



New Oshwal Distributors Limited v Moseti & 2 others (Environment and Land Case E001 of 2022) [2026] KEELC 1326 (KLR) (4 March 2026) (Judgment)

Neutral citation: [2026] KEELC 1326 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE E001 OF 2022**

M SILA, J

MARCH 4, 2026

BETWEEN

NEW OSHWAL DISTRIBUTORS LIMITED PLAINTIFF

AND

ALOYS MATAYA MOSETI 1ST DEFENDANT

LAND REGISTRAR, KISII 2ND DEFENDANT

HON. ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

(Suit where plaintiff and 1st defendant claim to have title to the same land; 1st defendant purporting that his mother owned the land and transferred it to him; 1st defendant alluding that his mother had a lease issued to her in 1972; purported lease found not to be genuine inter alia as it was purportedly issued by a person who was not the Commissioner of Lands at the time; title of plaintiff upheld and title of the 1st defendant nullified)

1. Through the case Kisii ELC No. 430 of 2015, commenced vide a plaint filed on 23 September 2015, and amended on 28 January 2020, Aloys Mataya Moseti (Mr. Mataya), the 1st defendant herein, sued Julius Ondieki Abuga (Mr. Abuga) and New Oshwal Distributors Limited (the plaintiff herein) as defendants. In his plaint, Mr. Mataya sought a declaration that he is the rightful proprietor of the land parcel Kisii Municipality/Block III/177; a declaration that the transfer of the suit property by Mr. Abuga to New Oshwal Distributors Limited (New Oshwal) was fraudulent, null and void; an order cancelling the title of New Oshwal; a permanent injunction; general damages for trespass; interest and costs. Mr. Abuga filed a statement of defence on 19 February 2016, wherein he pleaded that the documents of title of Mr. Mataya were a forgery. He pleaded that in fact Mr. Mataya was his tenant in the premises. He did plead that on 12 May 2015 he sold the suit property to New Oshwal and issued termination notices to the tenants therein and these tenants, including Mr. Mataya, filed cases before



- the Business Premises Rent Tribunal (BPRT). He wondered how Mr. Mataya ambulated from being a tenant to the owner of the premises.
2. New Oshwal Distributors Limited filed a suit of their own, which is this suit i.e Kisii ELC No. 1 of 2022. She has sued Aloys Mataya Mosei, the Kisii Land Registrar, and the Attorney General as defendants. The two suits i.e that suit filed by Mr. Mataya and this suit filed by New Oshwal were consolidated for hearing. However, in the course of hearing of the suits, Mr. Mataya opted to withdraw his suit Kisii ELC No. 430 of 2015 thus leaving only the suit by New Oshwal for determination.
 3. In her plaint, New Oshwal, pleaded that she acquired the suit property after purchasing it from Mr. Abuga. She contended that the title of Mr. Mataya is fraudulent as he could not have legally acquired it as he claimed. She averred that Mr. Mataya claims that he purchased the suit property from his mother, Sabina Kenyuri Mosei, which, according to the plaintiff, is a false claim, because Sabina was never an owner of the suit property. In her plaint, New Oshwal has asked for orders for a declaration that the title of Mr. Mataya was acquired through fraud; a declaration that she is the rightful owner; an order to cancel the title of Mr. Mataya and for rectification of the register; a permanent injunction to restrain Mr. Mataya from the suit property; eviction; general and exemplary damages; mesne profits; costs and interest.
 4. PW -1 was Joel Ombuna Mosei. He is an older brother of Mr. Mataya. His evidence was that their mother, Sabina, never owned the suit land. He testified that their mother had no plot in town and the only land she had was the land in the village. He testified that between 1972 (when it is claimed that she commenced ownership of the plot) and 2008 (when Mr. Aloys Mataya claims to have commenced ownership) their mother was just at home. He testified that she had no capacity to own a plot in town and could not even be able to afford the land rates. He testified that they are nine siblings and they would have known if their mother owned a plot in town. He testified that he used to be a Councillor in Kisii Municipality and the Chairman of the Town Planning Committee thus aware of who owned the plot. He testified that the plot was owned initially by five persons popularly known as 'The Big Five.' He approached them in 2004 so that he could lease the plot and put up a kiosk. They entered into a lease agreement before M/s Ochillo & Company Advocates, dated 25 August 2004 which was signed by himself and Mr. Mataya as tenants. The rent was Kshs. 12,000/= per month. He stated that it was Mr. Mataya who used to pay the rent as he had left him to run a hotel business on the plot. After the land was sold, they were given notice to vacate and Mr. Mataya filed the suit BPRT Case No. 41 of 2015, which case was dismissed. Cross-examined, he denied that he recorded a statement at the DCI offices wherein he stated that the plot was previously owned by their mother.
 5. PW -2 was Haria Kalpesh Nemchandbhai, a manager of New Oshwal. He testified that the company bought the suit land for Kshs. 26,000,000/= from Mr. Abuga after establishing its ownership, and transfer was effected into the company's name. When they went to take possession, they found Mr. Mataya on the land, operating a hotel, and he claimed that the land belongs to him. They lodged a complaint with the Department of Criminal Investigations (DCI) who initiated an investigation.
 6. With that evidence the plaintiff closed her case.
 7. DW-1 was Newton Miriti a police officer attached to the Kisii DCI office. He testified that a complaint was made by New Oshwal on allegation that Mr. Mataya had forged documents of title. An inquiry file was opened, but later closed on the direction of the DPP, who formed the opinion that no offence was disclosed.
 8. DW-2 was Mr. Mataya himself and he asserted to be the rightful owner of the suit property. He relied on a witness statement where he inter alia stated that the suit land was owned by his mother, Sabina. He stated that he became the registered proprietor on 19 June 2008 after acquiring the property from his



now late mother. He stated that his mother voluntarily transferred the title to him. He took possession and rented out the premises. He stated that in October 2008, Mr. Abuga approached him claiming that he owns the land. He later sent a relative called Orina with a request that they meet at Kisii Hotel. After a lengthy discussion involving five people, they reached a conclusion that he pays to Mr. Abuga the sum of Kshs. 10,000/= per month as they pursue the issue of double registration. He stated that out of greed, Mr. Abuga decided to use the BPRT to treat his tenants as his and have them evicted. He filed a reference at the BPRT to protect his tenants and himself from the fraudulent acts of Mr. Abuga. Subsequently he filed the suit Kisii ELC No. 430 of 2015 against Mr. Abuga. Mr. Abuga died in 2023. He denied having been a tenant of Mr. Abuga. He was aware of an inquiry by the DCI where his brother Joel wrote a statement. He stated that he is the one who has been in possession notwithstanding that the property was destroyed by a mysterious fire on 15 February 2022. He embarked on repairs to the same.

9. Cross-examined, he claimed that his brother Joel (PW-1) had given false testimony though he was not going to call any of his other siblings to contradict his evidence. A gazette notice No. 1571 of 16 May 1975, indicating when James Raymond Njenga was appointed Commissioner of Lands was put to him and his response was that it is that office which can answer to his appointment. He acknowledged that he filed suit at the BPRT, after he was issued with a tenancy notice by Mr. Abuga, and he also affirmed the order dismissing his suit. He filed no appeal against that order.
10. With that evidence he closed his case.
11. The State Law office for the 2nd and 3rd defendants did not call any witness, with counsel stating that all the evidence relating to the two titles is on record.
12. I have considered the pleadings, the evidence, and the submissions on record.
13. This is a case where two parties claim title to the same land. It is therefore necessary to trace the root of each title for it is the title with a genuine root that is to be upheld. I have carefully analysed the evidence, particularly the documentary evidence adduced by both parties in support of their titles. I opt to start by analysing the documents of Mr. Mataya, the 1st defendant. He of course claims to have acquired title from Sabina and asserts that Sabina held good title to the suit land.
14. I have looked at the purported documents of title of Sabina. They commence with a lease dated 20 December 1972. That lease is allegedly issued by James Raymond Njenga as Commissioner of Lands. Now, it cannot be that this lease is genuine, because James Raymond Njenga was not the Commissioner of Lands in 1972. James Raymond Njenga was appointed Commissioner of Lands vide Gazette Notice No. 1571 of 16 May 1975. The Gazette Notice states clearly that he was appointed Commissioner of Lands with effect from 1 April 1975.
15. Even the precursor to that lease, which is the allotment letter, is a dubious one. It is one dated 4 June 1971 and purports to allot to Sabina an unsurveyed commercial plot in Kisii Town. There is no Part Development Plan (PDP) annexed to that allotment letter and the plot being purportedly allotted is not identified at all. The back of that allotment letter provides that the allotting authority is 'Government' which is unusual, for what the 1st defendant purports to hold is a leasehold title from the Gusii County Council. If it is a lease from the Gusii County Council, then the allotting authority cannot be 'Government' but the Gusii County Council. A genuine allotment letter ought to have indicated the Gusii County Council as the allotting authority and it would be clear, vide a PDP, what plot was being allotted. There would also be proof of payment of the monies in the allotment letter of which there is none in this instance.



16. I have no doubt whatsoever that the suit plot was never allotted to Sabina and that Sabina never had title to the suit land. This is in fact supported by PW-1 (Joel) who is a brother of Mr. Mataya and a son of Sabina. He painted a picture of Sabina as being an ordinary lady living in the village; one that had no capacity to own a plot in town, nor even maintain one. In other words she was a simple peasant farmer in the village. If indeed the property was owned by Sabina, one would have expected Mr. Mataya to call another of his siblings to challenge what Joel stated, but Mr. Mataya did not muster the courage to call any.
17. Further to the above, there is significant evidence of Mr. Mataya merely being a tenant in the premises. The manner in which he became tenant was yet again elaborated by PW-1. The tenancy agreement was produced as an exhibit. Mr. Mataya himself filed a suit before the BPRT to contest a tenancy notice and his case was dismissed. It is patently clear that Mr. Mataya was no more than a tenant in the premises but at some point he conjured up a scheme to fraudulently acquire title to the suit land.
18. I have looked at the title of the plaintiff and I see no issue with it.
19. It is therefore my conclusion and finding that the title of Mr. Aloys Mataya Moseti to the land parcel Kisii Municipality/Block III/177 was acquired fraudulently, unlawfully, and through a corrupt scheme. I have no doubt that it is him who was the architect of the corrupt scheme. He pretended that his mother Sabina had title to the suit land when in fact she did not, and purported that she had transferred the title to him. It is sad that he has dragged the good name of his late mother through the soil in his nefarious scheme. His title is for cancellation and I proceed to order the Land Registrar, Kisii to expunge all records purporting that there was ever a title issued to Sabina Kemunto and subsequently to Mr. Aloys Mataya Moseti. I order the Land Registrar, Kisii, to rectify his/her records to reflect the title of the plaintiff, that is New Oshwal Distributors Limited, as the genuine title holder of the land parcel Kisii Municipality/Block III/177. Having no legitimate interest in the suit property, Mr. Mataya must vacate it immediately. I give him strictly 14 to give vacant possession and in default he be forcefully evicted. After lapse of these 14 days, he is permanently restrained from entering, being upon, or in any way interfering with the suit property, either by himself, or through his agents, or anyone claiming under his purported title. He had no right to be in the premises purporting to be the registered proprietor and he is therefore liable to pay damages to the plaintiff for trespass. Given the nature of the premises, I enter judgment in favour of New Oshwal Distributors Limited, against the 1st defendant, Aloys Mataya Moseti, for the sum of Kshs. 2,000,000/= (Kshs. 2 million) as general damages for trespass, the same to attract interest at court rates from the date of this judgment. There is a claim for mesne profits but no evidence was tendered to support it and I therefore make no award under this head.
20. The plaintiff shall also have the costs of this suit payable by the 1st defendant.
21. Judgment accordingly.

DATED AND DELIVERED THIS 4TH DAY OF MARCH 2026

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of:

Ms. Kebungo for the plaintiff instructed by M/s Nyamurongi & Company Advocates

Ms. Bosire for the 1st defendant instructed by M/s Bosire Gichana & Company Advocates



N/A for the 2nd & 3rd defendants represented by the State Law Office
Court Assistant – Michael Oyuko

