



REPUBLIC OF KENYA



**Ongondo v Mariongo & 4 others (Environment and Land Case  
1191 of 2016) [2024] KEELC 4195 (KLR) (14 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4195 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND CASE 1191 OF 2016**

**M SILA, J**

**MAY 14, 2024**

**BETWEEN**

**THOMAS ONGONDO ..... PLAINTIFF**

**AND**

**JOSEPHINE NYABONYI MARIONGO ..... 1<sup>ST</sup> DEFENDANT**

**MARGARET MORAA SOSI ..... 2<sup>ND</sup> DEFENDANT**

**JOSPHAT MARORO ONSONGO (AS LEGAL REPRESENTATIVE OF THE  
ESTATE OF JOHN ONSONGO MAYOGI (DECEASED)) ..... 3<sup>RD</sup> DEFENDANT**

**ZEBEDEO OMBASA ..... 4<sup>TH</sup> DEFENDANT**

**NYASORO MANGANA ..... 5<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was commenced through a plaint which was filed on 26 April 2010 by Thomas Ongondo and one Nyasoro Mangana. That plaint was amended a couple of times culminating into the (further) amended plaint filed on 25 January 2012. That further amended plaint now has only Thomas Ongondo as plaintiff and Nyasoro Mangana is now sued as 5<sup>th</sup> defendant. In the further amended plaint, the plaintiff avers that together with one Sigara Mangana (now deceased) they were registered as owners of the land parcel Central Kitutu/Daraja Mbili/1377 (the suit land). It is pleaded that on 19 May 2009, the 5<sup>th</sup> defendant obtained a grant of letters of administration for the estate of Sigara Mangana but did not disclose that the suit land was not wholly owned by the deceased. It is pleaded that upon obtaining the grant, the 5<sup>th</sup> defendant proceeded to subdivide the suit land into the land parcels Central Kitutu/Daraja Mbili/3144, 3145, 3146, 3147 and transferred them to the 1<sup>st</sup> – 4<sup>th</sup> defendant. It is averred that the grant issued to the 5<sup>th</sup> defendant was subsequently revoked, and that upon revocation the 5<sup>th</sup> defendant proceeded to obtain orders cancelling the titles No. 3144 – 3147, caused himself to be registered as sole proprietor of the suit land, and embarked on a process of selling it to third parties.



He avers that the defendants are now trespassing on the suit land. In this suit the plaintiff seeks the following orders :

- a. An order cancelling the registration of the 5<sup>th</sup> defendant Nyasoro Mangana, as proprietor of the land parcel Central Kitutu/Daraja Mbili/1377 and directing registration of the plaintiff, Thomas Ongondo, as proprietor of the same.
  - b. An order of permanent injunction restraining the defendants from trespassing, occupying, or interfering with the land parcel Central Kitutu/Daraja Mbili/1377.
  - c. Costs of the suit.
  - d. Any other order the court may deem fit to grant.
2. The defendants filed a defence which was amended on 23 June 2022 after the original 3<sup>rd</sup> defendant, John Onsongo Mayogi died and was substituted by his legal representative, Josphat Maroro Onsongo. The 1<sup>st</sup> – 3<sup>rd</sup> defendants in the amended defence aver that they purchased parcels of land which got registered in their names before 1992 and have been in occupation to date. It is pleaded that the portion registered in the name of the original 3<sup>rd</sup> defendant was transferred to him by Nyasoro Mangana as legal representative of Sigara Mangana the registered owner of the suit land.
  3. The suit against the 4<sup>th</sup> defendant was withdrawn.
  4. Hearing of the suit commenced on 3 October 2019 before my predecessor Onyango J. PW – 1 was Keresensiah Kwamboka, the wife of the plaintiff. She averred that the plaintiff had donated a power of attorney to her. She testified that she has been living on the suit land since 1986 and has the original title deed of the suit land which she exhibited. She pointed out that the title deed shows that the land is registered in the joint names of Sigara Mangana and Thomas Ongondo. She testified that it was a practice at the time that a vendor and purchaser be jointly registered as proprietors and that she was present when her husband purchased the land. The sale agreement was oral and nothing was put down in writing. She testified that the 5<sup>th</sup> defendant obtained a grant after the death of Sigara Mangana and transferred portions of the land to the 1<sup>st</sup> – 4<sup>th</sup> defendants. Her husband filed an objection and the grant was revoked. She testified that the 1<sup>st</sup> defendant has never been in occupation of the land, but the 2<sup>nd</sup> defendant took possession and fenced, and the 3<sup>rd</sup> defendant took possession in 2009. The 3<sup>rd</sup> defendant has constructed a permanent house on the land. She prayed that the titles of the 1<sup>st</sup> – 4<sup>th</sup> defendants be cancelled and for them to be restrained from the land.
  5. Cross-examined, she testified that she does not know what share Sigara Mangana (deceased) had on the land. She testified that her husband bought the whole land. She stated that Sigara Mangana was buried on the suit land and her sons were also buried here. She disclosed that Sigara Mangana continued living on the land with her two sons even after selling the property. She elaborated that after the grant was revoked the court ordered the land reverts back to the original status i.e in the name of the plaintiff and Sigara Mangana. She testified that she lives on the lower part of the land and occupies half an acre. She stated that Sigara Mangana sold some land to one Nyabiya and Moseti, and that her husband signed the transfer together with Sigara Mangana.
  6. PW – 2 was Steve Mokaya, the Land Registrar, Kisii. He testified that the suit land was first registered in name of Nyasoro Mangana. The title was closed on subdivision on 2 November 2009 resulting into the land parcels No. 3144- 3147 registered as follows :  
No. 3144 - Nyasoro Mangana (5<sup>th</sup> defendant);  
No. 3145 – Margaret Moraa (2<sup>nd</sup> defendant);



No. 3146 – Josephine Nyabonyi Maronga (1<sup>st</sup> defendant);

No. 3147 – John Onsongo Mayogi (original 3<sup>rd</sup> defendant).

7. He testified that these numbers were later nullified by an order dated 31 March 2011 issued in the Succession cause of Sigara Mangana and the property reverted back to Nyasoro Mangana for purposes of succession. He produced the Green Card to demonstrate the entries, the court order issued in the succession case, and the death certificate of Sigara Mangana. Cross-examined, he conceded that his records were incomplete as they were missing particulars of the first registration. He testified that on a sale property moves from the seller to buyer and title would not be in their two names. He could see that the suit land emanated from a subdivision of the parcel No. 1270 of which he did not have records of. He was aware of a court order dated 5 August 2011 which was issued upon consent of the plaintiff and 5<sup>th</sup> defendant that the property be transferred to the 5<sup>th</sup> defendant who would then transfer the portion bought by the plaintiff. He could not tell how Sigara Mangana and Thomas Ongondo got registered as joint proprietors of the suit land. He did not know what size of land was to be transferred to the plaintiff.
8. With the above evidence the plaintiff closed his case.
9. DW – 1 was Josephine Nyabonyi Maronga, the 1<sup>st</sup> defendant. She testified that she bought land from Ouru Mangana, who is brother to the 5<sup>th</sup> defendant. She testified that the land was previously in name of Sigara Mangana (deceased) and Thomas Ongondo (plaintiff). She was aware that Nyasoro Mangana (5<sup>th</sup> defendant) filed succession on behalf of the estate of Sigara Mangana. According to her, she got the land legally because Nyasoro put their names in the succession cause. Cross-examined she testified that the plaintiff lives on the land. She affirmed that her title deed was cancelled. She stated that the plaintiff also bought land from Sigara Mangana as he was not her son.
10. DW – 2 was Margaret Mora Sosi, the 2<sup>nd</sup> defendant. Her evidence was that she also purchased part of the land from Ouru Mangana who was son of Sigara Mangana. She got title in her name and then proceeded to build 18 single rooms. She was aware that the title was cancelled. She stated that the plaintiff lives on the land and has developed a house. She claimed that a son of the plaintiff demolished her 18 houses and it is now the plaintiff who utilizes the whole of the land.
11. DW – 3 was Josphat Maroro Onsongo, the son of the original 3<sup>rd</sup> defendant. He testified that his father purchased some land from Nyasoro Mangana in July 1983. He took possession and constructed a house which are in possession of the family. He did not know how the plaintiff came to be registered together with Sigara Mangana as co-owners.
12. DW – 4 was Nyasoro Mangana, the 5<sup>th</sup> defendant. He testified that he was born in 1948. He is the son of Sigara Mangana and Mangana Odongo who are now both deceased. He testified that after the death of his mother, he filed a succession cause and was issued with a grant. He claimed not to know the plaintiff though he also stated that he knew him later and was aware that he had bought land from his mother. He claimed that he came to know this in 1999. He testified that it was directed that he gives the plaintiff his share but he is yet to do so because of the cases filed. He is prepared to give him his share. He testified that he is aware of his portion and it is where he lives. He was not aware of any other person deserving land including the 1<sup>st</sup> – 3<sup>rd</sup> defendants. He denied selling land to them. Cross-examined, he testified that he had gone to Moshi, Tanzania, and when he came back he found John Onsongo (original 3<sup>rd</sup> defendant) on the land. He left his children on the land after his death. He denied that he sold land to them though he stated that he has no issue with them. He claimed that the plaintiff inserted his name in the title purporting to be his father. He testified that the plaintiff deserves half the



- land and he has no problem giving him this portion. With the above evidence the defendants closed their case.
13. I directed counsel to file submissions and I have taken note of the submissions filed before arriving at my decision.
  14. Before I go too far, there are some facts which are not in contest. The suit land was first registered on 1 April 1985 in the two names of Sigara Mangana (deceased) and Thomas Ongondo (plaintiff). The land measures 0.47 Ha and the register shows that it resulted from a subdivision of the land parcel No. 1270. There was therefore a co-ownership of the land by the two persons, that is the plaintiff and Sigara Mangana, but it was not indicated in the register whether the co-ownership was joint or in common, and if in common the respective shares of the co-owners. Sigara Mangana died on 25 May 1992. Following her death, the 5<sup>th</sup> defendant filed Kisii High Court Succession Cause No. 43 of 2009, Re Estate of Sigara Mangana (deceased). The 5<sup>th</sup> defendant was issued with a grant and he used it to transfer the title to his sole name leaving out the plaintiff. He got registered as proprietor on 20 July 2009. Now as sole registered proprietor, he proceeded to subdivide the suit land into the land parcels No. 3144 – 3147. He retained the parcel No. 3144, measuring 0.24Ha, in his name and transferred the parcels No. 3145 (0.06 Ha) 3146 (0.09 Ha) and 3147 (0.04 Ha) respectively into the names of the 2<sup>nd</sup>, 1<sup>st</sup> and original 3<sup>rd</sup> defendant. When the plaintiff found out about this occurrence, he filed an application before the succession court for the nullification of the grant which application was successful vide a ruling delivered on 31 March 2011. Subsequently, on 14 June 2011, a consent was entered between the two parties in the succession cause that the resultant subdivisions No. 3144-3147 be revoked. This consent was endorsed and executed by the cancellation of these subdivisions on 5 August 2011.
  15. On 1 August 2011, the parties entered into another consent as follows :

“By consent of the applicant and petitioner/ respondent herein, and further to the consent of the parties herein dated the 10<sup>th</sup> June 2011 whereof the illegally acquired Titles premised on the illegal grant were cancelled, the land parcel number subject herein to revert to its original number, Central Kitutu/Daraja Mbili/1377 and be registered in the name of the Petitioner/Respondent herein Nyasoro Mangana only whereof the said Petitioner/ Respondent, Nyasoro Mangana, upon registration, shall transfer to the applicant herein, Thomas Ongondo the portion in the subject parcel of land he rightfully bought from the petitioner/respondent’s deceased mother, Sigara Mangana.”
  16. This consent was endorsed and a court order issued on 5 August 2011 to that effect. This consent, it appears, was never executed. In the meantime, the plaintiff had already filed this case seeking the orders that I outlined above on the basis that the 5<sup>th</sup> defendant illegally procured title to the whole of the suit land.
  17. The bone of contention really is what sort of co-proprietorship the plaintiff had with Sigara Mangana. Was it a joint proprietorship, or was it a proprietorship in common ? If it was a joint proprietorship, then it would mean that upon the death of Sigara Mangana, the entire property vests in the plaintiff. If it was a proprietorship in common, it means that upon the death of Sigara Mangana, the plaintiff would retain his share in the property and the remainder, that share of Sigara Mangana, is what would proceed for succession.
  18. I do not think it can be contested that the 5<sup>th</sup> defendant could not obtain title in his sole name, irrespective of whether the proprietorship was joint or common. Assuming it was joint, then the whole of the land would go to the plaintiff. If it was in common, then there would be a portion for the plaintiff and the 5<sup>th</sup> defendant could not purport to succeed the whole of the land, since Sigara Mangana would



not be entitled to the whole of the land. The registration of the suit land in the sole name of the 5<sup>th</sup> defendant was therefore unlawful. As a consequence, the subdivision of the suit land solely by the 5<sup>th</sup> defendant was also unlawful and I see no problem with the revocation of the titles No. 3144 – 3147. However, since his registration as sole proprietor of the unsubdivided parcel No. 3177 was unlawful, it could not be retained upon revocation of the titles No. 3144 – 3147. What needed to happen was to have the land revert back to the names of the plaintiff and Sigara Mangana.

19. From the facts, it would appear to me, that although the proprietorship was in the two names and there was no indication whether the proprietorship was joint or in common, this proprietorship was actually one in common and not joint. The evidence adduced is that the plaintiff bought the land from Sigara Mangana. I am not persuaded that he bought the whole of it, because if he had, then the land would have been wholly registered in his name and not as co-owners. My hypothesis is that Sigara Mangana or her husband purchased, or were somehow entitled to part of the land parcel No. 1270. They then sold part of their entitlement to the plaintiff before this portion was transferred to them. That is why, when the parcel No. 1270 was subdivided, it was acknowledged that the plaintiff has a share in whatever Sigara Mangana had purchased, or was entitled to, and the land ended up being registered in their two names. In his evidence, the 5<sup>th</sup> defendant testified that the plaintiff is entitled to half share and I do not think that the plaintiff has seriously rebutted this. What the plaintiff claimed is that he bought the whole of the land but there is no such evidence. Moreover, as I have said, if indeed he bought the whole of the land, there would be no reason to have the land registered in his name and that of Sigara Mangana. In addition, it appears that when he subdivided the land, the 5<sup>th</sup> defendant kept half the land i.e parcel No. 1344, and sold the other half which comprised the three subdivisions No. 1345 – 1347. That was the portion taken over by the 1<sup>st</sup> – 3<sup>rd</sup> defendants and there is no evidence that they displaced the plaintiff's possession of the land. I think that the half that the 5<sup>th</sup> defendant kept for himself was the half that he believed was the share of the plaintiff.
20. What I will order in this case is that the title of the suit land reverts back to the names of the plaintiff and Sigara Mangana (deceased) as owners in common holding equal shares. I will also declare that the plaintiff is entitled to half the suit land which would comprise of where he stays and its environs to the extent of one half. The other half is for Sigara Mangana and may be subjected to succession in the usual manner. I cannot declare that this half share of Sigara Mangana belongs to the 5<sup>th</sup> defendant or the other defendants because the grant of the 5<sup>th</sup> defendant was revoked. In other words, that half share has to be subjected to succession. I cannot also proceed to declare the 1<sup>st</sup> – 3<sup>rd</sup> and the 5<sup>th</sup> defendant as trespassers, within the context of this case, but in the same vein I also cannot declare them to own any part of the land that was previously owned by Sigara Mangana, since, as I have said, it needs to be subjected to succession. They would however be trespassers if they interfere with the half share of the plaintiff and/or if the 5<sup>th</sup> defendant does not want them on the land. No evidence was led that they have in any way interfered with the half share of the plaintiff and the 5<sup>th</sup> defendant has no suit against them demanding that they give vacant possession of the share of Sigara Mangana. That will need other litigation after the shares of the two owners is ascertained on the ground. The plaintiff will need to apply for partition of land held in common in the usual manner as provided under Section 94 of the [Land Registration Act, 2012](#) so that his portion is ascertained and separate title issued to him for it.
21. I believe the above settles the litigation herein. The last issue would be costs. It was wrong for the 5<sup>th</sup> defendant to proceed as he did. He will bear the costs of the suit to the plaintiff. I make no order for or against the 1<sup>st</sup> – 4<sup>th</sup> defendants in respect of costs.
22. Judgment accordingly.

**DATED AND DELIVERED THIS 14 DAY OF MAY 2024**



**JUSTICE MUNYAO SILA**  
**JUDGE, ENVIRONMENT AND LAND COURT**  
**AT KISII**

Delivered in the presence of :

Mr. Masolo for the 1<sup>st</sup> – 3<sup>rd</sup> defendants

Mr. Kerosi for the 5<sup>th</sup> defendant

No Appearance on part of Mr. Sagwe for the plaintiff

