



**Oldeane Limited v Orioki & another (Environment & Land Case
E090 of 2022) [2024] KEELC 5527 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5527 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E090 OF 2022
LC KOMINGOI, J
JULY 25, 2024**

BETWEEN

OLDEANE LIMITED PLAINTIFF

AND

JANE ORIOKI 1ST DEFENDANT

THE LAND REGISTRAR, NGONG 2ND DEFENDANT

JUDGMENT

1. By the Plaint dated 1st November 2022, the Plaintiff (a registered company) states that it is the registered owner of property known as Kajiado/Ewuaso Kedong/1557 measuring approximately 89.5 hectares from 2013 having purchased it from Lekuura Ole Tumanga through one Peter Kariuki Njoroge. A title was subsequently issued in its name on the 16th July 2013 and was in possession until sometime in 2019 when the 1st defendant fraudulently caused the green card records and entries to be altered to reflect her as the owner of the property. The 2nd Defendant aided the fraud by altering the records and concealing the green card records from the Plaintiff. The plaintiff filed a complaint at the Directorate of Criminal Investigation at Ngong’ and the investigation is ongoing. It thus sought:
 - a. A declaration that the Plaintiff is the lawful owner of the whole of property known as Kajiado/Ewuaso Kedong/1557 measuring 89.5 hectares.
 - b. An order that the 2nd Defendant proceeds, forthwith, to expunge the name of the 1st Defendant from the register held at Ngong registry including the green card.
 - c. An order that the plaintiff’s name be entered on the records held by the 2nd defendant as the proprietor of the suit property.



- d. A permanent injunction against the 1st Defendant, her agents, servants or other people claiming through or under her prohibiting them from dealing in any way whatsoever with the suit property.
 - e. An order that the 1st Defendant surrenders all title documents in her possession relating to the suit property or any portion thereof to the Chief Registrar of Land for immediate shredding.
 - f. That the 1st Defendant do bear costs of this suit.
 - g. Any other remedy as the justice of the cause shall call for.
2. The 1st Defendant only entered appearance but did neither file a defence nor participated in these proceedings. The 2nd Defendant neither entered appearance nor filed a defence.

Evidence of the Plaintiff

3. PW1, Margaret Wanjiku Kellen, a director of the Plaintiff adopted her witness statement as part of her evidence in chief and produced documents marked as P. Exhibit 1-5. This marked the close of the Plaintiff's case.
4. At the close of the oral testimony, the Plaintiff tendered final written submissions.

The Plaintiff's Submissions

5. Counsel submitted that the Plaintiff produced its title document as proof of ownership which was protected by Section 26 of the [Land Registration Act](#) because it was acquired procedurally. Any document held by the 1st Defendant is what was acquired fraudulently and ought to be negated.

Analysis and Determination

6. I have considered the pleadings, the evidence tendered, the plaintiff's submissions and the authorities cited. The issues for determination are;
 - i. Whether the Plaintiff is entitled to the prayers sought in the plaint.
 - ii. Who should bear costs of the suit?
7. The Plaintiff seeks to be declared the legal and lawful owner of property known as Kajiado/Ewuaso Kedong/1557 and all the entries with the 1st Defendant's name be expunged from record. This was on grounds that the suit property was purchased and lawfully transferred to the Plaintiff in 2013. Despite service to the Defendants, they never appeared in court to contest this claim. The suit thus proceeded uncontested.
8. Nevertheless, it remains the Plaintiff's duty to substantiate the claims with compelling evidence, adhering to the principle that the burden of proof lies with the party asserting the claim as postulated in Section 107 of the [Evidence Act](#) which provides; "(1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. (2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person."
9. In support of its claim, the Plaintiff produced several documents as exhibits. These included a copy of the title deed issued in its name on 16th July 2013; an undated transfer form, a certificate of search dated 4th July 2013 showing that the property was registered to Lekuura Ole Timanga on 5th May 1995



with a title issued to him on 20th December 2012; and certificates of search dated 16th July 2013 and 11th May 2017 indicating that the Plaintiff was the registered owner.

10. In her supporting affidavit to the Notice of Motion dated 1st November 2022, PW1 attached copies of electronic funds transfer from the Plaintiff's account to that of Peter Kariuki Njoroge amounting to Kshs.7,177,000/=
11. I find that this confirms that there was indeed a transaction between the Plaintiff and the said Peter Kariuki Njoroge.
12. I find that the Plaintiff's case has not been controverted. However, I find that the Plaintiff is still required to prove its case to the required standard. In the case of Kenya Power & Lighting Company Ltd Vs. Nathan Karanja Gachoka & Another (2016) eKLR , the court stated;

“I am of the opinion that uncontroverted evidence must bring out the fault and negligence of a defendant and that a court should not take it truthful without interrogation for the reason only that it was uncontroverted. A plaintiff must prove its case too upon a balance of probability whether the evidence was challenged or not.”

13. The upshot of the matter is that the Plaintiff has proved its case against the Defendant's on a balance of probabilities.
14. Accordingly Judgement is entered for the Plaintiff as against the Defendants as follows;
 - a. That a declaration is hereby issued that the Plaintiff is the lawful owner of the whole of property known as Kajiado/Ewuaso Kedong/1557 measuring 89.5 hectares.
 - b. That the 2nd Defendant is directed to expunge the name of the 1st Defendant from the register held at Ngong registry including the green card. Within Sixty (60) days from the date of this Judgement.
 - c. That an order is hereby issued directing the 2nd Defendant to ensure that the Plaintiff's name be entered on the records held by the 2nd defendant as the proprietor of the suit property. Within Sixty (60) days from the date of this Judgement.
 - d. That a permanent injunction is hereby issued restraining the 1st Defendant, her agents, servants or other people claiming through or under her prohibiting them from dealing in any way whatsoever with the suit property.
 - e. That an order is hereby issued that the 1st Defendant surrenders all title documents in her possession relating to the suit property or any portion thereof to the Chief Registrar of Land for immediate shredding. Within 60 days from the date of this Judgement.
 - f. That the Defendants do bear costs of this suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF JULY, 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

N/A for the Plaintiff.

N/A for the Defendants.



Court Assistant – Mutisya.

