



REPUBLIC OF KENYA



KENYA LAW
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**Olgos v Ndorko (Environment & Land Case 141 of 2018)
[2022] KEELC 14671 (KLR) (3 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14671 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 141 OF 2018
MN GICHERU, J
NOVEMBER 3, 2022**

BETWEEN

OLOPOI SOINE OLOIBOR OLGOS PLAINTIFF

AND

MATINTI NDORKO DEFENDANT

JUDGMENT

1. Olopoi Soine Oloibor Olgos, the plaintiff seeks the following reliefs against the defendant, Matinti Ndorko.
 - a. A declaration that the plaintiff is the rightful owner of LR Kajiado/Lorngosua/358, suit land.
 - b. An order of eviction do issue against the defendant from the suit land.
 - c. An order of permanent injunction restraining the defendant by himself his agents from subdividing, alienating transferring or in any way dealing with the suit land.
 - d. General damages.
 - e. Costs of the suit.
 - f. Any other relief that the court deems fit and reasonable in the circumstances.
 - g. That the officer commanding Kajiado Police Station be ordered to ensure compliance with the orders of this court.

2. The plaintiff's case is as follows. He is the owner of the suit land which he purchased from the defendant in the year 2004. The agreement between the parties was oral.
The plaintiff paid the defendant 35 head of cattle and Kshs 150,000/= as purchase price. He then took possession of the suit land which he occupied for an uninterrupted period of ten years.



3. In the year 2014, the defendant came to the land and claimed that he had never sold it to the plaintiff. This was very surprising to the plaintiff who reported the matter to the community leaders.

A meeting was held on July 14, 2015 at Lorngosua Trading Center at 2.00 p.m. under the chairmanship of Daniel Mamai, Senior Chief Lorngosua Location. In total there were 143 elders at the meeting. The elders found in favour of the plaintiff.

The defendant was dissatisfied with the decision of the community leaders. He therefore filed Civil Suit No 565 of 2015 at the Chief Magistrates Court at Kajjado. On July 20, 2017, the suit was dismissed for non-attendance by the plaintiff.

On September 1, 2018, the defendant trespassed onto the suit premises and he grazes his livestock thereon. It is for the above reasons that the plaintiff filed this suit.

4. In support of his case, the plaintiff filed the following evidence.
- i. Witness statements by himself, Nkalai Nkopili, Seneu Olekitao and Lemaron Malas Ole Katati.
 - ii. Copy of title deed for the suit and dated March 16, 2004.
 - iii. Copy of green card for the suit land.
 - iv. Copy of the minutes of the meeting of July 14, 2005.
 - v. A copy of the court order issued on July 5, 2018.
 - vi. Copies of certificates of official search dated March 16, 2004, May 22, 2018 and September 4, 2015 all showing the plaintiff as the registered proprietor of the suit land.
 - vii. Two pictures.
5. The defendant filed a defence and counterclaim dated October 14, 2019. In the defence, the defendant denies selling the land to the plaintiff at all. He also denies that the plaintiff is in possession.

In the counterclaim, the defendant joins the Land Registrar and the Hon the Attorney General as the second and third defendants. He prays for the following orders.

- i. A revocation and cancellation of the title deed for the suit land.
 - ii. A declaration that the title deed to the suit land was irregularly acquired and the same is null and void ab initio.
 - iii. A declaration that the defendant is the legal proprietor of the suit land.
 - iv. An order of rectification of the register for the suit land cancelling the plaintiff's name and restoring the defendant's name.
 - v. An order of permanent injunction restraining the defendants or anybody else from dealing with the suit land in any manner whatsoever.
 - vi. Costs of the suit.
 - vii. Interest on court rates from the date of filing the suit until the date of payment in full.
6. In support of his case, the defendant field the following evidence.
- a. His witness statement dated October 14, 2019.



- b. Copy of title deed for the suit land dated March 16, 2004.
 - c. Copy of certificate of official search dated September 4, 2015 and another dated May 22, 2017.
 - d. Copy of caution registered on August 12, 2016.
7. At the trial on March 16, 2022, the plaintiff testified. He adopted his witness statement and documents as evidence. He was then cross –examined by the counsel for the defendants. He admitted that he did not attend the Land Control Board so that the suit land could be transferred to him. In addition, the plaintiff called two witnesses, Sereu Milia Kimenei alias Seneu Olekitau and Nkalai Nkopiti.
8. On the other hand, the defendant testified, adopted his witness statement and documents and was then cross-examined. He denied everything the plaintiff said especially selling the suit land and even attending the meeting at Lorngosua Group Ranch.
9. Counsel for the parties filed written submissions on May 13, 2022 and July 22, 2022 respectively.

The defendant raised the following issues.

- a. Whether the plaintiff fraudulently acquired the title deed for the suit land.
- b. Whether the defendant is entitled to the orders sought in the counterclaim.
- c. To whom should the costs be awarded.

On the other hand, the plaintiff raised the following issues.

- i. Whether the plaintiff is the lawful owner of the suit property?
 - ii. Whether the defendant trespassed onto the plaintiff's property?
 - iii. Whether the plaintiff is entitled to an order of eviction and permanent injunction?
 - iv. Whether the plaintiff is entitled to damages payable by the defendant for trespass?
10. Before I making a determination on the above issues, I wish to make two fundamental findings in this case.

Firstly, I find that it is the defendant who is in occupation of the suit land. The reason for saying so is that in prayer 2 of paragraph 18 of the plaint is a prayer for an order of eviction. This would only come about if the defendant is in occupation.

The other reason is that in his witness statement, the plaintiff and his witnesses have said that the defendant invaded the suit land in 2014.

Secondly, I find that the plaintiff paid 25 head of cattle and Kshs 150,000/- for the suit land.

In this regard, I believed the evidence of the plaintiff which I found to be consistent and credible. He was consistent from the beginning when he complained to the elders to the time he testified here in court. He was able to convince a total of 143 elders who included the defendants relatives.

Further, the plaintiffs evidence is corroborated sufficiently in material particulars by the evidence of two witnesses whom I also found to be credible and consistent. Both of them were present when the parties entered into the oral agreement for sale of the suit land and even when the defendant received the consideration which included the head of cattle and cash payment.

11. I now come to the defendant's issues. On the first issue, I find that the plaintiff did not acquire the suit land fraudulently. I find that he did so irregularly because he did not obtain the consent of the Land



Consent Board. This is because in his own testimony in court on the date of trial, he admitted that he did not appear before the Land Consent Board.

He was also with the burden of proof to demonstrate that the acquisition of the suit land was regular. He failed in this duty because he did not file any evidence of compliance with the requirement of consent of Land Control Board.

Regarding the second issue, I find that the defendant is entitled to orders numbers 1 to 5 in paragraph 14 of the counterclaim but subject to some conditions that I will impose.

12. Coming to the plaintiff's issues, I find that the defendant did not trespass onto the land. This is because the sale and transfer of the suit land were irregular for want of the consent of the Land Control board.

For the second and third issues, I find that the plaintiff is not entitled to an order of eviction and permanent injunction or damages for trespass for the same reasons given in the first issue.

13. I find that the sale and transfer of the suit land is void for lack of consent of the Land Control Board as required by section 6(1) (a) of the *Land Control Act*.

I hasten to add that the plaintiff was justified in bringing this action because the defendant should not keep his land and the consideration paid to him by the plaintiff. This is unconscionable.

Under section 7, of the *Land Control Act*, I order that he defendant refunds to the plaintiff the consideration of 35 head of cattle, Kshs 150,000/= with interest at court rates from March 16, 2004 to the date of payment in full.

14. In summary, the plaintiff's suit is dismissed but costs to be paid to the plaintiff. The defendant's counterclaim succeeds to the extent in paragraph 11 above. The defendant to refund the consideration as outlined above.

Order accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3RD DAY OF NOVEMBER, 2022.

M N GICHERU

JUDGE

