



**Odero v Magambo & another (Environment and Land Appeal
E040 of 2021) [2025] KEELC 738 (KLR) (19 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 738 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E040 OF 2021**

M SILA, J

FEBRUARY 19, 2025

BETWEEN

MARGARET ODERO APPELLANT

AND

GEORGE ODHIAMBO MAGAMBO 1ST RESPONDENT

DAVID OCHOLA OKECH 2ND RESPONDENT

JUDGMENT

1. Through a plaint filed on 23 January 2018, the respondents sued the appellant seeking orders for a declaration that they (appellants) were the owners of the land parcels Kamagambo/Kamwango/1949 and 1950; eviction of the respondent from the suit lands; a permanent injunction to restrain her from the suit lands; general damages for trespass; and costs. Their case, as orally presented and through the documents they provided, was that the suit lands were originally comprised in the title Kamagambo/Kamwango/188 in name of Michael Obonyo Ganga. He died on 27 July 1997. Subsequently one William Oketch Okach (Mr. Okach) applied for a grant of letters of administration in respect of his estate through the case Homa Bay Senior Resident Magistrate's Court Succession Cause No. 68 of 2004. He was issued with a grant which was confirmed. Pursuant to the confirmed grant, Mr. Okach was the sole beneficiary and was vested with the suit land. He then transferred the suit land to himself and obtained registration on 8 September 2004. He had earlier on 26 June 2004 entered into a sale agreement with the 1st respondent selling the parcel No. 188 and upon the land being vested in him, he transferred the title to the 1st respondent. The 1st respondent then subdivided the parcel No. 188 into two portions, i.e parcels No. 1949 and 1950, with the 1st respondent retaining the parcel No. 1949 and transferring the parcel No. 1950 to the 2nd respondent. The transfers were registered on 28 March 2017. They pleaded that notwithstanding their proprietorship the appellant in the year 2017 trespassed into their parcels of land, which led them to make a report of Forcible Detainer at



- Kamagambo Police Station and the appellant was charged, but despite the charge she still continued with her acts of trespass.
2. The defence of the appellant was that she was the wife of Michael Obonyo Ganga (the deceased) and that the respondents and Mr. Okach knew of this position as they all reside in the same area. She contended that Mr. Okach was a nephew of the deceased and he surreptitiously and corruptly filed the succession case when it was her who was first in priority. She averred that the respondents were also part of the corrupt scheme. She asserted that no good title passed to Mr. Okach or to the respondents. She pleaded that all along she was in occupation of the land as her matrimonial property and any visit by the purchasers would have confirmed this. She averred that she had filed an application for revocation of grant. She also filed a counterclaim seeking an order of rectification of the register to have her name inserted as proprietor in place of the names of the respondents, or alternatively, reverting the title back to the parcel No. 188 in name of the deceased so that proper succession can be done. She also sought general damages for fraud; a permanent injunction against the respondents; costs and interest.
 3. At the hearing of the suit, the 1st respondent testified on his own behalf and on behalf of the 2nd respondent. He averred inter alia that Mr. Okach wished to sell the land and he advised him to first undertake succession which was done and the property transferred to him. He stated that the appellant trespassed into the suit lands on 17 September 2017 and maintained possession until they filed suit. Cross-examined, he testified that to his knowledge, the deceased did not have any wife. He stated that there was nobody living on the land, and upon purchase in 2004, he took possession and planted sugarcane until 2017.
 4. The appellant testified and called two witnesses. In her evidence in chief she maintained that she was married to the deceased in August 1973 and that the suit land was matrimonial property. Cross-examined, she stated that the deceased built for her a two roomed house on the land, and that they had one child who got married. She identified Mr. Okach as son of her brother in law. She testified that in 1999 she went to Chabera to do business and she was there until 2017 when she returned. When she came back she found her home had fallen apart and she constructed a structure. She never filed any succession case for the estate of the deceased.
 5. DW-2 was Rogers Odhiambo. His evidence was that the deceased and himself shared a grandfather and he knew the appellant as wife of the deceased. Cross-examined he stated that they were arrested in 2017 when constructing a house for the appellant. According to him, she had been away in Chabera since 1997.
 6. DW-3 was Lawrence Ongodo Adede who described himself as a cousin of the deceased. His evidence was that they went to pay dowry for the appellant in Kendu Bay in 1973. They first took 4 cattle and later 3 cows. He stated that he took the cows alone with the deceased. He denied that an elder was required for such function.
 7. With the above evidence the appellant closed her case.
 8. Counsel filed submissions culminating in the impugned judgment delivered on 26 August 2021. In his judgment, the trial Magistrate found that Mr. Okach petitioned the court for a grant of letters of administration and he was granted the same and the property was confirmed to him. He found that the grant has never been revoked and remains legitimate. He did not find anything illegal in the transfer of the land or its subsequent subdivision. He referred to the appellant's pleading where she alluded that she had applied to revoke the grant, and was of opinion that it would have been prudent for her to stay the proceedings, as the application for revocation was being canvassed, which was never done. She found the appellant to have trespassed into the land and awarded the respondents Kshs. 100,000/= as



general damages for trespass. She also awarded the respondents their prayers in the plaint and dismissed the counterclaim with costs.

9. Aggrieved, the appellant has preferred this appeal on the following grounds :
 - i. The learned trial Magistrate misdirected himself on several matters of law and fact.
 - ii. The learned trial Magistrate erred in law by deciding the case against the weight of evidence.
 - iii. The learned trial Magistrate erred in law in holding that there was no evidence of fraudulent conduct by the respondents when the conduct of the respondents in the light of their knowledge of the fraudulent acquisition of suit land clearly inferred fraud.
10. The appellant seeks to have the judgment of the trial court set aside with costs.
11. The appeal was urged by way of written submissions and I have taken note of the submissions filed.
12. From the documents provided as exhibits at trial, it is discernible that indeed the deceased was proprietor of the parcel No. 188. He became proprietor on 2 September 1975. There was a Certificate of Death exhibited which shows that he died on 27 July 1997 aged 48 years. The grant and the confirmed grant issued to Mr. Okach vide Homa Bay SRM Succession Cause No.68 of 2004 were exhibited. The green card shows that the title to the parcel No. 188 was transferred to Mr. Okach as beneficiary and Mr. Okach later transferred the land to the 1st respondent. The 1st respondent subsequently in the year 2017 subdivided the parcel No. 188 into the parcels No. 1149 and 1150, and the two respondents became registered as proprietors of their respective parcels on 23 March 2017. The appellant of course asserted that the succession process was done fraudulently and that she ought to have been involved on the basis that she was wife to the deceased.
13. Well, if indeed she was wife to the deceased, and she was of opinion that the grant was issued illegally, nothing stopped her from filing an application for revocation of grant. Despite alluding in her defence that she had filed an application for revocation, no such application was ever exhibited in evidence, and the only conclusion that I can reach is that no such application was ever filed. It is within the succession case that it would be determined whether or not the appellant was a wife to the deceased and/or beneficiary of her estate. As matters stand, which was correctly observed by the trial court, the grant issued to Mr. Okach remained unchallenged.
14. The appellant herself admitted not to being on the suit land since the 1997. There was really no tangible evidence of her presence on the land prior to 1997 but even if we take it that she was on the land as at 1997, I wonder, if she was indeed married to the deceased, how she could have disappeared from this time only to surface 20 years later in 2017. You would expect that if indeed this was her matrimonial property, as she is claiming, she would take care of it and at least appear once in a while to see what is happening on it. I also take the allegation of PW-2 that only him and the deceased went to deliver dowry to the family of the appellant with a pinch of salt. It is extremely unusual that only two people go to a dowry ceremony in our African culture. The evidence presented by the appellant was too thin to conclude that this was her matrimonial property or that she was married to the appellant. Whatever the case, it is not disputed that the appellant was never on the suit land at least from 1997 till 2017 and therefore her pleadings, that she was all along in occupation and the respondents could see her in occupation, was all untrue.
15. In essence, I cannot fault the trial court for coming to the conclusion that there was nothing fraudulent in the manner in which the suit lands were transferred to the respondents. The transferor applied for a grant which was confirmed to him; he applied to the Land Control Board; he then transferred the land to the 1st respondent; the 1st respondent subdivided it into two, kept one portion and transferred



the other portion to the 2nd respondent; and they were in occupation until the appellant emerged from nowhere and seized possession of the suit lands. The appellant did not prove any fraud on the part of the respondents in the manner in which they acquired title to the suit property. She never proved that this was her matrimonial property and she never applied to challenge the grant issued to Mr. Okach. She was never in occupation of the suit lands for at least 20 years. Her counterclaim held no water and it was properly dismissed.

16. From the above discourse, it will be seen that I find no merit whatsoever in this appeal and it is hereby dismissed with costs. The judgment of the trial court is upheld.

17. Judgment accordingly.

DATED AND DELIVERED THIS 19 DAY OF FEBRUARY 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MIGORI

Delivered in presence of :

Josephine Lori – Court Assistant

No appearance for M/s Robert Ochieng & Company Advocates for the appellant

No appearance for M/s Oguttu Mboya, Ochwal & Partners Advocates for the respondents

