



Mwangombe v Kamata & another (Suing as the personal representatives of the Late Neville Kamata) (Environment and Land Appeal E012 of 2024) [2025] KEELC 896 (KLR) (Appeals) (27 February 2025) (Judgment)

Neutral citation: [2025] KEELC 896 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
APPEALS
ENVIRONMENT AND LAND APPEAL E012 OF 2024
EK WABWOTO, J
FEBRUARY 27, 2025**

BETWEEN

DORCUS MAKU MWANGOMBE APPELLANT

AND

SOPHY NDELA KAMATA 1ST RESPONDENT

CLAUDE JOSEPH KAMATA 2ND RESPONDENT

**SUING AS THE PERSONAL REPRESENTATIVES OF THE LATE NEVILLE
KAMATA**

JUDGMENT

1. This is the first appeal from the judgment of Hon. C. K. Kithinji (PM) delivered on 3rd July 2024 in Voi CMC ELC Case No. E001 of 2022 wherein the Learned Magistrate held that the Respondents had proved their case and proceeded to grant the following orders:-
 - i. An order for revocation of title deed for L.R 15031/144 and the same be registered in the name of the Plaintiffs to hold in trust for the benefit of the two minor children of Neville Kamata.
 - ii. A permanent injunction restraining the Defendant, her agents, servants or other person acting under her instructions from trespassing or interfering with the suit property in any manner.
2. The Learned Magistrate also granted costs to the Plaintiff.
3. Being aggrieved by the said judgment, the Appellant lodged this appeal vide a Memorandum of Appeal dated 31st July 2024. The Memorandum of Appeal was premised on the following grounds:-



1. That the Honorable Magistrate erred in both law and fact in finding that the Appellant had not proved her counterclaim against the weight of the evidence on record.
 2. That the Honourable Magistrate erred in both law and fact in finding that the respondents proved ownership of the suit property against the overwhelming evidence as to ownership by the appellant on record.
 3. That the Honourable Magistrate erred in both law and fact in making a finding that the appellant's title deed be revoked when no evidence whatsoever was led as to the illegality by the respondents.
 4. That the Honourable Magistrate erred in both law and fact in failing to recognize that the title deed was issued after the due process was done and with the sanction of the initial owner.
 5. That the Honourable learned Magistrate erred in both law and fact in dismissing the Appellant counterclaim against the weight of the evidence rendered in court on how the Appellant procured her title deed.
4. The Appellant thus sought the following reliefs:-
1. That the judgment delivered on 3rd July 2024 by Hon. C. K. Kithinji (PM) be set aside and/or varied.
 2. That the costs of this appeal be borne by the Respondents.
5. The Appeal was contested and pursuant to the directions issued by this court, it was directed that the same be canvassed by way of written submissions. In compliance to the said directions, the Appellant filed her written submissions dated 23rd January 2025 while the Respondents filed written submissions dated 27th January 2025.
6. The court has now considered the entire record of appeal and written submissions filed and is of the view that the following issues arise for determination:-
- i. Whether the appeal is merited.
 - ii. Whether the Appellant is entitled to the reliefs sought.
 - iii. What orders should issue as to costs.
7. This being a first appeal the mandate of this court is to consider the evidence, evaluate it and make a finding with the caveat that court lacks the advantage of the trial Magistrate who saw and heard the witnesses. See, the often-cited case of *Selle vs. Associated Motor Boat Co Ltd & Others* [1968] EA 123 where this Court stated:
- “...this Court is not bound necessarily to accept the findings of fact by the court below. An appeal to this court ... is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it has neither seen nor heard the witnesses and should make due allowance in this respect ...”
8. The Appellant submitted that she was an innocent purchaser for value since the suit property L.R 15031/144 was initially owned by Voi Development Company Limited under the auspice of Mzee Mwamunga. It was submitted that she had produced evidence before the trial court which showed



how she acquired the property. It was also her evidence that although she was made aware of the Respondent's interest over the property, it was evident that the Respondent had not paid for the same. It was also contended that the Respondents had not proved any fraud against her and thus the trial court erred in revoking her title.

9. The Respondent on the other hand submitted that the late Eliud Mwamunga ceased to have any right to the property when he received the purchase price of Kshs. 200,000/= as was required by the allotment letter dated 15th April 2011 and that he took advantage of the death of Neville Kamata and sold the same to the Appellant and as such the late Eliud Mwamunga had no powers to reallocate or sell that which he did not have as he could not have passed a good title to the Appellant. It was also submitted that the Respondents allotment was the first in time. The cases of M'ikiara M'Mukanya & Another =Versus= Gilbert Kabeere M'Mbijiwe Civil Appeal No. 13 of 1980 was cited in support.
10. As to whether or not the Appellant was an innocent purchaser for value without notice, this court makes reference to the case *Dina Management Limited vs County Government of Mombasa & 5 others* (Petition 8 (E010) of 2021) [2023] KESC 30 (KLR), the Supreme Court stated that, for a court to establish whether a party is a bona fide purchaser for value, the court must first establish the root of the title right from the first allotment and stated that:

“...in order to be considered a bona fide purchaser for value, they must prove; that they acquired a valid and legal title, secondly, they carried out the necessary due diligence to determine the lawful owner from whom they acquired a legitimate title and thirdly that they paid valuable consideration for the purchase of the suit property”
11. This position has recently been reaffirmed by the Supreme Court of Uganda in *Lwanga vs Mubiru and Others* (Civil Appeal 18 of 2022) [2024] UGSC 7, where the court held:

“The principle of bona fide purchaser for value without notice is a general defence in any transaction of sale or purchase of any property particularly land.

The definition of bona fide purchaser for value without notice is “that buyer who has paid a stated price for the property without knowledge of existing or prior claims or prior equitable interest.

Bona fide is a Latin word meaning good faith, without fraud, sincere, genuine. See (Black's Law Dictionary 9th Edn Page 199) A bona fide purchaser is a buyer who buys without constructive or actual notice of any defects or infirmities against the seller's title. See (page 1355 Black's Law Dictionary 9th Edn. It is trite law that a person who relies on the defence of bona fide purchaser for value without notice has the burden to prove that he or she acted in good faith. The purchaser must have given due consideration and purchased the land without notice of the fraud. Such notice cover both actual and constructive notice of fraud.”
12. The court reaffirmed the law regarding the importance of due diligence in land transactions holding that, “...Lands are not vegetables which are bought from unknown sellers. Lands are very valuable properties and buyers are expected to make thorough investigations not only on land but also of the owner before the purchase.” And as in the Supreme Court decision in *Dina Management Limited vs County Government of Mombasa* (supra), the Court went on to hold that, once the root of the title has been challenged, a party cannot derive benefit from the doctrine of bona fide purchaser.
13. So was the Appellant and innocent purchaser for value?



From the evidence that was tendered during trial, there was overwhelming evidence that the Appellant was aware of the Respondents' interest in the suit land. She ought to have done due diligence before purchasing the same. The initial purchaser had fully complied and paid the purchase price and hence there was no way the property could have been available for sale or transfer to another person unless with the consent of the estate of Neville Kamata. She did not adduce any evidence confirming that the initial purchaser had rescinded his interest on the land or had terminated the sale agreement that was executed therein or further that he had demanded refund of the purchase price that had been paid.

14. In view of the foregoing it is the finding of this court that the Appellant could not have been an innocent purchaser for value. She knew what she was getting herself into and clearly she was the author of her own misfortune. In the circumstances it is the finding of the Court that the appeal is not merited.
15. In respect to costs, the Respondents are the successful party herein and this court shall proceed to grant costs of the appeal to the Respondents.
16. The upshot is that after careful review and analysis of all the grounds of appeal and the entire record, this Court finds no fault with the decision of the Learned trial magistrate. Consequently, the appeal fails and is hereby dismissed with costs to the Respondents.

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

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mwanyumba for the Appellant.

Mr. Mwazighe for the Respondents

Court Assistants: Mary Ngoira and Norah Chao.

