



REPUBLIC OF KENYA



Nyagudi v County Land Registrar Kisumu County (Environment and Land Appeal E001 of 2023) [2024] KEELC 4708 (KLR) (6 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E001 OF 2023**

E ASATI, J

JUNE 6, 2024

BETWEEN

SELA AUMA NYAGUDI APPELLANT

AND

COUNTY LAND REGISTRAR KISUMU COUNTY RESPONDENT

(Being an appeal from part of the Order/Ruling of Honourable Court delivered on 23rd November, 2022 by Hon. Teresa Odera at Kisumu Law Courts in ELC Misc. Application No. E003 of 2022)

JUDGMENT

1. Vide the Memorandum of Appeal dated 23rd December, 2022, the Appellant herein, SELA AUMA NYAGUDI, appealed against the ruling of the trial court delivered on 23rd November, 2022 in Kisumu CMC EL MISC. APPLICATION NO. E003 OF 2022. The Appellant seeks that the appeal be allowed and the order/ruling of learned Magistrate be varied to compel the Respondent to supply the Applicant with the public records applied for.
2. The grounds of appeal as contained in the Memorandum of Appeal are that;
 - i. The learned Magistrate wholly and completely misapprehended the principles applicable on the information held by the Respondent herein.
 - ii. The learned Magistrate considered extraneous matters and thereby erred by considering whether the Appellant was a spouse of the deceased original owner of the suit land before granting orders forcing the Respondent to be furnished with public records held by the Respondent.
 - iii. The learned Magistrate erred in law by holding that the registered property owners have a right to be enjoined in a suit seeking public records of the properties.



- iv. The learned Magistrate erred in law by failing to consider the written submissions of the Appellant.
3. A brief background of the appeal as can be gathered from the record of appeal is that the Appellant filed a Miscellaneous Application in the Chief Magistrate's Court at Kisumu namely Kisumu CMC MISC. EL Application No. E003 OF 2023 vide the Notice of Motion dated 9th March, 2024. She sought for various documents in respect of land parcel numbers KISUMU/KONYA/8642, KISUMU/KONYA/8643, KISUMU/ KONYA/8646, KISUMU/KONYA/8647, KISUMU/KONYA/8648 AND KISUMU/KONYA/8649. The application was stated to be brought pursuant to the provisions of Section 86 of the Land Registration Act, Schedule Three of the Land Registration Act (General) Regulations and section 3A and 63(e) of the Civil Procedure Act.
 4. The basis of the application before the trial court was said to be that the suit land(s) were matrimonial property of the Applicant and her husband. That she had discovered that several transactions including sale, sub-division and transfers had taken place in respect of the suit land(s) without her involvement. That she had made formal request to the Land Registrar for certified copies of the documents. She deposed in the Affidavit that she had visited the office of the Land Registrar for the said documents, but had not been supplied with them. That she needed the documents in order to determine whether or not she should file suits for recovery of the said parcels.
 5. The record of appeal shows that the application was opposed vide the Defendant's grounds of opposition dated 23rd May, 2023.
 6. The record of appeal shows further that before the Notice of Motion dated 9/3/2022 could be disposed of, the applicant filed another application dated 13/7/2022 seeking for orders of prohibition to be registered on the parcels of land in respect of which she sought to be furnished with documents.
 7. The record further shows that the court heard the applications and delivered a ruling dated 23rd November, 2022 striking out the applications dated 13th July, 2022 and 24th March, 2022.
 8. A reading of the ruling appealed against shows that the applications were dismissed on the grounds that the Applicant had no Letters of Administration in respect of the estate of her late husband and that the registered owners of the suit lands had not been enjoined in the suit as required by law.
 9. The appeal was argued by way of written submissions.
 10. Written submissions dated 14th May, 2024 were filed by the firm of Juliet Dima Advocates on behalf of the Appellant. Counsel submitted that the application before the trial court dated 13th July 2022 sought orders of prohibition to be registered against each of the titles to prohibit any dealings therewith pending the hearing and determination of the application dated 24th March, 2022. That the trial court struck out both applications for lack of locus standi as the Applicant did not exhibit Grant of Letter of Administration over the estate of Charle Nyagudi and non-joinder of the registered owners of the respective parcels of land.
 11. That the court fell in error of fact when it found that the Applicant was the widow of Charles Nyagudi when the same was not pleaded. Counsel relied on the cases of Law Society of Kenya –vs- Commissions of Lands & Others, Nakuru High Court Civil Case No.464 of 2000 and Alfred Njau & Others –vs- City Council of Nairobi (1982) KAR 229 on the definition of locus standi.

Counsel submitted that locus standi means the right to appear before and be heard in a court of law. That the trial court erred in finding that the Appellant should have joined the registered proprietors



of the land parcels before the court could grant the orders that she sought. Counsel reiterated the submissions made before the trial court.

12. No submissions were filed on behalf of the Respondent.

Issues for Determination

13. The grounds of appeal form the issue for determination herein.

Analysis and Determination

14. This being a first appeal, the court reminds itself of the duty to re-examine and analyze the evidence placed before the trial court with a view to arrive at its own independent conclusion. See section 78 of the *Civil Procedure Act* and *Selle & another vs Associated Motor Boat Company Ltd & Another* (1968) IEA 123) where it was held that a court handling a first appeal is not necessarily bound to accept the findings of fact and law by the court below but has a duty to re-examine the evidence placed before the trial court.
15. The first issue for determination is whether or not the trial court misapprehended the principles applicable on the right of citizen to information held by the Respondent herein. Article 35 of *the Constitution* of Kenya 2010 provides for the right to access to information; that every citizen has the right of access to information held by the state and information held by another person and required for the exercise of or protection of any fundamental freedom. The Appellant states that she needs the documents for purposes helping her to determine whether she should file suit to protect her right to the suit land(s) which she describes as matrimonial property. The applicant did not need to be related to anyone to be entitled to the information sought or to the right to access to information. She had demonstrated in the application that she had made formal request for the said documents from the Respondent and had even visited the Respondent's offices for the same to no avail. No explanation was given why the required information or documents were not supplied. I find that the court misdirected itself on the principles on the appellant's right to access to information.
16. The next ground of appeal is that the learned Magistrate erred in law by holding that the registered property owners have a right to be enjoined in a suit seeking public records of the properties. A reading of the record reveals that there were two applications that were argued together before the trial Magistrate. That the ruling appealed against was in respect of both applications. One of the applications sought for an order of prohibition. An order of prohibition bars the registered owner of property or any person from registering any transactions over the subject property for a specified period. It was important that the registered owners of the subject parcels be made party to the application to respond to the same. I find that the trial court was right in dismissing the prayer for prohibition on grounds that the registered owners of the subject parcels of land ought to be have been joined in the matter.
17. I find that the appeal succeeds partly as follows: -
- i. the orders of the trial court dated 23/11/2022 are set aside and replaced with an order compelling the Respondent to furnish the applicant with the documents as listed in the Notice of Motion dated 9/3/2022 at the applicant's cost, within 30 days of service of this order.
 - ii. If the documents sought are not available, the Respondent to communicate the same to the applicant within 30 days of service of this order.
 - iii. No orders as to costs.

Orders accordingly.



Judgement dated and signed at Kisumu and delivered this 6th day of June, 2024 virtually through Microsoft Teams Online Application.

E. ASATI,

JUDGE.

In the presence of:

Maureen Court Assistant.

No appearance for the appellant.

No appearance for the Respondent.

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