



**Iranga v Oberi & 2 others (Environment and Land Appeal
E004 of 2023) [2024] KEELC 4564 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4564 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E004 OF 2023**

JM KAMAU, J

MAY 21, 2024

BETWEEN

CHARLES IRANGA APPELLANT

AND

NELSON OBIERO OBERI 1ST RESPONDENT

LAND REGISTRAR, NYAMIRA 2ND RESPONDENT

THE HON. ATTORNEY GENERAL 3RD RESPONDENT

*(Being an Appeal from Judgment of the Honourable Waswa, Senior Resident
Magistrate in Nyamira ELC NO. E008 of 2023 delivered on 17th August 2023)*

JUDGMENT

1. The Appellant, Charles Iranga, filed a suit in the Chief Magistrate’s Court at Nyamira being Civil Case ELC No.E008 of 2023 seeking for the following orders:
 - a. An order cancelling the names of the 1st Respondent from the suit parcel No. West Mugirango/Siamani/6189 being a combination of Title Number West Mugirango/Siamani/4913, 4914 and 5737 and reverting the same to the original Title Number West Mugirango/Siamani/4882 in the name of the Appellant.
 - b. Costs of the suit.
 - c. Any other relief the Court may deem fit and expedient to grant.
2. His claim was based on the averments that he was at all material times the registered proprietor of West Mugirango/Siamani/4882 but which was fraudulently transferred by the 2nd Respondent to the 1st Respondent at the instance of the latter and without the Appellant’s knowledge, participation, consent nor involvement. He claimed that this act was fraudulent and the same was followed by trespass. In



his statement, he said that Title Number West Mugirango/Siamani/833 belonged to their late mother Mora Iranga who divided the same into 2 West Mugirango/Siamani/4883 in the name of his brother Thomas Masenya Iranga (also now Deceased) on 13/6/1996 and West Mugirango/Siamani/4882 in the name of the Appellant on 4/2/1998. West Mugirango/Siamani/4881 was later sub-divided into West Mugirango/Siamani/6186 in the name of Nelson Obiero Oberi and then West Mugirango/Siamani/4913, 4914 and 5737 were combined to form West Mugirango/Siamani/6189 in the name of the said Nelson Obiero Oberi. The Appellant grounded his case by filing Green cards in respect of all the aforementioned parcels of land.

3. All the averments were denied by the 2nd and 3rd Respondents in a Defence dated 22/5/2023 and filed in court on 25/5/2023. Earlier on, on 17/4/2023 the 1st Respondent had filed his Defence denying the Appellant's claim and denied that L.R. West Mugirango/Siamani/4882 exists since it was created after giving birth to L.R. Nos. West Mugirango/Siamani 4912, 4913 and 4914 in 1998 and that he bought West Mugirango/Siamani/6186 from one Thomas Masenga Iranga. He said that he rightfully owns West Mugirango/Siamani/5737, 4913, 4914 and 6186. He also filed a counter-claim dated 14/4/2023 claiming that the Appellant sub-divided L.R. No. West Mugirango/Siamani/4882 into West Mugirango/Siamani 5737, 4913 and 4914 which he sold to the 1st Respondent in 2023. He therefore prayed that he be declared proprietor of LR NO. West Mugirango/Siamani/5737, 4913, 4914 and 6186 measuring 0.729 Hectares, an order of permanent injunction restraining the Appellant from re-entering the land and an order that the Appellant do remove his trees and other crops from the aforesaid parcels of land. In addition General Damages for Trespass, loss of use of the suit land and for Mesne profits. To support his case, the 1st Respondent produced the following documents;
 1. A Copy of Title Deed L.R No. West Mugirango/Siamani/4913.
 2. A copy of Title Deed L.R No. West Mugirango/Siamani/5737.
 3. A copy of Title Deed LR No. West Mugirango/Siamani/6186.
 4. A copy of Title Deed L.R No. West Mugirango/Siamani/4914.
 5. A copy of Green Card for LR. No. West Mugirango/Siamani/4913.
 6. A copy of Green Card for LR. No. West Mugirango/Siamani/5737
 7. A copy of Green Card for LR. No. West Mugirango/Siamani/6186
 8. A copy of Green Card for LR. No. West Mugirango/Siamani/4914.
 9. A copy of mutation form for LR No. West Mugirango/Siamani/833.
 10. A copy of mutation form for LR No. West Mugirango/Siamani/4881.
 11. A copy of mutation form for LR No. West Mugirango/Siamani/4882.
 12. A copy of mutation form for LR No. West Mugirango/Siamani/4912.
 13. A copy of latest map to West Mugirango/Siamani.
 14. A copy of OB NO.43/3/3/2023.
 15. A copy of OB NO.30/20/02/2023.
 16. A copy of Demand letter dated 20th February 2023.
 17. A copy of the Plaintiff's reply to the demand letter dated 22/2/2023.



18. A copy of the sale agreement dated 17/6/2006.
 19. A copy of the sale agreement dated 18/12/2004.
 20. A copy of the sale agreement dated 14/1/2001.
 21. A copy of the sale agreement dated 18/11/2001.
 22. A copy of the sale agreement dated 8/2/1998.
 23. A copy of the sale agreement dated 17/6/2006.
 24. A copy of the sale agreement dated 30/4/1997.
 25. A copy of the sale agreement dated 11/5/1997.
 26. A copy of the sale agreement dated 22/6/1997.
 27. A copy of the sale agreement dated 31/9/1997.
 28. A copy of the sale agreement dated 14/9/1997.
 29. A copy of the sale agreement dated 9/3/1998.
 30. A copy of the sale agreement dated 13/4/1998.
 31. A copy of the sale agreement dated 25/1/2001.
 32. A copy of the sale agreement dated 18/12/2004.
 33. A copy of the sale agreement dated 20/10/2001.
 34. A copy of the sale agreement dated 18/5/2005.
 35. A copy of the sale agreement dated 4/6/2005.
 36. A copy of the sale agreement dated 1/8//2005.
 37. A copy of the sale agreement dated 18/6/2005.
 38. A copy of the sale agreement dated 2/7/2005.
 39. A copy of the sale agreement dated 22/5/2007.
 40. A copy of the sale agreement dated 26/9/2003.
 41. A copy of the sale agreement dated 23/4/2009.
 42. A copy of the sale agreement dated 3/9/2006.
 43. A copy of the sale agreement dated 23/12/2006.
 44. Copies of Photographs (a) to (f).
4. On 13/7/2023 the Appellant's case was dismissed with costs for none-attendance after the case had been confirmed and the Respondents gave evidence on 24/7/2023. The 1st Respondent gave evidence to the effect that he purchased L.R. No. West Mugirango/Siamani/5737, 4914 and 4913 from the Appellant.
 5. He followed the right procedure since sale agreements were signed by the Appellant but he was later chased away for the suit land by the Appellant and his children on 20/2/2023 DW2 – Mr. Abel Mosiere



Obiero, testified that he is son to the 1st Respondent and that they have been cultivating the suit land for over 20 years until the Appellant and his children chased them from the land. On cross examination by the Appellant's counsel, he said that he was not there when his father was purchasing the land nor when the Appellant allegedly showed his father the parcel of land. The Appellant never tendered any evidence to rebut the counterclaim but only chose to cross examine the witnesses thereto. The 1st Respondent produced letters of consent for sub-division of West Mugirango/Siamani/4912 and for transfer of West Mugirango/Siamani/5737 to himself. He also produced copies of Title Deeds in respect of West Mugirango/Siamani/5737/4913 and 4914 all showing that the same are registered in his name. And as a result, the court gave judgment in respect to the counter claim in his favour as follows;

- a. A declaration that the 1st Defendant is the registered and/or lawful owner of L.R. Nos. West Mugirango/Siamani/5737, 4913 and 4914 measuring approximately 0.729 Hectares.
 - b. An order of eviction against the Plaintiff, agent(s), servant(s) and/or anyone claiming through the Plaintiff and/or acting at the behest of the Plaintiff from the suit land L.R. Nos. West Mugirango/Siamani/5737, 4913 and 4914 measuring 0.729 Hectares.
 - c. A permanent injunction restraining the Plaintiff either by himself or through agent(s), servant(s) and/or anyone claiming under the Plaintiff from entering, re-entering, trespassing onto, planting maize and cutting down trees interfering with and/or in any manner dealing with the suit land that is L.R. Nos. West Mugirango/Siamani/5737, 4913 and 4914 measuring approximately 0.729 Hectares.
 - d. An order against the Plaintiff for removal of any trees or crops planted thereon in L.R. Nos. West Mugirango/Siamani/5737, 4913 and 4914 restore his parcel of land thereof.
 - e. The OCS Nyamira police station to provide security in the execution of prayed orders.
 - f. General Damages for Trespass assessed at Kshs. 200,000.00
 - g. Costs of the suit and counter claim to be borne by the Plaintiff; and
 - h. Interests on the amount specified in (f) and (g) above hereof at Court rates from the time of filing of this suit.
6. Consequently and having been aggrieved by this Judgment, the Appellant filed an Appeal on the following grounds;-
1. The Learned Magistrate erred in fact and in Law in failing to accord the Appellant right for fair hearing as enshrined in Article 50 of the *Constitution* of Kenya on the following reasons:-
Dismissing the Appellant's suit for non-attendance of his advocate while the Appellant was present in court himself. Declining to grant the Appellant an adjournment or accommodate him until 2 PM since he was in another court which in any case is superior. Declining to grant the Appellant's advocate time to file its submission on the counter-claim even though the 1st Appellant served the Appellant with his submission a day before delivery of the judgment.
 2. The Learned Magistrate erred in fact and in law in failing to appreciate the fact that the appellant has a right to access fair justice as enshrined in Article 37 of the *Constitution* of Kenya and thereby declining to recuse himself by dismissing an application made by the Appellant's Counsel even after the counsel giving sufficient grounds. The Learned Magistrate literally drove away the Appellant from the wheels of justice.



3. The Learned Trial Magistrate misapprehended the gist understanding the issues of the suit by being totally biased, compromised or unfair by ordering that the Appellant should not step on the suit property pending the hearing and determination of the suit while it was still his home for almost 40 years. Even though temporary, the order left the Appellant homeless hence rendering him and his family homeless. In short the Learned Magistrate had already determined the suit before even trial had begun by evicting the Appellant from his home being cognizant it is the Appellant who moved first to court for reliefs. This was a clear abuse of judicial powers.
 4. The Learned Magistrate erred in fact and in law in failing to appreciate the fact that the Appellant is the rightful owner of the suit property known as West Mugirango/Siamani/6189 and that the 1st Respondent failed to prove to the required standard that how he acquired the sub divisions of the said parcel of land being West Mugirango/Siamani/4913, 4914 and 5737.
 5. The Learned Magistrate erred in fact and in Law by failing to appreciate the suit property was transferred to the 1st Respondent fraudulently by flaunting procedural rules on the following reasons: At the time of the transfer there was an existing/active caution by an interested party and the transfer could not be effected by law unless it was lifted. That the spousal consent was not acquired for the transfer to be effected. That no Land Control Board Consent was presented and the Appellant did not give the said consent. That the transfer forms were forged as the signature of the transferor the Appellant herein was forged.
 6. The Learned Magistrate erred in fact and in Law by failing to appreciate that the suit property was an exaggeration of measurements against what the Appellant had agreed to sale in the sale agreement contract thereby erred in law by awarding the 1st Respondent the whole parcel against the doctrine of privity of contract.
 7. The Learned Magistrate erred and proceeded on the basis of discredited and unreliable evidence to award the 1st Respondent General Damages of
 8. All in all the Learned Magistrate so misdirected herself on matters of both law and facts thereby completely being unfair and unable to be an arbiter as to occasion a miscarriage of justice against the Appellant.
7. I have carefully gone through the proceedings and the judgment of the Trial Magistrate and in respect to Grounds Numbers 1 and 2, the Appellant ought to have appealed against the Ruling of the court dismissing his suit for non-attendance immediately the order was made and not to wait until the counter claim was heard and determined. He can therefore not raise it now. Furthermore, the Appellant was given several opportunities to prosecute his case before the same was dismissed. He can therefore not claim that the court was biased or unfair to him. Time started running the same day the order was made and not when Judgment was delivered.
8. As to the Judgment on the counter-claim, sections 24, 25 and 26 of the [Land Registration Act](#) are clear and nothing has been shown that would have entitled the trial magistrate to impeach the 1st Respondent's Titles. No fraud was ever proved. The said Appeal is therefore dismissed with costs.

JUDGMENT DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 21ST DAY OF MAY, 2024.

MUGO KAMAU

JUDGE

In the presence of: -



Court Assistant – Brenda

Appellant’s Counsel – Mr. Ondima

1st Respondent – Mr. Omwoyo

2nd and 3rd Respondents – Mr. Ranah.

