



Sacapheso International Limited v Eversweet Bakery Limited & another (Environment & Land Case 439 of 2013) [2025] KEELC 870 (KLR) (27 February 2025) (Judgment)

Neutral citation: [2025] KEELC 870 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 439 OF 2013
M SILA, J
FEBRUARY 27, 2025**

BETWEEN

SACAPHESO INTERNATIONAL LIMITED PLAINTIFF

AND

EVERSWEET BAKERY LIMITED 1ST DEFENDANT

NATIONAL LAND COMMISSION 2ND DEFENDANT

JUDGMENT

(Plaintiff filing suit asserting that she is the holder of the genuine title to the suit land; defendant also having a title to the same land; at the hearing plaintiff not attending and not availing any evidence to support her title ; defendant availing documents evidencing the root of her title and also producing a criminal case where it was found that the original lease upon which the plaintiff asserts title was forged; from the evidence, apparent that it is the defendant with the better title; judgment entered for the defendant in her counterclaim; title of the plaintiff revoked; Land Registrar to reconstruct the records using the documents of the defendant)

1. Through a plaint filed on 4 November 2013, the Sacapheso International Limited contended to be the rightful proprietor of the land parcel Kisii Municipality/Block III/289 (the suit land). The plaintiff pleaded that the land was transferred into her name on 17 December 2010. She claimed that Eversweet Bakery Limited had trespassed into the suit land and was interfering with her possession. In the plaint, the plaintiff sought a declaration that she is the rightful proprietor of the suit land; a permanent injunction to restrain Eversweet Bakery Limited from the suit land; general damages for trespass ; interest and costs.
2. Eversweet Bakery Limited, the defendant, filed defence and counterclaim on 22 November 2013 which she later amended on 11 August 2015 so as to include the National Land Commission as 2nd defendant in the counterclaim. In her pleadings she asserted that she was the rightful proprietor of the suit



property having purchased the same from the previous owner one Henry Nyangechi Nyanchoka and took possession in 2006. She contended that the title of the plaintiff was procured by fraud inter alia that she colluded with officers in the Land Registry to prepare fraudulent documents of title in her favour and caused the removal and elimination of the rightful documents from the Land Registry. She pleaded that the plaintiff's predecessor in title was one Samuel Kenani Omwando who is also a director of the plaintiff. She further pleaded that the original lessee of the title displayed by the plaintiff, is one Nlikora Isaboke Kingara, who is the father of Samuel Kenani Omwando. In her counterclaim, she asked for a declaration that it was her (defendant) who was the rightful owner of the suit property; a permanent injunction to restrain the plaintiff from it; cancellation of the title of the plaintiff and return of her documents; general damages for trespass and for loss of user.

3. The plaintiff filed a reply to defence and defence to counterclaim, more or less joining issue with the defendant.
4. Nothing was filed by the National Land Commission, the 2nd defendant in the counterclaim.
5. At the hearing of the suit, an application for adjournment was made on behalf of the plaintiff which I denied. Subsequently only counsel for the defendant/counterclaimant appeared in court and the defendant called two witnesses. The first was Henry Nyangechi Nyanchoka whose evidence was that he sold the suit land to the defendant. He otherwise relied on a witness statement wherein he stated that he was allocated the suit land through a letter of allotment dated 16 January 1987 for the plot identified as 'unsurveyed plot No.42, Kisii Municipality.' He paid the stand premium and he was issued with a lease dated 21 December 1987. On 22 December 1987 he was issued with a Certificate of Lease. On 24 March 2006, he sold the suit land to the defendant.
6. PW-2 was Caren Nyaboke Onsongo. She stated that she is relying on a witness statement dated 5 July 2023 but what I have seen is a witness statement dated 28 January 2021. In it, she stated that the defendant purchased the suit land from Mr. Nyanchoka in March 2006. They were issued with the various documents of title by Mr. Nyanchoka and transfer was effected. She stated that the company had been paying land rates and rents. She produced various documents to support the title of the defendant.
7. As I earlier stated, no evidence was presented by the plaintiff and the only evidence I have is that of the defendant.
8. I have analysed the evidence tendered by the defendant. I have seen from the documents that there was an allotment letter in name of Mr. Nyanchoka dated 16 January 1987. I have seen a receipt No. 180973 for Kshs. 2,240/= indicating payment for the monies outlined in the allotment letter. I have also seen a search dated 17 May 2001 which verifies that Mr. Nyanchoka was registered as proprietor on 21 December 1987 and issued with a Certificate of Lease the following day. I have seen a copy of the Lease and Certificate of Lease in name of Mr. Nyanchoka. It was stated that Mr. Nyanchoka sold his interest to the defendant in 2006 and I have seen a copy of Certificate of Lease issued on 8 June 2006 in name of the defendant. I have no reason to doubt these documents; in any event the plaintiff did not attend court to contest them.
9. One of the significant documents that the defendant produced was the judgment in Kisii Chief Magistrates' Court, Criminal Case No. 1056 of 2014, Republic vs Samuel Kinani Omwando. In that case, Mr. Omwando was charged with three counts, respectively; forging an allotment letter in name of Nikora Isaboke Kingara purporting to be a genuine allotment letter issued for the suit land; forging a receipt No. D613235 purporting that it was for payment of stand premium; and forging a lease in name of Nikora Isaboke Kingara for the suit property. The case was heard and he was convicted through a judgment delivered on 23 January 2020.



10. It would mean that the root of the competing title held by the plaintiff was found to be a forgery. In addition to the foregoing, the plaintiff failed to attend court to prove that his title is a good title. In light of the above, I will proceed to dismiss the case of Sacapheso International Limited.
11. I have no reason not to enter judgment in favour of the defendant, Eversweet Bakery Limited in the contest between her title and that held by Sacapheso International Limited. I declare that as between the two competing titles, it is the title of Eversweet Bakery Limited which is the better title. I proceed to order cancellation of the title of Sacapheso International Limited for the suit property. I also order the Land Registrar to proceed and cancel all registers purporting to show Sacapheso International Limited as the proprietor of the suit land and no dealings should be entered in such registers. I direct the Land Registrar, Kisii, to reconstruct the records using those of the defendant (Eversweet Bakery Limited) and open a leasehold register indicating that the defendant is the proprietor of the suit land. I also issue an order of permanent injunction restraining the plaintiff (Sacapheso International Limited) from entering, being upon, or in any other way interfering with possession the suit property. The plaintiff is also permanently restrained from entering into any sale, charge, lease, or any other dealing in respect of the suit property.
12. There was a prayer for general damages and mesne profits. There was no evidence led on what sort of trespass the plaintiff undertook or what kind of mesne profits the defendant may have lost. In light of that I make no award in damages.
13. The defendant will have the costs of main suit as against the plaintiff and will also have the costs of the counterclaim jointly and/or severally against both defendants in the counterclaim.
14. Judgment accordingly.

DATED AND DELIVERED THIS 27 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Kasaya h/b for Dr. Kenyariri for the defendant

No appearance on part of the plaintiff

No appearance on part of NLC, 2nd defendant to counterclaim

Court Assistant – Michael Oyuko

