



REPUBLIC OF KENYA



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**Gudka v Koitaat (Environment & Land Case 1 of 2021)
[2025] KEELC 724 (KLR) (18 February 2025) (Judgment)**

Neutral citation: [2025] KEELC 724 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND CASE 1 OF 2021**

EM WASHE, J

FEBRUARY 18, 2025

BETWEEN

BHAVIN ASHWIN GUDKA PLAINTIFF

AND

PETRO SARUNI OLE KOITAAT DEFENDANT

JUDGMENT

1. The Plaintiff herein through a Plaint dated 12.11.2020 (hereinafter referred to as “the Present suit”) sought the following Orders against the Defendant; -
 - a. A declaration that the Plaintiff is the lawful, bona-fide and registered proprietor of LR.No.transmara/moyoi/1489.
 - b. An Order of eviction against the Defendant, his agents and/or servants from LR.No.transmara/moyoI/1489.
 - c. Permanent Injunction restraining the Defendant by himself, agents, servants and/or anyone claiming under the Defendant from entering, re-entering upon, trespassing onto, laying claim to, depositing assorted construction materials, leasing, building onto, fencing, interfering with and/or in any other manner, whatsoever dealing with the suit property or portions thereof, that is LR.No.transmara/moyoi/1489 in any manner prejudicial and/or adverse to the rights and interests of the Plaintiff.
 - d. General damages for trespass/mesne profits.
 - e. Costs of this suit be borne by the Defendant.
 - f. Such further and/or other reliefs as the Honourable Court may deem fit and expedient to grant.



2. The facts in support of the above prayers can be summarised as herein below; -
 - a. The Plaintiff herein is the lawful and registered owner of the property known as LR.No.transmara/moyoi/1489 (hereinafter referred to as “the suit property”).
 - b. The suit property was initially owned by the Defendant who offered it as a collateral to a financial institution known Equity Bank Limited which had advanced him a financial facility.
 - c. Consequently, the financial institution charged the suit property with the legal expectation that the Defendant would liquidate and redeem the same in line with the terms of the financial facility.
 - d. Unfortunately, the Defendant failed and/or defaulted to liquidate the financial facility advanced to him and therefore could not redeem the suit property in line with the terms and conditions of the financial facility.
 - e. Due to this default by the Defendant, the suit property was put up for auction based on the financial institution Statutory Powers of Sale and sold to the Plaintiff herein.
 - f. The Plaintiff stated that upon purchase of the suit property from the financial institution under its Statutory powers of sale, the same was lawfully transferred to his name and a Title Deed issued accordingly.
 - g. However, the Defendant herein has failed, refused and/or neglected to vacate, yield possession and/or move out of the suit property yet his ownership rights over the same had been extinguished and/or terminated on auction by the financial institution and registration of the Plaintiff as the lawful and registered owner.
 - h. The Plaintiff deems the Defendant’s occupation of the suit property to be unlawful, illegal and amounts to trespass as it is without any colour of legal ownership hence the outlined Particulars of Trespass under Paragraph 14 of the Plaintiff.
 - i. In addition to the above, the Plaintiff pleaded that the Defendant’s occupation on the suit property violated his rights as provided by law and was therefore illegal as provided by the Particulars of Illegality and Violations outlined in Paragraph 15 of the Plaintiff.
 - j. The Plaintiff therefore averred that this Court should declare the occupation, possession and/or use of the suit property by the Defendant to be illegal, unlawful and trespass.
 - k. Based on the above declaration, the Court should forthwith issue an eviction order against the Defendant to vacate and/or yield vacant possession to the Plaintiff who is the rightful owner of the suit property.
 - l. Further to that, the Defendant should be condemned to pay general damages and/or mesne profit for the unlawful occupation and/or use of the suit property which belongs to the Plaintiff from the time he acquired it until determination of this suit.
3. The present suit was indeed served on the Defendant who filed a Statement of Defence dated 10.01.2022.
4. In the Defendant’s Statement of Defence, the present suit was opposed on the following grounds; -
 - a. The Defendant confirmed that he was the previous registered owner of the suit property as pleaded by the Plaintiff.



- b. The Defendant pleaded that on or about the year 2014, a person known as Leonard Ole Seme misguided him to secure a facility from the financial institution known as Equity Bank Limited.
 - c. The Defendant admitted that the suit property herein was then charged to the financial institution as a collateral for the financial facility to be advanced.
 - d. However, later on, it came to be discovered by the Defendant that the financial facility was for the person known as LEONARD OLE SEME and he was only a guarantor hence did not get the actual funds for his own benefit.
 - e. The said Leonard Ole Seme defaulted to pay the financial facility and the suit property was subsequently sold through the Statutory powers to the Plaintiff.
 - f. The Defendant pleaded that despite all the above facts, the Bank failed to notify him and/or issue the appropriate statutory notices prior to auctioning the suit property.
 - g. Similarly, the auctioneers that undertook the auction process never served the notification of sale under Rule 15 (b) of the Auctioneers Rules and therefore denied the Defendant the right to redeem the suit property before auctioning the same to the Plaintiff.
 - h. The Defendant indicated that due to these anomalies, he filed the Court proceedings known as Narok High Court Civil Suit No. 11 of 2019 (now Kilgoris HCC No. 1 of 2021) challenging the auction process although the said proceedings are yet to be determined.
 - i. Further to that, the Defendant pleaded that the National Land Commission revoked and/or cancelled all the titles emanating from Moyoi Adjudication Section due to historical injustices and therefore the entire Moyoi Adjudication Section will be adjudicated afresh.
 - j. In conclusion, the Defendant sought this Court to dismiss the present suit with costs awarded to him.
5. The pleadings duly closed and the matter was certified ready for hearing on 08.04.2024 and fixed for hearing on 10.07.2024 by consent of all parties.
 6. However, on the 10.07.2024, the Defence Counsel sought leave to cease acting through an Application dated 14.05.2024 which the Court duly granted.
 7. Based on this turn of events, the hearing was rescheduled to the 01.10.2024 and the Plaintiff's Counsel directed to serve a fresh hearing notice.
 8. On the 01.10.2024, the firm of Kiarie Mungai & Company, Advocates informed the Court that they had filed a Notice of Appointment to act on behalf of the Defendant on the 22.07.2024 but the Defendant had not attended their Chambers for purposes of preparing for this hearing and therefore in the circumstances they also filed an application to cease acting for the Defendant dated 26.09.2024.
 9. The Plaintiff's Counsel admitted being served with the Application dated 26.09.2024 and informed the Court that he would not oppose the same.
 10. The Court granted leave to the firm of Kiarie Mungai & Company, Advocates to cease acting for the Defendant and thereafter directed the hearing to proceed given the fact that the Defendant was aware of the hearing date but had deliberately and/or without justification failed to attend the same.



Plaintiff's Case

11. The Plaintiff's case began on the 01.10.2024 with the testimony of one Jacon Omega Oboi who was marked as PW 1.
12. PW 1 introduced himself as an employee of the Plaintiff who held a Power of Attorney dated 12.11.2018 and registered on 12.11.2018.
13. PW 1 stated that the Plaintiff herein had prepared, executed and filed a Witness Statement dated 12.11.2020 which he wished to be adopted as his evidence in chief.
14. PW 1 proceeded to produce the following documents in support of the evidence in chief;-
 - PW 1 Exhibit 1- A Copy of the Power of Attorney donated by the Plaintiff to PW 1 dated 12.11.2018 and registered on the same date.
 - PW 1 Exhibit 2- Copy of the Green Card of the suit property.
 - PW 1 Exhibit 3- Copy of an Official Search of the suit property issued on the 05.08.2014.
 - PW 1 Exhibit 4- Copy of a charge dated 05.08.2014 between the Defendant and Equity Bank Limited over the suit property.
 - PW 1 Exhibit 5- A copy of a closure of redemption notice issued by Equity Bank Limited dated 11.05.2016.
 - PW 1 Exhibit 6- Copy of a Court Order/Decree issued in Narok ELC Case No. 468 of 2017 on 14.06.2017.
 - PW 1 Exhibit 7- Copy of a Ruling pronounced on 27.07.2019 in the proceedings known as Narok ELC Case No. 468 of 2017.
 - PW 1 Exhibit 8- Copy of a Ruling pronounced on 21.05.2020 in the proceedings known as Narok HCCC No. 11 of 2019.
 - PW 1 Exhibit 9- Copy of a Certificate of Sale issued by the Auctioneer on the 29.05.2017 relating to the suit property.
 - PW 1 Exhibit 10- Copy of a Transfer Instrument executed by Equity Bank Limited regarding the suit property in favour of the Plaintiff.
 - PW 1 Exhibit 11- Copy of a Demand letter from the Plaintiff's lawyer to the Defendant dated 18.10.2020.
 - PW 1 Exhibit 12- A bundle of photos showing the offensive occupation and/or structures undertaken by the Defendant on the suit property dated November 2020.
15. PW 1 proceeded to point out to the Court that the Charge document which was produced as PW 1 Exhibit 4 included the spousal consent from the Defendant's wife over the suit property.
16. PW 1 further testified that all the pre-auction notices were issued in line with the law and there was no illegality, fraud and/or misrepresentation undertaken by the Plaintiff in acquiring the suit property.
17. PW 1 pointed out that the Plaintiff was an innocent purchaser for value and should therefore enjoy the rights and privileges that come with the ownership of the suit property.



18. PW 1 informed the Court that the Defendant instituted legal proceedings against Equity Bank Limited challenging the Charge and manner in which the suit property was auctioned but the proceedings were all dismissed as contained in the exhibits present in Court.
19. Unfortunately, the Defendant has refused to vacate and/or yield possession of the suit property to the Plaintiff and has continued to waste the same in contravention of the law and the Plaintiff's rights.
20. PW 1 therefore sought this Court to issue an eviction order against the Defendant and permanently prohibit him, his servants, employees and/or any other person claiming under him from further dealing and/or occupying the suit property thereof.
21. PW 1 also sought for general damages and costs of the suit.
22. At the end of this examination in chief, the Defendant and/or his Counsel were not present and the Plaintiff was discharged from the witness box.
23. The Plaintiff's Counsel informed the Court that this was the only Plaintiff's witness and proceeded to close their case.

Defence Case

24. As regards the Defence case, the Court made a finding that the Defendant was personally aware of the hearing and had in fact instructed an advocate to be present on the material day.
25. However, for reasons best known to him, the Defendant failed to attend the advocates offices to prepare for the hearing hence the application to cease acting dated 26.09.2024 or attend Court in person to defend this suit.
26. In view of this scenario, the Court closed the Defence case as well and directed that the Plaintiff to file their final written submissions.
27. In compliance with the directions on submissions, the Plaintiff filed his submissions dated 15.10.2024.
28. The Court has duly perused through the pleadings, the testimony of PW 1, the documentary evidence produced before and the submissions filed by the Plaintiff and identify the following issues for determination; -
 - Issue No. 1- Who is the lawful & registered owner of the suit property?
 - Issue No. 2- Does the defendant have any legal right to occupy and/or enjoy possession of the suit property?
 - Issue No. 3- Is the plaintiff entitled to the prayers sought for in the present suit?
 - Issue No. 4- Who bears the costs of this suit?
29. The Court having duly identified the above-mentioned issues for resolution, the same will now be discussed as below.
 - Issue No. 1- Who is the lawful & legitimate owner of the suit property?
30. The first issue for determination who is the lawful and legitimate owner of the suit property.
31. The Plaintiff in his pleadings, testimony and documents produced before this Court states that he is the lawful and legitimate owner of the suit property having purchased the same through an auction from Equity Bank Limited.



32. The Plaintiff produced the Charge Documents from Equity Bank Limited (PW 1 Exhibit 4) confirming that the suit property had been offered as collateral for a financial facility offered to the Plaintiff.
33. After the failure by the Defendant to repay the financial facility and redeem the suit property from Equity Bank Limited, the same was auctioned and he purchased the same as the highest bidder.
34. Consequently, the suit property was transferred to him by Equity Bank Limited based on their Statutory Powers of Sale and he was issued with a Title Deed on the 25.06.2020.
35. Based on these facts, the Plaintiff stated that he was the lawful and legitimate owner of the suit property having been duly registered as such to the exclusion of any other party or entity.
36. The Defendant on the other hand in his pleadings admits that he was a former owner of the suit property.
37. The Defendant further admitted that the suit property was charged to Equity Bank Limited as collateral for some financial facilities which he was unable to pay and redeem the said suit property.
38. Based on the Defendant's inability to liquidate the financial facilities with Equity Bank Limited and redeem the suit property, the same was subsequently auctioned.
39. The Defendant's contention was that the auction undertaken by the financier Equity Bank Limited did not comply with various provisions of the law and is therefore not lawful.
40. The Defendant further pleaded that due to these irregularities by the financier Equity Bank Limited during the process of exercising its Statutory Power of Sale, he filed the proceedings known as Narok HCC No. 11 of 2019 (now Kilgoris HCC No. 1 of 2021) which was pending determination.
41. As such, the Defendant was of the view that his ownership rights over the suit property still existed and had not been extinguished and in fact the Plaintiff's ownership was still contested.
42. To begin with, it is not in dispute that the suit property is currently registered in the name of the Plaintiff herein.
43. The only issue is whether the Defendant could still have any interest over the suit property in view of the proceedings known as Narok HCC No. 11 of 2019 (now Kilgoris HCC No. 1 of 2021) which he alleges are still pending determination.
44. The provisions of Section 26 of the [Land Registration Act](#), No. 3 of 2012 provides as follows; -
 - “(1) The Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the certificate, and the title of that proprietor shall not be subject of challenge , except-
 - a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”



45. As a Court of law, Section 26 of the *Land Registration Act*, No. 3 of 2012 directs us to hold the person whose name appears on a Certificate of Title (in this suit the Title Deed) as the absolute and indefeasible owner of the land.
46. In this suit, the suit property is registered in the name of the Plaintiff, a fact admitted by the Defendant and as such, this Court hereby makes a finding that the suit property herein is the lawful and legitimate property of the Plaintiff who is the registered owner thereof.
47. The Court takes judicial notice that indeed the Defendant could have a pending litigation against the Defendant and/or the financial institution that sold the suit property to the Plaintiff, but as long as there is no order declaring the process and/or manner in which the sale was conducted to be irregular and/or unlawful hence subsequently cancelled and/or reversed the said transfer or auction, then the Plaintiff's registration as the lawful and legitimate owner will continue to stand and be recognised by law.

Issue No. 2- Does the defendant have any legal right to occupy and/or enjoy possession of the suit property?

48. The second issue for determination is whether or not the Defendant herein has any legal right to occupy and/or be in possession of the suit property.
49. The Plaintiff pleaded that he is the registered owner of the suit property and therefore the only one with the rights and privileges to be in occupation and use of the same.
50. Unfortunately, after the auction of the suit property by the Defendant's financier Equity Bank Limited, the Defendant has refused, failed and/or neglected to move out, vacate and/or yield possession to the Plaintiff.
51. The Plaintiff produced various photos (PW EXHIBIT 12) showing the Defendant's unlawful occupation, use and possession of the suit property.
52. The Defendant in his Statement of Defence did not dispute that he was in occupation of the suit property.
53. The provisions of Section 24 of the *Land Registration Act*, No. 3 of 2012 states as follows; -
 - “ a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of the land together with all rights and privileges belonging or appurtenant thereto; and....”
54. Based on the above proviso, this Court hereby makes a finding that the Plaintiff herein who is the registered proprietor of the suit property is the person vested with the absolute ownership and should therefore enjoy all the rights and privileges belonging and appurtenant thereto.
55. The rights and privileges intended herein includes the use, occupation and possession of the suit property.
56. So far, the Defendant did not plead any ground upon which the Plaintiff's rights and/or privileges should not be enforced.
57. The fact that there is a pending case whichever stage it is does not affect the Plaintiff's rights and privileges protected under Section 24 of the *Land Registration Act*, No. 3 of 2012 unless there is a valid and subsisting Order directing otherwise.



58. Unfortunately, the Defendant did not plead or bring to this Court's attention of any Orders that allow him to be in the suit property and as such, this Court makes a finding that the Defendant's occupation of the suit property registered in the name of the Plaintiff is unlawful, illegal and illegitimate.

Issue No. 3- Is the plaintiff entitled to the prayers sought for in the present suit?

59. The third issue is whether or not the Plaintiff is entitled to the prayers sought in the present suit.

60. As already decided in Issue No. 1, the Plaintiff herein is the lawful registered owner of the suit property and therefore a declaration to that effect is allowed.

61. Secondly, as determined in Issue No. 2, the Defendant's occupation of the suit property registered in the name of the Defendant is illegal, unlawful, illegitimate and therefore amounts to trespass.

62. To redeem and/or correct this illegality, this Court issues an eviction order as prayed by the Plaintiff to ensure that the Defendant vacates the suit property and the Plaintiff enjoys the rights and privileges envisaged under Section 24 of the Land Registration Act, No. 3 of 2012.

63. On the issue of General Damages and/or Mesne Profit, the Plaintiff did not make any submissions on the same and therefore this Court will not award any of them.

Issue No. 4- Who bears the costs of this suit?

64. On costs, the same usually follow the outcome of the proceedings.

65. In the present case, the Plaintiff has succeeded to prove his case and the Defendant is condemned to pay costs to the Plaintiff.

Conclusion

66. In conclusion, this Court hereby makes the following final orders as appertains to the Plaint dated 12.11.2020; -

- a. The plaint dated 12.11.2020 is merited & allowed.
- b. A declaration be and is hereby made to the effect that the plaintiff is the lawful, Bona-fide & registered proprietor of the property known as LR.No.Transmara/Moyoi/1489.
- c. The defendant by himself, his servants, agents, assignees and/or any other person who claims through him is hereby ordered to remove, vacate and/or hand over vacant possession, occupation and/or use of the property known as lr.no.Transmara/Moyoi/1489 to the plaintiff within ninety (90) days from the date of this judgement.
- d. In the event the defendant by himself, his servants, agents, assignees and/or any other person who claims through him fails, neglects and/or refuses to comply with order no. c hereinabove, an eviction order shall automatically stand issued against the defendant by himself, his servants, agents, assignees and/or any other person who claims through him and the deputy registrar is directed to extract the same upon expiry of the ninety (90) days period provided for from the date of this Judgement.
- e. An order of a permanent injunction be & is hereby issued restraining the defendant by himself, his agents, servants, employees and/or any other person claiming an interest over the property known as lr.no. transmara/moyoi/1489 from entering, re-entering, trespassing, interfering



with ad/or dealing with the said property in whatsoever manner prejudicial or adverse with the rights and interests of the plaintiff

f. The defendant is condemned to pay the costs of this suit to the plaintiff.

DATED, SIGNED & DELIVERED VIRTUALLY AT ELDORET ELC ON THIS DAY THE 18TH OF FEBRUARY 2025.

EMMANUEL.M. WASHE

JUDGE

In the presence of:

Court Assistant: Brian

Advocates for the Plaintiff: Mr. Mulisa holding brief for Mr. O.M Otieno

Advocates for the Defendant: No appearance

