



**Baraza ((Suing as the son and legal representative of the Late Sale Baraza Kwangoto)) v M/S Mumias Sugar Co Ltd (Environment & Land Case 83 of 2018) [2024] KEELC 4128 (KLR) (9 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4128 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 83 OF 2018**

**DO OHUNGO, J**

**MAY 9, 2024**

**BETWEEN**

**HAMIS ONYANGO BARAZA ..... PLAINTIFF  
(SUING AS THE SON AND LEGAL REPRESENTATIVE OF THE LATE SALE  
BARAZA KWANGOTO)**

**AND**

**M/S MUMIAS SUGAR CO LTD ..... DEFENDANT**

**JUDGMENT**

1. Litigation in this matter commenced in the High Court on 11<sup>th</sup> August 2005 when the plaintiff filed plaint dated 18<sup>th</sup> June 2005. He brought the proceedings as legal representative of Sale Baraza Kwangoto (deceased) who was his father. He averred that the deceased was registered on 22<sup>nd</sup> May 1970 as proprietor of the parcel of land known as North Wanga/Kholera/151 (the suit property) and that the deceased passed away on 6<sup>th</sup> July 1995 while still the proprietor. That the defendant trespassed into the suit property in 1973 thereby preventing the deceased from using it and that efforts to have the defendant vacate had been unsuccessful.
2. The plaintiff therefore prayed for judgment against the defendant for a declaration that the defendant, its agents, servants, and employees were trespassers on the suit property, an injunction restraining the defendant, its servants, and agents from entering the suit property, mesne profits from 1973 to date, costs, interest and further or other relief.
3. The defendant filed statement of defence and counterclaim dated 11<sup>th</sup> September 2005 in which it admitted entering the suit property and remaining in occupation thereof. It averred that its occupation was by consent of the deceased who vacated after having been compensated by the Government



- of the Republic of Kenya on its behalf. The defendant further averred that the deceased's title got extinguished by adverse possession.
4. The defendant therefore prayed that the plaintiff's suit be dismissed with costs and that judgment be entered in its favour for a declaration that the deceased's title to the suit property got extinguished upon expiry of 12 years and that it was entitled to be registered as absolute proprietor by virtue of adverse possession. It further prayed for costs, interest, and any other relief that the court may deem fit.
  5. The matter was later transferred to this court, hence its new case number.
  6. At the hearing, Hamisi Onyango Baraza (PW1) adopted his witness statements dated 21<sup>st</sup> June 2012 and 20<sup>th</sup> August 2014. He stated in the statements that the suit property was initially registered in the deceased's name and that it was transferred to him upon succession to hold in trust for the family. He further stated that there was no sale agreement between the deceased and the defendant, and that the defendant was growing sugar cane on the suit property. He produced copies of the documents listed as item numbers 1 to 9 in his list of documents dated 10<sup>th</sup> March 2011 as his exhibits.
  7. PW1 further testified that the defendant occupied the suit property and grew sugar cane on it from 1971 to 2020 when he took over possession. That the defendant relocated the deceased to another parcel nearby in 1973 and that the deceased stayed away from the suit property without any written complaint of being dispossessed until his death in 1995. He also stated that he and five other persons became the registered owners of the suit property in on 12<sup>th</sup> December 2007 and that even when they became proprietors, the defendant was growing sugar cane on the suit property without their consent.
  8. PW1 further testified that he was not aware if the suit property and other parcels were compulsorily acquired by the government and if a 99 year lease was thereafter issued to the defendant. He also stated that he was not aware if the suit property was located within the defendant's nucleus estate. He further stated that he and the other proprietors sold part of the suit property.
  9. The plaintiff's case was then closed. Since the hearing date had been fixed by consent and considering that there was no appearance for the defendant at the hearing date, defence case was closed upon an application by counsel for the plaintiff. Subsequently, an order was made that parties file and exchange written submissions. The defendant did not file any submissions. The plaintiff filed submissions dated 3<sup>rd</sup> November 2023.
  10. I have considered the pleadings, the evidence, and submissions. From the onset, it must be restated that the defendant did not offer any evidence. Consequently, its counterclaim fails for not having been prosecuted.
  11. The issues that arise for determination are whether trespass has been established and whether the reliefs sought should issue.
  12. Trespass is defined in the 10<sup>th</sup> Edition of Black's Law Dictionary as an unlawful act committed against the person or property of another; especially wrongful entry on another's real property.
  13. The defendant admitted in its defence that it entered the suit property in 1973 and that it remained in possession and occupation thereof and farming sugarcane on it since 1973. The question that arises is whether the entry was without the deceased's authority. I am persuaded that the deceased authorised the entry. To begin with, the plaintiff testified that the defendant relocated the deceased to another parcel in 1973 and that the deceased remained in that other parcel for 22 years until he passed away in 1995. Further, the plaintiff conceded that during the entire duration of 22 years, the deceased did not lodge any formal complaint or file any suit against the defendant complaining of any unauthorised entry into the suit property. The first formal complaint is the demand letter dated 24<sup>th</sup> October 1999,



which the plaintiff wrote some four years after the deceased's death. I find that trespass has not been established.

14. The plaintiff filed this case in his capacity as the administrator of the deceased's estate. The plaint does not disclose any claim by the plaintiff in his own capacity as a proprietor. In fact, the plaintiff testified that there are five other registered proprietors of the suit property besides him. Those other proprietors are not parties to this case.
15. Having found that that trespass has not been established and there being no claim by a registered proprietor, the reliefs sought cannot issue.
16. I find no merit in the plaintiff's case, and I therefore dismiss it. Considering that the defendant neither attended defence hearing nor filed submissions, I make no order as to costs.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 9<sup>TH</sup> DAY OF MAY 2024.**

**D. O. OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**

The Plaintiff present in person

No appearance for the Defendant

Court Assistant: M. Nguyayi

