

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ELCLC No. E005 OF 2024

NICHOLAS GISEMBA SITINO
PLAINTIFF

VERSUS

NAHASHON KAMAU NDANYA
1ST DEFENDANT
JANE BOCHABERI ONDIEKI
2ND DEFENDANT

JUDGMENT

1. The Plaintiff moved the Court through Complaint dated 8th March 2024 in which he averred that at all material times, he was in occupation of the parcel known as North Mugirango/Bonyarorande/74 (suit property) which was initially registered in the name of his uncle Nyabate Nyatanchi. That his said uncle died sometime in the year 1984 leaving a brother known as Thomas Sese Nyatanchi who was the Plaintiff's father in occupation of the suit property.
2. The Plaintiff averred that upon demise of Nyabate Nyatanchi, one John Nyang'au Nyabate (since deceased) applied for and obtained grant of letters of administration in respect of the estate of Nyabate Nyatanchi (deceased) in Kisii Succession Cause No. 281 of 2001 in the absence of Thomas Sese Nyatanchi who upon learning of the development, filed

summons for revocation of the grant but died before the summons were heard and that the summons were pending as of the date of filing of this suit.

3. The Plaintiff also averred that John Nyang'au Nyabate used the grant to file a case in the Land Disputes Tribunal at Ekerenyo which case was heard and determined on 8th December 2004 in the absence of Thomas Sese Nyatanchi. That the petitioner in Kisii Succession Cause No. 281 of 2001 also passed away and that when his wives sought letters of administration they included the suit property as part of the estate upon which grant was confirmed in the names of the Defendants herein.
4. The Plaintiff further averred that the Defendants threatened to evict him and his siblings from the suit property. Consequently, the Plaintiff prayed for judgment against the Defendants for:
 - a. *A declaration that the decision of the Ekerenyo Land Disputes Tribunal Board a non-existent body mad (sic) on 8th December 2004 is illegal, null and void.*
 - b. *A declaration that the Plaintiff is the lawful and bona fide owner of suit parcel of land No. North Mugirango/Bonyarorande/74.*
 - c. *A permanent injunction restraining the Defendant by either themselves, agents, servants and/or anyone claiming under the Defendants from entering into, re-*

entering, trespassing onto, building, interfering with and/or in any other manner dealing with the suit land No. North Mugirango/Bonyarorande/74.

d. Costs of this suit be borne by the Defendant.

e. Such further and/or other as the Honourable Court may deem fit and expedient so to grant.

5. The Defendants filed a joint statement of defence dated 2nd April 2024 through which they denied that the Plaintiff had been in occupation of the suit property and that Nyabate Nyatanchi left it in possession of Sese Nyatanchi. They averred that Nyabate Nyatanchi left it in possession of John Nyabate who in turn left in their possession with other beneficiaries and that they obtained title upon completion of succession.
6. At the hearing, Nicholas Gisemba Sitino (PW1) adopted his witness statement dated 8th March 2024 and produced copies of the documents annexed to his lists of documents dated 8th March 2024 and 12th July 2024 as his exhibits.
7. He stated that he had lived on the suit property together with his siblings and their families for thirty years and that his father's name was Thomas Sese Nyatanchi. That the registered owner of the suit property was his late uncle Nyabate Nyatanchi who died in 1984 leaving PW1's father living on the suit property.

8. He added when Nyabate Nyatanchi died, his uncle John Nyang'au Nyabate (who is also since deceased) obtained letters of administration in respect of the estate of Nyabate Nyatanchi through Kisii Succession Cause No. 281 of 2001. That John Nyang'au Nyabate used the grant to file a case in the Land Dispute Tribunal at Ekerenyo, which was heard and determined in the absence of Thomas Sese Nyatanchi on 8th December 2004.
9. PW1 further stated that Thomas Sese Nyatanchi sought revocation of the grant in Kisii Succession Cause No. 281 of 2001 but died before the application for revocation was determined and that the Petitioner in Kisii Succession Cause No. 281 of 2001 also died. That when the wives of the said petitioner sought letters of administration they included the suit property as part of the state upon which grant was confirmed in the names of the Defendants herein without the Defendants disclosing pendency of the application for revocation. He added that the Defendants had threatened to evict him together with his siblings and their families.
10. PW1 went on to testify that his application for revocation of grant was dismissed and that his father never appealed against the decision of the Land Dispute Tribunal at Ekerenyo.
11. Dismas Abuga (PW2) adopted his statement dated 14th June 2024 in which he stated that he was the eldest son of Thomas Sese Nyatanchi and an elder brother to the Plaintiff. That the

suit property was registered in the name of Nyabate Nyatanchi who was his uncle and who was unmarried and childless until death. That the suit property was in possession of Thomas Sese Nyatanchi and that in 1998, John Nyang'au Ndanya started making claims that he was a son to Nyabate Nyatanchi. He added that John Nyang'au lied to fraudulently acquire the suit property.

12. Mark Orenge Masenya (PW3) adopted his statement dated 14th June 2024 and stated that the Plaintiff is his cousin who was born on the suit property in 1955. He stated that when Nyabate Nyatanchi died he left his brother Thomas Sese and about thirty people on the suit property. He added that John Nyang'au Ndanya had never lived on the suit property but claimed it in 1998 without settling thereon. He also stated that he did not know how John Nyang'au Ndanya or the Plaintiff got title to the suit property.

13. Lastly, Nelson Nyabuku Nyabwari (PW4) adopted his statement dated 14th June 2024 and stated that the Plaintiff is a son to Thomas Sese Nyatanchi who was his brother. That when Nyabate Nyatanchi died he left Sese Nyatanchi his parcel of land and that as of the date of his testimony, it was the Plaintiff and his mother who were living on the suit property. He added that he did not know how the First Defendant got title to the suit property.

14. The Plaintiff's case was then closed.

15. The First Defendant testified as DW1 and adopted his witness statement dated 2nd April 2024. He also produced documents in his lists of documents dated 2nd April 2024 and 2nd July 2024. He stated in the statement that he is a brother to John Nyangau Nyabate (deceased) who was holding the suit property in trust. That when John Nyangau Nyabate died, he and the Second Defendant who is the widow of John Nyangau Nyabate were appointed administrators of his estate in Nyamira Chief Magistrate's Court Succession Cause Number E118 of 2023, and that they inherited the suit property.
16. DW1 further stated that the suit property was initially owned by Nyabate Nyatanchi who was their father and that in the year 2006, the Plaintiff started threatening Nyabate Nyatachi's family and forcefully occupied the suit property. That as a result, DW1's family was forced to seek shelter elsewhere and that the Plaintiff was found guilty and imprisoned through Nyamira Chief Magistrate's Criminal Case Number 119 of 2013.
17. DW1 added that the Plaintiff inherited his father's parcel of land and they had various parcels registered under their names including North Mugirango/Bonyarorande/71, 75 and 79. That following the succession proceedings in Nyamira Chief Magistrate's Court Succession Cause Number E118 of 2023, he (DW1) acquired title to the suit property for himself and 10 other beneficiaries.

18.DW1 also stated that neither the Plaintiff nor the Plaintiff's father appealed against the award of the Land Disputes Tribunal and that the award was adopted through Nyamira Chief Magistrate Misc. App. 35 of 2005. He added that the suit property was the only parcel of land that they had for all beneficiaries and if the Court did not intervene, then all other beneficiaries would be robbed of their right.

19.He went on to testify that Ndanya was not his surname, but he only adopted it for purposes of securing a job. That his father's name was Nyabate and his mother was Hannah Moraa Nyabate. That his mother's first husband was called Ndanya and that his father Nyabate bought for his mother the suit property. That his father's brother and Sese burnt his mother's house and chased her away in the 60s while his father was still alive. That since then, they only went to cultivate the suit property but never lived on it.

20.He further stated that his brother John Nyangau Nyabate obtained the suit property through the tribunal and that he (DW1) obtained title through succession after the death of his brother. He added that he is holding the suit property on his own behalf and on behalf of ten children.

21.Samwel Olesi Kamau (DW2) adopted his statement dated 2nd July 2024. He stated that he was the First Defendant's son and that the First Defendant and John Nyang'au Nyabate were sons to Nyabate Nyatanchi. He went on to testify that his father and

the Second Defendant were appointed co-administrators of the estate of John Nyang'au Nyabate. He also stated that he was 38 years old as of the date of his testimony and that his grandfather died before he was born.

22.The Defence case was then closed.

23.Thereafter, parties filed and exchanged written submissions. The Plaintiff filed submissions dated 5th November 2025 and supplementary submissions dated 20th January 2026 while the Defendants filed submissions dated 10th November 2025.

24.I have carefully considered the pleadings, the evidence and the submissions. The issues that arise for determination are whether the Court has jurisdiction, whether the Plaintiff has proved his case and whether the reliefs sought are available.

25.Jurisdiction, as has often been restated by the Courts, is everything. It is the entry point in any matter that a Court is called upon to determine. It is the very life and soul of any proceedings without which the proceedings come to a certain end. See **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd [1989] eKLR** and **Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR**.

26.Proceedings filed or conducted without jurisdiction are dead on arrival and cannot be remedied. See **Phoenix of E.A. Assurance Company Limited v S. M. Thiga t/a**

Newspaper Service [2019] eKLR. The Court of Appeal restated the position in **National Social Security Fund Board of Trustees vs. Kenya Tea Growers Association & 14 Others [2023] KECA 80 (KLR)** thus:

Jurisdiction, a mantra in adjudication connotes the authority or power of a court to determine a dispute submitted to it by contending parties in any proceeding. A Court of law is invested with jurisdiction to hear a matter when: (a) it is properly constituted as regards numbers and qualifications of members of the bench, and no member is disqualified for one reason or another; (b) the subject matter of the case is within its jurisdiction, and there is no feature in the case which prevents the Court from exercising its jurisdiction; and, (c) the case comes before the Court initiated by due process of law, and upon fulfilment of any condition precedent to the exercise of jurisdiction. The three ingredients must co-exist in order to infuse jurisdiction in a Court. Where a Court is drained of the jurisdiction to entertain a matter, the proceedings flowing from it, no matter the quantum of diligence, dexterity, artistry, sophistry, transparency and objectivity injected

into it, will be marooned in the intractable web of nullity.

27. There is no dispute that the First Defendant is the registered proprietor of the suit property. According to the certified copy of the register which was produced in evidence, the First Defendant was registered as proprietor for himself and in trust for ten other persons on 9th February 2024 pursuant to a grant issued in Nyamira CM Succession Cause No. E118 of 2023.

28. The history of proprietorship of the suit property is largely uncontested. According to the Plaintiff, John Nyang'au Nyabate (since deceased) obtained title to the suit property pursuant to a grant issued in Kisii Succession Cause No. 281 of 2001 and an award of the Land Disputes Tribunal at Ekerenyo delivered on 8th December 2004. The register shows that John Nyang'au Nyabate was registered as proprietor on 5th May 2001 and that the First Defendant became registered proprietor through transmission on 9th February 2024, as stated above.

29. The Plaintiff was clear in his testimony that the grant issued in Kisii Succession Cause No. 281 of 2001 has not been revoked. Equally, there is nothing to show that the grant issued in Nyamira CM Succession Cause No. E118 of 2023 has ever been revoked. They remain, until revoked, valid orders issued by Courts exercising jurisdiction.

30. The parties have dwelt a lot on the relationship between the First Defendant and previous proprietors and their supposed capacity to inherit. In the face of confirmed grants and resultant transmission, challenges to the grants can only be raised before the succession courts.

31. The First Defendant testified that the award of the Land Disputes Tribunal was not appealed against and that the award was adopted by the Subordinate Court. He produced a copy of the adoption order made on 28th March 2006 in Nyamira Principal Magistrate's Court Misc. Civil Application No. 34 of 2005 and a decree issued on 7th April 2006. The Plaintiff has not shown that the award and the decree were ever set aside or nullified. To that extent, they remain valid and are not liable to be challenged save in the manner provided in law.

32. Faced with similar circumstances in **Kiragu v Gicheha (Civil Appeal 138 of 2018) [2024] KECA 61 (KLR) (2 February 2024) (Judgment)**, the Court of Appeal held as follows:

As we alluded to earlier, no appeal was lodged against the adoption of the decision of the Provincial Lands Appeals Tribunal on 13th September 2011 as a judgment of the Court and as such the said adoption confirmed the final determination of all the issues that were before the District Tribunal and the Appeals Tribunal.

Suffice to state that the said judgment is still legally valid. ...

In our view it matters not that the land Dispute Tribunal and the Provincial Land Appeals Tribunal did not have jurisdiction. Of crucial importance is that the award of the Provincial Land Appeals Tribunal was adopted as an order of the court and was thereafter not challenged. ...

From the circumstances of this case, we fully adopt the reasoning taken by Obaga J in the above cited case. We are of the considered view that the learned judge fell into grave error when she delved into the issue of whether the Land Disputes District Tribunal had the jurisdiction to deal with the matter before it which issue was clearly not before her and more so when the decision of the Provincial Land Appeals Tribunal had not been appealed against and having been adopted as a judgment of the Court which judgment again was not appealed against.

33. This case is neither an appeal against the award of the tribunal nor a valid challenge of the order made by the Subordinate Court on 28th March 2006 and the decree issued on 7th April 2006. A valid challenge cannot be by way of a declaration as is sought at prayer (a) of the Plaint. The **Land Disputes**

Tribunals Act (repealed) provided for an appeal to the Provincial Land Disputes Appeals Committee and a subsequent appeal to the High Court. Alternatively, the Tribunal's award and its adoption could be challenged through proceedings seeking to quash them. The Plaintiff cannot lawfully seek a declaration that the decision of the Tribunal was null and void in proceedings commenced through Plaintiff.

34. In view of the foregoing, I find and hold that this Court lacks jurisdiction to grant the declaration sought at prayer (a) of the Plaintiff.

35. The rest of the prayers are consequent upon the Plaintiff successfully challenging the First Defendant's title. In the absence of a valid challenge to the First Defendant's title, those prayers have no foundation to support them and remain unproven.

36. In the result, I make the following orders:

a) Prayer (a) of the Plaintiff is struck out for want of jurisdiction.

b) Prayers (b) and (c) of the Plaintiff are dismissed.

c) The Defendants shall have costs of the suit.

Dated, signed, and delivered at Nyamira, this 29th day of April 2026.

D. O. OHUNGO
JUDGE

Delivered in the presence of:

Mr Bosire for the Plaintiff

Mr Nyariki for the Defendants

Court Assistant: B Kerubo