



**Teka (Suing for and on Behalf of the Estate of Laban Tekha Ikhale) v Makokha (Environment and Land Appeal E036 of 2021) [2024] KEELC 3496 (KLR) (29 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3496 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E036 OF 2021**

**DO OHUNGO, J**

**APRIL 29, 2024**

**BETWEEN**

**JOHN SITATI TEKA ..... APPELLANT**

**SUING FOR AND ON BEHALF OF THE ESTATE OF LABAN TEKA IKHALE**

**AND**

**EMILY L. MAKOKHA ..... RESPONDENT**

*(Being an appeal from the judgment and decree of the Senior Principal Magistrate's Court at Butali (Hon. ZJ Nyakundi, Senior Principal Magistrate) delivered on 11th August 2021 in Butali MCELC No. E33 of 2021)*

**JUDGMENT**

1. Litigation leading to this appeal started in the Subordinate Court on 30<sup>th</sup> June 2021 when the appellant filed plaint dated 30<sup>th</sup> June 2021 against the respondent. He averred in the plaint that the parcel of land known as North Kabras/Luandeti/349 (the suit property) was registered in the name of his deceased father who passed away on 28<sup>th</sup> March 1996 and that the plaintiff together with the children of the deceased filed succession proceedings which were pending confirmation. That the respondent entered the suit property together with her husband in the year 2015 claiming that one of the beneficiaries had sold land to them.
2. The appellant further averred that the respondent's husband passed away on 29<sup>th</sup> June 2021 and that the respondent intended to inter her husband Ben Munialo's remains in the suit property yet her husband was a total stranger to the estate. The appellant therefore prayed for judgment against the respondent for a permanent injunction to restrain the respondent, her family members, relatives, agents, servants, or any other person acting through her from interring Ben Munialo's remains in the suit property. He also sought an order of eviction of the respondent, her family members, relatives, agents, servants, or any other person claiming through her from the suit property.



3. The respondent filed a defence and counterclaim in which she admitted that her husband Ben Munialo had passed away and that she intended to inter his remains in the suit property. She averred that her husband had purchased the land from a beneficiary known as Emily Makokha. She prayed that the appellant's case be struck out and that she be allowed to inter her husband's remains in the suit property.
4. Upon hearing the matter, the Subordinate Court (Hon. Z J Nyakundi, Senior Principal Magistrate) delivered judgment on 11<sup>th</sup> August 2021 in favour of the respondent and ordered that Ben Munialo's remains be interred in the 1 acre of land that Ben Munialo purchased from Emily Makokha. The learned magistrate further dismissed the appellant's case with costs.
5. Dissatisfied with that outcome, the appellant filed this appeal through Memorandum of Appeal dated 12<sup>th</sup> August 2021. He prayed that the judgment be set aside and be replaced with an order allowing his case. The grounds of appeal are listed on the face of the Memorandum of Appeal. In summary, they are that the learned magistrate erred in finding that Emily Makokha had capacity to sell the 1 acre of the suit property, that the learned magistrate erred in applying the law of estoppel and that the learned magistrate erred in misapplying the facts to the provisions of the [Law of Succession Act](#).
6. The appellant passed away on 15<sup>th</sup> March 2022 during the pendency of this appeal. He was substituted with Steward Kabaka, pursuant to an order made on 30<sup>th</sup> October 2023.
7. The appeal was canvassed through written submissions. The appellant argued that although the respondent produced a sale agreement indicating that her husband purchased an acre of the suit property from Emily Makokha on 11<sup>th</sup> January 2014, at that time the land was still registered in the name of the deceased and that pursuant to which Section 45(1) of the [Law of Succession Act](#), the seller did not have capacity to dispose of any interest to the respondent. That by purporting to sell, she was disinheriting the real beneficiaries of the deceased registered proprietor. That the respondent's husband was not an innocent purchaser since he ought to have known that he was transacting with a person who could not give him the interest he was purchasing.
8. The appellant further argued that the law cannot be bent to disinherit the rightful beneficiaries of the deceased registered proprietor and that the respondent was not entitled to the one acre. He also argued that the learned magistrate wrongly applied the law of estoppel to the estate of a deceased person who was not party to the sale transaction between the respondent's husband and Emily Makokha. The appellant therefore urged this court to allow the appeal.
9. In reply, the respondent argued that the suit property was owned by Laban Ikhale Teka (deceased) and that the appellant and Thomas Teka who were sons of the deceased were entitled to the land as beneficiaries. That Emily Makokha who is a widow to Thomas Teka and has a life interest in Thomas Teka's share and therefore had capacity to transact. The respondent further argued that even if we were to assume that Emily Makokha engaged in an illegal action, the appellant being the administrator of the estate of the deceased sanitized her actions by promising the respondent the land parcel and that by his own conduct the appellant caused the respondent to believe that they were proper purchasers. That the appellant sought an equitable remedy of injunction and equity does not aid the indolent. On the issue of estoppel, the respondent argued that although the appellant was the administrator of the estate with responsibility to protect and preserve the estate, he did not file any suit or challenge the respondent or her husband but instead encouraged their occupation of the suit property. That the appellant is therefore estopped from crying foul. The respondent therefore urged this court to uphold the judgement of the Subordinate Court.



10. This is a first appeal. Consequently, the mandate of this court is to re-consider and re-evaluate the pleadings, the evidence, and the material on record and to determine whether the conclusions reached by the learned Magistrate are to stand or not and to give reasons either way. See *Selle & Another v Associated Motor Boat Co. Ltd & Others* (1968) EA 123 and *Abok James Odera & Associates v John Patrick Machira t/a Machira & Co. Advocates* [2013] eKLR.
11. The issue that arises for determination in this appeal is whether the reliefs that were sought ought to have issued.
12. A perusal of the appellant's plaint reveals that the case that he pleaded before the Subordinate Court was for a permanent injunction and eviction of the respondent. Thus, the Subordinate Court was not called upon to determine ownership of the suit property. The suit property is registered in the name of Laban Teka Ikhale (deceased) who passed away on 28<sup>th</sup> March 1996 and is the subject of active succession proceedings. The respondent contends that in the year 2014, her deceased husband and her purchased one acre of the suit property from Emily Makokha who is a beneficiary of the estate of Laban Teka Ikhale (deceased). There is no dispute that they took occupation and even constructed on the one acre in the year 2015 with the appellant's knowledge. The appellant has been the administrator of the estate of Laban Teka Ikhale (deceased) since the year 2011.
13. The appellant argued that the learned magistrate wrongly applied the doctrine of estoppel and that pursuant to which Section 45(1) of the *Law of Succession Act*, the seller did not have capacity to dispose of any interest to the respondent.
14. Lord Denning, Mr stated as follows in *D & C Builders vs Sidney Rees* (1966) 2 QB 617 concerning estoppel by conduct:

It is the first principle upon which all courts of equity proceed, that if parties, who have entered into definite and distinct terms involving certain legal results, afterwards by their own act or with their own consent enter upon a course of negotiation which has the effect of leading one of the parties to suppose that the strict rights arising under the contract will not be enforced, or be kept in suspense, or held in any event, the person who otherwise might have enforced those rights will not be allowed to enforce them when it would be inequitable having regard to the dealings which have taken place between the parties.
15. The Subordinate Court did not decide ownership of the suit property. It was simply called upon to decide if Ben Munialo's remains could be interred in the suit property. Judging from the appellant's conduct and the overall conduct of the parties, it is clear that Ben Munialo and the respondent had occupied and developed the one acre with the appellant's knowledge from as far back as 2015. All the while, the appellant was the administrator of the estate of Laban Teka Ikhale (deceased) and had the opportunity to act to stop Ben Munialo and the respondent. He interacted with the respondent and her husband and even attended a local chief's meeting. Given that background, he was estopped from turning around and seeking to stop burial of Ben Munialo's remains on the one acre. I find nothing wrong with the learned magistrate's application of the doctrine of estoppel in the circumstances. The appellant was not entitled to the reliefs that he sought.
16. Whether the transaction between Emily Makokha, Ben Munialo and the respondent and even the respondent's occupation of the suit property translates to title is another matter and the Subordinate Court was not called upon to determine that issue. Parties will have to resolve that question separately, in the succession proceedings and elsewhere.
17. I find no merit in this appeal, and I therefore dismiss it with costs to the respondent.



**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF APRIL 2024.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

Mr Indimuli for the Appellant

Ms Shabola holding brief for Ms Mukhwana for the Respondent

Court Assistant: M Nguyayi

