



**Manoti & another v Manoti (Environment & Land Case 133 of 2016)
[2024] KEELC 6195 (KLR) (24 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6195 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 133 OF 2016**

M SILA, J

SEPTEMBER 24, 2024

BETWEEN

JACKLINE MORAA MANOTI 1ST PLAINTIFF

TERESIA KERUBO MANOTI 2ND PLAINTIFF

AND

ALEX MISATI MANOTI DEFENDANT

JUDGMENT

(Plaintiffs claiming that their grandfather subdivided land to them and that they have titles to the subdivisions; defendant contending that their grandfather gifted him and his brother the whole of his land and that it has never been subdivided; court not persuaded by either the plaintiffs' or the defendant's assertion; court of opinion that the land has never been subdivided or gifted as alleged and making an order of cancellation of any titles of the plaintiffs and defendant; the land to revert back to the name of their grandfather for proper succession to be undertaken)

A. Introduction And Pleadings

1. The plaintiffs are sisters to the defendant. Through a plaint filed on 19 May 2016, they pleaded that on 2 March 2016, the three of them became registered as joint proprietors of the land parcel Wanjare/Bogiakumu/933 measuring 1.7 Ha (land parcel No. 933). They averred that subsequently in March 2016 the original parcel No. 933 was subdivided to bring forth the land parcels Wanjare/Bogiakumu/7889,7890,7891, and 7892 with the parcels No. 7891 and 7892 being respectively registered in the names of the 1st and 2nd plaintiff. They alleged that despite being so registered the defendant in the month of May 2016, trespassed into their parcels of land, chased the 2nd plaintiff away and barred them from accessing their parcels of land. In the suit the plaintiffs seek the following orders :
 - i. Declaration that the plaintiffs are the lawful, bona fide, and registered owners of the land parcels Wanjare/Bogiakumu/7891 and 7892 (the suit properties).



- ii. An order of eviction against the defendant.
 - iii. Permanent injunction to restrain the defendant from the suit properties.
 - iv. General damages for trespass.
 - v. Costs of the suit.
 - vi. Any other relief the court may deem fit to grant.
2. The defendant filed defence wherein he denied that they were ever jointly registered as proprietors of the land parcel No.933. He also denied that this land parcel No.933 has ever been subdivided. He averred that he has never attended any Land Control Board nor signed any transfer forms in respect of this land parcel No. 933. He pleaded that this parcel No.933 was given to him and his brother Protus Manoti Moracha (deceased) by their late grandfather one Benedicto Manoti Moracha.

B. Evidence Of The Parties

3. PW -1 was Jackline Moraa Manoti the 1st plaintiff. She affirmed that the 2nd plaintiff is her sister and the defendant her brother. She testified that the original land parcel No. 933 was registered in the name of their grandfather Benedict Manoti. Benedict was father to their mother. She stated that since their mother was buried on this parcel of land, their grandfather gifted it to the three of them, as his grandchildren. She testified that in 2016 the parcel No. 933 was divided into four portions being the parcels No. 7889-7892. She got registered as proprietor of the parcel No. 7891 whereas the 2nd plaintiff got registered as proprietor of the parcel No. 7892. The defendant got registered as proprietor of the parcel No. 7889 and the parcel No. 7890 got registered in the name of Protus Taabu Manoti (deceased) who was their last born brother. She testified that the defendant was fully involved in the process and was at a loss as to why he had a change of heart.
4. Cross-examined, she testified that their mother is deceased but their father is alive. Their father was however absent in their lives and their mother raised them as a single mother. Their mother lived with her father (grandfather to the parties herein) on the disputed land. Their grandfather died in December 2004. She testified that they went to the Land Control Board (LCB) for consent to transfer though she acknowledged that she has not presented any application for consent or the LCB consent. She also conceded that she has not exhibited the transfer instrument nor stamp duty payments for transfer. She was asked whether she filed a succession case and she claimed not to recall filing any. She was referred to proceedings in Kisii Succession Case No. 461 of 2015, estate of Benedicto Manoti which bore her name and the 2nd plaintiff as petitioner but she stated that she was not aware of the case. She acknowledged that she is facing criminal charges, being Kisii CMC Criminal Case No. 3201 of 2019 for obtaining registration by false pretenses and the case is ongoing. She was shown the Green Card to the parcel No. 933 bearing the name of the defendant as proprietor and according to her she was not aware of any cancellation of their titles.
5. Questioned by the court, she elaborated that Protas, their deceased brother, was born in 1990 and died in 2010. They got their titles in 2016. They registered one plot in his name despite being deceased as he had a wife and a child born in 2009. His wife however moved out of the land. According to her it was because of the dispute herein.
6. PW – 2 was Teresa Kerubo Manoti, the 2nd plaintiff. Her evidence in Chief was more or less similar to that of the 1st plaintiff. Cross-examined, she testified that their grandfather died in 2004. She mentioned that they lived with their grandfather and she has never been to her biological father’s home. She affirmed being charged with her sister for falsely obtaining title. She stated that she did sign the



instruments of transfer of the land in 2016 though she acknowledged not to have any document to show the transfer process nor any LCB consent. She had no answer when questioned on whether they obtained LCB consent. She could not tell who paid the transfer fees claiming that it was the 1st plaintiff dealing with the documentation as she is her elder sister. She was born in 1987 while the 1st plaintiff was born in 1984. She denied that she was born in 1993 but asked to show her ID she stated that she did not carry it. She could see that the documents they have show that the three siblings got jointly registered as proprietors on 29 September 2004. Against her name was an Identity Card number. She conceded that in 2004 she had no ID card. On the succession documents in Succession Case No. 461 of 2015 she wavered in her evidence, on one hand stating that she was not aware, but on being pressed testified that they filed the cause.

7. PW -3 was Samuel Nyangwoka Omambia. He first claimed that the parties are his cousins as his father and their mother are siblings. This evidence however changed when questioned by the court. He now stated that Benedicto had only one child, the mother of the disputants, and that he is son of one Samuel Omambia and that Samuel was son of a brother to Benedicto. He testified that Benedicto owned the parcel No. 933 and that he died in 2004. He stated that prior to his death he had given his land to the three disputants and had divided to them the land on the ground. Cross-examined, he purported to have been present when the land was divided and that all disputants were present. He did not know whether the 2nd plaintiff had by that time attained the age of majority. He alleged to be aware that they went to the LCB at Suneka and that they all had their Identity Cards. Pressed he could not now recall whether the 2nd plaintiff had an ID card and he conceded that Protas was a young boy and now claimed that he did not go to the LCB. His evidence changed to say that he took them to the LCB in 2016. He was not aware that no LCB documents have been presented. He could not recall who signed the transfer forms and did not know whether they paid for the transfer. Re -examined, he swore to have attended LCB meetings in 2004 and 2016.
8. PW – 4 was Festus Ratemo Nyota. He claimed that the disputants are grandchildren to his brother which would have meant that he is brother to Benedicto. However, on further evidence, it emerged that he is a son of one Ngota and that Ngota and Benedicto were step-brothers. At best, Benedicto was thus his uncle and not brother. He went further to testify that Benedicto had one daughter, Angelina who was mother to the disputants and that he gave the land to the disputants. Cross-examined, he testified that he was not there when Benedicto distributed his land. He alleged that Benedicto took the family to the LCB and that he was present. This he claimed to have been in 2004 before the death of Benedicto. He stated that transfer was not effected prior to his death. He did not know how title was changed to the names of the disputants. He averred that the Chief wrote a letter to the Land Registrar to issue them with title.
9. With the above evidence the plaintiffs closed their case.
10. DW – 1 was the defendant. He testified that their grandfather transferred the land to him and his brother Protas on 10 September 2002 and they got a title deed in their name on 29 September 2004 when their grandfather was still alive. He stated that he was born in 1982 and was 22 years in 2004. He testified that Teresa was born in 1983 and did not have an ID in 2004 though she had gained the age of majority. He stated that he was the one using the land from 1994. He denied that the plaintiffs ever got registered as proprietors of the parcel No. 933 at any one time. He denied that this parcel No. 933 has ever been subdivided. He referred to the mutation form alleged to have subdivided the land and was categorical that he never signed it and that the alleged signature bearing his name is a forgery. He added that the mutation form is not registered. He averred that the Land Registrar cancelled the titles said to be subdivisions of the parcel No. 933. He testified that the plaintiffs filed Kisii High Court Succession Cause No. 461 of 2015 but the same was dismissed.



11. Cross-examined, he stated that their grandfather wrote a document giving him and Protas the land but he could not exhibit it. He claimed that they went to the LCB in 2002 but he did not have the consent. He mentioned that the 1st plaintiff was born in 1980 and the 2nd plaintiff in 1983 while he was born in 1982. According to him Protas was born in 1984 and their mother died in 1986. He averred that in 2004 it was only him who held an ID card. He stated that their grandfather died on 19 April 2003 and not the year 2004. He pronounced that they started the process of transfer on 10 September 2002. He acknowledged that he has not exhibited the transfer documents. He stated that their father is alive and lives in Nyaribari (a different sub-county) and had two wives. He mentioned that he has given him some land at Nyaribari and that the girls (plaintiffs) have not gone to him to ask for land. He disclosed that his mother was the second wife and lived with his father in Nyaribari until her death in 1986. Thereafter their grandmother took them in and raised them and that is how they ended up living with their grandparents on the disputed land. Their mother was their only child. He acknowledged that he at one point had a title deed issued in his name and that of Edigar Manoti Taabu (minor). Edgar was said to be son of Protas. He elaborated that this was done on 21 April 2017. Prior to that he held a title deed in his name and Protas. He had a Death Certificate showing that Protas died on 12 January 2010 aged 23 years which he insisted is correct. He claimed that he (Protas) was registered as proprietor as a minor though this is not what was indicated in the title. He stated that his sisters are married and as far as he is concerned they do not deserve his grandfather's land because they are girls and they are married. He added that if they want land they should go and ask their father. He insisted that his grandfather gave him and his brother the land as a gift. Re-examined, he stated that Protas was about two weeks old when their mother died in 1986. He affirmed that he was the one who made the criminal complaint against the plaintiffs.
12. The defendant wished to call the Land Registrar to testify on the records. Despite being called on application by the defendant, I will treat the Land Registrar as an independent witness. The Land Registrar, Oswera Cecilia Harriet, testified that the parcel No. 933 does not have a clear register. The Land Records has two Green Cards. The first, identified as Card A, was opened on 21 September 1974 in the name of Manoti Moracha. Entry No. 2 was made on 10 September 2002 for the name Benedicto Manoti Moracha. Entry No. 3 was made on 29 September 2004 in the joint names of the plaintiffs and defendant (i.e three proprietors). Entry No. 4 entered on 4 April 2016 is a restriction in respect of Succession Case No. 461 of 2015 said to be pending. That card is crossed with two lines. Card B has an entry 'original register missing. This copy from complainant.' She explained that the card was brought from outside and attached to the Green Card that was crossed (i.e Card A). She testified that receipt of it from outside was improper as there is a procedure for advertising and reconstruction of a missing Card.
13. She testified that the entries in Card B are not the same as in Card A. Apart from entries 1 and 2, which are similar, entry No. 3 in Card B is dated 24 February 2003 in name of Alex Misati Manoti and Protas Taabu Manoti. Entry No. 4 is issue of title to them on 29 September 2004. Entry No. 5 is dated 2 August 2013 and is a restriction in the following terms "restriction : no dealings on the title until family issues are sorted out reported by Jackline Manoti." Entry No. 6 is dated 13 June 2016 and is removal of the restriction. Entry No. 7 is dated 18 April 2017 that "Protas Taabu Manoti reported dead vide Death Certificate No. 07210 dated 12 January 2010." Entry No. 8 is dated 21 April 2017 and registers Alex Misati Manoti and Edgar Manoti Taabu (minor) as proprietors and Entry No. 9 is issue of title deed to them on the same day. She testified that the copy brought has entries up to No. 6 and thereafter the other entries are on an original continuation card. She testified that there is no documentation to show how the defendant got the property from the original proprietor and no documents to show removal of the restriction. According to her the parcel No. 933 has not been subdivided. In her records she had to titles said to emanate from the parcel No. 933, that is the parcel No. 7889 and 7890. Parcel No. 7889



shows three proprietors, that is the two plaintiffs and the defendant. Parcel No. 7890 is registered in the name of the defendant on 2 March 2016. Her record shows that it was upon a 'partition' meaning that there ought to have been a grant but she had none in her records.

14. She testified that these two cards are retained in the parcel file of No. 933 hence one cannot get a search in respect of them. She had a letter in her file dated 21 March 2021 stating that the title has reverted back to No. 933 and the proprietors called to return their title deeds to the parcels No. 7889 and 7890 though there was no entry of any issuance of title deeds for these two alleged subdivisions. Cross-examined, she stated that the only entry she can vouch for is the first entry as there is no documentation to support any entries after that. Her records did not have the Death Certificate of Manoti Moracha. She had no record for the parcels No. 7891 and 7892. We adjourned to allow her time to recheck her records. On resumption she testified that the parcels No. 7891 and 7892 are recorded as subdivisions of a parcel No. 923. They indicate the names of the plaintiffs as having been registered on 2 March 2016 and issued with title deeds on 3 March 2016.
15. With the above evidence the defence closed its case.
16. I invited counsel to file submissions and I have taken note of the submissions filed.

C. Analysis And Disposition

17. The case of the plaintiffs is that they are truly the registered proprietors of the land parcels No. 7891 and 7892 and they want the defendant not to interfere with the same. The case of the defendant is that the plaintiffs own no land and that the original land parcel No. 933 is intact and registered in his name. He claims that it was gifted to him by their grandfather. Neither does he believe that the plaintiffs deserve this land because according to him they are girls and they are married.
18. I regret to say that I have not been impressed by both the plaintiffs and the defendant. They and their witnesses (not the Land Registrar) have come to court full of lies, more lies, and outright dishonesty. It is no wonder that their evidence is all jumbled up. When you go through the evidence it is even difficult to identify the speck of truth in the plethora of lies vented to this court. Even simple straight forward things such as when a person was born and the relationships of the witnesses to the parties became issues of conflicting evidence. I am shocked that they actually thought that I can swallow their lies hook, line and sinker.
19. It is clear to me, in fact as clear as day, that both the plaintiffs and the defendant, employed underhand schemes and tactics to obtain registration of their late grandfather's land and came to court with the hope that they will dupe this court. I am sorry to tell them that they have hopelessly failed. The only person who came to court with unbridled honesty was the Land Registrar.
20. It is apparent to me, and it is not disputed, that their grandfather, Manoti Moracha (also known as Benedicto) owned the land parcel No. 933. The Land Registrar confirms that he was duly registered as proprietor on 21 September 1974. There is no document in the office of the Land Registrar to support any other entry save for this first entry. There is nothing in her records to indicate any application for change of names from Manoti Moracha to Benedicto Manoti Moracha which is the alleged Entry No. 2 in the two cards in her possession. For the Card A, there is nothing to support the entry No. 3 in the names of the plaintiffs and the defendant which was purportedly registered on 29 September 2004. Even the plaintiffs who appear to claim under this Card have not a single document to support the transfer into the three names mentioned. For the defendant, who appears to claim under the Card B, he clearly went and prepared a card which he somehow convinced the personnel at the Lands office to accept. As stated by the Land Registrar, this was irregular given that there is a process of gazetting lost Green Cards for purposes of reconstruction. Again, and it can only be through illegal means or



a corrupt scheme, the defendant got himself registered alongside Protas Taabu Manoti as proprietors of the whole parcel No. 933 on 24 February 2003. The Land Registrar was categorical that there is nothing to support this registration and the defendant did not offer any. In any case, I wonder how Protas Taabu Manoti could have been registered as proprietor as he had not attained the age of majority and the register does not show that he was a minor. They were purportedly issued with a title deed on 29 September 2004. There then follows the properitorship of the defendant jointly with one Edgar Manoti Taabu (minor) entered on 21 April 2017. There is nothing to show a transfer or anything to support this registration.

21. Need I really waste much time in analysing who between the plaintiffs and defendant have good title ? There is no need. It is as clear as day that neither the plaintiffs nor defendants have good title. The purported title of the plaintiffs to the alleged parcels No. 7891 and 7892 is a sham. First, there was never any transfer of the land parcel No. 933 to the plaintiffs and defendants. Secondly, there was never any subdivision of the parcel No. 933 to produce the alleged parcels No. 7889-7892. These titles are all fake. For the defendant, there was never any transfer of the land parcel No. 933 to him and/or Protas as he alleges. The purported transfer to him is a sham and fake. These titles of the plaintiffs and defendants must be nullified and they are hereby declared null and void ab initio and hereby ordered nullified. The registers of these purported titles No. 7889 – 7892 be cancelled. I direct the Land Registrar to open a new Card with only one entry, that is Entry No. 1 in name of Manoti Moracha. The Land Registrar needs to enter a restriction in that register pending succession as Manoti Moracha is now deceased.
22. I earlier said that the parties herein were outrightly dishonest, and using the word ‘dishonest’ is actually being overly polite. I should use stronger words but I refrain. What pans out is that they realized that their grandfather is deceased and he has left land. The plaintiffs thought of sharing the land equally but without going through a succession process. That was wrong and illegal. The property of a deceased person must go through the succession process for proper distribution. They intermeddled in the estate of a deceased person. The defendant was even worse. He thought of keeping the whole land to himself and not even consider the girls. He had no shame in stating in court that according to him the girls deserve no land because they are girls and they are married. I am shocked that in this day and age we still have some people who think that girls have no right to inherit property or no right to property at all. He is a chronic misogynist that is in dire need of conversion. I want to tell the defendant that he needs to have an entire makeover and mentality of how he views women. There is no difference between the rights of men and rights of women when it comes to inheriting or owning property. Any lingering hangovers were wiped out by *the Constitution* of 2010. The defendant needs to be schooled that Article 27 of *the Constitution* provides for equality and freedom from discrimination. Sub-article 3 provides that women and men have the right to equal treatment, including the right to equal opportunities in political, cultural, and social spheres. Under sub-article 5, a person shall not discriminate against another on the grounds inter alia of sex or culture.
23. The long and short of it is as I have said earlier but I will repeat. Neither the plaintiffs nor the defendants have good title. My order is that their titles and any other purported subdivision of the parcel No. 933 be nullified and the title to revert to entry No. 1 in the name of Manoti Moracha. The land to be subjected to succession in the usual manner. There was of course mention of Succession Cause No. 461 of 2015. It was a simple ad litem that was dismissed. Parties to file for full succession.
24. Neither plaintiff nor defendant deserve any costs. Each to bear their own costs.
25. Judgment accordingly.

DATED AND DELIVERED THIS 24 DAY OF SEPTEMBER 2024

JUSTICE MUNYAO SILA



JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in Presence of :

Mr. Godia for the defendant

N/A on part of M/s Ogutu Mboya Ochwal & Partners Advocates for the plaintiffs

Court Assistant : David Ochieng'

