



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Lyambila v Majimbo & 8 others (Environment & Land Case
E008 of 2021) [2025] KEELC 3754 (KLR) (12 May 2025) (Judgment)**

Neutral citation: [2025] KEELC 3754 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT & LAND CASE E008 OF 2021**

EC CHERONO, J

MAY 12, 2025

BETWEEN

AGNES NAKUMISHA LYAMBILA PLAINTIFF

AND

DENNIS MAJIMBO 1ST DEFENDANT

ROBERT MASINDE 2ND DEFENDANT

JUSTUS NYONGESA MURUNGA 3RD DEFENDANT

ELIZABETH SIMIYU 4TH DEFENDANT

LEVI KISONGOJI WASIKE 5TH DEFENDANT

LINA KHAOYA 6TH DEFENDANT

LEONARD JUMA 7TH DEFENDANT

EMMANUEL WEKESA 8TH DEFENDANT

DAVIS WAFULA 9TH DEFENDANT

JUDGMENT

1. By a Plaint dated the 12/06/2021, the Plaintiff seeks judgement against the Defendants for:
 - a. A permanent injunction against the defendants, their agents and servants or any other persons acting through their instructions from trespassing and or making use of Bungoma/Kamakoiywa/4224.
 - b. An eviction to remove the demarcations made by the defendants, sugar cane planted on the suit land, building material and to demolish any structures or houses built on L.R Bungoma/Kamakoiywa/4224.



- c. Costs of the suit.
2. It was the plaintiff's claim that she is the registered proprietor of land parcel no. Bungoma/Kamakoiywa/4224 (hereinafter referred to as "the suit land") wherein she resides. That the defendants have without any color or right invaded the suit land and put up construction materials on site and commenced building permanent houses alleging that they had bought and leased part of the said land.
 3. The 1st, 2nd, 3rd, 7th and 8th defendants filed their statement of defence dated 21/02/2022 where they averred that the plaintiff is the registered proprietor of the suit land but she holds the same in trust for her sons namely Geoffrey Wanjala Lyambila, Samuel Wafula Lyambila, Patrick Wanyama Lyambila and Oliver Bahati Lyambila who sold part of their shares to the 1st, 2nd, 3rd and 8th defendants and leased part of their respective portions to the 3rd defendant. They averred that they are bona fide purchasers, having entered into sale and lease agreements with the plaintiff's sons who are beneficial owners.
 4. They further averred that the suit land is a creation of LR No. Bungoma/Kamakoiywa/725 which was the property of the late Bernard Lyambila Nduruchi-dcd who was the plaintiff's husband and the father of the sons mentioned above. That a succession cause was filed and the said sons were allocated shares of 4 acres each. That LR No. Bungoma/Kamakoiywa/725 was subdivided into two portions i.e LR No. Bungoma/Kamakoiywa/4224 and 4225 wherein LR NO. Bungoma/Kamakoiywa/4225 was registered in the name of Mwazo K.A.G Church while the plaintiff was registered as owner of LR No. Bungoma/Kamakoiywa/4224. That the above sons have filed a suit claiming their respective shares of the suit land in Bungoma ELC No. 3 of 2021. That the plaintiff has equally sought to have the shares allocated to the said sons reduced in Bungoma CMC P& A No. 144 of 2017.
 5. The 9th defendant on his part filed a statement of defence dated 15/3/2022 stating that he purchased his claimed share just as the 1st, 2nd, 3rd, 7th and 8th defendants as per their defence summarized above.
 6. The 4th, 5th and 6th defendants did not enter Appearance nor participate in these proceedings.

Evidence by parties.

7. During pre-trial conference, the parties agreed to proceed with the hearing of this case by way of viva voce evidence.

Plaintiff's Case

8. PW1 Agnes Nakumisha Lyambila adopted her witness statement dated 13/06/2021 as her evidence in chief. She equally produced her list of documents which contained three (3) items as PExhibit 1, 2 & 3. She testified that she has not authorized the alleged sale. In cross-examination she testified that she was the administratrix of the estate of her husband and that the suit land was shared amongst her children in the succession cause pursuant to the certificate of confirmed grant.

Defendants' Case

9. DW1 Robert Simiyu adopted his witness statement dated 15/3/2022 as his testimony-in-chief. He referred to her list of documents also dated the same date containing 7 and produced the same as D-Exhibit 1, 2, 3, 4, 5, 6 and 7 respectively documentary evidence his list of documents of even date containing seven (7) items. He stated that he bought his share of the suit land from George Lyambila after doing due diligence and satisfying himself that the plaintiff was aware of the intended sale. On cross-examination, he testified that he met the plaintiff before he bought his share and that she (the plaintiff) was not a party or a witness to the sale agreement.



10. Geoffrey Wanjala Lyambila (DW2) adopted his witness statement dated 24/10/2023 as his testimony-in-chief. He testified that his father left behind 32 acres and a succession cause was filed. That the resultant grant has never been revoked and as such, he is entitled to his allocated share. The witness was stood down for parties to exchange documents.
11. Davis Wafula Machimbo (DW3) adopted his witness statement dated 15/03/2022 as his testimony-in-chief. He testified that he bought his claimed share from Samuel Lyambila, a son to the plaintiff. On cross-examination, he testified that the plaintiff was not a party or a witness to the sale Agreement with Samuel Lyambila.
12. Emmanuel Wekesa Mulongo (DW4) adopted his witness statement dated 15/03/2022 as his testimony-in-chief. On cross-examination, he testified that he purchased his share from Oliver Lyambila. That the plaintiff is the administrator of the estate of the original owner. On re-examination, he testified that at the time of the purchase of his share, he did not know that there was an ongoing succession cause.
13. Oliver Lyambila (DW5) adopted his witness statement dated 24/10/2023 as his testimony-in-chief. He testified that he sold 1 ½ acres of his share of the suit land.
14. Samuel Wafula Lyambila (DW6) adopted his witness statement dated 24/10/2023 as his testimony-in-chief. He testified that he sold 0.3 acres of the suit land to one Dennis Machimbo.
15. Leonard Juma Musuto (DW7) adopted his witness statement dated 15/03/2022 as his testimony-in-chief. He produced into evidence seven (7) items contained in his list of documents of even date as D-Exhibit 1-7. On cross-examination, he stated that he conducted due diligence before purchasing his share of the suit land. That the search showed that the plaintiff was the registered owner of the suit land and that she was not involved in the sale.

Parties submissions.

16. After the close of their respective cases, the parties agreed to file submissions.
17. The plaintiff filed submissions dated 19/02/2025 where she submitted that the alleged vendors did not have the capacity to sell the suit land as the same was yet to be shared/distributed and as such, no good title could pass and the defendants actions' amounted to intermeddling. She urged the court to allow her claim with costs.
18. On their part, the 1st, 2nd, 3rd, 7th, 8th and 9th defendants filed submissions dated 28/02/2025 where they submitted that the plaintiff was registered as the proprietor of the suit land as a trustee according to the certificate of grant issued and that the sons who sold parts of the suit land were entitled to do so. That their purchase was therefore justified and the orders sought against them cannot issue.

Analysis and Determination

19. I have carefully read and considered the pleadings by the parties, the evidence adduced, the rival written submissions, authorities cited and the relevant provisions of law.
20. From the pleadings and the evidence adduced, it is not in dispute that the Plaintiff is the registered proprietor of the suit land parcel L.R. No. Bungoma/Kamakoiywa/4224, having acquired the same by transmission on 28th March 2007. It is also not in dispute that the suit property is a resultant subdivision of L.R. No. Bungoma/Kamakoiywa/275, which was originally registered in the name of the late Bernard Lyambila Nduruch, the Plaintiff's deceased husband. It is also not denied that the 1st, 2nd, 3rd, 7th, 8th, and 9th Defendants purportedly purchased their respective portions from the sons



of the plaintiff and immediately took possession and occupation of the same. The crux of the dispute herein lies in whether the defendants lawfully and procedurally acquired their purported portions of the suit land.

21. It is therefore my considered view that from the pleadings and the materials placed before me, the following issues commend for determination;
 - a. Whether the 1st, 2nd, 3rd, 7th, 8th and 9th defendants are entitled to any claim over the suit land?
 - b. Whether the plaintiff is entitled to the orders sought in the Plaintiff?

Whether the 1st, 2nd, 3rd, 7th, 8th and 9th defendants are entitled to any claim over the suit land?

22. The plaintiff in support of her case produced a certificate of official search for the suit land as PExhibit 1 and, three (3) photographs as PExhibit 2 and a demand letter dated 30/07/2020 as PExhibit 3.
23. The 1st, 2nd, 3rd, 7th, 8th, and 9th defendants in support of their case claim that they are bonafide purchasers of their respective shares since they purchased the same from beneficiaries who were justified to sell their shares held in trust by the plaintiff. In support of their claim they produced a certificate of confirmation of grant in Bungoma HCC P&A 23 of 1998(Dexhibit 6) which showed that their respective sellers had been allocated 4 acres each. The 1st defendant, Dennis Majimbo whose alias is Davis Wafula and who is also listed as 9th defendant purchased 0.3acres from Samuel Lyambila vide an agreement dated 04/09/2019(DExhibit 2), the 2nd defendant purchased ½ acre from Geoffrey Wanjala Lyambila vide an agreement dated 17/07/2019(DExhibit 3), the 3rd respondent purchased 1.6acres from Oliver Lyambila vide an agreement dated 15/11/2018(DExhibit 1), the 8th defendant purchased 1 acre from Oliver Lyambila vide an agreement dated 10/11/2020 (DExhibit 4) while the 7th defendant purchased ½ acre from Oliver Lyambila vide an agreement dated 27/02/2020 (DExhibit 5).
24. From the evidence, it is apparent that indeed the plaintiff is the registered proprietor of the suit land. The legal framework on legitimacy of title documents is governed by Sections 24, 25 and 26 of the [Land Registration Act](#). Section 24(a) thereof recognizes the registered owner as the absolute owner of land. This absolute right is limited by Section 25 which provides that land shall be held by the registered proprietor together with all other privileges appurtenant thereto but subject to charges, leases, encumbrances, restrictions, liabilities, rights and interests as stipulated in Section 28.
25. Section 28 (b) of [Land Registration Act](#) provides as follows:
 - a. Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as may for the time being subsist and affect the same, without their being noted on the register—
 - b. ...
 - c. trusts including customary trusts.
26. It is not in doubt that the estate of Bernard Lyambila Nduruchu was succeeded and the plaintiff herein was appointed as a legal representative. The single asset of the said estate vested in the plaintiff who was to hold in trust for the children as was prescribed in the grant. Although this court has been told that the plaintiff contends the mode of distribution as per the said grant, nothing has been placed before this court to show that the said grant was revoked or there are active proceedings or subsisting orders with regard to the said grant. This being a court of record, I shall proceed guided by the evidence before me.
27. The plaintiff in the above-mentioned certificate of confirmation of grant (D-Exhibit 6) was not allocated any share and her single role was being a personal representative. Therefore, as a personal



representative, her role is cut out as stated In re Estate of Daudi Owino Olak (Deceased) [2022] eKLR where the court, while citing with approval the case In re Estate of David Kyuli Kaindi (Deceased)1[2015] eKLR stated of an administrator’s duty to render accounts as follows: -

“The obligation to account is tied up with the fact that personal representatives are also trustees. They are defined as such in the Trustee Act, cap 167, Laws of Kenya, at Section 2. This is so as property belonging to another vests in them in their capacity as personal representatives, and they hold the same for the benefit of others – beneficiaries, heirs, dependants, survivors, creditors, among others. They stand in a fiduciary position in relation to the property and the beneficiaries. As they hold the property for the benefit of others or on behalf of others – they stand to account to the persons for whose benefit or on whose behalf they hold the property. It is an equitable duty and a statutory obligation.”

28. In the circumstances of this case, the issuance and confirmation of the grant of letters of administration had the effect of converting the estate of the deceased into trust property, with the children of the deceased becoming the beneficiaries of the said trust. Consequently, the Plaintiff, as the administratrix of the estate, assumed the role of a trustee within the meaning of the law. In her fiduciary capacity, the Plaintiff was obligated to manage and deal with the trust property strictly in accordance with the terms of the trust as created by the grant, and not beyond the scope conferred by the law.
29. It is important to note that no evidence was placed before this Court to suggest that the beneficiaries of the said trust obtained any order from a competent court dissolving the trust or terminating the plaintiff’s trusteeship. As such, the beneficiaries’ interests in the trust property remained contingent and had not yet vested or crystallized. This Court has been informed that the plaintiff was not privy to the agreements under which the purported transactions were conducted, and her consent as trustee was neither sought nor obtained. It therefore follows, as a matter of law, that any purported sale or disposition of the trust property undertaken without the trustee’s consent is null and void ab initio and is therefore unenforceable and of no legal consequence.
30. It is trite law that a beneficiary under a trust has no legal title to the trust property and, as such, lacks the capacity to sell, transfer, or otherwise dispose of any part of the trust property. The legal title resides with the trustee who for the purposes of any registerable dealings is deemed to have the absolute power and authority. The trustee is mandated to, hold and manage the property for the benefit of the beneficiaries who are children in accordance with the terms of the confirmed grant. Any purported sale or disposition of trust property by the children or beneficiaries without authority or consent from the trustee and in the absence of a court order is null and void and of no legal effect.
31. As for the defendants claim that they are innocent purchasers for value without notice, it is trite that Superior Court have held for the umpteenth time that an innocent purchaser for value without notice is someone who exchanges value for property without any reason to suspect any irregularities in the transaction as was held in the case of Arthi Highway Developers Limited v West End Butchery Limited & 6 others [2015] eKLR, where the Court of Appeal pronounced itself on the doctrine of bona fide purchaser for value without notice. It commenced with the meaning of trust as defined in Black’s law Dictionary 8th Edition as follows;

“One who buys something for value without notice of another’s claim to the property and without actual or constructive notice of any defects in or infirmities, claims or equities against the seller’s title; one who has in good faith paid valuable consideration for property without notice of prior adverse claims.”



32. The Defendants have each acknowledged that at the time of the impugned transactions, they were aware that the plaintiff was the registered proprietor of the suit property. Having had actual notice of the plaintiff's legal ownership, the defendants cannot now be heard to say that they are bona fide purchasers for value without notice. Accordingly, the purported transactions cannot be deemed to have been conducted in good faith as they were undertaken with full knowledge of the plaintiff's registration as the legal owner and in the absence of her involvement or consent in her capacity as trustee or that of the court. In the absence of proper authority and considering that the beneficiaries held no legal title to the trust property, no valid or indefeasible title could pass to the defendants. Consequently, any such purported conveyances are null and void ab initio and bear no legal consequences.

Whether the plaintiff is entitled to the orders sought in the Plaintiff?

33. The plaintiff claim is that the defendants were intruders and trespassers. I have stated elsewhere in this judgment that the plaintiff is a trustee of the children of Benard Lyambila Nduruchi (deceased) and as such, her duties are to hold and manage the suit land for the benefit of the said children. I have also found that the transactions between the beneficiaries and the defendants were void ab initio and unenforceable in law.

34. The plaintiff has sought for a permanent injunction and eviction order against the defendants.

35. Trespass has been defined as any intrusion by a person on the land in the possession of another without any justifiable cause. See, Clerk & Lindsell on Torts, 18th Edition, page 923, paragraph, 18-01. Section 3 of the [Trespass Act](#) provides that:-

- “(1) Any person who without reasonable excuse enters, is or remains upon, or erects any structure on, or cultivates or tills, or grazes stock or permits stock to be on, private land without the consent of the occupier thereof shall be guilty of an offence.
- (2) Where any person is charged with an offence under subsection (1) of this section the burden of proving that he had reasonable excuse or the consent of the occupier shall lie upon him.”

36. The plaintiff claims the Defendants have constructed structures on the suit land and planted sugarcane. The defendants did not controvert these averments. I find that they are indeed trespassers on the suit land.

37. A permanent injunction is defined as a court order requiring a person to do or cease doing specific action that is issued as a final order of a court. It is also clear that a permanent injunction is granted after the court has made a final determination in a dispute. These orders are meant to prevent the defendants from continuing with a particular action or behavior. See the case of Kenya Power & Lighting Co. Limited v Sheriff Molana Habib [2018] eKLR where the Court held inter alia as follows:

“...A permanent injunction which is also known as 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 an act by the defendant in order for the rights of the plaintiff to be protected. A permanent injunction is different from a temporary/interim injunction since a temporary injunction is only meant to be in force for a specified time or until the



issuance of further orders from the court. Interim injunctions are normally meant to protect the subject matter of the suit as the court hears the parties...”

38. The rights of the parties have been determined and therefore, this court finds and holds that the Plaintiff has established a prima facie case on account of being the registered owner of the suit land in trust and therefore, is entitled to a permanent injunction against the defendants.
39. As regards costs, I find that the plaintiff is the successful litigant and is entitled to costs of the suit.
40. The upshot of my finding is that the plaintiff’s claim is merited and the same is hereby allowed as prayed with Costs to the plaintiff
41. Orders accordingly.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 12TH DAY OF MAY, 2025.

.....

HON.E.C CHERONO

ELC JUDGE

In the presence of;

1. Mr. Sichangi for the Plaintiff
2. Mr Wamalwa R for the defendants
3. Bett C/A.

