



**Mathare v Kenya Meat Commission (Environment & Land Case
294 of 2017) [2022] KEELC 13518 (KLR) (3 October 2022) (Judgment)**

Neutral citation: [2022] KEELC 13518 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT & LAND CASE 294 OF 2017
CA OCHIENG, J
OCTOBER 3, 2022**

BETWEEN

JOHN WALLACE MATHARE PLAINTIFF

AND

KENYA MEAT COMMISSION DEFENDANT

JUDGMENT

1. Through a plaint dated the March 6, 2017, the plaintiffs pray for judgment against the defendant for:-
 - a. A declaration that the estate of the late John Wallace Mathare is the bona fide owner of Title No LR No 337/112.
 - b. A permanent injunction restraining the defendant by itself, agents or any person from claiming ownership of the suit land or interfering with the suit land or at all.
2. The defendant though duly served, entered appearance on November 12, 2019 but did not file a defence to controvert the plaintiffs' averments. The matter then proceeded for hearing where the plaintiffs had one (1) witness but the defendant had none.

Evidence of the Plaintiffs

3. The plaintiffs who are administrators of the estate of the late John Wallace Mathare claim the land parcel No LR No 337/112 hereinafter referred to as the 'suit land' belonged to the deceased. It was their testimony that on or about May 12, 2016, the defendant trespassed on the suit land and erected a sign post thereon claiming ownership. Further, that on the said date, the plaintiffs' demanded that the defendant desist from its actions of trespass but it declined to do so. They explained that on May 17, 2016, the defendant wrote to their advocate claiming ownership of the suit land and have continued to do so illegally. In support of their case, they produced the following documents as exhibits: Title Deed



for LR No 337/112; grant of letters of administration dated the December 24, 1991; miscellaneous receipt for approval fees dated September 7, 2006; miscellaneous receipt for payment of rates and penalties dated April 10, 2006; land rent payment request from ministry of lands dated November 14, 2012; letter of allotment dated June 6, 1991; letter from commissioner of lands dated June 18, 1991 acknowledging letter of allotment; pay in slip from ministry of lands for payment of land rent dated November 14, 2012; Copy of Grant number IR 54488 for LR 337/112; receipt for payment of rent in Mavoko Sub County dated March 14, 2014, September 13, 2013; Receipt for payment of building plan from Mavoko Sub County dated September 13, 2013; Building approval plan receipt from Mavoko Sub County dated 13th September; Letter dated May 12, 2016 to Kenya Meat Commission and Letter dated May 17, 2016 from Kenya Meat Commission.

Evidence of the Defendant

4. The defendant never tendered any evidence to controvert the plaintiffs' averments.

Submissions

Plaintiffs' Submissions

5. The plaintiffs in their submissions reiterated their evidence as presented and contended that since the defendant never tendered any evidence to controvert their averments, their claim remain unopposed. They submitted that they had demonstrated that the deceased was the registered owner of the suit land and relied on sections 24, 25 and 26 of the Land Registration to support this argument. To buttress their averments, they relied on section 107 of the Evidence Act as well as the decision of Okal Ongaro v James Owiyo Odipo (2015) eKLR.

Defendant's Submission

6. The defendant never filed any submissions in respect to this suit.

Analysis and Determination

7. Upon consideration of the plaint, testimony of PW1, exhibits and submissions, the only issue for determination is whether the plaintiff is entitled to the orders as sought in the plaint. The plaintiff sought for a declaration that the estate of the late John Wallace Mathare is the bona fide owner of the suit land as well as a permanent injunction restraining the defendant from interfering with it.
8. The defendant did not file a statement of defence nor bring a witness to testify in this matter.
9. PW1 in his evidence confirmed the deceased John Wallace Mathare was the registered proprietor of the suit land. He produced various documents including the certificate of title, correspondence and receipts to confirm how the deceased acquired the suit land. The defendant did not rebut the averments of the plaintiffs and as held in the case of Okal Ongaro v James Owiyo Odipo (2015) eKLR, I hold that the plaintiffs' claim remain unopposed. It emerged in evidence that the defendant claimed ownership of the suit land and erected a signpost thereon. It however never produced any documents to prove its ownership.



10. From the certificate of title produced by the plaintiffs, it is clear the deceased was registered as a proprietor of the suit land since December 27, 1991. Further, the deceased paid land rent for the said parcel of land. Section 24 (a) of the [Land Registration Act](#) stipulates as follows:

“Subject to this act, the registration of a person as a proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto....”
11. In the case of [Willy Kipsongok Morogo v Albert K Morogo](#) (2017) eKLR the court held as follows:

“The evidence on record shows that the suit parcel of land is registered in the names of the Plaintiff and therefore is entitled to the protection under sections 24, 25 and 26 of the [Land Registration Act](#).”
12. While in the case of [Joseph NK Arap Ng'ok V Moiyo Ole Keiwua & 4 others](#) [1997] eKLR, the Court of Appeal held that:

“Once one is registered as an owner of land, he has absolute and indefeasible title which can only be challenged on grounds of fraud or misrepresentation and such is the sanctity of the title bestowed upon the title holder.”
13. Further, in Civil Appeal No 246 of 2013 [Arthi Highway Developers Limited vs West End Butchery Limited and others](#), the Court of Appeal expressly stated thus:

“Section 23(1) of the then Registration of Titles Act (now reproduced substantially as sections 25 and 26 of the [Land Registration Act](#) set out below) gives an absolute and indefeasible title to the owner of the property. The title of such an owner can only be subject to challenge on grounds of fraud or misrepresentation to which the owner is proved to be a party. Such is the sanctity of title bestowed upon the title holder under the Act.”
14. In associating myself with the cited decisions, the legal provisions cited above as well as the evidence before me, I find that the deceased John Wallace Mathare, whose estate is represented by the Plaintiffs is indeed the absolute proprietor of the suit land and hence entitled to protection of the law in accordance with the provisions of sections 24, 25 and 26 of the [Land Registration Act](#).
15. On the issue of a permanent injunction, it is trite that the same has to be proved. From the pleadings as well as the evidence tendered in court, I note there is a certificate of title in respect to the suit land in the deceased's name. Further, the defendant has claimed ownership of the suit land as stated in its letter dated the May 17, 2016 but never produced any documents nor controverted the plaintiffs' averments. Based on the principles enshrined in the celebrated case of [Giella v Cassman Brown Co Ltd](#) 1973 EA 358, I find that the plaintiffs have indeed established a prima facie case as against the defendant to warrant the said orders of a permanent injunction.
16. On the issue of costs, I note the plaintiffs never sought for the same but since costs follow the event, I will award it to them.
17. It is against the foregoing that I find the plaintiffs have proved their case on a balance of probability and will proceed to make the following final orders:
 - a. A declaration be and is hereby issued that the Estate of the late John Wallace Mathare is the bona fide owner of Title No LR No 337/112.



- b. A permanent injunction be and is hereby issued restraining the defendant by itself, agents or any person from claiming ownership of the suit land or interfering with the suit land or at all.
- c. Costs of the suit is awarded to the plaintiffs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 3RD DAY OF OCTOBER, 2022

CHRISTINE OCHIENG

JUDGE

