



**Menge v Ondoro (Environment & Land Case E005 of 2023)  
[2024] KEELC 1541 (KLR) (11 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1541 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE E005 OF 2023**

**JM KAMAU, J  
MARCH 11, 2024**

**BETWEEN**

**JOHNSTONE NYANYUKI MENGE ..... PLAINTIFF**

**AND**

**RHODAH MONGINA ONDORO ..... DEFENDANT**

**RULING**

1. This suit was commenced by a Plaint dated 28/11/2023 where the Plaintiff averred that the Defendant was the registered proprietor of the parcels of land Known as Title Nos. Gesima Settlement Scheme/337 and 343 measuring approximately 12 and 2 Acres respectively. Both are situate within Nyamira County. He claims that on 21/4/1998 the late Stanley Ondoro Baraya entered into a sale agreement with him (the Plaintiff) wherein the latter agreed to buy the entire 12 Acres of Gesima Settlement Scheme/337 at Kshs 2,300,000/=. Later on, on 4/10/2004 the Plaintiff also bought the 2 Acres of Gesima Settlement Scheme/343 for Kshs 800,000/=. He did take possession of both and has made substantial developments thereon, including a semi-permanent homestead, planted tea bushes and maize plantations over the years. The said Vendor died on 18/12/2004 before he obtained the letters of consent from the relevant Land Control Board. The legal representative, who is the Defendant herein, has failed or refused to transfer the suit property to the Plaintiff who has sought specific performance of the sale transaction and a Declaration that he is the proprietor of the suit properties and that in the alternative the Deputy Registrar of this Court does sign all the necessary documents requisite to the transfer of the suit lands to the Plaintiff. In his declaration, the Plaintiff states that there is no other suit pending in court or determined concerning the subject matter herein save Nyamira ELC case Nos E005 of 2023 and E006 OF 2023 respectively but which he says have been withdrawn. Before filing Defence and contemporaneously with entering appearance through her Advocate, the Defendant filed a Notice of Preliminary Objection whose purport is that the suit herein offends the provisions of Section 7 of the *Civil Procedure Act* for being Res judicata and that the same ought to be dismissed with costs.



2. I did allow counsel for the parties herein to make their oral submissions on this Preliminary Objection. It was agreed on behalf of the Defendant that there was a suit i.e. Kisii, ELC No.1130 of 2016 where the parties and the subject matter were the same, before a competent court. The Plaintiff herein appealed but later withdrew the Appeal and filed the 2 cases earlier mentioned, ELC E005 and E006 of 2023 respectively. When a Preliminary Objection was filed in the aforesaid cases, the same were withdrawn followed by the filing of this case. It is also in contention that there was also Nyamira ELC No. 78 of 2011 (OS) over the same subject matter save that the parties were different. This suit is now coloured in the form of Specific Performance.
3. On his part, the Plaintiff urged that Kisii ELC No. 1130 of 2016 was dismissed on a technicality since adverse possession had not matured and that the cause of action still subsists.
4. As for Nyamira ELC Nos E005 and E006 of 2023 the same were withdrawn and can therefore not be said to have been fully determined. That now leaves us with Kisii ELC No. 1130 of 2016. Unfortunately, although the prayers in the Plaint were reproduced in the Judgment of the Honourable Mutungi dated 9/10/2020 a copy of which was availed to the Court, none of the Parties herein produced the pleadings in the case. The Suit was dismissed for being brought to Court prematurely. On this ground alone I will allow this Suit to proceed. Costs in the cause.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 11<sup>TH</sup> DAY OF MARCH, 2024**

**MUGO KAMAU**

**JUDGE**

In the Presence of:

Court Assistant: - Brenda

Mr. Aencha for the plaintiff

Mr. Okenye holding brief for Mr. Mokua for the Respondent

