



**Mwangima v Trustees of Association of Jehovah's Witness in East Africa
(Environment and Land Appeal 22 of 2023) [2024] KEELC 138 (KLR)
(Environment and Land) (23 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 138 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL 22 OF 2023
NA MATHEKA, J
JANUARY 23, 2024**

BETWEEN

MAGHANGA MWANGIMA APPELLANT

AND

**THE TRUSTEES OF ASSOCIATION OF JEHOVAH'S WITNESS IN EAST
AFRICA RESPONDENT**

JUDGMENT

1. The appellants being dissatisfied with the judgement filed this appeal on the following grounds;
 1. That the Learned Trial Magistrate erred by law and facts to make up an opinion that the plaintiff had made and proved the case not showing or stating what grounds evidence and also presentation of the plaintiff witness in the case.
 2. That the Learned Trial Magistrate erred by the law and facts to except the document in the file which were used to build up the case which lacked merit and threshold due they lacked several things like signatures, stamps and dates from receipt or delivered (transfer letter page 18 and 19, application of consent page 20 and 21 certificate of sale page 22 vesting order page 24 and 25.
 3. That the Learned Trial Magistrate erred by the law and facts by mixing two subjects in the whole process of the hearing in examination of which the mother land was not issue of contention land parcel no Mgange /Nyika 241 being of the original proprietor Maghanga Kitunge Mwashighadi.



4. That the learned trial magistrate erred by the law and in the opinion saying that the said land belonged to the son of Kitunge (Mwashighadi Kitunge) without fully making proper identity or identification to prove if the earlier civil suits as referred he was real debtor and furthermore the plaintiff, did not enjoined or pick him for the suit as by the time this was filled in 2019 while alive.
5. That the learned trial magistrate erred by the law and fact by terming Francis Chao Kulola as the original proprietor as in accordance to all papers she become the second party who illegal acquired this land by using the court on Miscellaneous Appeal No 172 of 2004 to get a vesting order of which I don't understand the district land register except this document which lack an official stamp of the said court and without satisfied proceedings which were also delivered in court during the hearing which I did not requested even for Civil Suit No 3045 of 2001 which said Mwashighadi Kitunge being a debtor.
6. That the Learned Trial Magistrate erred by the law and fact as ownership of land cannot be of two person being a father and a son and in our traditions a land belongs to the father and he is late Maghanga Kitunge Mwashighadi and his wife were laid to rest in this said land, proving beyond reasonable doubts that the land was not for the son.
7. That the Learned Trial Magistrate erred by the law and fact as in cross- examination of the witness it was proved that all documents which are said to have supported the case where formality as proved by Fred Mengo the trustee as from the certificate of sale from Civil Suits No 3045 of 2001 No certified proceedings of judgement was given hence disqualifying it completely.
8. That the Learned Trial Magistrate erred by law and facts to say the notice was given or taken to the Kenya Gazette with full knowledge that the same was never reflected in any Kenya dailies as required by law and land procedure.
9. That the Learned Trial Magistrate erred by law and facts in consideration of Mwara investment company notice which did not have a rubber stamp or not certified by the director of which the hearing he did disapprove by giving a gazette notice in star paper which shows this company had and does not have jurisdiction to conduct any matters in this county of Taita Taveta.
10. That the Learned Trial Magistrate erred by law and facts to consideration transferee document in the file which was not duly received by the lands office which makes him wonder how did then the land register issue a title deed without a document he relied on, hence here comes in influence in one way or another.
11. That the Learned Trial Magistrate erred by law and facts in considering the land application form which does not indicate to which county the application was addressed furthermore the description over the sister title deed upon the subdivision of parcel no Mgange/ Nyika 241, Mwanda/Mgange/ Nyika /1826 of Franciscar Chao Kalela is not reflected as from the transfer to the title deed which reads Mgange/ Nyika/ 1827 failure of going thoroughly to the document of Civil Suits No 72 of 2010 as given been defendant list of documents.
12. That the Learned Trial Magistrate erred by law and facts for not capturing our cross-examination disapproval of the documents in entirety from the transfer, certificate of sale, application of consent (no minutes shown). Kenya Gazette notice not reached by litigants them or common citizen.



13. That the Learned Trial Magistrate erred by law and facts as shown in the judgement by excepting documents which are of other parties to be used as supporting documents over this suits knowingly noting that the suit only examined from the sub-division done by Franciscar an illegal acquired land and mainly through transfer from which is out of bounce cause all documents in the file never surfaced to the said land offices at Wundanyi.
 14. That the Learned Trial Magistrate erred by law and facts in bring some issues which were never disclosed during the hearing as the credits sum Kshs 135,000.00 and the sale of Kshs 265,000.00 meaning some cash was remaining somewhere which was to be either collected or handed over to the debtor let this be clarified which came behind their backs.
 15. That the Learned Trial Magistrate erred by law and facts stating that there was a typing error which she didn't clearly get it is on letter of transfer part 5 (the description of the land) or the tittle deed of which approves the illegality of the title by itself
2. The appellant prays that the judgement to be set aside and the determination of hearing of their entire suit by this court to the deliverance of justice and all titles 1826 and 1827 be cancelled to reverse to its original proprietor Kitunge Maghanga Mwashighadi who had not collected his title leaving this plot being a free cold for succession process to take cause to the beneficiaries. For this being a sensitive and emotive issue or aspects the only way to instill justice and for the involved parties and of the presentation of the documents during the hearing. May also the whole file be brought to this court to follow up the early mentioned papers or documents which were used to support the case.
 3. I have considered the appeal and the submissions therein. This is an appeal from the judgement of Hon. Oburu on April 6, 2023 where the court found the respondent is the registered owner of Land Parcel No. Mgange/Nyina/1827 and permanently restrained the appellant from occupying the same. The appellant who is acting in person, prayed for the court to set aside the judgement and cancel the titles to Land Parcel No. Mgange/Nyika/1827 and Land Parcel No. Mgange/Nyika/1826 and revert the same to its original proprietor Kitunge Maghanha Mwashighadi.
 4. The respondent was the plaintiff in the lower court suit. It was the respondent's case that they obtained title to the suit property by way of a gift from the previous owner Francisca Chao Kalela on June 26, 2007. Who had acquired Land Parcel No. Mgange/Nyika/241 through a vesting order, issued in Mombasa Misc Civil Application No. 172 of 2004 issued on March 12, 2004. Following her purchase of Land Parcel No. Mgange/Nyika/241 by way of public auction on June 5, 2003 in execution of the decree in Mombasa Resident Magistrate Civil Suit No. 3045 of 2001 between *Edward Kwaru Mjomba v Mwashigadi Kitunge*. Francisca Chao Kalela then subdivided Land Parcel No. Mgange/Nyika/241 into two plots Land Parcel No. Mgange/Nyika/1826 and Land Parcel No. Mgange/Nyika/1827 in July 11, 2015. Subsequently, she gifted the respondent with Land Parcel No. Mgange/Nyika/1827 through a transfer dated May 11, 2007 and the respondent became the registered owner of building a church hall on the suit property.
 5. The appellant was the 1st defendant alongside Jonam Maghanga as the 2nd defendant acted in person even at the lower court suit. His appearance at the lower court limited his legal expertise as his claim came off as a counterclaim but the same was never indicated in his statement of defence. The appellant was challenging the respondent's title to the suit property, it was his case that Land Parcel No. Mgange/Nyika/241 was registered in the name of his grandfather Kitunge Maghanga Mwashigadi, and not Mwashigadi Kitunge who was a defendant and judgement debtor in Mombasa Resident Magistrate Civil Suit No. 3045 of 2001 between *Edward Kwaru Mjomba v Mwashigadi Kitunge*. He maintained that Kitunge Maghanga Mwashigadi, was the initial registered proprietor of Land Parcel No. Mgange/Nyika/241 having been registered on November 23, 1966 as seen from the green card dated April 15,



2013. He maintained that Kitunge Maghanga Mwashigadi died on January 4, 1998 and was not alive at the time of the said suit was instituted in 2001. He insisted that Kitunge Maghanga Mwashigadi and not Mwashigadi Kitunge was the registered owner of Land Parcel No. Mgange/Nyika/241. He asserted that it was the Land Registrar at the time who insisted that Kitunge Maghanga Mwashigadi be registered as Mwashigadi Kitunge on the title document, and in no way did that mean that the same was owned by Mwashigadi Kitunge as claimed by the respondent.

6. The appellant challenged both the process under which Francisca Chao Kalela acquired Land Parcel No. Mgange/Nyika/241 through a public sale and at the same time insisted that since Parcel No. 241 was registered in the name of Kitunge Maghanga Mwashigadi and not Mwashigadi Kitunge, the same could not be subjected to sale by public sale as Kitunge Maghanga Mwashigadi was not the judgment debtor. In support of his case, he produced a green card for M/Nyika Scheme Parcel No. 241 which was opened on November 23, 1966 and Mwashighadi Kitunge was registered as the first proprietor and certificate of title issued. However the same was cancelled pursuant to Gazette Notice No. 4726, Registration of Instrument dated June 25, 2004 issued by the Land Registrar Taita Taveta. The instrument stated that Land Parcel No. Mgange/Nyika/241 registered in the name of Mwashigadi Kitunge to be vested in Francisca Chao Kalela as ordered in Mombasa Civil Suit No. 172 of 2004. Francisca Chao Kalela was then registered on March 17, 2004 and the title document was issued on July 28, 2004. The green card was then closed on July 11, 2005 following the subdivision the parcel into Parcel No. 1826 and 1827.
7. In my view, the appellant ought to have sought the setting aside of the sale of the judgment debtor's property on the grounds of irregularities and challenged the terms and conditions of sale therein. The appellant ought to have challenged the sale on the ground that the advertisement calling for the public auction of Parcel No. 241 misdescribed and misrepresentation of the name of the registered owner of the land parcel. The appellant failed to provide further particulars that would have guided the court in finding that indeed Parcel No. 241 was registered in the name of Kitunge Maghanga Mwashigadi and not Mwashigadi Kitunge who was the judgment debtor.
8. The appellant did not contest the process of execution by way of attachment and sale of property. The validity of the Certificate of Sale of Land issued in Mombasa RMCS No. 3045 of 2001 nor the Vesting Order issued on Mombasa HCMC No. 172 of 2004 have been challenged by the appellant. From the green card, its Mwashighadi Kitunge who is registered as the proprietor of Parcel No. 241 and not Kitunge Maghanga Mwashigadi as insisted by the appellant. The claims that it's the Land Registrar who referred to registering him as Mwashighadi Kitunge and not Kitunge Maghanga Mwashigadi have not been substantiated. From the evidence before the court it is Mwashighadi Kitunge who was the registered proprietor and also the judgment debtor in Mombasa RMCS No. 3045 of 2001.
9. The appellant disputed ownership of Parcel No. 241 on the basis that the name shown on the land register, Mwashighadi Kitunge was different from the names alleged by the respondent. This discrepancy was material and the appellant failed to go further and demonstrate to the court that the names referred to different individuals. The appellant wanted the court to believe that Mwashighadi Kitunge the registered owner was his late grandfather Kitunge Maghanga Mwashigadi. I would have expected the appellant to provide identity cards of the two, his grandfather and uncle and this would have confirmed their identity, bearing in mind that identity cards were used in the registration of land. If the details of their names had turned out different, then the appellant would have made out a case of mistaken or different identity.
10. In the absence of the above, this court cannot find any different from what the subordinate court found; that the respondent had demonstrated that it had acquired the suit property legally and procedurally. The respondent has established that it became the registered owner following the transfer



of the same from Francisca Chao Kalela and issued with a certificate of title on June 20, 2007. The respondent alleged trespass, the appellant is said to have fenced off the suit property denying them access to the same. The respondent demonstrated by way of both oral and documentary evidence of the appellant's presence and activities on the suit property. Such presence and activities are not justified and the same amount to trespass. According to Sections 24 and 25 of the [Land Registration Act](#), the respondent as the registered owner is entitled to a quiet possession of the suit property which meant that the appellant ought to be evicted from the same.

11. In conclusion, I find that the trial court did not err in finding that the respondent proved its case on a balance of probability and that it was entitled to the orders sought in its plaint dated July 15, 2019. I find no reason to disturb the judgement of the learned magistrate that was delivered on April 6, 2023. Consequently, the Amended Memorandum of Appeal dated November 20, 2023 is dismissed with no order as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED ELECTRONICALLY VIA EMAIL THIS 23RD DAY OF JANUARY 2024.

N.A. MATHEKA

JUDGE

