



**Lenya v Mangira & 2 others (Land Case 24 of 2013)
[2016] KEELC 1309 (KLR) (11 October 2016) (Judgment)**

Lewcadia Awuor Lenya v Gabriel Apol Mangira & 2 others [2016] eKLR

Neutral citation: [2016] KEELC 1309 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

LAND CASE 24 OF 2013

SM KIBUNJA, J

OCTOBER 11, 2016

BETWEEN

LEWCADIA AWUOR LENYA PLAINTIFF

AND

GABRIEL APOL MANGIRA 1ST DEFENDANT

DOMINIC OUMA APOL 2ND DEFENDANT

MICHAEL APOL 3RD DEFENDANT

JUDGMENT

1. Lewcadia Awuor Lenya, the Plaintiff, sued Gabriel Apol Mangira, Dominic Ouma Apol and Michael Apol, the 1st to 3rd Defendant respectively, through the plaint dated 1st February 2013 seeking for a declaration that the plaintiff is the legal proprietor of East Ugenya/Murumba/235 as administration of the estate of Gombe Lowlands Lenya, mandatory injunction over the suit land and costs. The Plaintiff avers that on 16th January 2013, the Defendants trespassed onto the suit land and started tilling it without any colour of right and have refused to vacate.
2. In their filed statement of defence and counterclaim dated 19th March 2013 the Defendants denied the Plaintiff's claim. They averred that the land was first registered in the names of 1st Defendant's father who is also the 2nd and 3rd Defendants grandfather called Mangir'a Auka on 2nd April 1973. That the said Mangira Auka died on 5th May 1989 and the late Gombe Lowlands Lenya got registered as sole proprietor of the land on 19th August 1998 without filing a succession cause for the estate of the late Mangira Auka. That the registration of Gombe Lowlands Lenya as proprietor of the suit land was done fraudulently and hence null and void and the Plaintiff has no sustainable legal claim over the suit land and her suit is incompetent, malicious, scandalous and should be dismissed with costs.



In the counterclaim, the Defendants sued the Plaintiff, Land Registrar Ugenya District and the Attorney General as the 1st to 3rd Defendants respectively. They aver that the Plaintiff conspired with the 2nd Defendant to transfer the suit land to her fraudulently on 19th August 1998 without a confirmed grant of letters of administration. The Defendants pray that the registration of the suit land in the names of Gombe Lowlands Lenya be cancelled and the land revert, to the names of Auka Mangira. They also pray for costs and interest.

3. The Plaintiff (1st Defendant in the counterclaim) filed a reply to the defence and defence to counterclaim dated 4th May 2013 reiterating her claim that her case is sustainable. She denied that there was fraud in the way the suit land was transferred to the names of Gombe Lowlands Lenya averring that the due process was followed and therefore the counterclaim should be dismissed with costs.
4. That on 21st May 2015, Mr Anyumba for the Plaintiff fixed the suit for hearing on the 28th September 2015. The hearing notice was served on M/S E.M. Masheti & Co. Advocates on 11th June 2015 as sworn in the affidavit of service of George O. Anyumba sworn on 25th September 2015. On the 28th September 2015 the Defendant and his counsel were absent and on the court being satisfied that a hearing notice had been properly served allowed the Plaintiff to prosecute her case. The Plaintiff testified as PW1. She told the court that Gombe Lowlands Lenya was her husband and that he died on 9th November 2009 leaving land parcel East Ugenya/Murumba/235 in his names. PW1 told the court that the Defendants, who are her neighbours and brothers in laws, chased her away from the suit land after the death of her husband claiming that they had a right to use it. She produced a copy of certificate of official search showing that the land was in the names of Gombe Lowlands Lenya as exhibit 1. She also produced a copy of a grant in her late husband's succession cause as exhibit 2 and certificate of confirmation of the grant as exhibit 3 and a demand notice addressed to the Defendants among others as exhibit 4. She prayed for judgment to be entered in her favour as per the plaint.
5. The court allowed the counsel for the Plaintiff to file written submission. The written submissions dated 5th October 2015 was filed on 19th October 2015.
6. The following are the issues for courts determination
 - a) Who is the current registered proprietor of the suit land East Ugenya/Murumba/235 and whether the registration had been processed procedurally.
 - b) Whether the Plaintiff has legal capacity to file this suit.
 - c) Whether the Plaintiff is entitled to the order sought.
 - d) Whether the Defendants have established their counterclaim.
 - e) Who should pay the costs.
7. The court has carefully considered the pleadings filed, the evidence adduced by the Plaintiff, the submission by Plaintiff's counsel and concluded as follows.
 - a) That from the evidence adduced by the Plaintiff and documentary evidence in form of certificate of official search dated 22nd January 2013 for land parcel East Ugenya/Muromba/235, the land was registered in the names of Gombe Ronlands Lenya on 19th August 1998 and title deed issued. That further a copy of the register for the suit land attached to the replying affidavit of 1st Defendant sworn on 19th March 2013 shows that the land had been charged on 4th August 1977 to secure a loan of Sh.10, 000 with Standard Bank Limited. That a Discharge of Charge was registered on 19th August 1998 which is the same date Gombe



Lowland Lenya was registered as proprietor of that land through transmission. That further, the Plaintiffs list of documents contains a copy of Gazette notice No.4010 of 21st July 1995 under which succession cause No.1118 of 1995 in respect of the estate of Paul Mangira Auka filed by Gombe Rowland Lenya was advertised. That also attached to the list is a copy of grant dated 23rd August 1995 issued in Nairobi High Court Succession cause No.1118 of 1995 issued to Gombe Rowland Lenya in respect of the estate of Paul Mangira Lenya. That the foregoing confirms that from the evidence availed to the court the provisions of Law of succession Act Chapter 160 of Laws of Kenya that guides the way properties of deceased persons appear to have been followed in the process of transmitting the suit land to the names of Gombe Rowland Lenya contrary to the Defendants allegations.

- b) That the Plaintiff has been appointed administratrix of the estate of Rowlands Gombe Lenya in Nairobi High Court Succession Cause No.781 of 2012 as confirmed in the grant issued on 19th September 2012 and certificate of confirmation dated 22nd May 2013. That in the schedule on the certificate of confirmation the beneficiary for the whole of land parcel East Ugenya/Murumba/235 is indicated as Collins Oduor Lenya. That the Plaintiff therefore has capacity to file and prosecute this suit as one of the administrators of the estate of Rowland Gombe Lenya who is the registered proprietor of the suit land.
 - c) That though the defendants had sued the Land Registrar, Ugenya District and the Attorney General as the 2nd and 3rd Defendants respectively in their counter claim dated 19th March 2013, there is no evidence that the counterclaim was served on the said 2nd and 3rd Defendants. There has been no efforts made to have summons issued and served on the said 2nd and 3rd Defendants and the claim against them in the counterclaim is hereby struck out.
 - d) That the Defendants did not come to court to avail evidence in support of their counterclaim against the Plaintiff and to defend the Plaintiff suit against them. That the Defendants counter claim against the Plaintiff is therefore not proved to the standard of balance of probabilities and is dismissed with costs to the Plaintiff.
 - e) That the Plaintiff has tendered sufficient evidence in support of her claim against the Defendants on a balance of probabilities.
8. That having found as above the court enters judgment for the Plaintiff against the Defendants as follows;
- a) That the occupation and possession of land parcel East Ugenya/Murumba/235 or any part thereof by the Defendants without the consent or permission of the administrators appointed for the estate of Rowlands Gombe Lenya in Nairobi H.C. Succession cause No,781 of 2012 amounts to trespass.
 - b) That the Defendants should vacate and give vacant possession of land parcel East Ugenya/Murumba/235 to the Plaintiff within 30 days in default eviction orders to issue.
 - c) The Defendants do pay the Plaintiff's cost in the suit.
 - d) That the Defendants counterclaim against the Plaintiff is dismissed with costs.

It is so ordered.

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE



DATED AND DELIVERED THIS 11TH DAY OF OCTOBER 2016

In presence of;

Plaintiff Absent

Defendants Absent

Counsel Absent

S.M. KIBUNJA

ENVIRONMENT & LAND – JUDGE

11/10/2016

11/10/2016

S.M. Kibunja J.

Oyugi court assistant

Parties absent

Court: Judgment dated and delivered in open court and Deputy Registrar to communicate to the parties/
Counsel.

S.M.KIBUNJA

ENVIRONMENT & LAND – JUDGE

11/10/2016

