



Omollo & another (Administrators of the Estate of John Omollo Amanga) v Registered Trustees of the National Council of Churches of Kenya & 3 others (Environment & Land Case E041 of 2021) [2025] KEELC 121 (KLR) (23 January 2025) (Judgment)

Neutral citation: [2025] KEELC 121 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT & LAND CASE E041 OF 2021
E ASATI, J
JANUARY 23, 2025**

BETWEEN

MIRIAM ENGESA OMOLLO 1ST PLAINTIFF

DAVID AMANGA OMOLLO 2ND PLAINTIFF

ADMINISTRATORS OF THE ESTATE OF JOHN OMOLLO AMANGA

AND

**THE REGISTERED TRUSTEES OF THE NATIONAL COUNCIL OF
CHURCHES OF KENYA 1ST DEFENDANT**

COUNTY LAND REGISTRAR, KISUMU 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

NATIONAL LAND COMMISSION 4TH DEFENDANT

JUDGMENT

Introduction

1. The Plaintiff's herein in their capacity as the Administrators of the estate of John Omollo Amanga, deceased, sued the defendants seeking for;
 - a. A declaration that the plaintiffs are the rightful owners of land parcel known as East Kisumu/Dago/675
 - b. A permanent injunction restraining the defendants their agents. Servants, assigns, relatives or whomsoever claiming title or acting on their behalf from remaining in, occupying continuing to occupy, selling, trespassing and/or encroaching and in any other manner interfering with land parcel No. East Kisumu/Dago/675.



- c. An order do issue directing the 3rd defendant to revoke the illegal title issued to the 1st defendant against land parcel No. East Kisumu/Dago/675
 - d. Costs of this suit.
2. The plaintiff's case is that they are the legal owners of land parcel known as East Kisumu/Dago/675 registered in the name of the deceased as the original owner and have been living on the suit land since the pre-1969's to date. That they were surprised when the 1st defendant fraudulently obtained title in respect of the suit land in connivance with the 2nd defendant. That the defendants have denied the plaintiffs their right to use the land and access thereto hence they seek the court's intervention.
 3. In response to the plaintiff's claim, the 1st defendant filed the 1st defendant's amended statement of defence and counterclaim. The 1st defendant denied the plaintiffs' claim and vide the counter claim, claimed that it is the lawful owner of the suit land which measures approximately 4.6 Ha after the property was allocated to it on 12th May 1975 and title in respect thereof issued on 12th June 1997.
 4. The 1st defendant further claimed that in or about the year 2013, the Land Registrar allowed the sub-division of the suit land and fraudulent, unlawful and illegal issuance of title documents in favour of the plaintiffs while the same was still held by the 1st defendant and subject to ownership dispute. That the sub-division culminated in subsequent sale and transfer of the ensuing titles by the plaintiff to third parties. That consequently the 1st defendant placed a restriction on the resultant land parcels numbers East Kisumu/Dago/675, 3624, 3625, 3626, 3627, 3828, 3629, 3630, 3631, 3632 and 3634. That the imposition of the restriction led to the institution of a case namely KSM ELC No. 324 OF 2014 (O.S) - the Registered Trustees of National Council of Churches of Kenya vs. David Amanga & Another (2017) eKLR.
 5. The 1st defendant claimed further that in another case the court revoked the plaintiff's confirmed Grant and rescinded all subsequent sub-divisions of the suit property.
 6. The 1st Defendant therefore sought for the following relief against the plaintiffs by way of the counterclaim;
 - a. A declaration that the 1st defendant is the lawful owner of all that parcel of land known as East Kisumu/Dago/675.
 - b. A declaration that the allotment of the parcel of land known as East Kisumu/Dago/675 to the 1st and 2nd plaintiffs was unlawful, illegal, fraudulent and therefore null and void ab initio.
 - c. A declaration that the issuance of resultant titles in respect of the parcel of land known as East Kisumu/Dago/675 to the 1st and 2nd plaintiff or anyone whatsoever is illegal and void ab initio.
 - d. An order compelling the 1st and 2nd plaintiffs, their servants, agents, personal representatives, attorneys and/or employees to forthwith give immediate vacant possession of all that parcel known as East Kisumu/Dago/675 to the 1st defendant.
 - e. A permanent injunction restraining the 1st and 2nd plaintiffs their servants, agents, personal representatives and/or assigns or otherwise howsoever from trespassing and/or entering upon that parcel of land known as East Kisumu/Dago/675.
 - f. A permanent injunction restraining the 1st and 2nd plaintiffs their servants, agents, personal representatives and/or assigns or otherwise howsoever from interfering howsoever with the 1st defendant's enjoyment, possession, title and/or occupation of all that parcel of land known as



East Kisumu/Dago/675 and further restraining the 1st and 2nd plaintiffs from misrepresenting themselves to the general public as the owners of the suit property.

- g. An order be issued directing the 3rd defendant (by counterclaim) to cause the rectification of the register in respect of the title deed over the parcel of land known as East Kisumu/Dago/675 by deleting and cancelling the entry evincing ownership by John Omollo Amanga or by the 1st and 2nd plaintiffs.
- h. General damages for trespass and fraudulent misrepresentation against the 1st and 2nd plaintiff's
- i. An order for mesne profits
- j. Costs of the suit and the counterclaim together with interest thereon at court rates from the date of judgment until payment in full.
- k. Such other further relief as the honourable court may deem appropriate in the circumstances.

The Evidence

7. One witness- the 2nd plaintiff testified on behalf of the plaintiffs. He adopted the contents of his pre-recorded and filed witness statement dated 19th July 2021 as his evidence in chief. He had stated in the said witness statement that he was the son of John Omollo Amanga, deceased, who was the registered owner of the suit land, and was in continuous occupation of the land since 1960's.
8. That upon the death of the deceased, the plaintiffs vide Kisumu HC Succession Cause. No. 86 of 2012 obtained Letters of Administration in respect of his estate. That in the year 2013 they decided to sub-divide the estate amongst other siblings and purchasers – whereupon the suit land was sub-divided into 11 pieces of land namely East Kisumu/Dago/3624 to 3634.
9. He stated further that sometime in the year 2012 he was summoned to the DCIO's office Kisumu on the grounds that the 1st defendant was laying claim to the suit land. That at the end of the investigations, the DCIO advised the Land Registrar that the Land belonged to John Omollo Amanga, deceased. That the Land Registrar then proceeded to process the eleven (11) title deeds. That the plaintiffs then sold the resultant parcels to various purchasers and were able to effect transfers.
10. That they obtained consent of the Land Control Board to transfer the parcels and complied with all legal requirements.
11. PW1 stated that the 1st defendant filed an application and had the Grant issued to the plaintiffs in Kisumu HC Succession Cause No. 86 of 2012 revoked and all subsequent dealing cancelled. The court directed that parties to first litigate on who is the legitimate owner of East Kisumu/Dago/675 after which fresh succession should be conducted. That the claim by the 1st defendant is untrue as the land belongs to John Omollo Amanga, deceased, deceased, and that the plaintiffs are entitled to inherit it.
12. PW1 produced documents as exhibits namely; Letter dated 9/5/2012 from the Lands office, adjudication record, title deed dated 24/4/1978, for the suit land, certificate of official search dated 21/2/2012, copy of certificate of death for John Omollo Amanga, Letter dated 4/8/6/2012 from District surveyor, bundle of documents in respect of KSM HC Succession Cause No.86 of 2012, certificate of confirmation of Grant, title deed dated 7/5/2013, certificate of official search dated 8/10/2013, Letter of consent for sub- division dated 6/11/2013, Title deed for Kisumu/Dago/3631, 2630 and 3632, Mutation form dated 15/11/2013, Certificate of Compliance, Letters from Mauwa & Co. Advocates dated 20/9/2022, 18/10/2022 and 21/11/2022 and letter dated 27/9/2022 from Director of land Adjudication and Settlement.



13. On cross examination PW1 stated that his home is on the suit land and that it is his mother and brother who live there and that they have lived there since 1971. That the land was ancestral land. That his grandfather's name was in the adjudication record and his father got the land from the said grandfather. That he did not appeal to the Court of Appeal against the ruling in Kisumu H.C Succession Cause No. 86 of 2012.
14. That the people whose names appeared on the register before the land was registered in his father's name were all his grandfathers and that they died when they were still young.
15. On behalf of the 1st defendant one witness, Tracy Chamia, testified as DW1. She stated that she was the Legal Officer with the 1st defendant. She adopted the contents of her witness statement dated 29/5/2023 as her evidence in chief. She had stated in the witness statement that the 1st defendant who was the bona fide and lawful owner of the suit land had always enjoyed quiet possession of the suit property since the time of allotment. The rest of the contents of her statement are the same as the contents of the amended defence and counter claim.
16. She produced documents as exhibits namely; copy of application for certificate of official search dated 4/10/2011, payment receipt for the search, certificate of official search dated 17th October 2011, copy of title deed and copy of ruling in Kisumu HC Succession Cause No. 86 of 2012.
17. On cross examination DW1 stated that the suit property was allotted to the 1st defendant by the Kisumu Land Registrar. That she did not have any document in respect of the allotment. That the land Registrar cannot allocate land which is registered in the name of an individual without the knowledge of the individual. That there used to be structures on the suit land but that they were demolished. That Grant Letters of Administration was annulled and parties advised to approach the Environment and Land Court to determine ownership of the land first.
18. On behalf of the 2nd and 3rd defendants, the Land Registrar, Kisumu Mr Nicholas Obiero testified as DW2. He produced adjudication record in respect of the suit land. He testified that the adjudication record shows that the suit land was originally adjudicated to 5 people namely; Oduodo Amanga, Okondo Nyakwa, Kaiko Okidi, Abayo Okongo and Agong Ogunda each of them having 1/5 share. He also produced a green card in respect of the suit land and testified that the same was opened on 23/10/1973 in the name of the 5 people. That on 4/4/1975 the land was transferred to John Omollo Amanga and a certificate of lease which DW2 produced as exhibit issued on 24/4/1978. That on 7/5/2013 a Grant of Letters of Administration in Kisumu H.C Succession Cause No. 86 of 2012 in respect of the estate of John Omollo Amanga was registered in favour of the plaintiffs. That on the same day certificate of confirmation of Grant was registered.
19. That on 3/12/2013 the registry received a mutation for sub-division of the suit land, Letter of consent for sub-division, application for consent for sub-division and compliance certificate from physical planning department to sub-divide the suit land to produce parcel No. Kisumu/Dago/3624 to 3634. That the register in respect of the original title was closed upon sub-division and the registers for the resultant parcels opened. That some of the resultant parcels were transferred to other people. That on 10/10/2014, the National Council of Churches of Kenya placed a restriction on the parcels. That after the restriction, the 1st defendant attempted to use the title for the suit land to secure a loan of Kshs.1.2 billion but the application was rejected on the grounds that the land had a dispute and the title had been sub-divided and closed.
20. On cross examination by Counsel for the plaintiffs, DW2 stated that freehold titles are not given by way of allocation. That the green card does not show that the land had ever been owned by the 1st defendant. That as per the green card, the land belongs to the plaintiffs.



21. On cross –examination by Counsel for the 1st defendant, DW2 testified that a restriction was placed on the land at the instance of the 1st defendant. That there are 2 parties claiming the land but he did not have the records for the Church. That the 1st defendant had not explained how it got the land.
22. No evidence was tendered by or on behalf of the National Land Commission, the 4th defendant herein.

Submissions

23. At the close of the evidence parties undertook to file written submissions on the case. It was submitted on behalf of the plaintiffs vide the written submission dated 16/5/2024 by the firm of Mauwa & Co advocates that the right to own property in Kenya is premised under article 40 of the Constitution of Kenya 2010 which provides that
 - i. “Subject to article 65, every person has the right, either individually or in association with others to acquire and own property
 - a. of any description, and
 - b. in any part of Kenya.”
24. That certificate of title is prima facie evidence of ownership of land as provided for in section 26 of the Land Registration Act. Counsel also cited section 25 of the Land Registration Act which provides that
“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...”
25. Counsel relied on the cases of Willy Kipsongok Morogo vs Albert K. Morogo (2017)eKLR and the case of Joseph N.K Arap Ng’ok vs Moijo Ole Keiwa & 4 others (1997)eKLR to the effect 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. Counsel submitted further that the plaintiffs had proved their case of ownership and therefore entitled to possession.
26. On whether or not the counter-claim by the 1st defendant has merit, Counsel relied on the case of Munyu Maina vs Hiram Gathiba Maina Civil Appeal No 239 of 2009 where it was held that:
“When a registered proprietor’s root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership--- that the registered proprietor must go beyond the instrument to prove legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrance including any and all interests which would not be noted in the register.”
27. Relying on the case of Alice Chemutai Too vs Nickson Kipkurui Korir & 2 others (2015) eKLR Counsel further submitted that the 1st defendant loses the protection from the law and cannot seek protection under section 26 of the Land Registration Act. That the 1st defendant’s claim of ownership has no bearing and the Counterclaim fails and should be dismissed.
Counsel prayed that costs be awarded to the plaintiffs.
No submissions were filed on behalf of the 1st and 4th defendants.



28. On behalf of the 2nd and 3rd defendants it was submitted vide the written submissions dated 6th May 2024 filed by Principal Litigation Counsel, Callen Masaka, that merely having a title in itself cannot proof ownership of land. That the process through which it was acquired and the supporting documents are critical.
29. That the Land Registrar tabled the records held that support the processes of the title as held from adjudication to the current holder of the title. Counsel relied, inter alia, on the case of Peter Kagungu Kiragu vs Ann H.G. 2021 and urged the court to uphold the plaintiffs' claim.

Issues for Determination

30. From the pleadings filed, the evidence adduced and the submissions made two substantive issues emerge for determination, namely; -
 - a. to whom does the suit land belong
 - b. whether the counter claim has merit
 - c. Costs

Analysis and determination

31. The case of the plaintiffs is that the suit land belonged to the estate of John Omollo Amanga, deceased who was their husband and father respectively and that they had brought the suit in their capacity as the administrators of the said estate.
32. Their complaint is that the 1st defendant in connivance with the 2nd defendant fraudulently obtained title to the suit land thereby denying the estate of the deceased the right to the land. The plaintiffs itemised the particulars of fraud in paragraph 12 of the plaint as
 - a. Creating a parallel title for land which is in the name of the plaintiffs without their permission,
 - b. Tempering with the register and putting the name of the 1st defendant in the register,
 - c. Acquiring the plaintiffs' land through fraudulent means,
 - d. Falsifying documents and registering the name of the 1st defendant thereby creating non-existent parcel on the plaintiffs' parcel,
 - e. Trespassing onto the plaintiffs' land.
33. The plaintiffs adduced evidence and produced documents to show that the land belonged to the estate of the deceased. Among the documents produced was copy of land adjudication record dated 1971 which shows that the land was first adjudicated in the year 1971 and registered in the names of 5 people namely Oduodo Amanga, Okondo Nyakwa, Kaiko Okidi, Abayo Okongo and Agong Ogunda. The other document was copy of green card in respect of the suit land. The same showed that the land was on 4. 4. 1975 registered in the name of John Omollo Amanga as sole proprietor. A copy of certificate of death in respect of the said John Omollo Amanga produced as exhibit shows that he died on 1st September 2006 aged 68 years. The plaintiff's case was that as at the date of death of the deceased the suit land was registered in his name. This was confirmed by the copies of green cards produced on behalf the plaintiffs' and the Land Registrar which show that the land remained registered in the name of the deceased until 7/5/2013 when the same was transmitted to David Amanga Omollo, the 1st plaintiff herein, by registration of form RL 19 through Succession Cause No. Kisumu H.C Succession Cause No. 86 of 2012.



34. The evidence of the plaintiffs was supported by the evidence of the Land Registrar who testified as DW2. He was emphatic that according to the records in his custody the land belongs to the plaintiffs.
35. The 1st defendant on the other hand testified that it is the owner of the suit land. It testified through DW1 that the Land was allocated to the 1st defendant on 12/5/1975 and title deed issued to it on 12/6/1997. That when it attempted to fence the land, its workers were chased away by people claiming to be the owners of the land. The 1st defendant produced among other documents a title deed dated 12th June 1997, it shows that the suit land measuring 4/6 Ha. was on the said date registered in the name of National Christian Council of Kenya (Trustees Registered) no evidence was tendered as to whether this was one and the same person as the Registered Trustees of the 1st Defendant (the National Council of Churches of Kenya). Nonetheless, it is the title document that the 1st defendant produced and relied on.
36. Section 7 (1) makes the Land Registrar the custodian of documents of ownership of land. It provides:
- “There shall be maintained, in each land registration unit, a land registry in which there shall be kept: -
- a. A land register in the form to be determined by the Commission,
 - b. The cadastral map,
 - c. Parcel files containing the instruments and documents that support subsisting entries in the land register
 - d. Any plans which shall, after a date appointed by the Commission, be geo-referenced’
 - e. The presentation book, in which shall be kept a record of all applications numbered consecutively in the order in which they are presented to the registry,
 - f. An index, in alphabetical order, of the names of the proprietors and
 - g. A register and file of powers of Attorney.
37. Section 9(1) places the mandate to maintain the documents upon the Land Registrar as follows: -
- “The Registrar shall maintain the register and any document required to be kept under this Act in secure, accessible and reliable format...”
38. In *Mwangi -vs- Thiro & 2 others* (Environment & Land Case 122 of 2014) [2022] KEELC 14423 (KLR) the court observed that the Land Registrar is the custodian of all the documents in the Land Registry with power/mandate to produce the same as evidence in court or other proceedings.
39. While the plaintiffs’ title is supported by documents that show the process of acquisition, the title of the 1st defendant is not supported by any documents. The root of the 1st defendant’s title is not explained. Firstly, the said title is not known in the Land Registry- the Land Registrar testified that he has no knowledge of it. Secondly the 1st defendant was not able to explain how it was obtained. DW1 stated that the land was allotted by the Land Registrar but had no documents on the allotment. She testified on cross-examination that a Land Registrar cannot allot privately owned land without the knowledge or consent of the registered owner. It is therefore only the 1st defendant who knows where it got the title from.



40. On the basis of evidence placed before court, I find that the plaintiffs have proved that the suit land belonged to the deceased. That the title held by the 1st defendant is a nullity.
41. No claim was laid against the 4th Defendant and no nexus was established between it and the suit land.
42. On the basis of these findings I find that the plaintiffs have proved their case on a balance of probabilities. The Counterclaim based on the title held by the 1st defendant fails. Judgement is therefore hereby entered in favour of the plaintiffs for:
- i. A declaration that the deceased John Omollo Amanga was the rightful owner of land parcel known as East Kisumu/Dago/675.
 - ii. An order of permanent injunction restraining the defendants their agents, servants, assigns, relatives or whomever claiming title or acting on their behalf from remaining in, occupying continuing to occupy, selling, trespassing and/or encroaching and in any other manner interfering with land parcel No. East Kisumu/Dago/675.
 - iii. An order directing the Land Registrar to revoke the title held by 1st defendant or National Christian Council of Kenya (Trustees Registered) in respect of land parcel No. East Kisumu/Dago/675.
 - iv. Costs of this suit.

Orders accordingly.

JUDGEMENT DATED AND SIGNED AT KISUMU AND DELIVERED THIS 23RD DAY OF JANUARY, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Maureen: Court Assistant.

Maua for the Plaintiffs.

Githui for the 1st Defendant.

Muthoki for the 2nd and 3rd Defendants.

