



REPUBLIC OF KENYA



KENYA LAW
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**Mwadime v Mwakio (Environmental and Land Originating Summons E001 of 2024)
[2025] KEELC 895 (KLR) (Environment and Land) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 895 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIROMENTAL AND LAND ORIGINATING SUMMONS E001 OF 2024
EK WABWOTO, J
FEBRUARY 27, 2025**

BETWEEN

AMORGAST MWANGANGU MWADIME PLAINTIFF

AND

NEWTON CHUMA MWAKIO DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit by way of Originating Summons dated 3rd October 2024 which was later amended on 30th January 2025 seeking for the following reliefs:-
 - i. The Plaintiff be declared the legal owner of the suit property by purchase and the strength of the subsequent judgement of the court *Vide* ELC CASE NO. 13 OF 2018 Voi delivered on 8th July 2022.
 - ii. The Plaintiff be registered as sole owner of the suit property in place of the Defendant / Defendant and Rodgers Mwakio respectively.
 - iii. An order be issued directed to the ELC Deputy Registrar Voi to execute transfer forms and all necessary documents for transfer of the said plots in Taita Taveta/Upper Sofia/ 38 and 31 Voi in favour of the Plaintiff herein.
 - iv. The honourable court do and hereby issue orders directing the Taita Taveta County Land Registrar to issue title deeds to the Applicant herein in respect of Plots Nos. Taita Taveta/ Upper Sofia/38 and 31.
 - v. Costs of the application be provided for.



2. The Originating Summons was supported by the Affidavit sworn by Amorgast Mwangangu Mwadime on 4th October 2024.
3. Pursuant to the directions issued by this court, it was directed that the same be canvassed by way of written submissions. The Plaintiff filed written submissions dated 27th January 2025. No response nor written submissions were filed by the Defendant despite being served and being notified of these proceedings.
4. It was the Plaintiff's case that she bought the suit property from one Newton Chuma Mwakio the Defendant herein vide a sale agreement dated 13th December 2016 which payment was paid in full.
5. It was his case that whereas the suit property was registered in the names of Rodgers Mwakio who was the father of the Defendant, it had been given to him before the death of his father and the Defendant had not changed the registration to his name. It was averred that in order to clear any doubt that he was the owner of the suit property herein, the Defendant bought his brothers and sisters to give consent and confirmed that the property belonged to the Defendant.
6. It was also averred that after executing the said sale agreement and payment of the purchase price, he took possession of the same and started collecting monthly rent from the tenants. However later while he was away in Nairobi, the Defendant took advantage of his absence and threatened the tenants with eviction if they do not remit the rent to him.
7. Upon learning of the same, he confronted the Defendant on his action and the Defendant informed him that he had sold the property cheaply and should be added more money. The request was rejected by the Plaintiff who proceeded to institute VOI CMC ELC NO. 13 OF 2018 wherein the Court rendered its judgment and directed that the Defendant to vacate the unit of House B and to stop interfering with Plots No. 31 and 38 Upper Sofia Settlement Scheme Voi. Despite the said judgment, the Defendant declined to comply and his appeal was dismissed on 4th June 2024.
8. It was the Plaintiff's case that despite all that the defendant has continued to collect rent from tenants and has refused to grant possession of the suit properties to the Plaintiff.
9. The Plaintiff also filed written submissions dated 27th January 2025 wherein, he submitted on the following issues:
 - i. Whether the Plaintiff has proven his case to the required standard.
 - ii. Whether the Plaintiff is entitled to the orders sought.
10. It was submitted that it is not in contention that the Plaintiff bought the suit properties from the Defendant vide a sale agreement dated 13th December 2016 but despite a finding of the court in ELC Case No. 13 of 2016 the Defendant has never taken possession of the same and hence the need of the orders sought. The Plaintiffs also prayed for the grant of costs.
11. The court has considered the Originating Summons and the written submissions filed and is not of the view that the issues falling for determination are the same issues rightly captured by the Plaintiff in his submissions which this court proceeds to adopt the same as follows:-
 - i. Whether the Plaintiff has made a case for grant of the reliefs sought.
 - ii. What are the appropriate reliefs to grant.
12. This court shall address all the issues sequentially.



13. It is not disputed that the Defendant sold the suit property containing 4 units of houses to the Applicant on 13.12.2016 vide sale agreement executed before J. M. Muthami Advocate. The Plaintiff paid in full purchase price to the Defendant who does acknowledge receipt of the purchase price. The Defendant after receiving full purchase price let the possession of the suit property to the Plaintiff for a year but later repossessed the suit property back by threatening the tenants in the units to stop paying rent to the Plaintiff. The Defendant has refused to execute and transfer the suit property to the Plaintiff and as such the property remains in the possession of the Defendant.
14. Consequently, according to the Plaintiff what is in contention is the title deed for the suit property known as Taita Taveta/Upper Sofia/38 and 31 Voi which the Defendant has illegally continued to hold on the possession. It was also the finding of court in the ELC CASE NO. 13 OF 2018 that the Plaintiff is entitled to the ownership of the suit property. But the Defendant herein has refused and/or remained adamant to relinquish the property to the Applicant in defiance of the judgment of the court.
15. To date the Defendant has not provided any reason as to why he has not complied with the orders previously issued by the court. Court orders are not made in vain and they ought to be complied with by all the parties.
16. The said facts and Plaintiff's evidence were never contested by the Defendant and in view of the foregoing it is the finding of this court that the Plaintiff has proved his case to the satisfaction of this court and is entitled to the reliefs sought which this court shall proceed to grant.
17. In respect to costs, the conduct of the Defendant herein is wanting. The Defendant has really frustrated the Plaintiff in realising his rights to the said property and further the Defendant's actions is what led the Plaintiff to file this suit and in view of the foregoing, this court shall proceed to grant costs of the suit to the Plaintiff.
18. In conclusion, it is the finding of this court that the Plaintiff has proved his case to the required standard and the Amended Originating Summons dated 30th January 2025 is hereby allowed in the following terms: -
 1. A declaration be and is hereby issued that the Plaintiff Amorgast Mwangangu Mwadime is the owner of the suit properties known as Taita Taveta/Upper Sofia/38 and 31 Voi pursuant to the judgment delivered in Voi CMC ELC Case No. 13 of 2018 on 8th July 2022.
 2. An order be and is hereby issued that the Plaintiff be registered as the sole owner of the said suit properties in the place of the Defendant herein and Rodger Mwakio respectively.
 3. An order is hereby issued directing the Deputy Registrar, ELC Voi to execute the transfer forms and all the necessary documents for transfer of the said Plots Taita Taveta/Upper Sofia/38 and 31 Voi in favour of Amorgast Mwangangu Mwadime.
 4. An order be and is hereby issued directing the Taita Taveta County Registrar to issue title deeds to the Plaintiff herein Amorgast Mwangangu Mwadim in respect to Plots No. Taita Taveta/Upper Sofia/38 and 31.
 5. The Plaintiff is awarded costs of the suit.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 27TH DAY OF FEBRUARY 2025.

E. K. WABWOTO



JUDGE

In the presence of:-

Mr. Mwinzi for the Plaintiff.

N/A for the Defendant.

Court Assistants: Mary Ngoira and Norah Chao.

