



REPUBLIC OF KENYA



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**Nduta v Ogambla (Civil Appeal E723 of 2021)
[2025] KECA 452 (KLR) (7 March 2025) (Judgment)**

Neutral citation: [2025] KECA 452 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL E723 OF 2021
P NYAMWEYA, AO MUCHELULE & GV ODUNGA, JJA
MARCH 7, 2025**

BETWEEN

ANNAH AGNES NDATA APPELLANT

AND

JENIFFER OGAMBLA RESPONDENT

(Being an appeal from the judgment and decree of the Environment and Land Court at Nairobi (S. Okong'o, J.) dated 5th October 2021 in ELC NO. 1476 OF 2016)

JUDGMENT

1. This appeal is about land parcel referred to as LR No. Nairobi/Block 126/877 (the suit property) whose ownership both the appellant, Annah Agnes Nduta, and the respondent, Jeniffer Ogambla, claimed. The appellant, who had title to the suit property, sued the respondent in the Environment and Land Court at Nairobi, claiming that she had on 4th September 2016 found that the respondent had destroyed the fence and, in its place, put a new fence. She pleaded trespass and sought an order permanently restraining the respondent from trespassing on or in any other manner interfering with the parcel of land. The respondent filed a defence and counterclaim. She denied that the appellant had any lawful claim to the suit property, and sought a declaration to the effect that she was the one entitled to the property.
2. The trial court (S. Okong'o, J.) received evidence and at the end of the day found for the respondent, and dismissed the appellant's claim to the suit property.
3. The appellant was aggrieved by the findings and filed this appeal whose grounds were as follows:-
 - "1) The learned judge of the High Court erred in law and fact by failing to appreciate, evaluate and analyze the evidence placed before the Court.



- 2) The learned judge erred in law and fact by finding that the respondent who was not the legal holder of the alleged mother title and or lease had a locus standi to claim interest of the property.
 - 3) The learned judge erred in law and fact by making a finding that the appellant's title was acquired fraudulently and illegally whereas there was no evidence placed before Court by the legally concerned institution to confirm the same, clearly impugning the appellant's right to property.
 - 4) The learned judge erred in law and fact by finding that the appellant ought to prove allegations of fraud as alleged by the respondent in her pleadings, in clear breach of the law and the court's own precedent.
 - 5) The learned judge erred in law and fact by failing to consider the appellant's arguments on the respondent's locus standi to claim a property owned by a Sacco and the non-joinder of the Land Registrar who the orders sought by the respondent directly relates to the functions and duties of his office.
 - 6) The learned judge erred in law and fact by ordering the cancellation of a valid title without any cogent evidence and or proof of illegality in acquiring it.
 - 7) The learned judge erred in law and fact by holding and ordering that the ownership of Nairobi/Block 126/877 to revert to Nairobi Teachers Housing Co- operative Society Limited and ordering the Chief Land Registrar to process title to the respondent, thereby clearly misdirecting himself by determining issues not raised by the parties and or sought for the parties who were not part of the suit and or property which was not in question in the suit before Court."
4. As the first appeal Court, our jurisdiction is to re-evaluate the evidence that was tendered before the trial court and to determine whether the conclusions reached thereon should stand, while bearing in mind that we did not have the advantage of seeing and hearing the witnesses. (See Francis Muregi Kiragu - vs- Joseph Gachie Kiragu [2014] KECA 745).
 5. We can discern from the record that the appellant's case was advanced through her mother Sophia Wacu Ndirangu (PW 1), who had a power of attorney. She produced a certificate of lease in the name of the appellant. The appellant was registered on 9th February 2000 as the proprietor of the suit property, which measures 0.0224 hectares. The appellant bought the suit property from one Francis Kyalo Mutuku who handed over the original title certificate, copy of his KRA PIN, official search and map. The appellant's certificate was then processed. A look at the property section of the certificate of lease shows that Francis Kyalo Mutuku was registered as lessee on 9th February 2000. The lessor was the Government of Kenya. The appellant's case was that the respondent had entered the suit property forcefully in 2016 and put up a house thereon. The respondent was claiming that this was her land.
 6. The respondent (DW 1) testified that she was a member of Nairobi Teachers Housing Sacco Limited (the Sacco) which was involved in buying land and selling to its members. As a member, she bought and was allocated plots Nos. 37 and 38. The Sacco owned LR Nairobi/Block 126/47 which it subdivided into plots that it sold to its members. She produced evidence of the purchase and the plots documents; and called Paul Waibochi Nyathi (DW 2) who was the chairman of the Sacco to confirm that indeed she was their member to whom the plots were sold. DW 2 testified that in 1983 the Sacco acquired LR No. Nairobi/Block 126/47 for the purposes of subdivision and sale to its members. The members included the respondent. The process of subdivision ended in 2002 and the documents were submitted to the Commissioner of Lands for issuance to the members. The Commissioner of Lands issued



letters of allotment dated 9th August 2007 to the Sacco for the processing of individual leases. The individual plots included LR Nos Nairobi/Block 126/876 and 877 that belonged to the respondent. On 17th November 2009 the Sacco submitted the documents in bulk to the Commissioner of Lands for registration. DW 2 stated that neither the appellant nor the said Francis Kyalo Mutuku was a member of the Sacco. The individual leases had not come out by the time of the dispute.

7. This is the evidence that was placed before the learned Judge.
8. When the appeal was called for hearing on the Court's virtual platform on 12th November 2024, PW1 was present in person. M/s. Ameli Inyangu & Partners for the respondent was absent. Each side had filed written submissions which we have considered.
9. According to the appellant's submissions, she had legally acquired the suit property over which she had been registered as proprietor. Therefore, she submitted, it was wrong for the trial court to find that her title was questionable or that the suit property belonged to the respondent; that the respondent had failed to show how her plots Nos. 37 and 38 had turned out to be the suit property.
10. It was submitted on behalf of the respondent that the appellant had failed to demonstrate to the trial court how she had acquired the suit property; had failed to produce evidence of sale agreement or registration documents. On her side, it was submitted, she had called sufficient evidence to show that she was the valid owner of the suit property.
11. As indicated in the foregoing, the trial court was called upon to determine who between the appellant and the respondent was the rightful owner of the suit property. This appeal will fail or succeed on whether the learned Judge properly appreciated the evidence and reached the correct conclusions thereon regarding the question of ownership.
12. Once the appellant claimed to own the suit property and produced a lease certificate in her name, she became prima facie protected under sections 26, 27 and 28 of the Registered *Land Act*, Cap. 300 She had an indefeasible claim to the property. Such claim could only be defeated on the ground of fraud or misrepresentation to which she was a party, or where the certificate of title had been acquired illegally, unprocedurally or through a corrupt scheme. The learned Judge was alive to these provisions and also cited the decision of this Court in *Munyu Maina -vs- Hiram Gathika Maina, Civil Appeal No. 239 of 2009* in which it was indicated as follows: -

“We state that when a registered proprietor's root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument that is in challenge and the registered property must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”
13. The learned Judge found that the appellant's title was attacked, and pointed to several features as evidence. One, the suit land fell within the parcel of land that the Sacco had brought to be subdivided and given to its members; that the respondent was their member and was the one who had brought and had been allocated the suit property, although the lease certificate had not formally been processed; and that the appellant and Francis Kyalo Mutuku were not members of the Sacco. Regarding the case of the appellant, the learned Judge observed that the appellant had not produced the sale agreement between her and Francis Kyalo Mutuku; that the documents of registration signed between them had not been tendered in evidence; Francis Kyalo Mutuku had not testified; and that the certificate of lease produced showed that the suit property was first registered on 9th February 2000 and that was the same date it was registered in the name of the appellant.



14. The trial Judge observed that the Sacco's LR No. Nairobi/Block 126/47 was subdivided on 22nd October 2022 through survey plan folio No. 285/72 which subdivision gave rise to various plots including LR No. Nairobi/Block 126/877 (the suit property).
15. On our independent re-evaluation of the evidence on record, we determine that the learned Judge was correct in his finding that the appellant's claim to the suit property was based on a lease certificate whose root was evidently questionable, and which could not form a solid basis to accept that she was the owner of the property. On the other hand, the learned Judge had correctly found that the respondent's claim to the suit property was based on firm ground.

She had, by sufficient evidence, demonstrated that she was the bona fide beneficial owner of the suit property.
16. Regarding the claim that the respondent had trespassed on the appellant's land, this is what the learned Judge observed:-

"44. To establish trespass, the plaintiff had to prove that she was either lawfully in possession of the suit property or was the owner thereof and that the defendant entered and occupied the property without any justifiable cause.

45. I have held that the title held by the plaintiff is not valid and that the defendant is the lawful beneficial owner of the suit property. In the circumstances, the defendant has a right to occupy the suit property."
17. We fully agree with these observations and findings. The claim that the respondent had trespassed on the property lacked basis.
18. In all therefore, we find no merit in the appeal which we dismiss with costs to the respondent.

DATED AND DELIVERED AT NAIROBI THIS 7TH DAY OF MARCH, 2025.

P.NYAMWEYA

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

G.V. ODUNGA

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

