



Gwanyemba & 4 others v Matanye & another (Environment and Land Case E003 of 2024) [2025] KEELC 4628 (KLR) (12 June 2025) (Judgment)

Neutral citation: [2025] KEELC 4628 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VIHIGA
ENVIRONMENT AND LAND CASE E003 OF 2024**

**E ASATI, J
JUNE 12, 2025**

BETWEEN

**PAMELA MIDEVA GWANYEMBA 1ST PLAINTIFF
HILLARY MATANYE EZAVITA 2ND PLAINTIFF
FAITH MINAYO EZAVITA 3RD PLAINTIFF
LAVINE KADOTA EZAVITA 4TH PLAINTIFF
MACKMILLAN ESOLLO EZAVITA 5TH PLAINTIFF**

AND

**ELAM EZAVITA MATANYE 1ST DEFENDANT
GIDEON LUMADEDE MUGUHELI 2ND DEFENDANT**

JUDGMENT

Introduction

1. Apart from the 2nd Defendant, all the parties in the suit are members of one family. The 2nd, 3rd, 4th and 5th Plaintiffs are children of the 1st Plaintiff and 1st Defendant.
2. The subject matter of the suit is a parcel of land known as North Maragoli/Kisatiru/2215 (the suit land) which the Plaintiffs claim was their ancestral land but registered in the name of the 1st Defendant in their trust and for their benefit.
3. The complaint of the Plaintiffs is that they discovered that the suit land had been secretly, irregularly and fraudulently sold by the 1st Defendant to the 2nd Defendant on 23rd December, 2021. That the 2nd Defendant was threatening to evict them from the suit land.

The Plaintiffs therefore sought for orders that;



- a. title in respect of L.R. parcel number North Maragoli/Kisatiru/2215 in the name of Gideon Lumadede Muguheli be cancelled forthwith and the same be reverted to the name of Elam Ezavita Matanye to hold in trust for the Plaintiffs and/or in the alternative, the same be cancelled and be registered in the names of the Plaintiffs.
 - b. Permanent injunction do issue restraining the Defendants whether acting by themselves or through their employees, servants or any other person purporting to act on their instructions from interfering with the Plaintiffs' use and occupation of L.R. NO. North Maragoli/Kisatiru/2215 and be further restrained from destroying, cutting, demolishing or in any other manner dealing with L.R. NO. North Maragoli/Kisatiru/2215.
 - c. Costs of the suit.
 - d. Any other or further relief the court deems just and fit to grant.
4. In response to the Plaintiffs' claim the 2nd Defendant filed a defence and counterclaim dated 2nd October, 2024. He denied the Plaintiff's claim and vide the counterclaim sought for an order of eviction against the Plaintiffs, their agents and any person acting from their authority, an order for demolition of the structures on the suit land with the assistance and supervision of the O.C.S Chavakali police station and costs of the suit.
 5. The 1st Defendant did not file any response to the claim in spite of being given opportunity.

The Evidence

6. Four witnesses testified on behalf of the Plaintiffs. PW1 was the 1st plaintiff who testified that the suit land was family land and that she did not sign land sale agreement for sale of the land. PW2 and PW3 were the 5th and 2nd plaintiffs respectively. They denied knowledge of sale of the suit land. PW4 the father of the 1st defendant and original owner of the suit land testified that he was surprised that the 1st Defendant had sold the land and that he did not know that Elam had sold the land where his family resides.

The 1st Defendant adduced no evidence.

7. The 2nd Defendant testified as DW1. He stated vide his witness statement that he is at all material times the registered owner of the suit land being a bona fide purchaser. That he is a neighbour of the 1st Defendant and the Plaintiffs whom he has known since he was born in 1962. That due to the closeness and after doing due diligence, he entered into a land sale agreement with the 1st Defendant vide which he bought the land. That the plaintiffs and the 1st Defendant have several parcels of land. That the plaintiffs had encroached onto the suit land and denied him access to the same yet he had invested heavily in purchasing the land.
8. DW2 a younger brother of the 2nd defendant testified that he witnessed the sale. That the 1st plaintiff was present with her husband during the sale. On cross examination he confirmed that the 1st plaintiff stays on the land with her family and PW4.

Submissions

9. At the close of the evidence, the parties filed written submissions on the case. Written submissions dated 10th March 2025 by the firm of Chitwah & Co. Advocates were filed on behalf of the Plaintiff.
No submissions were filed on behalf of the 1st Defendant.



10. Written submissions dated 5th March, 2025 were filed on behalf of the 2nd Defendant by the firm of Lugadiru & Company Advocates.

Issues for Determination

11. From the pleadings, evidence and the written submissions filed, the following emerge as the issues for determination;
 - a. Whether or not the suit land was ancestral land and whether the 1st Defendant held the land in trust for the plaintiffs.
 - b. Whether or not the sale and transfer of the suit land by the 1st Defendant to the 2nd Defendant was fraudulent and irregular.
 - c. Whether or not the Plaintiffs are entitled to the relief sought in the plaint.
 - d. Whether or not the Defendant is entitled to the relief sought in the counterclaim.
 - e. Costs of the suit.

Analysis and determination

12. The first issue for determination is whether or not the suit land is ancestral land and whether the 1st Defendant held the land in trust for the plaintiffs.
13. The Plaintiffs pleaded in the plaint that the suit land emanated from the original L.R. Parcel No. North Maragoli/Kisatiru/2198 belonging to the 1st Defendant's father by the name of Andrew Matanyie Losega who testified herein as PW4. The 1st Plaintiff who testified as PW1 stated in her witness statement that she got married to the 1st Defendant in the year 1996 and that together they were staying on the suit land on which they constructed their home where she resides on the lower part. The 1st Plaintiff stated further that she stays on the land with her family. On cross-examination, she stated that when she got married in the year 1994, she found the 2nd Defendant using a section of the suit land.
14. PW2 and PW3 testified that they had been staying on the suit land since they were born. PW4 was the father of the 1st Defendant, father-in-law of the 1st Plaintiff and grandfather of the rest of the Plaintiffs. He testified that the suit land is a sub-division of land parcel number North Maragoli/Kisatiru/2198 which belonged to him and which he sub-divided amongst his three sons.
15. The 2nd Defendant vide paragraph 9 of his defence and counterclaim denied that the suit land was ancestral land. He also denied that the land was registered in the name of the 1st Defendant in trust for the Plaintiffs.
16. It is clear from the evidence that the land originally belonged to PW4 who gave it to the 1st Defendant as his son. Certificate of official search produced as exhibit D.1 dated 9th August, 2021 shows that the suit land measuring 0.21Ha was as at that date registered in the name of PW4. The search further shows that the land was a sub-division of parcel number 2198. There is no doubt that the suit land is ancestral land having been passed down from the 1st defendant's father, it is expected that the 1st defendant could hold it and pass it down to the 2nd to 6th plaintiffs under the concept of intergenerational trust. Under section 28 of the [Land Registration Act](#) customary trust is an overriding interest to which registered land is subject.
17. In *Isack Kieba M' inanga vs Isaya M 'Lintari & another* [2018]eKLR the Supreme Court held that in determining the existence of a customary trust what is important is the nature of the holding of the



- land and the intention of the parties. That if the holding is for the benefit of the other members of the family then a customary trust would be presumed to have been created in favour of such members.
18. None of the parties disputed that the suit land belonged to PW4 and was passed down to the 1st Defendant as the son. PW1 lives on the land where the 1st defendant settled her upon marriage. The other Plaintiffs, PW4 and the mother of the 1st Defendant live on the suit land according to the testimony of PW1.
 19. I find that the land was ancestral land which the 1st Defendant inherited from his father and to which the Plaintiffs had a beneficial interest. The 1st Defendant held the land in trust for the Plaintiffs by reason of the land being ancestral land.
 20. The next issue for determination is whether or not the sale of the suit land to the 2nd Defendant by the 1st Defendant was fraudulent
 21. The Plaintiffs pleaded in paragraph 11 of the plaint that the sale of the suit land was secret, irregular and fraudulent. The particulars of fraud and irregularities are pleaded thereunder as;
 - a. Secretly disposing of L.R.NO. North Maragoli/Kisatiru/2215 to the 2nd Defendant by the 1st Defendant.
 - b. Relocating to Nandi County after disposal of the said land and without the knowledge of the Plaintiffs.
 - c. Forging the 1st Plaintiff's signature on the sale agreement and their identity cards.
 - d. Transferring the said parcel to the 2nd Defendant without first obtaining family or spousal consent as required by law.
 22. PW1 testified that she was not aware of any sale agreement till when the 2nd Defendant tried to take possession of the suit land. That she was surprised to learn that her identity card number appears in the sale agreement and a signature with the initial of "P.M.". That the said signature is not hers.
 23. The 1st Defendant filed no defence and evidence in response to the claim.
 24. The 2nd Defendant denied that he engaged in fraudulent acts. He pleaded in paragraph 16 of the Defence and counterclaim that he entered into the agreement with the 1st Defendant after doing due diligence and in the presence of the Plaintiff. He produced the land sale agreement dated 12th August 2021, title deed and green card (copy of register) in respect of the suit. It is clear from the green card that as at the date of the sale agreement the suit land was still registered in the name of the father of the 1st defendant. The 1st plaintiff disowned the signature on the sale agreement. The 1st Defendant did not testify to explain what transpired.
 25. To the extent that the land was ancestral land and held in trust for the plaintiffs and to the extent that the PW4 who was the registered owner as at the time of sale was not informed or involved in the sale, the sale and transfer was fraudulent.
 26. The next issue is whether the plaintiffs are entitled to the relief sought in the plaint.
 27. The relief sought in the plaint is cancellation of the title held by the 2nd Defendant, permanent injunction and costs. Having determined that there existed a customary trust in favour of the plaintiffs to which the suit land was subject and having found that the 1st Defendant sold the land secretly without the involvement or consent of the plaintiffs and PW4, the court finds that the plaintiffs are entitled to the relief sought in the plaint.



28. On whether or not the 2nd Defendant is entitled to the relief sought in the counter claim, the court has found that the sale of the suit land to the 2nd Defendant in disregard of the customary trust that the land was subject to was fraudulent. The 2nd Defendant claimed to have been a bona fide purchaser for value without notice. However, it emerged from the evidence that he is a neighbour of the Plaintiffs and the 1st Defendant. That he has known the family of the 1st plaintiff and the 1st Defendant since his childhood. His evidence and the evidence of DW2 confirmed that all the plaintiffs have their home on the suit land where they live yet he proceeded to buy the land without their involvement. He now seeks their eviction from their home and demolition of the home. This will render the plaintiffs homeless. Although the 2nd Defendant claimed that the plaintiffs have many parcels of land, he did not prove this. The court finds that the 2nd Defendant is not entitled to the relief sought in the counterclaim. The 2nd Defendant has recourse to the 1st defendant for refund of monies he may have paid to him or other appropriate relief.
29. Regarding costs, taking all the circumstances of the case into account it is in the interest of justice that each party do bear own costs of the suit and counter claim.

Conclusion

30. The upshot is that the court finds that the Plaintiffs have proved their case on a balance of probabilities and that the counterclaim has not been proved. The counter claim is hereby dismissed. Judgement is hereby entered in favour of the plaintiffs for: -
- a. title in respect of L.R. parcel number North Maragoli/Kisatiru/2215 in the name of Gideon Lumadede Muguheli be cancelled forthwith and the same be reverted to the name of Elam Ezavita Matanye to hold in trust for the Plaintiffs.
 - b. An order of permanent injunction restraining the Defendants whether acting by themselves or through their employees, servants or any other person purporting to act on their instructions from interfering with the Plaintiffs' use and occupation of L.R. NO.North Maragoli/Kisatiru/2215 and from destroying, cutting, demolishing or in any other manner dealing with L.R. NO.North Maragoli/Kisatiru/2215.
 - c. Each party to bear own costs of the suit and counterclaim.
- Orders accordingly.

JUDGEMENT DATED AND SIGNED AT VIHIGA AND DELIVERED THIS 12TH DAY OF JUNE, 2025 VIRTUALLY THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE.

In the presence of:

Ajevi- Court Assistant.

No appearance for the Plaintiff

1st Defendant in person.

Lugadiru for the 2nd Defendant

