



**Machora v Onkangi & another (Environment and Land Appeal
E011 of 2023) [2024] KEELC 4600 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4600 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E011 OF 2023**

JM KAMAU, J

MAY 30, 2024

BETWEEN

PETER MACHORA APPELLANT

AND

LEONIDAS NYABANDO ONKANGI 1ST RESPONDENT

ONDIEKI KINGOINA 2ND RESPONDENT

*(Being an Appeal from Judgment and Decree of the learned Magistrate
M.S. Nyigei -P.M. in Nyamira ELC No. 150 of 2015 dated 10th May 2023)*

JUDGMENT

- 1 The Appellant filed a suit in the Chief Magistrate’s Court, Nyamira on 2/11/2015 seeking for orders of:-
 - a. A permanent injunction do issue restraining the Defendant by himself, his servants, agents or any other person acting under his authority or directions from trespassing, encroaching, interfering entering, staying and or carrying any activity on the parcel of land known as L.R.no Central Kitutu/mwogeto/2127.
 - b. Costs of the suit be provided for.
 - c. Any other relief the Honourable court deems fit to grant.
- 2 He anchored his case on the fact that he was the registered owner of L.r. No. Central Kitutu/ mwogeto/2127 measuring 0.025 Hectares or thereabout on which the 1st Respondent, Leonidas Nyabando Onkangi is said to have trespassed on 23/9/2013 and 26/10/2013 which act was malicious and without any condoning by the Appellant and the Appellant needed the orders of the Chief



Magistrate's Court to forestall the trespass, otherwise it would occasion him irreparable loss and damage.

- 3 The 1st Respondent on the other hand denied the Appellant's claim but admitted that the Appellant was indeed registered the proprietor of the suit land but that the Title was obtained by way of fraud since it was so registered when there was an ownership dispute between the Appellant and the Respondent. The 1st Respondent filed a counter-claim and joined the 2nd Respondent as the 2nd Defendant and claimed that he was at all material times been in possession of the suit land having purchased the same on 31/8/1976 from the late husband of the 2nd Respondent and had now been deprived of the suit land for which he has suffered loss and damage. He therefore sought for orders of:-
- a. A declaration that the Counter Claimer is the rightful owner of land parcel no. Central Kitutu/Mwogeto/2127.
 - b. An order for the reversion and cancellation of the transfer and registration of land Titles No. Central Kitutu/Mwogeto/2127 unto the names of the 1st Defendant Peter Machora.
 - c. Permanent injunction to restrain the Defendants either by themselves, their agents/servants from entering upon, trespassing onto and/or otherwise interfering or dealing however with Title No. Central Kitutu/Mwogeto/2127.
 - d. An order of cancellation of the registration of the suit land in favour of the 1st Defendant and registration trust of the Counter Claimers.
 - e. Such further and/or other relief as the Honorable court may deem fit and expedient to grant.
 - f. Costs of the suit to be borne by the Defendant.
- 4 The Appellant filed a Reply to Defence and Defence to counter-claim repeating the averments contained in the Plaintiff and further stating that the 1st Respondent never obtained consent of the Land Control Board for the transfer of the property, an agricultural land and that no letters of administration were sought in respect to the estate of the purchaser of the suit land.
- 5 The case commenced for hearing on the 11/8/2021 and the counter-claim having survived the dismissal of the Appellant's suit for want of prosecution on 13/11/2019 by the Honourable Alice Towet, S.R.M. The 1st Respondent, Leonidas adduced evidence to the effect that he bought 25 by 100feet being CENTRAL KITUTU/MWOGETO/196 on 31/8/1976 from the late Kingoina Osoro who died in early 2000 at a consideration of Ksh. 2,400/=. Kingoina was the registered owner of the land. He then took possession of the same and erected a semi-permanent house thereon. Upon the death of Osoro, the 2nd Respondent caused the land to be sub-divided and transferred to the Appellant. The semi-permanent structure is still intact but the 2nd Respondent and the Appellant have been letting it out on lease, albeit illegally. The land has been fenced off. The building was later destroyed and the Appellant started construction on the site. He later learnt that the same had been re-subdivided and the current number is 2127, in the name of the Appellant. His tenants were evicted. He produced the following documents in support of his case;
1. Sale agreement dated 31/8/1976
 2. Certificate of registration for Women group
 3. Photos and Plans for the structures on the ground
 4. Summons to attend a meeting by the County Commissioner.



- 6 On cross-examination by Mr. Bwonwonga for the Appellant he said that Kingoina Osoro died around 2003-2005 and that he was not able to obtain consent because the Vendor relocated to Masai land immediately upon the sale. From 2003, when he was evicted from the land, the 2nd Respondent has been in possession. On re-examination by Ms. Shilwatso, he said that the seller relocated to Masai land after the sale transaction. The 2nd witness, Gichana Ogeto Oseko said that the 2nd Respondent is a widow of Kingoina Osoro with whom he used to do business, and that he is aware that the land was sold to the 1st Respondent and the deceased used the money to educate his children. There is now another person on the land.
- 7 On cross-examination by Mr. Bwonwonga, he said that he is the one who advised the late Osoro (his brother) to sell the land and educate his children which he sold at kshs. 2,400/=.
- 8 PW3, Zacharia Gikoyo Mogere said he saw the 1st Respondent build a shop which he, Mogere, later rented but was later chased away by the sons of John Mechira his cousins and sons of the late Kingoina. On cross-examination he said he rented the shop in 1992 and was chased away in 1999. On re-examination he said that the Appellant got a Title Deed in respect to the suit land on 31/7/2008 after the had been evicted from the shop.
- 9 Martin Osano, Land Registrar, Nyamira, produced a certified Green Card for Central Kitutu/mwogeto/196 first in the name of Kingoina Osoro, closed on 9/5/1992, then 1844 to Ondieki Kingoina after succession and then to 2127. The Green Card was produced. On cross-examination, the Land Registrar said that 2127 was a resultant sub-division of 1844 and that the succession is alleged to have been done but was not indicated in the Register. No consent on the Land Control Board was shown to have been obtained and no transfer documents were in the parcel file. No entry was in the Presentation Book.
- 10 These are the facts of the case.
- 11 After the close of the case and filing of written submissions, the learned trial magistrate retired to write the Judgment and held that a short cut was taken at the Land Registry and a “direct transfer” made instead of transmission through the succession process and for the lack of the lawful procedure having been followed the transfer of East Kitutu/mwoseko/1844 from Kingoina Osoro to Kingoina Ondieki was null and void and the resultant sub-divisions were hence illegal. But the 1st Respondent by providing a copy of the sale agreement of the parcel of land measuring 25 by 100 feet from the originally registered owner of parcel number 196 and paid 2,400/= on 31/8/1976 and immediately taking possession of the same and developing it and the fact that there was no Defence to the counter-claim, the same stood unchallenged and the same succeeded.
- 12 Having being dissatisfied with the Judgment of the Court, the Appellant filed an Appeal asking this Court to upset the Decree of the lower court and reverse, vary and set it aside on the following grounds;-
1. That the learned erred Magistrate in law totally ignored the Appellants written submissions filed in court 15th March 2023 and instead indicated in her Judgment that the Appellant never filed his submissions.
 2. The learned Magistrate totally failed and or ignored a very vital exhibit, which was produced in court. The said exhibit a land sale agreement dated 31st August 1976. In the said land sale agreement there was an important clause; indicated that same agreement shall be null and void for all purposes if consent or the laid Control Board is not obtained within three months from the date of the drafting and or signing the agreement.



3. That the learned Magistrate erred in law and fact misdirected herself by not taking note that the vendee (Respondent); was not sold land the vendor. The vendor by then was ON4S company. ON4s is not a company.
4. That the Counter-Claimer who is the Respondent never produced any land Title Deed as evidence that he owned the said land; but the Appellant produced the Title Deed.
5. Non gave authority to the Decree Holder to file the suit.

13 I find the reasoning of the learned Trial Magistrate sound. His Judgment is also in conformity with the law and the same does not stand for faulting. The Appeal is therefore dismissed with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 30TH DAY OF MAY 2024.

MUGO KAMAU

JUDGE

In the presence of: -

Court Assistant - Brenda

Appellant's Counsel - N/A

Respondent's Counsel – Ms. Chepkorir for the 1st Respondent

