



**Nyangoka & 2 others v Kabwori & another (Environment and Land Appeal  
013 of 2023) [2024] KEELC 4599 (KLR) (30 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4599 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT AND LAND APPEAL 013 OF 2023**

**JM KAMAU, J**

**MAY 30, 2024**

**BETWEEN**

**ALOYCE OMARE NYANGOKA ..... 1<sup>ST</sup> APPELLANT**

**JUSTUS ONSONGO NYANGOKA ..... 2<sup>ND</sup> APPELLANT**

**HENRY NTOME NYANGOKA ..... 3<sup>RD</sup> APPELLANT**

**AND**

**ROBINA KWAMBOKA KABWORI ..... 1<sup>ST</sup> RESPONDENT**

**VINCENT GITENGE OSANO ..... 2<sup>ND</sup> RESPONDENT**

*(Being an Appeal from the Judgment of the learned Trial Magistrate (Hon. C. W. Waswa (SRM)  
delivered on 2nd June 2023 in Nyamira Chief Magistrate's Court ELC Case No. E030 of 2022)*

**JUDGMENT**

1. In this suit filed by way of a Plaint dated 17/6/2022, the Respondents state that the 1<sup>st</sup> Respondent was married to one Peter Osano Nyangoka who died on 21/3/2004 and the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents are children of the 2. The Deceased was brother to the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Appellants whose father Nyangoka Orucho Osano died on 25/1/2021. He was the registered owner of LR No. East Kitutu/Mwamangéra/626 having inherited the same from his later father Orucho Osano. The land is therefore ancestral which they have occupied for more than 47 years now. All the parties herein live on separate parts of the suit land. But the Appellants sub-divided the land into East Kitutu/Mwamangéra/3700, 3701 and 3702 and had the same shared amongst the 3 of them which was fraudulent and calculated to disinherit the Respondents and deny them their proprietary rights over the suit property. They therefore sought for:-



- a. A Declaration that the Defendants Obtained the Registration of the Land Parcel Title Numbers East Kitutu/Mwamang'era/3700, 3701 and 3702 fraudulently and an Order do issue directing the Land Registrar Nyamira to cancel the same.
  - b. A Declaration that a section of the Land Parcel Title Number East Kitutu/Mwamang'era/626 or the resultant Titles measuring 0.9 Hectares is held in trust of the Plaintiffs and the aforesaid trust be dissolved and the aforesaid land be transferred in favour of the Plaintiffs and an Order do issue to the Nyamira County Registrar and the Nyamira County Land Surveyor to amend the map and the records held by them to reflect as such.
  - c. A Mandatory Injunction compelling the Defendant to execute and hand over to the Plaintiff the completion documents required to effect the sub-division and transfer of the property measuring 0.9 Hectares, comprised in Land Parcel Title number East Kitutu/Mwamang'era/626 or the resultant titles within 60 days from the date of the Judgment in favour of the Plaintiff.
  - d. In case the Defendant defaults in executing the necessary documents to effect the transfer, the Honourable Court be pleased to order and direct that the Executive Officer or the Court itself to sign the Requisite Application Forms for Land Control Board Consent and the Transfer Instrument and issue Title in favour of the Plaintiff.
  - e. A permanent injunction restraining the Defendants, the Defendants servants, employees, workers, assignees, agents, siblings, parents, children, brothers relatives, or any other person working under the instructions and or title and or name of the Defendants from encroaching, trespassing, setting foot, residing and or staying and or occupying, leasing, managing, charging, appointing a receiver, disposing or in any other way dealing with the Plaintiffs' property measurement 0.9 Hectares comprised in the parcel Title Number East Kitutu/Mwamangera/626 or the resultant Titles.
  - f. Costs and interest thereof.
2. The Appellants, in their Statement of Defence, denied that LR East Kitutu/Mwamang'era/626 is ancestral land and that the particulars of customary trust are not all admitted. They averred that the sub-division of the suit land and subsequent transfer were lawful and that the transfer was effected by their late father Orucho Nyangoka Osano and that the 1<sup>st</sup> Respondent was bequeathed East Kitutu/Bonyamondo II/1316 and Transmara/Moyoi/2499 by the said Orucho Nyangoka Osano (deceased).
  3. The case proceeded for hearing on the 2/3/2023 before the Honourable C.W. Waswa, S.R.M when the 1<sup>st</sup> Respondent, Robina Kwamboka repeated the averments in the Plaint backed with her statement dated 17/6/2022. She testified that for the sub-divisions and transfer of LR NO. East Kitutu/Mwamang'era/626 to take place no Stamp Duty was paid. She did produce the following documents to buttress her case:-
    1. Green card for land parcel title number East Kitutu/Mwamang'era/626 dated 05/02/2018.
    2. Green card for land parcel title number East Kitutu/Mwamang'era/3700 dated 05/02/2018.
    3. Green card for land parcel title number East Kitutu/Mwamang'era/3701 dated 05/02/2018.
    4. Green card for land parcel title number East Kitutu/Mwamang'era/3702 dated 05/02/2018.
    5. A letter dated 17/6/2013 from the Chief East Kitutu location
    6. A letter dated 12/11/2013 from the Chief East Kitutu location



7. A letter from the Masaba North Deputy County Commissioner dated 26/8/2014 to the Nyamira Land Registrar
  8. Report dated 29/9/2017 from the Assistant County Commissioner- Gachuba and Rigoma division
  9. Report dated 09/01/2018 from the Assistant County Commissioner – Gachuba and Rigoma division
  10. A report/letter from Land Registrar Nyamira County dated 05/02/2018
  11. Death certificate for Osano Orucho Nyangoka
  12. Death certificate for Peter Osano Nyangoka
4. On cross-examination the witness said she was not aware of any other land distributed by her father in law and that it was the 1<sup>st</sup> and 2<sup>nd</sup> Appellants who were evicting her from the land. The 2<sup>nd</sup> Respondent repeated his mother’s testimony and said that he had planted bananas on their piece of land which were uprooted by the 1<sup>st</sup> Appellant.
  5. On their part, the Appellants repeated the averments contained in the Defence and also added that all due process was followed in the transfer of the suit property i.e. application for consent of the land control board, preparation of mutation forms, transfer of land and finally there is evidence of Title Deed, and that no fraud was applied. They also produced the following documents:-
    1. Application for consent of land control board approved on 22/5/2013
    2. Application for consent control board dated 27/03/2013
    3. Letter of consent dated 22/05/2013 for Henry Ntome Nyangoka
    4. Letter of consent dated 22/05/2013 Aloyce Omare Nyangoka
    5. Letter of consent dated 22/5/2013 Justus Onsongo Nyangoka
    6. Transfer of land dated 05/06/2013 for Henry Ntome Nyangoka
    7. Transfer of a land dated 05/06/2013 for Aloyce Omare Nyangoka
    8. Transfer of land dated 05/506/32013 for Justus Onsongo Nyangoka
    9. Pin in respect Henry Ntome Nyangoka - A00715656111
    10. Pin No for Aloyce Omare Nyangoka - A0021272441
    11. Pin No for Justus Onsongo Nyangoka - A001232293M
    12. Pin No for Osano Nyangoka Orucho - A004488339F now deceased
    13. Letter of consent for Robina Kwamboka Kabwori (1<sup>st</sup> Plaintiff) dated 24/03/2016
    14. LR East Kitutu/Bonyamondo II 316 gifted to Robina Kwamboka Kabwori but not yet transferred.
    15. Mutation for in respect East Kitutu/Mwamangera/626 dated 13/05/2013
    16. Certificate of death for Orucho Nyangoka Osano dated 25/1/2021
    17. Letter of consent dated 27/03/2013



18. Letter from Assistant County commissioner Rigoma ward dated 11/08/2016
  19. Letter from the chief East Kitutu location dated 07/06/2018
6. In cross-examination, the 1<sup>st</sup> Appellant said that their late father bought LR NO.East Kitutu/Mwamangéra//626 in 1974 but he did not have any documents to show that. He also admitted that the transfers were not signed by the Land Registrar and that he did not have receipts for the Land Control Board Consent nor Valuation Reports for the properties. The suit land was purchased by his father. The 2<sup>nd</sup> Appellant said that when the husband to the 1<sup>st</sup> Respondent (also father to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents) died, they sub-divided land parcel number 626 into 3 portions. He also had nothing to show that Stamp Duty was paid nor Valuation Report and that transfers were not signed. No payments for the transfer were made and he had no documents to show that their father bought the suit land. He summed up his evidence by saying that it is only fair the 1<sup>st</sup> Respondent to get her rightful share of land from parcel No. 626. DW3 – Justus Onsongo Nyangoka also testified that the 1<sup>st</sup> Respondent’s husband was also buried on the suit land parcel number 626. These are the facts of the case and the Judgment of the Honourable C.W. Waswa set the same and so clearly. The court analyzed the case as follows. The Transfer forms for the sub-division and transfer of the Titles resultant from LR NO.626 for registration were not executed by the transfer. No entry in the presentation book. No registration fees paid. The mutation forms produced by the Appellants were not endorsed by land registrar. The Appellants did not produce the Title Deeds in court as conclusive proof of ownership of the suit properties.

These are the irregularities.

7. The court then gave Judgment as follows:-
- a. Order cancellation of title deeds for properties East Kitutu/Mwamang’era/3700, 3701 and 3702 and order hat the register be rectified to revert the suit properties back to the original parcel East Kitutu/Mwamang’era/626 in the name of the late Orucho Nyangoka Osano.
  - b. A permanent injunction restraining the Defendants, the Defendants’ servants, employees, workers, assignees, agents, siblings, children, brothers’ relatives or any other person working under the instructions and or title and or name of the Defendants from leasing, managing, charging, appointing a receiver, disposing or evicting the Plaintiffs land a parcel Title Number East Kitutu/Mwamangéra/626 pending the completion of succession proceedings over the Estate of the late Orucho Nyangoka Osano.
  - c. Costs to the Plaintiffs.
8. Consequently, the Appellants, being aggrieved by the said Judgment appealed on Grounds that:-
1. The learned Magistrate erred in law and fact when the trial Magistrate failed to notice and take a Judicial notice that the suit filed in court by the Respondents involved the Estate of deceased persons (Orucho Nyangoka Osano and Peter Nyangoka Osano (deceased) and the Respondents first were under obligation to obtain Letters of Administration before instituting the suit.
  2. The learned trial Magistrate erred in law and fact when the Magistrate without cautioning himself proceeded to hear the suit and make Judgment which Judgment without letters of administration by the Respondents made the judgment retrospective, un-procedural and unwarranted therefore impossible to implement.



3. The learned trial Magistrate erred in law and fact when the trial Magistrate in the Judgment delivered proceeded to presume and construed a customary trust to the Estate of the said Orucho Nyangoka Osano (deceased) without taking notice that the deceased had distributed his estate while alive and issued Titles while alive and any presumption of such, customary trust will trigger family feuds previously addressed by the distribution of the Estate of the deceased and contravene his wishes.
4. That learned trial Magistrate erred in law and fact when the Magistrate without considering the land law and succession law proceeded to revoke and cancel the Titles East Kitutu/Mwamang'era/3700, 3701 and 3702 issued to the deceased Orucho Nyangoka Osano as if the said Titles were processed and issued by the Appellants.
5. The learned Magistrate erred in law and fact when the Magistrate failed to consider the Appellants evidence adduced in court and filed submissions and arrived at a wrong decision of Judgment.
6. The learned Magistrate erred in law and fact when the Magistrate misdirected himself that the Estate, East Kitutu/Mwamang'era/626 was ancestral when the said Estate of the deceased Orucho Nyangoka Osano was acquired by the deceased and at all times was not ancestral.
7. The learned Magistrate erred in law and fact when the Magistrate failed to notice that by cancelling the Titles issued by the deceased who didn't adduce evidence in court and creating customary trust shall ignite the three families to claim interest to the customary trust to the already distributed property by the deceased and bring new cases not anticipated.
8. The learned Magistrate erred in law and fact when the Magistrate acted with bias and considered only the pleadings of the Respondents and ignored the crucial evidence and submissions of the Appellants and arrived at a wrong decision of Judgment.
9. The learned Magistrate erred in law and fact when the Magistrate refused to consider the Appellants evidence adduced in court together with the applicable law of land and succession arriving at a wrong Judgment.
9. They therefore sought that the Appeal be allowed, Judgment of the lower court set aside and dismissed and that the Appellant be awarded the costs of the Appeal and that of the lower court.
10. In the absence of the law being followed in the transfer of the suit land and by not paying Stamp Duty for the transfer, no mutation signed for the sub-division, the transfer forms having not been signed by the transferor and without any record on the presentation book, the sub-division and transfer of LR NO. East Kitutu/Mwamang'era/622 must have been done fraudulently and the trial Magistrate's Judgment dated 2<sup>nd</sup> June 2023 cannot be faulted.
11. Appeal dismissed with costs.

**JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 30<sup>TH</sup> DAY OF MAY 2024.**

**MUGO KAMAU**

**JUDGE**

In the presence of: -

Court Assistant – Brenda

Appellants' Counsel – N/A



Respondents' Counsel – N/A

