



REPUBLIC OF KENYA



KENYA LAW
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**Ndiki v Sidai & 2 others (Civil Appeal E012 of 2023)
[2025] KEELC 5246 (KLR) (16 June 2025) (Judgment)**

Neutral citation: [2025] KEELC 5246 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
CIVIL APPEAL E012 OF 2023
MD MWANGI, J
JUNE 16, 2025**

BETWEEN

ISAAC KIRAGU NDIKI APPELLANT

AND

MIRIAMBI OLE SIDAI 1ST RESPONDENT

HANNAH MARION K NJOROGE 2ND RESPONDENT

THE LAND REGISTRAR, KAJIADO 3RD RESPONDENT

JUDGMENT

1. This appeal is against the judgment delivered by Hon. V. Kachuodho, (SRM) on 30th March 2023, in Kajiado CMELC 6 of 2010. The appellant who was the plaintiff in the suit before the trial court has raised seventeen (17) grounds of appeal listed in the memorandum of appeal dated 26th April 2023. The appellant prays that the judgment issued on 30th March 2023 be set aside and in its place a declaration be made that the appellant is the bona fide proprietor of all that piece or parcel of land known as Kjd/Kitengela/5480. Further that the costs of this appeal and the proceedings before the trial court be provided for.

Pleadings before the trial court

2. The appellant's case was as pleaded in the amended plaint amended on 23rd February 2023. The appellant pleaded that by a sale agreement signed on 17th April 1996, he had contracted with the 1st respondent herein to purchase two acres of land known as Kjd/Kitengela/5480 at an agreed consideration of Kshs. 117,000/=. He asserted that he had paid the full consideration to the 1st respondent through his appointed agent. It his claim that he was subsequently issued with a title deed on 2nd July 1996 and he allegedly took possession of the land and commenced developments.



3. It was the appellant's case that the suit parcel was however transferred and registered in the name of the 2nd respondent on or about the 24th March 2009. He termed the transfer to the 2nd respondent illegal and fraudulent since he was still in possession and retained the original title deed of the suit property.
4. The appellant further pleaded that he was not aware of the dealings between the 1st and 2nd respondents until he conducted a search of the title in December 2009. He sought for judgment against the defendants, jointly and severally for the following orders;
 - a. A declaration that the land parcel no. Kjd/Kitengela/5480 measuring two (2) acres or thereabouts absolutely belongs to the appellant (plaintiff).
 - b. An order directing the land registrar Kajiado to immediately rectify the register to vest the title in the appellant (plaintiff).
 - c. Costs of the suit.

Response by the 2nd respondent

5. The second respondent responded to the appellant's claim before the trial court by way of a statement of defence and counterclaim dated 23rd January 2023. He vehemently denied the appellant's claim against him putting him to strict proof. He asserted that he was the registered owner of the suit property which he had purchased for value and took possession of after the purchase. He further stated that he acquired the suit property from one Daniel Katei, the registered proprietor then; who according to the records held by the land registry had acquired the title way back in 1995, from the 1st respondent.
6. In his counterclaim, the 2nd respondent pleaded that he purchased the suit property measuring approximately 0.81 Ha for valuable consideration on 24th November 2008 from Daniel Katei Ibrahim, the registered proprietor then. At the time of the purchase, the suit property was allegedly vacant and beacons were pointed out to him by the vendor.
7. The 2nd respondent affirmed that he carried out relevant due diligence before the purchase. The title to the suit property was duly transferred to him and a title deed issued on 2nd April 2009. It was in the year 2010 that the 2nd respondent found out that the appellant had trespassed into the suit property and constructed a semi-permanent structure thereon. On further enquiry, he learnt that the appellant was claiming ownership over the suit property and was actually in possession of a fraudulent title deed.
8. The 2nd respondent avers that the green card of the suit property issued by the land registrar confirms that he is the duly registered proprietor of the suit property. The appellant's name on the other hand does not appear on the green card. The 2nd respondent asserts that at the time the appellant purports to have acquired the suit property from the 1st respondent on 2nd July 1996, the title had already been transferred to Daniel Kantai Ibrahim on 25th July 1995. That explains why there are no corresponding records at the lands registry to support the appellant's claim.
9. The 2nd respondent claims that the appellant's occupation of the suit property is wrongful and amounts to trespass. The 2nd respondent therefore sought judgment against the appellant for;
 - a. A declaration that the 2nd respondent (2nd defendant) is the absolute registered proprietor of all that parcel known as L.R. No. Kjd/Kitengela/5480.
 - b. An order of permanent injunction restraining the appellant (plaintiff) by himself, his servant, agent and or whomsoever in any means howsoever from trespassing, constructing,



encroaching, alienating, or disposing of and or in any way interfering with the 2nd defendant's ownership of the suit property.

- c. An order that the semi-permanent structures constructed by the plaintiff and or any person on L.R. No. Kjd/Kitengela/5480 be demolished.
 - d. An order of eviction evicting the plaintiff from the suit property.
 - e. Costs and interest of the suit.
10. Apparently, the appellant did not file a statement of defence against the 2nd respondent's counterclaim. The 1st and 3rd respondents did not enter appearance in the suit before the trial court; they did not participate in the proceedings before the trial court.

Evidence presented before the trial court.

11. The case proceeded to full hearing. The appellant who was the plaintiff called two witnesses in his case. The 2nd respondent testified as the only witness in his case.
12. The appellant testified as the 1st witness in his case by adopting his witness statement as his evidence in chief. The witness statement reiterated the averments in the amended plaint. He too produced the documents on his list of documents dated 23rd February 2023 as exhibits in support of his case.
13. In cross-examination, the appellant alleged that he was taken to the home of the 1st respondent by her nephew who was selling the suit property on her behalf. He confirmed that the green card of suit property indicated the 2nd respondent as the registered owner. Further, the green card indicated that in 1996, the registered owner was one Daniel Kantai Ibrahim.
14. The appellant stated that he paid the purchase price of Kshs. 117,000/= to the agent, Ruth Wairimu. He had allegedly been informed by the owner of the suit property that Ruth Wairimu had the authority to sell the suit property on her behalf but there was no document confirming the authority to sell by the agent. In the agreement produced as an exhibit by the appellant, there is no certificate for the purported thumb print of the seller.
15. The 2nd witness was a brother to Ruth Wairimu Kinuthia who was said to have re-located to the United States. She had appointed Godfrey Karanja as her power of attorney vide the power of attorney registered as 64753/1 on 1st October 2015. He adopted his witness statement as his evidence in chief.
16. In cross examination, the witness admitted that though he alleged to have witnessed the agreement between the appellant and the 1st respondent, his signature was not on the sale agreement. The thumbprint on the agreement alleged to be of Miriam Ole Sodai was not accompanied with a thumbprint certificate.
17. Reading from the green card shown to him, the witness admitted that the 1st respondent was not the owner of the land.
18. The 2nd respondent testified as a witness in his case adopting his witness statement dated 23rd January 2023. He testified that he bought the suit property for the sum of Kshs. 640,000/- from Daniel Kantai, the registered owner of the land.



Court's directions on the hearing of the appeal.

19. The court's directions on the hearing of the appeal were that the appeal be canvassed by way of written submissions. Both the appellant and the 2nd respondent complied and filed their respective submissions which form part of the record of this court.

Issues for determination.

20. From my analysis of the pleadings filed before the trial court and the evidence adduced at the trial, the critical issue for determination is the ownership of the suit property since each of the disputants claim to have a title to the suit property.

Determination

21. From my perusal of the proceedings before the trial court, the trial court identified four issues for determination, one of which was who the legal/registered owner of the suit property land parcel Kjd/Kitengela/5480 was.
22. In its judgment on page seven (7) at paragraphs 2 and 3 thereof, the court made two contradictory findings which I quote hereunder verbatim;
- “2 The court is unable to determine the same for the reasons; the suit property is land parcel Kjd/Kitengela/5480, the entire presentation book at Kajiado Land Registry from the period between 23/2/1996 to 24/3/2009 was not produced in court, the issue was further compounded by absence of custodian or officers' authors of the said presentation book to verify or shed light on the said entries.
- 3 In conclusion, from the evidence herein above, I find the 2nd defendant is registered owner of the suit property”.
23. The trial court was right on the need for verification of the documents purported to have come from the land registry. The said documents were not even certified copies. The court ought to have exercised its authority to compel the attendance of the Land Registrar to clarify on the documents.
24. To facilitate the conclusive determination of the issues and the dispute between the parties, the Land Registrar who is mandated to maintain the register and who is the custodian of the parcel file containing all instruments and document that support the subsisting entries in the Land Register should testify before the court before a final decision is made.
25. This court exercising its power as an appellate court under Section 78(1) of the [Civil Procedure Act](#) will take additional evidence specifically from the Land Registrar in order to verify the contents of the parcel file in regard to the suit property before delivering a final judgment in this appeal.
26. The court further exercising its authority under Section 22(b) of the [Civil Procedure Act](#) will issue witness summons to the Land Registrar, Kajiado to appear as a witness and produce the parcel file for the Land Parcel L.R. No. Kjd/Kitengela/5480. Parties will be at liberty to cross-examine the Land Registrar.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF JUNE 2025.

M.D. MWANGI



JUDGE

In the virtual presence of:

Mr. Kariuki for the 2nd Respondent

N/A by the Appellant and the 1st and 3rd Respondent

Court Assistant: Mpoye

