



**Ambundo v Shiundu & another (Environment & Land Case  
73 of 2014) [2023] KEELC 39 (KLR) (17 January 2023) (Judgment)**

Neutral citation: [2023] KEELC 39 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT & LAND CASE 73 OF 2014  
DO OHUNGO, J  
JANUARY 17, 2023**

**BETWEEN**

**LYSTONE SACHIEL AMBUNDO ..... PLAINTIFF**

**AND**

**HARRISON OMMUMIA SHIUNDU ..... 1<sup>ST</sup> DEFENDANT**

**JACKTONE MALIKA LAWI ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff moved to the court through plaint dated March 12, 2014. He averred in the said plaint that he is the registered proprietor of the parcel of land known as Kisa/Mundeku/633 (the suit property) and that the defendants occupied the suit property and refused to vacate despite demands to do so. He therefore prayed for eviction of the defendants as well as for costs of the suit.
2. The defendants filed a statement of defence in which they averred that the plaintiff fraudulently and unlawfully acquired the suit property through a succession cause that was being contested. They father have had that they had been living on the suit property for over 40 years, had built their homes on it and therefore qualify to be its owners by adverse possession. They prayed that the plaintiff's suit be dismissed with costs.
3. At the hearing, the plaintiff testified as PW1. He stated that he is the registered proprietor of the suit property and that he purchased it from Emily Muhambe who was its beneficiary or owner. That the suit property was subject to succession proceedings which were concluded, and that the seller transferred the property to him. That the defendants encroached into the suit property and remained in it despite his pleas that they vacate.
4. The plaintiff further stated that he went to the suit property in 2014 prior to purchasing it and that he found the defendants on the land. That the defendants told him that they were the owners of the suit property and that it was their home. That he then conducted a search at the land registry which



showed that Emily Muhambe was the owner. He added that the defendants sued him in Kakamega ELCC No. 52 of 2014 over the suit property and that judgment was delivered in the case. He produced a copy of the title in the name of Emily Muhambe (PEXb.1), the agreement (PEXb.2), a copy of the title in his name (PEXb.3), a copy of certificate of official search as on February 19, 2014 (PEXb.4) and a copy of judgment in Kakamega ELCC No. 52 of 2014 (PEXb.5).

5. The plaintiff's case was closed at that point.
6. Harrison Omumia Shiundu testified next as DW1. He stated that he was born on the suit property, that he resides on it and that he built a house on it in 1985. He added that the plaintiff has never been on the suit property, that he filed Kakamega ELCC No. 52 of 2014 and that the case was dismissed.
7. Jackson Malika Lawi testified next as DW2 and stated that he resides on the suit property and that it was given to him by his father in 1970. He further testified that Emily Muhambe sold the suit property without informing them.
8. The defence case was then closed. Parties filed and exchanged written submissions. The plaintiff submitted that he is the registered proprietor of the suit property and that he is therefore entitled to the rights and privileges under sections 24 to 26 of the *Land Registration Act*. That the defendants admitted being in occupation of the suit property and that he is therefore entitled to the relief sought.
9. On their part the defendants submitted that the plaintiff conceded that they were in occupation as of the time she purchased the suit property and that consequently by the time this suit was heard they had acquired rights of adverse possession. They therefore urged the court to dismiss the suit with costs.
10. I have considered the pleadings, the evidence, and the submissions. the sole issue that arises for determination is weather the reliefs sought should issue.
11. There is no dispute that the plaintiff is the registered proprietor of the suit property. The evidence on record demonstrates that the plaintiff purchased the suit property on January 5, 2014 from Emelly Najite Muhambe and that he was subsequently registered as proprietor on January 27, 2014. A title deed was issued to him on January 29, 2014. Copies of the sale agreement, the title deed, and a certificate of official search as on February 19, 2014 were produced in evidence.
12. As a registered proprietor, the plaintiff is entitled to the rights, privileges, and benefits under section 24 of the *Land Registration Act*. Further, section 26 of the Act obligates the court to accept his certificate of title as conclusive evidence of proprietorship, unless of course the provisos under section 26 (1) (a) or (b) are established. The said sections provide as follows:

24. Interest conferred by registration  
Subject to this Act—

- (a) the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto; ....

26. Certificate of title to be held as conclusive evidence of proprietorship

- (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 to 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. ...

13. The defendants neither presented a counterclaim nor challenged the plaintiffs title on any of the grounds prescribed under section 26 (1) (a) and (b) of the *Land Registration Act*. Through Kakamega ELCC No. 52 of 2014, they claimed to have acquired the suit property through adverse possession. That attempt failed when the case was dismissed through judgment dated September 25, 2018.
14. In their statement of defence, the defendants claimed that the plaintiff fraudulently and unlawfully acquired the suit property through a contested succession cause. Any contest in the succession cause can only be undertaken before the succession court and not this court. As for the allegations of fraud and illegality, they are of no use in this case in the absence of a counterclaim seeking nullification of the plaintiff's title.
15. I am persuaded that the plaintiff has proven his case. No valid reason has been offered to warrant keeping him from fully enjoying the rights and privileges of a registered proprietor of land.
16. I therefore make the following orders:
  - a. The defendants to vacate the parcel of land known as Kisa/Mundeku/633 within 90 (ninety) days from the date of delivery of this judgment.
  - b. In default, the plaintiff shall be at liberty to evict the defendants from the parcel of land known as Kisa/Mundeku/633.
  - c. Considering the relationship between the parties, I make no order as to costs.

CONC

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF JANUARY 2023.**

**D. O. OHUNGO**

**JUDGE**

Delivered in open court in the presence of:

No appearance for the plaintiff

No appearance for first defendant

No appearance for second defendant

Court Assistant: E. Juma

