



**Seria Limited v Munene (Environment and Land Appeal E006 of 2023)  
[2024] KEELC 6312 (KLR) (26 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6312 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E006 OF 2023  
LC KOMINGOI, J  
SEPTEMBER 26, 2024**

**BETWEEN**

**SERIA LIMITED ..... APPELLANT**

**AND**

**LYDIA MUNENE ..... RESPONDENT**

*(Being an Appeal against the Judgement of Hon. P. Achieng' in  
Ngong' ELC Case No. 82 of 2018 delivered on 16th March 2023)*

**JUDGMENT**

1. The learned Hon. P. Achieng' in the Judgement dated and delivered on 16<sup>th</sup> March 2023 in Ngong' SPM ELC No. 82 of 2018 ordered held:

“The evidence by the defence clearly shows that plot 818 was to be transferred to DW4, who in turn sold it to the defendant. In regard to plot 815, there is no evidence whatsoever connecting the defendant to the same. Having considered the evidence tendered in totality, I find that the rightful owner of plot Ngong Township Block 2/818 is the Defendant and not the Plaintiff. The Plaintiff has therefore not proved its case against the defendant on a balance of probabilities. I therefore proceed to dismiss the present suit against the defendant with costs to the defendant.”

2. The Appellant dissatisfied with this judgement has appealed to this Court on the grounds that:
  1. The Learned Magistrate erred in law and in fact in failing to consider the Appellant's evidence of record.
  2. The Learned Magistrate erred in law and in fact in failing to find that the Appellant is still the bona fide registered owner of the parcel of land known as Ngong' Township Block 2/818



whose title of ownership has never been successfully challenged by the Respondent and/or anybody else in any court proceedings.

3. The Learned Magistrate erred in law and in fact in finding that the Plaintiff is the rightful owner of plot No. Ngong' Township Block 2/818 and not the Appellant.
  4. The Learned Magistrate erred in law and in fact in misconstruing this case to be about a performance contract with a third party who was a party to the said suit but as a witness.
  5. The Learned Magistrate erred in law and in fact in finding that the Respondent is the rightful owner of the said Ngong' Township Block 2/818 yet the latter personally stated that she had never entered into any sale contract for the same with the Appellant.
  6. The Learned Magistrate erred in law and in fact in finding that the Appellant had transferred the said Ngong' Township Block 2/818 to a third party not in the suit.
3. This appeal was canvassed by way of written submissions.

### **The Appellant's submissions**

4. Counsel submitted that the Appellant in an irrevocable offer dated 23<sup>rd</sup> September 2008 appointed A. K. Sialala as a selling agent and in exchange of his services, he was offered three quarter plots and 3% commission. One of the plots was the suit property. In 2009, the said A.K. Sialala informed the Appellant that he had nominated a Catherine Naisola to receive the suit property and to execute the consent and transfer in her favour. In 2012, the Appellant received title to the suit property. In 2013, the Respondent entered into a sale agreement with the said Catherine to purchase the suit property and took possession. The Appellant then filed this suit seeking the Respondent to be restrained from taking possession or claiming the suit property. The said A.K. Sialala and Catherine Naisola were not parties to the suit.
5. On whether the Respondent can enforce a contract she was not party to, counsel submitted that the Respondent entered a sale agreement with Catherine on 11<sup>th</sup> February 2013. The agreement indicates that the purchase price would be paid to A.K. Sialala and that Catherine was awaiting transfer of the property from the Appellant. The Appellant was not party to the agreement neither was the Respondent party to the agreement between the Appellant and A.K. Sialala. It was not possible to enforce contracts that they were not party to. Therefore, the learned Magistrate in ordering that the suit property belonged to the Respondent and in essence ordering specific performance on a non-existent contractual relationship between the Appellant and the Respondent. Reference was made to *Kenya National Capita; Corporation Ltd v Albert Mario Cordeiro & another* (2014) eKLR.
6. Counsel went on to submit that the contract relied upon by the Respondent was an illegal contract and unenforceable. While acknowledging that the offer to give him three quarter plots upon subdivision and 3% commission, counsel submits that the offer did not materialise because the said A.K. Sialala was not a registered estate agent as per Section 18(1)(a) of the *Estates Agents Act* citing *Ocra Realtors Ltd v Abdulghani Kipkemboi Komen & 2 others* (2019) eKLR.

### **The Respondent's submissions**

7. At the time of writing this judgement the Respondent had not filed their submissions.



## Analysis and Determination

8. I have considered the grounds of appeal, the record of appeal the written submissions and the authorities cited. I find that the issues for determination are:
- i. Whether the learned Trial Magistrate misconstrued the facts of the case and erred in finding that the Respondent was the rightful owner of property plot Ngong' Township Block 2/818;
  - ii. Whether the Appellant is entitled to the orders sought.
  - iii. Who should bear costs of the appeal?
9. This being a first appeal, the duty of this Court is reiterated as was set out in the case of *Selle & Another v Associated Motor boats Co. Ltd & others* (1968) EA 123 where it was stated;

“An Appeal to this Court from a trial by the High Court is by way of retrial and the principles upon which the court acts in such an appeal are well settled. Briefly put they are that this court must reconsider the evidence, evidence, evaluate it and draw our conclusion of facts and law, and we will only depart from the findings by the trial Court if they were not based on evidence on record; where the said Court is shown to have acted on wrong principles of law...”

See [\*Heineken East Africa Import Company Limited & another v Maxam Limited\* \[2024\] KECA 625 \(KLR\)](#).

10. In the Complaint dated 11<sup>th</sup> July 2018, the Appellant therein sought to be declared the bona fide registered owner of parcels Ngong' Township block 2/815 and 818, the Respondent be restrained from trespassing on the said properties together with costs of the suit and general damages for trespass. This was on the grounds that the Appellant was the bona fide owner of the property from 27<sup>th</sup> July 1993, after being issued with letter of allotment for a parcel known as Ngong Township Block 2/290. The parcel was subsequently sub-divided giving rise to parcels known as Ngong Township Block 2/799 to 821 respectively. The Appellant was issued with certificates of lease for 21 of the said plots, and was awaiting issuance of leases for two more plots. The Appellant claimed that sometime in June 2018 the Respondent trespassed on plots Ngong Township Block 2/815 and Ngong Township Block 2/818 using fraudulently obtained titles and began constructing on them, which led to institution of the suit.
11. The Respondent in her Statement of Defence dated 28<sup>th</sup> September 2021 denied that she had an interest on plot 815. She averred that the Appellant extinguished its proprietary interest on property 818 after it irrevocably offered it to one Alexander Kipaiyu Sialala. She claimed that on 7<sup>th</sup> February and 23<sup>rd</sup> September 2008, the Appellant entered into an irrevocable agreement with one Alexander Sialala who accepted the offer on 4<sup>th</sup> October 2008. Mr. Sialala then asked the Appellant to transfer the property to his nominee one Catherine Naisola Sialala. A Deed of transfer was executed sometime in November 2008 following a letter dated 4<sup>th</sup> November 2008 by the Appellant to its advocates. On 3<sup>rd</sup> November 2009, the County Council of Olkejuado approved the application to transfer the plot to Catherine Naisola Sialala. The Appellant would then receive the Certificate of Lease for the two plots on 21<sup>st</sup> September 2012 but did not hand them over to Alexander Sialala and his nominee.
12. The Respondent entered into an agreement with Catherine Naisola Sialala on 11<sup>th</sup> February 2013 for the purchase of the suit property and on 20<sup>th</sup> February 2013, Alexander Sialala and Catherine Naisola through their advocates demanded that the Appellant hands over the Certificates of Lease to them. On 27<sup>th</sup> August 2013, Catherine sought consent from the County Government of Kajiado to transfer



- the plot to the Respondent and this consent was approved on 30<sup>th</sup> August 2013. The Respondent therefore sought that the suit be dismissed with costs and the Certificate of Lease be issued to her.
13. At the hearing John Simel Ole Sokoto, a Director of the Appellant stated that the Appellant had the original title deed of the suit property which had never been sold to anyone. During cross examination he however acknowledged that he asked his advocates to have the land sub-divided and transfer a portion to Catherine Naisola who was Mr. Sialala's nominee. He never received a letter from the Ol Kejuado County Council accepting to transfer or a letter from Catherine's Naisola's advocates asking him to release the Title. On re-examination he confirmed that he was to transfer plots 817 and 818 to Mr. Sialala upon completion of the sub-division. However, he did not fulfil this condition and the agreement became void. He denied that he sought consent to transfer the land to Mr. Sialala. It was his case that Mr. Sialala had no authority to sell the plot to the Respondent.
  14. The Respondent – Lydia Munene in her testimony stated that when she entered into an agreement with Catherine Naisola, she was aware that she did not have title to the property and the search conducted showed it belonged to the Appellant. However, she was shown the executed transfer forms from the Appellant to Catherine Naisola and therefore purchased the property awaiting effecting of the transfer and issuance of title.
  15. Alexander Kipaiyu Sialala in his testimony acknowledged that he entered into an agreement with the Appellant whereby he undertook subdivision of the land in exchange for three plots. He nominated his wife and daughter Catherine Naisola to get one plot each. One plot was to be in his name. Mr. Sokoto then signed the necessary documents to facilitate the transfers. He later decided to sell Catherine's plot to the Respondent. He stated that the Appellant never issued him titles to the plots and he has not sued for damages.
  16. This case arises from the contentious ownership dispute concerning plot number Ngong Township Block 2/818. To ascertain the rightful ownership of the disputed property, it is imperative to thoroughly examine the historical background of the property in question, as well as the nature of the transactions that followed, all of which were analysed by the Learned Trial Magistrate.
  17. The Appellant's case is that plot Ngong township Block 2/818 originated from a subdivision of the larger parcel known as Ngong township Block 2/290, which had been allocated to the Appellant in the year 1993. On 7<sup>th</sup> February, 2008, the Appellant, acting through its Director, John Simel Ole Sokoto, entered into a formal agreement with one Alexander Kipaiyu Sialala. In this agreement, the Appellant committed to transferring certain plots of land to Mr. Sialala, contingent upon the fulfilment of specific obligations as stipulated within the agreement. Subsequently, on the 23<sup>rd</sup> of September, 2008, the Appellant issued an irrevocable offer to Mr. Sialala, thereby solidifying their contractual relationship. The irrevocable offer reads: "... this offer is final, irrevocable and unnegotiable..."
  18. On 4<sup>th</sup> October 2008, Alexander asked Mr. Sokoto to process consent to transfer plots 817 to him, 818 to his nominee Catherine Naisola and 800 to his other nominee Felista Nduta Leposo. In a letter dated 4<sup>th</sup> November 2008, Mr. Sokoto asked M.N. & Kamau Advocates to apply for consent to transfer the listed plots which included plot 818 to Catherine Naisola. A transfer of lease to Catherine for plot 818 was then executed by Mr. Sokoto as the Director of the Appellant in November 2008.
  19. On 3<sup>rd</sup> November 2009, the County Council of Olkejuado informed the Appellant that on 25<sup>th</sup> March 2009, the Council had approved the application to transfer plots 817 and 818 and he could proceed to register the proposed transfers.
  20. In a letter dated 21<sup>st</sup> September 2012 the Commissioner of Lands informed the Appellant that they had forwarded lease documents in quadruplicate for 20 parcels of land, among them being plot 818.



This lease was however never issued to either Alexander or Catherine. In anticipation of the transfer being registered in her favour (clause 1 of the sale agreement), Catherine Naisola sold plot 818 to the Respondent vide the sale agreement dated 11<sup>th</sup> February 2013. And on 30<sup>th</sup> August 2013 the Interim County Secretary for Kajiado County Government granted Catherine consent to transfer plot 818 to the Respondent.

21. It is noteworthy that in the Appellant's submissions, the Appellant contended that Alexander Sialala was not a registered agent and, as such, argued that the irrevocable contract entered into with him was legally unenforceable. However, despite the substantial involvement of both Alexander Sialala and Catherine Naisola in the events leading to this litigation, it is peculiar that the Appellant chose not to include them as parties to this suit. Therefore, the issue that Mr. Sialala was not a registered agent is rendered moot, as Mr. Sialala is not a party to this litigation. It is a fundamental principle of law that no person should be condemned unheard and this principle must be upheld to ensure the fairness and integrity of the judicial process.
22. Upon a comprehensive review of the record, the evidence presented before this court, and the chronological sequence of events, I find no credible evidence to support allegations of forgery, fraud, illegality, trespass, or unlawful possession of plot known as Ngong township Block 2/818 by the Respondent. The absence of such evidence substantiates the findings of the lower court. Consequently, I find no reason to interfere the Learned Trial Magistrate's findings that the Appellant failed to prove its case on a balance of probabilities. I concur with the learned Trial Magistrate's determination that the Respondent is the rightful owner of the property identified as Ngong' Township Block 2/818.
23. I find no merit in this Appeal and the same is dismissed. In essence the findings of the Lower Court are upheld. I order each party to bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**L. KOMINGOI**

**JUDGE.**

In The Presence Of:

Ms. Kirisiet for the Appellant.

N/A for the Respondent.

Court Assistant – Mutisya.

