



Oroo (Suing as the Legal Representative of the Estate of Silvanus Oroo – Deceased) v Mwebi & another (Environment and Land Case 8 of 2019) [2025] KEELC 5561 (KLR) (22 July 2025) (Judgment)

Neutral citation: [2025] KEELC 5561 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT AND LAND CASE 8 OF 2019**

M SILA, J

JULY 22, 2025

BETWEEN

**REBECCA KEMUNTO OROO PLAINTIFF
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF SILVANUS
OROO – DECEASED**

AND

**MAGDALENE NYABOKE MWEBI 1ST DEFENDANT
KISII COUNTY GOVERNMENT 2ND DEFENDANT**

JUDGMENT

1. The suit herein was commenced through a plaint filed on 12 March 2019. The plaintiff has sued as the legal representative of the estate of Silvanus Oroo (deceased). It is her case that the deceased owned the Plot No. 13 Daraja Mbili Market measuring 50 x 100 feet vide Minute No. GCC/TMC/Min. No. 20/74 (B) (6) of 25/9/74. She pleaded that vide Minute 4/1997 and 26/2/1997 the deceased sold and transferred a portion measuring 25 x 100 feet to one Jane Moraa Orangi and remained with the other portion measuring 25 x 100 feet. She contended that the defendants colluded to fraudulently create a new registration number for the property registered as Plot No. 13A Daraja Mbili Market which was subdivided to produce Plot No. 13A Sec B/9A and 13A Sec B/9B in name of Jane Orangi and Silvanus Oroo each measuring 25 x 100 feet and introduced a plot 13B which was not in the plan, in name of the 1st defendant. She pleaded that as a result of the creation of Plot 13B the 1st defendant has taken possession of the property of the deceased. In the plaint, she seeks the following orders :
 - a. A declaration that the deceased Silvanus Oroo was the original allottee and registered owner of Plot No. 13 Daraja Mbili Market measuring 50 x 100 feet vide Minute No. GCC/TMC/MIN. No. 20/74 (B) (6) of 25/9/74.



- b. A declaration that upon subdivision of the Plot No. 13 Daraja Mbili Market into two portions each measuring 25 x 100 feet and transfer to Jane Orangi, the deceased remained with a portion measuring 25 x 100 feet registered in the names of Silvanus Oroo and therefore comprised an estate of a deceased person registered as Plot No.13A Sec B/9(B).
 - c. An order compelling the Kisii County Physical Planner to demarcate and alienate a portion measuring 25 x 100 feet out of subdivision of Plot No. 13 on the ground at Daraja Mbili market registered as Plot No. 13A Sec B/9(B).
 - d. A declaration that the creation and registration of Plot No. 13B at Daraja Mbili market in the names of the 1st defendant was irregular, unlawful, null and void and cancellation of the registration.
 - e. An order of permanent injunction restraining the defendants or any person claiming through them from trespassing, occupying, constructing or dealing with Plot No. 13A Sec B/9(B) Daraja Mbili market.
 - f. Costs of the suit.
 - g. Such further relief that the Honourable Court may deem fit and expeditious to grant.
2. The 1st defendant filed defence wherein she pleaded that she and her late husband are the allottees of the plot Daraja Mbili/13 B Section B/9(B). She denied trespassing into the plaintiff's property and pleaded that she is constructing on her property. She asked that the plaintiff's suit be dismissed with costs.
 3. No defence was filed by the 2nd defendant, the County Government of Kisii.
 4. At the early stages of this case, it was thought that the matter could be resolved through a survey report. One was prepared and filed. The court (Onyango J) also took some evidence from one Francis Maranga, who was at the time the Director Land Administration, Kisii County. When I took over the matter, that is the stage the case had reached. The issues appeared to me to be severely contested and I thought it best that the parties prove their case through evidence in the usual manner.
 5. The plaintiff testified and called three witnesses. In her evidence she testified that she is the wife of Silvanus Oroo and administrator of his estate. According to her, the deceased owned the Plot No. 13 measuring 50 x 100 feet. She did not know when her late husband got the plot as she found him owning it when she got married to him. She testified that the plot was used as a carpentry workshop. They sold half of it to Jane Orangi and they remained with the other half measuring 25 x 100 feet. She testified that they dug a foundation but the 1st defendant built on it. She mentioned that there was a time they wished to sell the land and even approached the 1st defendant but she did not have money and the plot was sold to one Juma. She stated that the County Government declined the sale as they had not done succession. She denied that her late husband sold land to one Mecheo or to one Okindo.
 6. Cross-examined by counsel for the 1st defendant, she testified that her husband died in 1996. He denied that he was issued with a Plot Card reading Plot 13A and testified that what he was issued with is a Plot Card for Plot 13 which she did not however have. She was not aware of persons known as Okindo being proprietors of the Plot 13B. She affirmed that she entered into a sale agreement dated 11 May 2009 with one Johnson Juma Omwega, selling the land at Kshs. 350,000/=. Johnson filed a suit against the 1st defendant. She asserted that the only sale was to Jane Orangi for a portion measuring 25 x 100 feet and they remained with the other portion of equal size. She was not aware of a person called John Ombasa Akanga or that he sold the land in dispute to the 1st defendant and her husband Patrick Mwebi. According to her, they sold land to Jane Orangi in 1997. She stated that this is the portion that they



- had a furniture workshop and now has mabati structures. Re-examined, she testified that they divided the plot No.13 into two in 1997. She mentioned that Jane Orangi is using her land and this time she mentioned that where they had a furniture workshop is the land that the 1st defendant has built on.
7. PW – 2 was Haron Nyamache, the Director Land Administration, County Government of Kisii. He carried with him the original minute book relating to allotment of plots. He testified that the Plot No. 13 Daraja Mbili is captured in Minute No. 20/74 in favour of Silvanus Oroo. Under the same Minute, there is subdivision to Plot 13A and 13B respectively in name of Silvanus Oroo and Jane Moraa Orangi. He elaborated that normally the plots were 50 x 100 feet so that if you have it split into ‘A’ and ‘B’ the new sizes would be 25 x 100 feet. He had no record of change of ownership of the plot of Jane Orangi. The Plot Card he had was for Plot No. 13 in name of Silvanus Oroo.
 8. Cross-examined, he confirmed that what he had was the “unaltered” original minute book. He did not agree with a document produced by the plaintiff indicating a transfer for a portion measuring 25 x 100 feet to Jane Orangi vide Minute 4/97 of 26 February 1997. He refuted the Plot Card produced by the plaintiff as P-exhibit 1. He also refuted a document said to be an extract of minutes of 25 April 1974 relied upon by the 1st defendant and signed by one Henry Ogeto. According to him, the extract did not reflect what is in the original minutes. He pointed out that the original minute book shows a subdivision by Silvanus Oroo on 25 April 1974, with Silvanus retaining Plot 13A and Jane Orangi Plot B. He refuted a subdivision (by Silvanus) to Mecheo Okari for the Plot No. 13B. He had a minute on Mecheo Okari which was Minute 22/75 for a meeting held on 13 May 1975. Mecheo was transferring a plot to Clement Okindo, Nathan Okindo, Ngoge Okindo and M. Okindo (hereinafter referred to as ‘the Okindos’) and it was approved. He did not have in his records the various Plot Cards availed by the plaintiff and 1st defendant. He had the market plan for Daraja Mbili which shows Plot No. 13A and 13B. Regarding the Minute 4/97 (mentioned in the plaint as the minute vide which Silvanus transferred half the land to Jane Orangi) he testified that this was for registration of schools, churches and other institutions and had nothing to do with the suit land. He testified further that there was no meeting of 26 February 1997 hence no minutes for this date. He was not privy that both parties claim the plot 13B. In his opinion, the plots are best identified by the elders on the ground and history but not the Planner and Surveyor. He asserted that the Plot No. 13A has never changed hands from Silvanus Oroo. He did not recognize the document identified as list of allottees for Daraja Mbili relied upon by the plaintiff and 1st defendant and stated that the same did not emanate from his office. He could see that the Plot Card bearing the names of Patrick Mwebi and Magdalene Nyaboke Mwebi, for Plot No. 13B, bore Minute 46/89 and explained that there is no record of any meeting having been held on such a day. According to his records the minutes for the year 1989 end at Minute No. 22 and the next record is of 4th May 1990. There was no record of a Minute 46/89. Regarding payment of rates, he testified that there is a lot of fraud on rates and the fact that a person is paying rates should not mean that he owns land.
 9. I questioned him on the Minute 22/1975 showing Mecheo Okari to the four Okindos. He could see that there was a handwriting ‘B’ next to Plot 13 (not typed as the rest of the minutes but handwritten). He thought that this was an attempt to tamper with the original record. He stated that he has not seen any minute transferring land from Jane Orangi to Mecheo Okari. He nevertheless formed the opinion that Jane Orangi transferred to Mecheo Okari. He did not have records of the Plot as 13A Sect B9A or Sec B/9B.
 10. PW – 3 was Daniel Omondi Dianga. His evidence was that he lived on the disputed plot with his parents from 1985 to 2012. They identified the plot to be owned by Silvanus. They left after the plaintiff asked them to vacate. Soon after construction started on the plot the following year. Cross-examined, he testified that he did not know the plot number that they were staying in. He stated that



it was his parents who leased the plot but he however did not have a lease agreement. He claimed to have married while on the suit plot but it was his parents who were paying the rent.

11. PW -4 was Hezron Kebaso Okeiga aged 77 years. He testified that the plot No. 13 was owned by his uncle Silvanus Oroo. He testified that he knew the history of the land; that his uncle sold half of it to Jane Orangi. He testified that Jane Orangi is not on the land sold to her. The plaintiff later sold the land to one Juma who dug a foundation and he later found the plaintiff building on it. His evidence in cross-examination was pretty muddled. Initially he testified that the 1st defendant is the one in possession of the plot of Jane Orangi. He later changed his evidence to say that Jane Orangi sold her plot to another lady whose name he did not know and that the 1st defendant has built on the plot belonging to Silvanus. He did not know about Plot A or Plot B. He did not know which side was sold to Jane Orangi.
12. With the above evidence, the plaintiff closed her case. DW- 1 was Henry Ogeto, who testified that he works with the Survey Department at the County Government of Kisii. Previously, he used to work as a records officer with the defunct Gusii County Council. He started working there in 1991. He testified that he was the one who issued an extract of minutes of 25 April 1974. He testified that from the records the Plot No. 13 was initially allocated to Silvanus Oroo on 16 January 1953. He testified that under Minute 20/74 (B) (6) of 25 April 1974, the plot was subdivided into A and B with plot 'A' for Silvanus and Plot 'B' for Mecheo Okari and in the year 1975 the plot was transferred. He testified that Plot 13B was transferred by Mecheo Okari to the Okindos under Minute 22/75 (C) (3) of 13 May 1975. He testified that he went to the records in the office and found Plot 13B belongs to Patrick Mwebi and Magdalene Nyaboke Mwebi with Plot 13A remaining to belong to Silvanus Oroo. He mentioned that plot 13A has arrears of rates amounting to Kshs. 23,335/=. He testified that from the accounts office, he found that Plot 13A is still under the name of Silvanus Oroo as at 2 October 2024. He produced what he referred to as Minute Extract of 24 April 1997 and 13 May 1975 and rates demand notices for Plots 13A and 13B.
13. Cross-examined, he acknowledged that the demand notices indicate Plots 13A Sec B/9B and 13B/ Section B/9B which is not the same description as shown in the minutes of 25 April 1974. He did not have any minute changing the description. When he testified he did not have the original minutes of 1974 but he asserted that what he produced as the Minute Extract was from the original minute book. He had no record of transfer of the plot from Silvanus Oroo to Mecheo Okari. He nevertheless asserted that when Silvanus subdivided the plot he remained with plot 'A' and plot 'B' remained for Mecheo Okari.
14. Re-examined, he testified that both parties are claiming the plot No. 13B.
15. DW – 2 was Magdalene Nyaboke Mwebi, the 1st defendant. She testified that in 1989, one John Akanga was proceeding to the USA and needed money urgently. He offered to sell his land, Plot 13B Daraja Mbili. He testified that they were shown the beacons by one Cheruiyot a Government Surveyor and went to Advocate Masese to write a sale agreement. The sale agreement was between Mr. Akanga and herself and her husband Patrick Mwebi. He stated that they paid Kshs. 350,000/= for the plot. They found a lady selling 'busaa' (a form of traditional liquor) on the land and they allowed her to continue doing so. They however put up a toilet just to put a mark of ownership. About the year 2012, she found someone digging the plot. This person was Johnson Omwega. He later came and informed her that he has been conned because what he bought was Plot No. 13A. She subsequently took a loan and started construction. Johnson filed suit against her and surveyors went to the ground. The information received from the surveyor was that the Plot No. 13A had a mabati structure and the suit was decided in her favour. She resumed construction but this case came up. According to her, the plot was owned by Oroo, who transferred to Mecheo, who transferred to the Okindos, who transferred to John Ombasa, who sold the plot to her and her husband. She referred to the Minutes of 13 May 1975 showing transfer



from Mecheo to Okindo and some various plot cards. She referred to the sale agreement between the plaintiff and Johnson Omwega and pointed out that what was being sold was Plot No. 13A. She also produced a demand letter dated 17 March 2014 from advocates acting for Johnson Omwega, and that letter was to effect that Johnson was claiming the plot No. 13A. She referred to a survey report dated 19 May 2017 which had a sketch showing the Plots No. 13A and 13B. She elaborated that in the case that she had with Johnson, it was found that she had not encroached into the Plot No. 13A and that the Plot No. 13B belonged to her. She produced various documents including a Plot Card for Plot No. 13B. Cross-examined, she did not have minutes of transfer of the plot from John Ombasa to her. She did not have the sale agreement. She averred that Johnson had bought the plot No. 13A but what was pointed out to him was the plot No. 13B. She testified that the plot measures 25 x 80 feet and not 25 x 100 feet as part of it was taken up by the road. She asserted that what the plaintiff sold was Plot A and she cannot now come to claim Plot No. B.

16. DW – 3 was John Ombasa Akanga. He lives in the USA and his evidence was taken virtually. He testified that he owned the Plot No. 13B which was transferred to him by Clement Okindo. He testified that they transferred to him the plot in 1985 vide Minute No. 136/85B of 20 November 1985. He did not have money to develop it and when he later sold it in order to raise money to finance his move to the USA. He sold it to the 1st defendant. Cross-examined, he testified that his neighbour was Oroo who had not developed his plot.
17. With the above evidence, the defence closed its case.
18. I invited counsel to present their final submissions. I have seen and gone through the submissions of Mr. Nyambati, learned counsel for the plaintiff, and Mr. Momanyi Aunga, learned counsel for the 1st defendant. I observe that in his submissions, Mr. Nyambati submitted that PW-2 was Jane Moraa Orangi and outlined what he said was her evidence. There was no such witness and no such evidence. I also observe that the position taken by Mr. Momanyi is that Silvanus Oroo transferred the plot No. 13A to Jane Orangi in 1997 and did not remain with any plot since he had already transferred the Plot No. 13B to Mecheo Okari in 1974. I have otherwise considered all that counsel submitted together with the authorities they provided. My disposition is as follows.
19. There is no dispute that the original owner of the Plot No. 13 was Silvanus Oroo. In her pleadings and in her witness statement which the plaintiff adopted as part of her evidence in chief, the plaintiff contended that Silvanus sold half of this plot to Jane Moraa Orangi (Jane Orangi) in 1997. It would mean that the position of the plaintiff is that the whole of Plot No. 13 belonged to Silvanus Oroo until 1997 when he split it into two. The plaintiff of course denied that her late husband sold any plot to Mecheo Okari or to the Okindos. Although she testified that she only recognises the plot as Plot No. 13 without an ‘A’ or a ‘B’ she did acknowledge having entered into a sale agreement with Johnson Omwega, dated 11 May 2009, with the sale agreement identifying what she was selling as Plot No. 13A. It is therefore apparent to me that there is in existence Plot 13 ‘A’ and Plot 13 ‘B’.
20. From the evidence of PW-2, it is discernible that Silvanus Oroo entered into a disposition with Jane Orangi, but this was not in 1997 as claimed by the plaintiff, but in 1974. Indeed, the contention that there was a dealing with Jane Orangi in 1997 is outrightly false. First, Silvanus could not have dealt with Jane Orangi in 1997 because he died in 1996. Secondly, and probably most importantly, the original minutes of the Gusii County Council have it on record that the dealing between Silvanus and Jane Orangi occurred on 25 April 1974 under the Minute 20/74. The Minute 20/74 specifically dealt with applications to divide plots and when you go through the list of approved applications, it is discernible that the intention of the applicants was to subdivide and transfer the subdivisions to third parties, or where a plot was owned by two persons, they could subdivide so that each owner now has a distinct



- plot. For the plot No. 13, it is clear that there was subdivision so that Silvanus Oroo keeps the Plot No. 13A and Jane Moraa Orangi keeps the plot No. 13B. There was no dealing in 1997 as I have mentioned.
21. In her plaint, the plaintiff pleaded that the transfer to Jane Orangi in 1997 was vide Minute No. 4/1997 of 26 February 1997. PW-2 had the original minutes for 1997 and he pointed out that it indicates it to be an application for registration of schools, churches and other institutions and had nothing to do with the subject plot at Daraja Mbili market. It is therefore patently false for the plaintiff to assert that she or her husband dealt with Jane Orangi in 1997.
 22. I believe the minutes that were presented by PW-2 as they were in their original form within the original minute booklet. I am persuaded that on 25 April 1975, Silvanus subdivided the Plot No. 13 to bring forth the Plot No. 13A which he retained, and he transferred Plot No. 13B to Jane Orangi. While I am on that, the purported extract of minutes of 25 April 1974 presented by DW-1, purporting that on 25 April 1974 under Minute 20/74, it was approved for Silvanus Oroo to transfer the Plot 13B to Mecheo Okari, is clearly false. This is a fake document that was prepared by DW-1 for it does not conform to the original minutes which we all saw and were exhibited by PW-2.
 23. It is indeed unfortunate that within this case, I have been bombarded by fake documents and/or false claims from both plaintiff and 1st defendant. Anyway, let us move on.
 24. There is the minute 21/75 in the meeting of 13 May 1975. It records that Mecheo Okari is transferring the Plot No. 13 to the Okindos. Now, there could not have been a Plot No. 13 in 1975 for it was already subdivided into the Plot No.13A and 13B in 1974, with 13A to Silvanus and 13B to Jane Orangi. PW-2 formed the opinion that this transfer in the minute 21/75 must be transfer of the Plot 13B and this seems to have support even from the previous Director Land Administration, Mr. Fredrick Maranga. He had been summoned by court (Onyango J) to shed light on the ownership of the land when the court was dealing with whether or not to adopt a surveyor's report as its judgment. In his evidence, he testified that Plot 13A belongs to Silvanus and Plot 13B belongs to the Okindos. All the County officers who testified affirmed that they have not registered any dealings in respect of the Plot No.13A belonging to Silvanus. Even DW -1, who despite having some questionable extract of minutes, testified that according to their records, Plot No.13A still reads Silvanus Oroo with rates arrears of Kshs. 23,335/= and the plot 13B read the name of the Okindos and now is in name of Patrick Mwebi and the 1st defendant. Contrary to the submissions of Mr. Momanyi, learned counsel for the 1st defendant, that Jane Orangi bought Plot 13A the record shows that what she acquired was Plot 13B.
 25. There is a layout plan and survey reports on record. They all confirm that we have a plot 13A and a plot 13B. The records are stark that this Plot No. 13A remained in name of Silvanus Oroo and what Jane Orangi acquired in 1974 was the Plot No. 13B. The County Land Administrator, County Surveyor and County Physical Planner identified the locations of Plot 13A and 13B according to what they recognize as the correct layout plan for Daraja Mbili Market. Their findings are not contradictory. The first plot after the road is Plot No. 12, then follows Plot 13A, then 13B, then the plot No.14. We have evidence of the plaintiff selling the plot No. 13A to Johnson Omwega through a sale agreement dated 11 May 2009. That sale agreement identifies what is being sold not as Plot No. 13A but Plot 13A Section B/9B. When the buyer went to the ground, he took possession of what he thought was Plot 13A which ignited litigation which is the case Kisii ELC No. 178 of 2014. In that case, Johnson Omwega sued the 1st defendant herein for interfering with his plot. The court (Mutungi J) sent a surveyor who prepared a report dated 19 May 2017. The surveyor identified the disputed ground as Plot 13B B/9B which would be the same as Plot No. 13B. That report was adopted by the court, with Mutungi J observing that the report shows that there are two distinct plots. The net effect was that it was found that the suit by Johnson Omwega was unfounded and it was dismissed with costs. In essence, what the court in Kisii ELC No. 178 of 2014 found was that Johnson Omwega had no right



- to assert any claim over the Plot No. 13B and if any land was sold to him, then it ought to have been the Plot No .13A.
26. It is the same conclusion that I am persuaded to reach in this case. The disputed land lies on the Plot No. 13B and it matters not whether it is described in the rates records as Plot 13B Section B/9B. It is the same Plot 13B, however described, and it is the same land that Johnson Omwega claimed in the suit Kisii ELC No. 178 of 2014 and he lost. Silvanus Oroo had no interest in Plot 13B as he had already sold it to Jane Orangi in 1974. His interest, if any, can only be restricted to the Plot No.13A.
 27. It never came out clearly why the plaintiff has not sued whoever is in possession of the Plot No.13A and I actually have no concrete evidence which I can point at to affirmatively state who is in this Plot No. 13A. It was said that it could be the plot occupied by Jane Orangi but there is no conclusive evidence on that. Jane Orangi did not testify and neither did anyone who is in occupation of that plot testify. The plaintiff of course called DW-3 and DW-4 to demonstrate that she is the one who has been in occupation of the disputed land but I am afraid that the evidence of DW-3 and DW-4 was very inconclusive if not downright contradictory. In any event they were unable to distinct what is Plot 13A and what is Plot 13B.
 28. What is clear to me is that the plaintiff has come alleging rights over the Plot No. 13B but it is apparent that Silvanus could not have left any interest in the Plot 13B as he ceded his rights over it in 1974. What he was left with is the Plot No. 13A. The case here is not on the Plot No. 13A and I cannot make any finding on it. What I will make a finding on is that the plaintiff has not proved that Silvanus Oroo had any interest in the Plot No.13B and it is the same plot that is described as Plot 13B Section 9B/B.
 29. In the plaint, the first prayer that the plaintiff asked for is a declaration that the deceased was original allottee. There is no dispute on that and I need not make any declaration on an issue that has no dispute. The second prayer she sought was a declaration that the plot No. 13 was subdivided into two and one transferred to Jane Orangi and the deceased remained with one plot registered as Plot No. 13A Sec B/9B. I can make no declaration on this Plot 13A since it is not one in dispute before me. The third prayer was for the Kisii County Physical Planner to demarcate the portion of 25 x 100 feet registered as Plot No. 13A Sec B/9B. This would be the plot 13A but as I have said I have no suit over the Plot No. 13A. This prayer fails. There is the other prayer for a declaration that creation of the Plot 13B in name of the 1st defendant was irregular. I cannot give this prayer to the plaintiff for she has not demonstrated any right over the Plot No. 13B. Neither can the plaintiff succeed in the prayer for an order to permanently restrain the 1st defendant from Plot 13A Sec B/9B for the 1st defendant does not claim Plot 13A but plot 13B which the plaintiff cannot have an interest in.
 30. I reiterate that the plaintiff cannot possibly have any claim for the Plot 13B however described. Silvanus had let go of this plot in 1974. It is upon the plaintiff to see if she has any rights over the Plot No. 13A but she cannot disturb the 1st defendant in the Plot No. 13B. It is not clear to me whether the plaintiff is simply mixed up on the location of Plot 13A or 13B but it was confirmed what ground is occupied by the Plot 13B and it is the land that belongs to the 1st defendant.
 31. The end result is that I find no merit in the case of the plaintiff and it is hereby dismissed with costs.
 32. Judgment accordingly.

DATED AND DELIVERED THIS 22 DAY OF JULY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII



Delivered in the presence of :

Mr. G.M Nyambati for the plaintiff

Mr. Momanyi Aunga for the 1st defendant

Ms. Githinji for the 2nd defendant

Court Assistant – Michael Oyuko

