



**Indimuli v Emonyi (Environment & Land Case 130 of 2014)
[2024] KEELC 7051 (KLR) (22 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 7051 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 130 OF 2014
DO OHUNGO, J
OCTOBER 22, 2024**

BETWEEN

JOHN BENSON INDIMULI PLAINTIFF

AND

JOHN EMONYI DEFENDANT

JUDGMENT

1. The Plaintiff moved the Court through Plaintiff dated 17th April 2014 wherein he averred that he was the registered proprietor of the parcel of land known as Kakamega/Chekalini/3474 (the suit property) and that the Defendant had trespassed into the suit property, erected structures thereon and occupied it. He therefore prayed for judgement against the Defendant for eviction and costs of the suit.
2. The Defendants filed a Statement of Defence and Counterclaim through which he denied the Plaintiff's averments and stated that the Plaintiff acquired the suit property fraudulently by subdividing the original Kakamega/Chekalini/204 through Kakamega HC Succession Cause No. 417 of 1990. He prayed that the Plaintiff's suit be dismissed, and that judgment be entered against the Plaintiff for cancellation of the title in respect of the suit property and the subdivisions and transfers from the original Kakamega/Chekalini/204 so that the title reverts to Kakamega/Chekalini/204 in the name of Edward Epeni Oracho (deceased). He also sought costs of the suit.
3. At the hearing, the Plaintiff adopted his witness statement and stated that he purchased a portion of Kakamega/Chekalini/204 and that the suit property was curved out of the said parcel and a title deed dated 4th July 2013 issued to him. That the Defendant who is a son of Veronicah Khatali Ebeni who was the vendor signed the sale agreement alongside other members of the family and that the Defendant later entered the suit property and erected a structure on it. He added that he reported the matter to the area upon which the Defendant committed, through a written undertaking dated 16th November 2012, to remove the structure and vacate but later neglected to honour the undertaking despite being served with a demand letter dated 17th March 2014. The Plaintiff's case was then closed.



4. The Defendant testified that Edward Epeni Oracho (deceased) who was his father owned parcel number Kakamega/Chekalini/204 which he acquired from Settlement Fund Trustees. He stated that he was not aware of any purchase of the suit property by the Plaintiff and added that Veronicah Khatali Ebeni had no power to sell the suit property and that the subdivision that resulted in the suit property was cancelled by the succession court thus reverting back to Kakamega/Chekalini/204. He produced a copy of the green card in respect of Kakamega/Chekalini/204 and added that the said parcel remains unsubdivided and that resides therein together with his brothers.
5. The Defendant produced a copy of the judgment delivered on 29th November 2019 in through Kakamega HC Succession Cause No. 417 of 1990 Re: Estate of Edward Epeni Oracho (deceased) and ruling delivered in the said succession cause on 24th March 2023, among other documents. He also stated that in view of the orders made by the succession court, the prayer in his counterclaim seeking cancellation of the Plaintiff's title in respect of the suit property and reversion to Kakamega/Chekalini/204 in the name of Edward Epeni Oracho (deceased) is overtaken by events. The defence case was then closed.
6. Parties thereafter filed and exchanged written submissions. I have considered the pleadings, evidence and submissions. The issue that arises for determination is whether the reliefs sought should issue.
7. The Plaintiff moved the Court on the basis that he was the registered proprietor of the suit property. That situation is no longer the case. The subdivision that yielded the Plaintiff's title in respect of the suit property was revoked by the Hight Court through its ruling delivered on 24th March 2023 in Kakamega HC Succession Cause No. 417 of 1990 Re: Estate of Edward Epeni Oracho (deceased).
8. As is manifest from the copy of green card in respect of Kakamega/Chekalini/204 which was produced in evidence, the suit property is no longer in existence. In those circumstances, the very foundation upon which the Plaintiff moved the court has ceased to exist. The Plaintiff cannot claim trespass to a property that he does not own. I find no merit in the Plaintiff's case.
9. The Defendant mounted a counterclaim seeking cancellation of the Plaintiff's title. He however stated in his testimony that his counterclaim is overtaken by events in view of the revocation by the High Court. That is the correct position. The Defendant prayed for costs. I am however not persuaded that I should award costs in this matter, since the dispute was resolved by events occurring elsewhere, outside of this case.
10. In the result, I dismiss the Plaintiff's case. The Defendant's counterclaim is overtaken by events. I make no order as to costs.

DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 22ND DAY OF OCTOBER 2024.

D. O. OHUNGO

JUDGE

Delivered in open court in the presence of:

The Plaintiff present in person

No appearance for the Defendant

Court Assistant: M Nguyayi

