



**Kenya National Union of Teachers v Ng'andu, Mainga, Ndolo, Nzyoka & 1121 others
(Civil Appeal 124 of 2019) [2022] KECA 89 (KLR) (4 February 2022) (Judgment)**

Neutral citation: [2022] KECA 89 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPEAL 124 OF 2019
AK MURGOR, S OLE KANTAI & HA OMONDI, JJA
FEBRUARY 4, 2022**

BETWEEN

KENYA NATIONAL UNION OF TEACHERS APPELLANT

AND

**GIBSON NG'ONDU, FRANCIS MAINGA, GEORGE NDOLO, ISAAC WAMBUA
NZYOKA & 1121 OTHERS RESPONDENT**

*(An Appeal against the Judgment and Decree of the Environment & Land
Court at Machakos (O. Angote, J) dated 19th October, 2018 in Civil Suit No.
32 of 2009 (OS) Consolidated with Nairobi Civil Appeal No. 164 of 2019)*

JUDGMENT

1. A dispute arose between the parties in this matter, over the ownership of land parcel known as Machakos Municipality Block 1/59 (the suit property). The respondents, (who were the plaintiffs at the trial), filed the suit in the Environment and Land Court at Machakos vide an Originating Summons dated 16th February, 2019 and amended on 30th July, 2014, claiming that they were the beneficial owners of Land Title. They also sought a declaration that the loan given on the security of the suit property in favour of IDB Capital Limited was unauthorized, and therefore illegal, and also orders directing the appellant, Kenya National Union of Teachers to transfer the suit property to the respondent's nominee namely United Retired Teachers Company, and for the District Land Registrar, Machakos, to cancel the registration of the charge dated 1st December, 2008, in favour of IDB Capital Ltd.
2. The trial court upon conclusion of the matter held that the respondents were the beneficial owners of the suit property and directed the appellant to transfer the suit property to the respondents.
3. Aggrieved by the decision, the appellants have preferred Civil Appeal No. 124 of 2019 against the Judgment and Decree of the Environmental and Land Court delivered by Angote J. on 19th October, 2018, in ELC No. 32 of 2009. Another appeal emanating from the same decision was filed, being



Civil Appeal No. 164 of 2019 involving KNUT Machakos Branch as the 1st appellant, and Registered Trustees Kenya National Union of Teachers, Machakos branch as the 2nd appellant. The respondents remained the same as in No. 124 of 2019.

4. Counsel in both matters had already filed written submissions. When the two matters came up for hearing on 21st September, 2021, Mr. Gachuna who represents the respondents proposed to this Court that since the two appeals arose from the same judgment, it would be prudent to consolidate them and hear them as a single appeal. In response to this proposal, both Mr. Kamolo, who represents the appellants in Civil Appeal No. 164 of 2019, and Mr. Sigei who represents the appellants in Civil Appeal No. 124 of 2019 had no objection. We consequently ordered that the parties herein having consented, the two appeals be consolidated and heard simultaneously, with Civil Appeal No. 124 of 2019 being the lead file.
5. For purposes of this consolidated judgment, we shall refer to Kenya National Union of Teachers (KNUT), as 1st the Appellants; KNUT Machakos Branch as the 2nd appellant, and Registered Trustees Kenya National Union of Teachers, Machakos branch as the 3rd appellant.
6. It was the respondents' case that in the year 1968, they contributed Kshs.8/= each from their salaries and bought the suit property for Kshs.36,000/- which was registered in the name of the trustees appointed by the members who were all officials of KNUT, Machakos Branch.
7. Further, that after the purchase of the suit property, they agreed to have the 2nd appellant (in which they were all members), use the premises for its' operations and lease out the remaining part to other tenants. After retirement a majority of the respondents formed a committee to have the suit property registered in their names. However, instead of transferring the suit property, by way of a charge dated 1st December, 2008, the 2nd appellant charged the suit property to secure a loan of Kshs.30,000,000/= from Industrial Development Bank (IDB), without the authority of the beneficial owners.
8. The 1st appellant then advised the respondents to register a company for purposes of owning the suit land and transferring suit property to their company once it completed paying off the loan from IDB, and that once that was done, then the suit property would be transferred to their company. However, after the repayment of the loan the appellants failed to honor the agreement to transfer the suit property to the respondents.
9. Apparently all the documents relating to the purchase of the suit property were within the custody of the appellants who were unwilling to transfer the property to the respondents. The respondents then filed suit seeking declarations that they were the beneficial owners of the suit property, that the loan given on the security of the said property in favour of IDB Capital Ltd was unauthorized and therefore illegal, and for orders that: the appellants transfer the said property to the respondents nominee i.e. United Retired Teachers Company Ltd, that the District Land Registrar, Machakos cancels the registration of the charge, for return of the loan amount, or the freezing of the loan account until ownership of the property was established. Subsequently, the umbrella body (KNUT), intervened and mediated between the parties whereupon it was agreed that the appellant would transfer the suit property to the respondents after the branch had fully repaid the loan to the bank and there was consequent discharge of the suit property.
10. In response, the 1st appellant, (being the 4th defendant in the High Court), filed an affidavit sworn by Wilson Sossion dated 3rd November, 2014 stating that one of the 1st appellant's objectives was to bring together and unite all teachers in Kenya, to acquire either by purchase, or lease, of movable and immovable properties or other assets, and sell, let or mortgage or charge or otherwise seal with or dispose of movable and immovable property belonging to it. That the respondents were its members



- who had retired variously and had been making monthly contributions to it for performance of its objectives.
11. That in 1968, the 1st appellant purchased the suit property through its funds, and the suit property alongside all its other properties are registered in the name of registered trustees (ie KNUT Machakos Branch) on behalf of the Union and its members.
 12. That the respondents were at a time trustees of the Union, and could not purport to insist that the suit property belonged to the retired teachers, because upon retirement an individual's union membership ceased and no rights would accrue as to ownership of the Union's suit property.
 13. That as the registered owner of the suit property, the 1st appellant, could not have been requesting to have its own premises as an office for its operations. It insisted that it owned the suit property and had leased it out to third parties. The appellants prayed for dismissal of the claims with costs.
 14. The 2nd appellant had by a replying affidavit dated 3rd November 2014, and sworn by Wilson Sossion maintained that the 2nd appellant was the registered proprietor of the property in question. He further stated that upon retirement, a member ceased to enjoy the benefits or privileges from the 1st or 2nd appellant, and that although the respondents made monthly contributions of Kshs.8/-, the property in question was purchased by the 1st appellant through its funds. He also stated that the property was registered in the names of the trustees in their capacity as officials of the 2nd appellant to hold in trust for the 1st appellant, and its present and future members, and upon their retirement, no rights accrued to them as regards ownership of the appellants' property.
 15. The 2nd appellant filed written submissions in which it urged the trial court to find that the respondents claim was statutorily time barred as it related to a claim for recovery of land, and was being brought after the lapse of more than 12 years; that the evidence presented by the respondents was bare and lacked any supportive documents such as a green card or search. Further, that the respondents had no record of their contributions, and the list they produced was not authentic. The 2nd appellant urged the trial court to find that it had explained the parameters and extent to which a retiring member would benefit from his/her contributions. They urged for the dismissal of the suit.
 17. By a judgment dated 19th October, 2018, the trial court having carefully considered the parties' pleadings and evidence record, found that the respondents had proved their claim on a balance of probabilities and declared that the 1,125 persons who were parties in the suit, were the beneficial owners of land parcel No. Machakos Municipality Block 1/59; that the loan secured by the suit property in favour of IDB Capital was unauthorized, and therefore illegal; and the appellants to transfer the said parcel of land to the respondents' nominee being United Retired Teachers Company Ltd. The 1st and 2nd appellants were to bear the costs.
 18. The court's rationale in finding for the respondents was the fact that the appellants did not have documentation to support the allegation that it purchased the suit property in light of the concession by the appellants' officials in writing that the suit property was purchased by the teachers in 1968, and that the registration of the title in the names of the trustees of the branch was merely for convenience sake. The court went on further to state that the appellants did not produce the 1968 KNUT Constitution to enable the court understand the legal standing of the Union by then, particularly in what capacity it could own property.
 19. The court went further to hold that the appellants conveniently withheld information concerning the purchase of the suit property, and being a body whose mandate it is to keep record of its membership especially with regard to the monthly deductions the court would have expected the appellants to produce all the records for period 1966-1968 on the manner in which the respondents contributed



to the purchase of the suit property, which they failed to do and just relied on the title document to defeat the respondent's claim.

20. The appellants were aggrieved and challenged the judgment of the Environment and Land Court on 8 grounds of appeal, which all boil down to more or less one issue, namely- the principle of sanctity of Title/Ownership of suit property. The appellants contend that the trial court failed to appreciate the principle of sanctity of title which provides that the certificate of title shall be prima facie evidence that the person named as the proprietor is the absolute owner of that land. The appellants further contend that the title is currently registered in the name of the three respondents, John Nthini Katilu, Julius Kimeu Muasya and Isaac Wambua Nzyoka as trustees of KNUT.
21. That Section 26 of the [Land Registration Act](#) provides for the principle of sanctity of title, with the proviso in Section 26(1) being that unless that title was obtained through fraud, misrepresentation or that the certificate was acquired illegally or through a corrupt scheme. The appellants argue that this proviso does not apply as the title was not obtained by the scenarios observed in the proviso.
22. The appellants also reiterate that the 1st appellant being a Trade Union duly registered, all property vests in its trustees for the use and benefit of the Trade Union, and that the suit property has been over time registered in the names of the various Union Official Trustees. The appellants reiterate that according to their constitution, the respondents' membership of the union ceased upon retirement/resigning, and no rights accrued to them as to ownership of the Union Property. That the title to the suit property cannot be impugned, as it has not been shown that the Title was obtained by the circumstances envisaged in Section 26 (1) of the [Land Registration Act](#). The appellants submit that the onus did not rest on them to demonstrate to the court how the respondents made monthly contributions and how this was injected towards the purchase of the suit property. That the onus was on the respondents to prove that monthly contributions were made as, he who alleges must prove, and that no documentation and/or evidence was proffered by the respondents to show the contributions made to purchase the suit property. The appellants also contend that it had produced enough evidence i.e. certificate of lease, demand notes for unpaid rent and rates from Municipal Council of Machakos and a declaration of trust by the trustees to prove its ownership of the suit property.
23. The respondents retort to the appellants' submissions is that the suit property, though registered in the name of the 2nd & 3rd appellants, belongs to the respondents as it was held in trust.
24. The respondents maintain that they were involved in the purchase of the suit property and even secured registration in their individual names under KNUT, the 1st appellant, and not under KNUT-Machakos branch, the 2nd appellant which was non - existent by the time of purchase. That they produced a copy of the lease which revealed that the suit property was not registered in the name of the branch but in the names of the respondents. The respondents also explained that they used the name of the 1st appellant in the registration process of their title, that KNUT being the common link made it easier to do business with the seller. The respondents are very clear that they did not refer to themselves as the trustees of the branch, which in any event, would have been Masaku Branch and not the 1st appellant.
25. It is the respondent's further contention that the 2nd appellant had admitted the respondents' ownership of the suit property in the letters signed by Peter M. Kavisi (Executive Secretary, KNUT Masaku branch), dated 10th May, 1991, 29th July, 1991 and 14th September, 1993 in which the 2nd appellant communicated its intention to transfer the property to the owners who were the teachers who had contributed towards its purchase. That the 1st appellant also admitted the respondents' ownership in the letters dated 18th November, 2009, 18th January, 2010 where it conceded the respondents ownership and advised them to register a private company for ease of transfer ownership. Further, that there were minutes of meetings between the officials of the 1st, 2nd appellants and the



- respondents' representatives with regard to the modalities to be involved in the transfer of the suit property to the respondents, and showing there was a consensus in the release the suit property to the respondents.
26. That, in further support of the respondent's case the appellants' witness conceded that the Union did not purchase any property during the respondents tenure.
 27. The respondents reiterated their explanation as to why they were not in possession of the title documentation, which was that the documents were in the possession of the 2nd appellant, whose elected union officials, were the trustees holding the suit property in trust for the respondents.
 28. On the issue of sanctity of title, the respondents rebut the same by making reference to the provisions of Section 28 of the *Land Registration Act* and submit that a trust is an overriding interest in asserting the rights of a proprietor, whether on first registration or subsequently for valuable consideration.
 29. This being a first appeal it is this court's primary duty to re-evaluate the evidence on the record in order to come to its own independent conclusion on the evidence and the law, as per Rule 29 (1)(a) of the *Court of Appeal Rules*. In our view, the main issue in this appeal is ownership of the Suit Property.
 30. The crux of the appeal is that the 1st appellant is the registered owner of the suit property and that since 1967 the suit property always belonged to KNUT Machakos Branch, the 2nd appellant, and that the same was registered in the names of the trustees of the union.
 31. Upon our perusal of the proceedings, we find that there was no evidence led by the appellants to show that the 2nd appellant purchased the suit property. On the other hand, the respondents produced several letters dated 10th May, 1991, 29th July, 1991, 18th January, 2010 and the minutes dated 30th June, 2010, which documentation proved that the appellants acknowledged the respondents' ownership, and demonstrated their intent to transfer the suit property to the respondents.
 32. We note the appellants' argument that the respondents did not produce any document in support of the contributions from the members toward the purchase of the suit property.
 33. This notwithstanding, we are in agreement with the findings of the trial court that although the respondents were unable to produce the sale agreement and pay slips showing the deductions of Kshs.8 made by each member, there were documents presented which supported their claim as reflected in the letters dated 10th May, 1991, 29th July, 1919, 18th January, 2010 and minutes dated 30th June, 2010. The wording of the documents essentially shows the appellants' intention to transfer the suit property to the respondents. Despite the charge on the suit property, the Secretary General of the 1st appellant in a letter dated 18th November, 2009 confirmed the position that the Union was simply a trustee and was willing to transfer the property to a properly instituted corporate. All the correspondence ultimately led to a meeting of 30th June, 2010, where it was agreed and recorded in the minutes that the building should be handed over to the retired teachers after the completion of the loan at the end of November 2011. We also agree with the trial court that the appellants did not have any documentation to support the allegations that the suit property was purchased by them, and that the registration of the title in the name of the trustees of the 2nd appellant was merely for convenience purposes. Indeed, the appellants did not even produce a copy of its 1968 constitution to ascertain whether or not it could own property, in any event.
 34. We note that the trial court correctly observed and supported by this Court's decision in *The Chairman Kenya National Union of Teachers & Others v Henry Inyagala & Others* (2016) eKLR, that teachers in the early 1960's came together in their respective branches and contributed towards the purchase of the buildings as an investment, and vide a circular dated 1st October, 1968, from KNUT,



a directive was issued to the effect that all buildings in Kenya constructed by the original teachers be transferred to them. From our re-evaluation of the evidence, it is clear that the appellants withheld information concerning the purchase of the property, as the appellant is a body whose mandate is to keep record of its members especially pertaining to the monthly deductions and/or contributions. We do not find any fault in the sentiments expressed by the trial court that it would have been expected for the appellants to avail records as to how the respondents contributed to the purchase of the suit property, and in the alternative demonstrate that the respondents did not make any deductions and/or contributions. Instead of doing so the appellant relied solely on the title document to try and defeat the respondents claim.

35. Indeed, the evidence so clearly shows that at all times, the 1,125 teachers got together and set out to invest for their retirement, made contributions, and the property was acquired by them and not the appellants, who were just an interim vehicle. After they had identified the property, they identified trustees to hold it for them, but in an odd twist of events, the 2nd appellant, being fully aware of how the property came to be, used it as collateral to borrow money. The letters and minutes produced by the respondents in our considered view show that the appellants conceded the respondents' claim and there is no proof to the contrary.
36. Consequently, we find no error in fact or law, and we hold that the appeal has no merit and is dismissed with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 4TH DAY OF FEBRUARY, 2021.

A. K. MURGOR

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

