



REPUBLIC OF KENYA



KENYA LAW
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**Mokaya v Singoey & another (Environment & Land Case
E026 of 2024) [2024] KEELC 3869 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3869 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE E026 OF 2024**

EO OBAGA, J

MAY 16, 2024

BETWEEN

ELICK AMWOMA MOKAYA PLAINTIFF

AND

REUBEN SILE SINGOEY 1ST DEFENDANT

LAND REGISTRAR, UASIN GISHU COUNTY 2ND DEFENDANT

RULING

1. The plaintiff filed a suit against the Defendants in which he sought the following reliefs:-
 - a. an order eviction from parcel of land known as Cheptiret/Cheplaskei Block 2 (Chepkigen)/195.
 - b. A permanent injunction restraining the Defendants, their agents and/or servants from entering into, constructing on, fencing, wasting, selling, alienating, and/or in any manner whatsoever dealing with and/or interfering with the plaintiff's land parcel known as Cheptiret/Cheplaskei Block 2 (Chepkigen)/195.
 - c. An order that the Land Registrar, Uasin Gishu County to effect the transfer of land parcel known as Cheptiret/Cheplaskei Block 2(chepkigen)/195 from the 1st Defendant to the Plaintiff forthwith.
 - d. A declaration that the plaintiff is the absolute owner of land known as Cheptiret/Cheplaskei Block 2 (Chepkigen)/195 measuring approximately 35.23 hectares.
 - e. An order for mesne profits.
 - f. Costs of the suit.
 - g. Any other relief that this Honourable court may deem fit to grant.



2. The plaintiff contemporaneously filed a notice of motion in which he sought to restrain the 2nd Respondent from issuing a new title in respect of LR. No. Cheptiret/Cheplaskai Block 2 (Chepkigen)/195 (suit property). It is the Plaintiff's contention that he purchased the suit property from the 1st Defendant who handed to him the original title after he fully paid for the land. It is his contention that the 1st Defendant has instructed the 2nd Defendant to issue another title on the ground that the original is lost.
3. Before the Plaintiff's notice of motion could be heard, the 1st Defendant raised a preliminary objection on the ground that this court lacks jurisdiction to hear and determine the motion and or take any further proceedings in the matter.
4. The preliminary objection was argued orally. Mr. Kenei for the 1st Defendant argues that the notice of motion by the Plaintiff is seeking to challenge the powers of the Land Registrar under section 33 of the Land Registration Act. Mr. Kenei argued that section 13 of the Environment and Land Act gives this court both original and appellate jurisdiction and that this therefore means that there are some bodies who have to deal with other issues and if the parties concerned are not satisfied with the decision of the concerned body, then they can move to this court on appeal or for judicial review.
5. He argued that there is no provision which gives powers to this court to stop the Land Registrar from discharging his duties. He further argued that the plaintiff should have first moved the Land Registrar before coming to this court. He urged the court to be alive to the doctrine of exhaustion and judicial deference. He relied on the case of Pullman England v Louisiana state Board of Medical Examiners 375 v 411 (1964), Priscah Alouch Odongo & 7 others v National Irrigation Authority (2021) eKLR, Kenya Bank Limited v Alcon Holdings Limited (2021) eKLR and Hassan Abdulkadir Aziz v Land Registrar Mombasa & another (2023 eKLR).
6. Mr. Mukhabane for the plaintiff opposed the preliminary objection on the ground that it does not meet the threshold set out in the case of Mukisa Biscuit Manufacturers Limited v West End (1969) Limited. He argued that a look at the reliefs sought in the plaint shows that the reliefs sought by the plaintiff are squarely within the jurisdiction of the court as clearly set out under section 13 of the Environment and Land Court Act.
7. He further argued that the 1st Defendant had given the plaintiff the original title to the suit property, spousal consent and that therefore the Land Registrar cannot issue a title where there is an original one existing. He further stated that if a new title was to be given, the 1st Defendant can use it to defeat the plaintiff's interest.
8. I have considered the preliminary objection and the opposition thereto by the plaintiff as well as the authorities cited. The only issue for determination is whether this court has jurisdiction to deal with this case. A look at the plaint shows that the prayers being sought fall squarely within the jurisdiction of this court. It is being alleged that the 1st Defendant has moved the Land Registrar to issue a new title on the ground that the original is lost. The Plaintiff contends that he has the original. If this be the case, then there are facts which have to be ascertained and as per the Mukisa Biscuit Manufactures case (*supra*), the preliminary objection cannot succeed.
9. The rationale behind the requirement for the Land Registrar to publish the issue of lost title in the Kenya Gazette and Daily papers is to call on persons who may have knowledge of the title in issue to come and give such information. This is why the person applying for replacement has to make a statutory declaration, so that the Land Registrar is satisfied that the title is lost. I therefore find that the preliminary objection is devoid of merit. The same is dismissed with costs to the plaintiff.



It is so ordered.

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

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kenei for 1st Defendant.

Mr. Mukhabane for plaintiff.

Court Assistant –Laban

E. O. OBAGA

JUDGE

