



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Nyukuri v Wanambuko & another (Environment and Land Case
25 of 2017) [2024] KEELC 4042 (KLR) (21 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4042 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT AND LAND CASE 25 OF 2017**

FO NYAGAKA, J

MAY 21, 2024

BETWEEN

MAFURA NYUKURI PLAINTIFF

AND

JOSEPH WAMALWA WANAMBUKO 1ST DEFENDANT

JOSEPH WANJALA WANAMBUKO 2ND DEFENDANT

JUDGMENT

Introduction

1. By a Plaint dated 16/02/2017 and filed on that day, the plaintiff seeks the following reliefs:
 - a. Eviction;
 - b. Costs;
 - c. Interest.
2. The 1st defendant entered appearance on 06/03/2017. Then he filed a statement of defence dated 08/03/2017 on that day. It is not clear when the 2nd defendant entered appearance. However, he filed his statement of defence dated and filed on 13/06/2017.

The Plaintiff's Case

3. The plaintiff claims ownership of all that parcel of land namely L. R. No. 7921 portion 4 measuring approximately thirteen (13) acres. He produced the map thereof and marked it as P.Exhibit 2. He recalled that in 1986, the defendants' father obtained shares from Mwambu Co-operative Society (sic) together with him towards the purchase of the property from one mzungu (sic), meaning white man, one Steenkamp. He claimed further that the defendants' father subsequently withdrew his shares



leaving him to clear the payment of the shares with the said landlord Mr. Steenkamp. He stated that the defendants' father would be issued with the receipts which bundle he produced and marked P.Exhibit 4. That after the withdrawal of the shares by the defendant's father the Plaintiff purchased the land from Mr. Steenkamp vide a sale agreement dated 05/09/1987 which he produced as P.Exhibit 1. He testified that he placed posts on the ground after the portion bought was identified before the vendor passed on.

4. The plaintiff's claim is that in 2014, the defendants invaded the suit parcel of land. The plaintiff averred that the actions of the defendants amounted to trespass. That they had since excised ten (10) acres as follows: four (4) acres to the 1st defendant and six (6) acres to the 2nd defendant.
5. Following this action, the plaintiff pursued for eviction in the year 2000 against the defendants' father and the defendants at the District Officer's (DO) office. He successfully evicted them by way of a court order issued in Principal Magistrate Court Land Case No. 66 of 1994 which he marked P.Exhibit 3. However, in 2014, the defendants invaded and developed the suit land without his consent. The plaintiff stated that one individual, Daniel Barasa, who wanted to buy the land was to pay him. He produced a letter dated 29/12/1990 marked P.Exhibit 5. He maintained that of the people who were shareholders in the cooperative he refunded everyone and did not owe anyone money. That whereas he did not live on the suit land, his son farmed on three (3) acres of it.
6. It is for the above stated reasons that the plaintiff sought the reliefs as prayed. He also prayed for loss of user while testifying on his feet.
7. When cross examined by the 1st defendant, the following salient facts were pointed out: that the 1st defendant was the plaintiff's uncle; that the 1st defendant's father's name was deleted manually or by hand allegedly by Mr. Steenkamp from the printed agreement of sale but on further cross-examination the Plaintiff admitted he was the one who did it single handedly although he could not tell when; that he withdrew money from J. M. Wafula advocate's office who drew the agreement; that Daniel Barasa was the secretary of the Cooperative, the 1st defendant was the chairman while the plaintiff was the treasurer; that the 1st defendant was not a member of Mwambu Farmers' Cooperative Limited; that no evidence was presented before the tribunal on 18/07/2004; that the 1st defendant was not a party in the suit that whose decree the Plaintiff claimed to have used to evict all people from the suit land earlier although plaintiff stated that he sued him, further the 1st defendant was not present during the hearing; that the 1st defendant's father "ate" the plaintiff's mother's cow during their cultural rights; that the 1st defendant gave Kshs. 11,000.00 to the Company where he was a member; that the receipts dated 23/01/1983, 03/12/1984, 16/05/1986, 23/01/1987, 05/03/1988 and 27/05/2010 bore his signature; that the Plaintiff was not aware if the 1st defendant entered into an agreement with Mr. Steenkamp; that he did not know who crossed out the other names (although he admitted later he crossed them); that the agreement that he produced the original from P.Exhibit 6 which is a copy; that the 1st defendant's signature had been crossed out; that he crossed out the names on his document and not on the copy which he had already given to the defendants.
8. When cross examined by the 2nd defendant, the following was pointed out: the 1st defendant's father was the chairman of the Company; that in Kitale HCCC No. 85 of 2000, he was sued alongside the 1st defendant's father for eviction; that he was summoned vide a letter dated 19/11/2013 to appear before the Assistant County Commissioner Saboti Trans Nzoia where he was present regarding a dispute over the suit land; and that he (plaintiff) lied that he had not gone to the said office.



The 1st Defendant's Case

9. The 1st defendant adopted his witness statement filed on 08/03/2017. His testimony was that he is an original member of Mwambu Farmers' Cooperative Limited. That he has a share capital of Kshs. 25,000.00 and has paid his membership fee of Kshs. 300.00. He produced the receipt dated 23/01/1983 for the said sum marked D.Exhibit 2. He also produced receipt for payment of his shares as follows: Receipt dated 03/12/1984 for Kshs. 5,000.00- D.Exhibit 3; Receipt dated 16/10/1986 for Kshs. 5,000.00- D.Exhibit 4; Receipt dated 23/01/1987 for Kshs. 5,000.00- D.Exhibit 5; Receipt dated 05/03/1988 for Kshs. 10,000.00 refunding Daniel Barasa - D.Exhibit 6.
10. He testified that the plaintiff was the Treasurer of Mwambu Farmers' Cooperative Limited while he was the Secretary. As a fact, the 1st defendant was a signatory of the agreement dated 05/09/1987 for purchase of L. R. No. 7921 portion 4 measuring approximately 13 acres. He signed the agreement together with the plaintiff and the 2nd defendant; directors of the Company. The vendor was called P.I.L. Steenkamp. The agreement was marked D.Exhibit 7.
11. According to the terms of the agreement, the purchase price was Kshs. 91,000.00. The 2nd defendant paid Kshs. 10,000.00, the 1st defendant paid Kshs. 25,000.00, Daniel Barasa paid Kshs. 20,000.00 but it was not disclosed how much the plaintiff paid. However, since Daniel Barasa refused to take up the land, his shares in the sum of Kshs. 20,000.00 were refunded. That it is only the plaintiff who was privy to whether the 2nd defendant paid for the balance of the purchase price since he was the one who used to keep records of the Cooperative but he had none in Court.
12. That when John Weronga died, the plaintiff and the 1st defendant entered upon the land on 02/04/2010 and took possession. The plaintiff took nine (9) acres while the 1st defendant took (4) acres.
13. On 27/05/2010, the plaintiff obtained a notice from the KRA to pay land rates. He requested the 1st defendant to pay a sum of Kshs. 11,000.00 towards land rates. The 1st defendant produced the receipt marked D.Exhibit 1.
14. That he was allocated four (4) acres of land from the suit land by the Company and paid Kshs. 5,000.00 survey fees. The receipts were produced in a bundle and marked D.Exhibit 11(a) and (b). In 2015, government surveyors visited, surveyed the land and he was allocated the said four (4) acres namely plot No. 113. The plaintiff was allocated plot No. 114 measuring nine (9) acres.
15. Vide a letter dated 29/12/1990 produced as D.Exhibit 8, J.W. Wafula Advocates wrote to the defendants stating that if they did not refund Daniel Barasa the sum of Kshs. 2,800.00, he had instructions to sue for recovery.
16. The Plaintiff filed Kitale Principal Magistrate Land Case No. 66 of 1995 where it was decreed that land parcel No. 7921 Block 4 belongs to thirteen (13) original members; amongst those members being the 1st defendant. The orders issued were dated 08/06/1995. The said decree was produced and marked D.Exhibit 9. He also produced D.Exhibit 10, minutes in which the plaintiff attended a meeting on behalf of the members on 07/05/2010. He thus prayed that the suit be dismissed with costs.
17. The defendant also called DW1 (sic) Malik Kassachoon, in charge Civil Registry Chief Magistrate's Court at Kitale. He produced the court file in respect to Kitale Principal Magistrate Land Case No. 66 of 1995; Mafura Nyukuri vs. Richard Twanga Nato. It was marked D.Exhibit 12. The decree therein dated 30/05/1995 is the same as D.Exhibit 9 save for the heading. There were two (2) eviction orders against the defendant and his group as well as any other person associated with him. The suit was the culmination of a dispute before the tribunal.



18. On cross examination, the 1st defendant confirmed that Richard Twanga Nato was introduced into the Company by the 2nd defendant and became a member; that he was introduced to the Company by the plaintiff; that his father is called Benedicto Wanambuko Matere; that they used to contribute towards purchase of the land collectively through the plaintiff that issued the receipts; that from the acres given to the plaintiff, six (6) are used by the 1st defendant since 2014 while the remaining three (3) are used by the plaintiff; that the 2nd defendant was not an original member but his father was; that the 2nd defendant's father has since passed away; that Daniel Barasa deposited a cheque, brought some people to the suit land but did not occupy the same himself; that several persons were evicted pursuant to Kitale Principal Magistrate Land Case No. 66 of 1995. He then gave certain evidence regarding the minutes of the meeting.

The 2nd Defendant's Case

19. The 2nd defendant relied on his statement of defence filed on 13/06/2017 to testify that he is the son of John Wanambuko Weronga who died in 2002. His evidence was that the suit land was purchased by his father (chairman) and two (2) others from Mr. Steenkamp namely the plaintiff (treasurer) and the 1st Defendant (the secretary). A copy of the agreement dated 05/09/1997 was produced and marked 2nd D.Exhibit 1. He observed that the said document is the same as that produced by the Plaintiff as P.Exhibit 6 and the 1st Defendant as D.Exhibit 7.
20. Thereafter, about ten (10) people occupied the suit land improperly. The ten (10) persons were later evicted by way of a court order. The judgment was produced and marked 2nd D.Exhibit 2. The land was divided amongst the three (3) persons that had originally purchased it as follows: the plaintiff obtained three (3) acres, the 1st defendant obtained four (4) acres while the 2nd defendant's father took six (6) acres.
21. During the lifetime of his father, the 2nd defendant and family occupied the suit land. He clarified that he was the step-brother of the 1st defendant. It was upon the death of his father that the plaintiff sought to claim ownership of the suit land. He maintained that he rightfully occupied the suit land as a result of his father. He thus urged this court to dismiss the plaintiff's claim even though no grant of letters of administration had been obtained in respect to his father's estate.
22. When cross examined, he stated that since he was not there when the agreement was executed, he could not establish whether his father paid a sum of Kshs. 45,000.00; that the ten (10) people, brought initially by the plaintiff did not finish paying and it is for this reason that they were evicted; that their monies were refunded; that the parties are different in Suit No. 85 of 2000 when compared in Suit No. 66 of 1995; that the original thirteen (13) occupants left on their own volition since they could not raise the full sum sought; that he could not ascertain his father's number of shares; that his father was never evicted from the suit land; that he built on the suit land before his father passed on and that the plaintiff built homes on the suit land; that the plaintiff has never occupied the land; that by the time he occupied the land when his father was alive, boundaries had been placed.

Written Submissions

23. At the close of evidence taking, parties were directed to file and serve their respective written submissions. The plaintiff filed his written submissions dated 05/12/2023 on that day to submit that he has proven his case on a balance of probabilities having furnished the requisite evidence. Contra, in his argument, the defendants did not support their case with any evidence. He prayed that the suit be allowed as prayed. The 1st defendant filed written submissions dated 26/01/2024 on that day. He submitted that the plaintiff had not proved his case on a balance of probabilities and for that reason,



the suit ought to be dismissed with costs to him. The 2nd defendant presented his written submissions dated and filed on 29/01/2024 prayed that the suit be dismissed with costs.

Analysis And Disposition

24. I have considered the pleadings, examined the evidence and analyzed that evidence against the law. I have also considered the submissions filed by the rival parties. The plaintiff lays credence to ownership of all that parcel of land namely L.R. No. 7921 portion 4 measuring approximately thirteen (13) acres. He thus seeks the orders as prayed in his plaint. The other parties deny that the plaintiff is the owner of that entire suit land. That being said, the question for determination is whether the plaintiff is the owner of the entire parcel of land. Thereafter, the court will establish whether or not the orders sought can be granted.
25. “Land ownership and land rights is both a historical and emotive subject in Kenya. A right to hold property is a constitutional one as well as a human right, and no person can be deprived of his property except in accordance with the provisions of *the Constitution* or Statute. The condition precedent to taking away anyone's property is that the authority must ensure compliance with *the Constitution* and Statutory provisions.” On this the parties can refer to the decision in the *Chief Land Registrar & 4 others vs. Nathan Tirop Koech & 4 Others* [2018] eKLR.
26. In this case, in order for me to establish the ownership of the plaintiff, it is prudent to establish the historical acquisition of all that parcel of land namely L. R. No. 7921 portion 4 measuring approximately thirteen (13) acres. It is not disputed by the parties herein that suit land was purchased from one Mr. Steenkamp. According to P.Exhibit 1, P.Exhibit 6, D.Exhibit 7 and 2nd D.Exhibit 1, the agreement dated 05/09/1997 was entered between Mwambu Farmers' Co. Ltd on one hand and P.I.L. Steenkamp on the other hand; the purchaser and vendor respectively. It is instructive to note that the contents of the sale agreement are not disputed. What was disputed strongly was the manual or crossing of the other purchaser's names on the agreement without countersignatures and confirmations as to who and why it was done.
27. According to the terms of agreement, L.R. No. 7921 measuring 13 acres was sold to the purchaser for an agreed sum of Kshs. 91,000.00. That the advocate for both parties is J. M. Wafula of P.O. Box 1366. The plaintiff confirmed by way of admission in cross-examination that P.Exhibit 6 had names crossed out. I'll come back to this piece of evidence later in my analysis. He, however, maintained that P.Exhibit 6 was the same as D.Exhibit 7 although the copy of the original. The document had Mr. P.I.L Steenkamp's name against the vendor's name and the 2nd defendant's father, the plaintiff and the 1st defendant's names in those orders as the persons executing the sale agreement; the chairman, treasurer and secretary of the Company respectively.
28. The plaintiff relies on this document to advance that he is the rightful owner of this parcel of land and no one else has a lawful claim of its ownership. It is for that reason that he sought to evict the defendants. However, it is evident that the plaintiff is not only spurious but perhaps sheltered away from imagination without facing the reality that the document shows the parcel was purchased for and on behalf of a company known as Mwambu Farmers' Co. Ltd. How then could he purported to be the purchaser in the absence of an agreement in his personal name to that effect? It is inconceivable.
29. Gathered from the evidence, the officials and directors of the Company entered into the agreement for its benefit. We may not know the composition of the Company and whether it exists to date but it is certainly impractical and unlawful for the plaintiff to claim ownership over the parcel of land by relying on a contract entered into between a company and another. We further have no clear picture of who contributed what sum to the acquisition of the property but that is immaterial before this court.



A company is a juristic person that is capable of suing and being sued. It can thus own property, sue and be sued as established in the *locus classicus* case of *Salomon vs. Salomon & Co. Ltd.* [1897] AC 22.

30. In fact, according to the map marked P.Exhibit 2, the said Company was listed as one of the owners/beneficiaries in respect to the suit land. It, however, does not show the acreage.
31. If the plaintiff had any claim of ownership, then it was incumbent upon him to establish how the property was transferred from the Company to him or in the alternative, what justification was set out to determine that he had a better claim of interest over that of the Company. Either way, ownership could only be deciphered from his relation with the Company and nothing outside that context.
32. I am satisfied to hold that as the treasurer, the plaintiff receipted funds collected for the purchase price as the treasurer of the Company. That the receipts were actually issued under his sole name and others in the treasurer's. Granted that the Company was dissolved and the shares of the then existing or remaining shareholders given to them, if the others who did not complete their payments were refunded and or bought out by the remaining ones as the evidence the Plaintiff and Defendants pointed out, (then) I am also satisfied that the property was shared out between the plaintiff, the 1st defendant and the 2nd defendant's father in accordance with the respective portions they occupy. It can only be greed and trickery that can purport to alter the same by laying a claim of contrary nature and a purport of adduction of evidence to support such a claim. Furthermore, contrary to the plaintiff's claim, in Principal Magistrate Court Land Case No. 66 of 1994, the court evicted about ten (10) not parties to the present proceedings. This could be discerned from the decrees and judgment produced in evidence and marked P.Exhibit 3 and D.Exhibit 9. The plaintiff cannot therefore be heard to say that he was the one who evicted the defendants herein: the claim was different. It did not show and settle the transmission of the shareholding between the three disputants herein.
33. In his own admission, the plaintiff testified that he crossed out the names of the other parties in the agreement dated 05/09/1997. It is apparent from that admission, that the plaintiff was intent on defrauding the defendants with a view to defeating their interest over the parcel of land. In my view, the plaintiff had every mala fides intention of demonstrating that the estate belonged to him alone and at all costs. However, he was caught on his own action and could not claim the suit land when in actual fact the suit land belonged to the Company.
34. The action of crossing out the names of the other parties amounts to fraudulent activities on the face of it. However, I will say no more on this since it was not pleaded by the defendants in their statements of defence. Be that as it may, I will not hesitate to chastise and caution the plaintiff against taking such drastic and illegal action with the intention of having his cake and eating it.
35. Ultimately, and purely based on the agreement dated 05/09/1997, I am of the considered view and I find and hold that the plaintiff has failed to establish that he is the lawful proprietor of the entire suit land. For those reasons, he cannot purport to evict the defendants therefrom since the parcel is settled on according to the already share-out portions. With is paucity of evidence of contribution to the shareholding in Mwambu Cooperative Society Limited, Mafura Nyukuri is even lucky in these proceedings in two ways: one, the Defendants had agreed to share with him the little, that is to say the 3 acres, they left for him; two, the Defendants did not counterclaim against him even for the three acres he all agree he occupies and uses through his son. Otherwise, they would have been taken away. Thus, I advise that each party herein should be satisfied with their portion. For those reasons, this court unwaveringly concludes that the plaintiff's suit is completely devoid of merit. It is hereby dismissed with costs to the defendants.
36. Orders accordingly.



**JUDGMENT DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL THIS
21ST DAY OF MAY 2024.**

HON. DR. *IUR* FRED NYAGAKA

JUDGE, ELC KITALE

