



REPUBLIC OF KENYA



KENYA LAW
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**Matati & another v Ikhungu & another (Environment and Land Appeal
E007 of 2023) [2024] KEELC 4248 (KLR) (16 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4248 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

EO OBAGA, J

MAY 16, 2024

BETWEEN

ALEXANDER MAINA MATATI 1ST APPELLANT

PAUL GACHANJA CHEGE 2ND APPELLANT

AND

CHARLES SONGOLE IKHUNGU 1ST RESPONDENT

COUNTY LAND REGISTRAR, UASIN GISHU COUNTY 2ND RESPONDENT

*(Being an appeal from Judgement of Honourable P. N. Areri, Senior
Principal Magistrate in Eldoret CM E&L 170 of 2021 Made on 22.6.2023)*

JUDGMENT

Background;

1. The Appellants filed a suit against the Respondents in which they claimed the following reliefs:-
 - a. An order directing the 2nd Defendant to rectify their records and have the names of the 1st Defendant removed from the green card or any records in respect to the suit property and the name of the 1st Plaintiff be inserted and title issued in his favour.
 - b. Eviction orders to issue to remove the 1st Defendant from all that property known as Eldoret Municipality Block 15/488.
 - c. Costs of the suit and interest.
 - d. Any other relief that this Honourable court may deem fit to grant.
2. The 1st Respondent filed a defence and raised a counter claim in which he sought the following reliefs: -



- a. Dismissal of the Plaintiff's suit with costs.
 - b. An order of permanent injunction be issued restraining the plaintiffs jointly and severally by themselves, their agents, servants, representatives or any other person acting on their behalf and/or any third parties claiming through them from dealing, selling, interfering with the 1st Defendant's occupation and ownership of Eldoret Municipality Block 15/2319.
 - c. Costs of this suit be awarded to the 1st Defendant.
3. Immediately after the 1st Appellant had testified and been cross-examined before being re-examined, the trial magistrate made a ruling that the Appellants had no reasonable cause of action and proceeded to strike out the Appellants' suit with costs to the Respondents under Order 2 Rule 15(1)(a) of the [Civil Procedure Rules](#). This is what triggered the filing of this appeal.

Grounds of appeal;

4. The Appellants raised the following grounds: -
- a. That the Trial Magistrate erred in law and fact in dismissing the plaintiff's suit with costs without granting the 1st Plaintiff an opportunity to be Re-examined.
 - b. That the learned Trial Magistrate erred in law and fact in failing to allow the 2nd Appellant to testify and to be cross-examined by defence counsel.
 - c. That the learned Trial Magistrate erred in law and fact in failing to appreciate the admission of the plaintiffs' documents as exhibits by the defence without any objection.
 - d. That the learned Trial magistrate erred in law and fact in invoking the provisions of the law in total disregard to the Constitutional Rights of the Appellants to be heard and the principal of Natural Justice.

Submissions of the parties;

5. The parties were directed to file written submissions. The Appellants filed their submissions on 14.2.2024. The 1st Respondent filed his submissions on 8.4.2024. The 2nd Respondent did not file any submissions.

Appellants' submissions;

6. The Appellant submitted that the trial magistrate was wrong in summarily dismissing the Appellants suit even before the 2nd Appellant could be heard. They submit that their right to be heard was ousted by the trial magistrate who did not hear all the parties.

First Respondent's submissions;

7. The 1st Respondent submitted that the trial magistrate was correct in summarily dismissing the Appellants' case. The 1st Respondent had already obtained title to his 1/8 of an acre and that the suit property which was sold to the 1st Appellant was non-existent the same having been subdivide and ceased to exist. The 2nd Appellant's action of purporting to subject it to the succession of his father's estate was void *ab initio* as it was not part of the Estate of the father to the 2nd Appellant.



8. The 1st Respondent relied on the case of *Kivanga Estates Limited v National Bank of Kenya Ltd* (2017) eKLR where the court of Appeal stated as follows:-

“...striking out a pleading, though draconian, the court will, in its discretion resort to it, where, for instance, the court is satisfied that the pleading has been brought in abuse of its process or where it is found to be scandalous, frivolous or vexatious. Where the court below has properly addressed itself on these principles, and is satisfied, upon assessment of the material before it that any of the grounds enumerated under order 2 Rule 15 exists, as an appellate court, this court will not interfere with the exercise of the former’s discretionary power to strike out the pleading.”

Analysis and determination;

9. I have carefully considered the submissions by the parties, the record of appeal as well as the grounds of appeal. The only issues for determination in this appeal are firstly whether the trial magistrate properly invoked his jurisdiction to dismiss the Appellants’ suit under order 2 Rule 15(1) of the *Civil Procedure Rules*. Secondly which order is to be made on costs.
10. This being a first appeal to this court, I am under a duty to re-evaluate the evidence and arrive at my own conclusions. In the case of *Gitobu Imanyara & 2 others v Attorney General* (2016) eKLR the court held as follows:-
- “An appeal to this court from a trial by the High Court is by way of retrial and the principles upon which this court acts in such an appeal are well settled. Briefly put, they are that this court must reconsider the evidence, evaluate it itself and draw its own conclusions though it should always bear in mind that it had neither seen nor heard the witnesses and should make due allowances in this respect.”
11. The suit property that is LR. No. Eldoret Municipality Block 15/488 measuring 0.080 hectares was registered in the name of Joram Chege Gacanja (Deceased) who was the father of the 2nd Appellant. The title in the name of the deceased was issued on 25.6.1991. On 26.6.1991, the deceased sold 1/8 of his property to the 1st Respondent.
12. On September 22, 1992 the suit property was registered in the names of the deceased and the 1st Respondent in equal shares. On September 1, 2003, the 1st Respondent obtained his title which was now LR. Eldoret Municipality Block 15/2319. He has since been paying rates in respect of this property. The other 1/8 of an acre that is LR. No. Eldoret Municipality Block 15/2318 remained with the deceased.
13. On December 21, 2012 the 1st Appellant purported to purchase the entire LR. No. Eldoret Municipality/Block 15/488 which was non-existent as it had been divided into two portions and the 1st Respondent had already obtained a certificate of lease on 1.9.2003 in respect of his half share.
14. On July 19, 2017 the 2nd Appellant obtained a certificate of confirmation which purported to show that the 1st Appellant was the sole beneficiary of LR. No. Eldoret Municipality/Block 15/488 which was non-existent. The 1st Appellant was already aware that the 1st Respondent was in possession of half of the suit property.
15. The 1st Appellant had carried out an official search on November 19, 2019 which search showed that the title to the suit property was in the names of the deceased and the 1st Respondent. The dismissed suit was filed in 2021.



16. Order 2 Rule 15(1) of the *Civil Procedure Rules* provides as follows:-

“At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

- a. It discloses no reasonable cause of action or defence in law; or
- b. It is scandalous, frivolous, or vexatious; or
- c. It may prejudice, embarrass or delay the fair trial of the action; or
- d. It is otherwise an abuse of the process of the court, and may order the suit to be stayed or dismissed or judgement to be entered accordingly, as the case may be.

Disposition;

17. With all these facts the trial magistrate was correct in striking out the Appellant’s suit with costs to the Respondents. There was no point of wasting the court’s time to hear a case which was clearly groundless as it did not disclose any reasonable cause of action against the Respondents. I therefore find no fault in the ruling of the trial magistrate. The Appellants’ appeal is without merit. The same is dismissed with costs to the Respondents. The 1st Respondent is at liberty to proceed with his counter-claim as the trial magistrate did not make any finding on it.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF MAY, 2024.

E. O. OBAGA

JUDGE

In the virtual absence of parties who were aware of delivery of judgement.

Court Assistant –Laban

E. O. OBAGA

JUDGE

16TH MAY, 2024

