



Ondieki v Angwenyi & 2 others; Omwoyo Auctioneers (Interested Party) (Environment & Land Case 942 of 2016) [2025] KEELC 3811 (KLR) (13 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3811 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 942 OF 2016**

M SILA, J

MAY 13, 2025

BETWEEN

OGEMBO ONDIEKI PLAINTIFF

AND

SAMWEL BOSIRE ANGWENYI 1ST DEFENDANT

KEROKA RIVERSIDE SELF HELP GROUP 2ND DEFENDANT

MARGARET NYANGAU 3RD DEFENDANT

AND

OMWOYO AUCTIONEERS INTERESTED PARTY

RULING

1. The application before me is that dated 17 September 2024. It seeks the following orders :
 1. The Honourable Court be pleased to direct that the property herein, otherwise known as LR West Kitutu/Bogeka/2997 sold by way of public auction on the 6th April 2021 at 10.30am has vested and/or passed to the ownership of one James Maina.
 2. The Honourable Court be pleased to lift and/or cancel the orders of inhibition registered over property LR West Kitutu/Bogeka/2997 as entry No. 8 on 22 February 2021 and entry No. 8 on 18 July 2024.
 3. That this Honourable Court be pleased to direct, order and/or authorize the court executive officer/administrator/magistrate of this Honourable Court to sign and/or execute all the attendant and necessary forms, transfer instruments, application for land control board consent or such other relevant documents/instruments to enable the County Land Registrar/



Surveyor Kisii County, to complete and facilitate transfer and registration of the sold land to the successful purchaser of LR West Kitutu/Bogeka/2997.

4. That the judgment debtor herein, Ogembo Ondieki, do return and/or hand over the original title deed in respect of LR West Kitutu/Bogeka/2997 within the next 14 days, failure to which the Land Registrar Kisii County shall proceed to issue new title deed to the successful purchaser, James Maina, failure to hand over or return the original title deed notwithstanding.
5. The costs of this application be in the cause.
2. The background leading to the application is that the plaintiff was the initial registered proprietor of the land parcel Central Kitutu/Bogeka/2997 (the suit property). He had charged this property to Ecobank Limited to secure a loan of Kshs. 800,000/=. In addition to the loan the plaintiff also owed other creditors some amounts of money. In the year 2010 or thereabouts, the plaintiff entered into some arrangement with the 1st defendant, Samwel Bosire Angwenyi, whereby the 1st defendant would pay off the monies that he owed his creditors. There was dispute between the parties as to the nature of this arrangement with the plaintiff asserting that the 1st defendant was only to hold the title as security while he pays him back with interest of 10%, whereas according to the 1st defendant, the title was transferred to him in consideration of him paying off the debts owed by the plaintiff. Whatever the true position, the title to the suit land got registered in the name of the 1st defendant on 22 September 2010. Subsequently the 1st defendant sold the suit property to the 3rd defendant, Margaret Nyangau, for a consideration of Kshs. 3,300,000/= and the title to the suit property got registered in name of the 3rd defendant on 10 May 2012.
3. Through a plaint filed on 24 July 2012, the plaintiff contended that the registration of the title in name of the 1st defendant and later to the 3rd defendant was fraudulent. He asked for orders to permanently restrain the defendants from evicting him and for the title of the 3rd defendant to be cancelled so that the property would revert back to him and for the 1st defendant to recover his money from him as a civil debt.
4. The 1st defendant filed defence asserting the position that the suit land was transferred to him in consideration of the monies paid to clear the indebtedness of the plaintiff. The 3rd defendant on her part contended to be a bona fide purchaser for value. The 2nd defendant (Keroka Riverside Self Help Group) on her part averred that she was only engaged to collect rent from the premises.
5. Mutungi J, who was then handling the matter, referred the matter to mediation, and through a letter dated 17 May 2017, the mediator reverted with the advice that the parties had agreed to have the plaintiff pay Kshs. 3,000,000/= to the 1st defendant in three instalments of one million each, the first instalment being due on 31 July 2017, the second on 29 September 2017, and the last instalment due on 29 December 2017, and that upon the last payment the title deed be returned to the plaintiff. On 25 April 2018, Mutungi J entered judgment in favour of the defendants for Kshs. 3,000,000/= in accordance with the advice of the mediator, only that he ordered the monies paid on or before 30 June 2018 'failing which execution to issue.' The monies were to attract interest at court rates till settlement in full. The court also awarded the defendants the costs of the suit. On 13 May 2019, costs were taxed at Kshs. 450,925/= .
6. The plaintiff did not pay the money. Instead, he filed an application dated 3 September 2019 seeking to set aside the judgment, inter alia contesting the entry of the judgment on the basis of the mediation report. That application was heard by Onyango J, who dismissed it in a ruling delivered on 22 November 2019.



7. There followed an amended application dated 17 July 2020 filed by the defendants seeking orders to have an order of prohibition registered against the title of the suit property, authority to sell the suit property to offset the decretal sum, and an order for the plaintiff to hand over possession to the successful purchaser or else he be forcefully evicted. The plaintiff opposed the application, inter alia on the reasoning that he is not the registered proprietor of the property. The application was allowed by Onyango J in a ruling delivered on 25 November 2020. She found that the 3rd defendant had been refunded Kshs. 3,500,000/= and technically the property reverted back to the plaintiff. In essence the court was persuaded to allow the sale of the suit land to offset the judgment sum.
8. The present application is based on grounds inter alia that the suit property was sold by way of public auction. The application is supported by the affidavit of David Obare Omwoyo, a licenced auctioneer. He has deposed that he advertised the suit property for sale through a public auction; that the auction was conducted on 6 April 2021; that James Maina was the successful bidder and that he paid the purchase price; that he is informed that there is registered an order of inhibition in the title; that unless the order of inhibition is lifted the title cannot be transferred to the said James Maina.
9. To oppose the motion, the plaintiff filed Grounds of Opposition. In the grounds it is claimed that there was no public sale conducted on 6 April 2021 and the property has not vested in the said James Maina who it is alleged did not have capacity to bid. The plaintiff seeks that the inhibitions in entries No. 8 and 9 be removed but the property to revert back to him; that the executive officer cannot be directed to sign the transfer documents when the defendants illegally transferred the property to themselves; that the plaintiff cannot hand over the original title deed within 14 days and the Land Registrar not to proceed to issue a new title deed to James Maina who has no connection with the plaintiff's property; that the plaintiff was not party to the inhibition orders and has always been ready to clear the decretal sum of Kshs. 3,000,000/= ; that the plaintiff was not served with a notification of sale of his property nor a redemption notice; that none of the bidders executed a bond of Kshs. 500,000/= ; that the Certificate of Sale is false; that no valuation was done within 3 months of sale and the property was undervalued; that the warrants of sale be recalled and the plaintiff be given a chance to redeem the suit property by paying the decretal sum; a declaration that the auction sale was irregular; that the court to order the plaintiff to remain with his original title deed until the matter is heard and determined; that the plaintiff never executed any transfer documents and the property was fraudulently transferred to the 1st defendant and later to the 3rd defendant. He also claimed that the decree was entered without his consent; that he was never served with a Notice to Show Cause and that he has been ready to pay the money; that he has no alternative land to take his family; and that the proceedings leading to the transfer of the suit property, the notice to show cause, and the attachment were irregular and unlawful.
10. There was mention by counsel for the plaintiff of an application dated 8 November 2024. I have seen no such application. I will therefore confine myself to the application dated 17 September 2024 and I have given it due consideration.
11. This matter is concluded and there is judgment entered. It does not help the plaintiff to try and contest that judgment for his protest against entry of the judgment was already heard and dismissed in the ruling of Onyango J of 22 November 2019. I have no jurisdiction to sit on appeal against the said judgment and/or the ruling declining to set aside the judgment. Neither do I have jurisdiction to reverse the order of inhibition entered for the purposes of preserving the property pending a sale of it to recover the decretal sum. I also have no jurisdiction to question or interrogate the ruling of Onyango J which authorized the sale of the suit land. The property was already attached and I cannot authorize it to revert to the plaintiff, putting aside the fact that there is even no application asking for such orders. All these issues that the plaintiff is raising are now water under the bridge.



12. The only thing that I need convincing is that the property has been sold and that the person who is registered as proprietor, i.e the 3rd defendant, is aware of the sale and has no issue with the suit property being transferred to the person said to have purchased it. Unfortunately, I have no affidavit from the alleged purchaser, one James Maina. I do not even know if such person exists. If at all he is the purchaser, you would have expected that it would be him filing an application to have the suit property transferred to him but I have no such application from him. There is even no affidavit sworn by the said person. Neither is there any affidavit from the registered proprietor, the 3rd defendant, affirming that she has no issue with the suit property being transferred to James Maina or any such purchaser.
13. The other issue that may be important is where the proceeds of the purchase price should go. Is the money going to the 1st defendant or the 3rd defendant or both ? That also needs elaboration and consensus from both the 1st and 3rd defendants. It is an important issue so that it may be clear whether or not there is any money that is outstanding and pending from the plaintiff, and if so, the amount thereof and to which person.
14. The other issue that is not clear to me is why there is a prayer for the plaintiff to hand over the title and execute the transfer yet the title is actually in the name of the 3rd defendant. Why not have the documents executed by the 3rd defendant who is the current registered proprietor thereof ? That has not been explained.
15. I am afraid that it would be a granting orders without the benefit of the appropriate information if I am to allow this application in the manner presented. Without an affidavit from the alleged purchaser and/or 3rd defendant, and elaboration on the issues that I have pointed out above, I am afraid that the application is a non-starter and it is hereby struck out. I however make no orders as to costs as the plaintiff cannot claim to have any right over the suit property given the previous orders against him.
16. Orders accordingly.

DATED AND DELIVERED THIS 13 DAY OF MAY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Court Assistant – Michael Oyuko

Mr. O.M Otieno for the applicant – Absent

Ms. M. Caleb for the respondent – Absent

