite of absence of the consent of the Land Control Board and dismissed the appeal.

I too find the two doctrines applicable in this case.

In conclusion, I dismiss the Plaintiff’s suit against the first Defendant.

Secondly, I enter judgment for the first Defendant against the Plaintiff as per the counterclaim with two amendments.

Firstly, I find that the Defendant is entitled to four (4) not six (6) acres.

Secondly, the doctrines applicable in this case are those of constructive trust and proprietary estoppel and not adverse possession.

No order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 2ND DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

