



Ng'ang'a v County Council of Olkejuado & another (Environment and Land Appeal 19 of 2020) [2023] KEELC 37 (KLR) (16 January 2023) (Judgment)

Neutral citation: [2023] KEELC 37 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 19 OF 2020
MN GICHERU, J
JANUARY 16, 2023**

BETWEEN

ARTHUR KAHURANI NG'ANG'A APPELLANT

AND

COUNTY COUNCIL OF OLKEJUADO 1ST RESPONDENT

LILIAN ATIENO DICKSON 2ND RESPONDENT

(being an appeal against the entire judgment/decree of PM Hon. Kahuya I.M. (mrs) issued on 9/9/2020 in Kajiado Chief Magistrate's Court in ELC 115 of 2018)

JUDGMENT

1. On 9th September 2020, Hon Kahuya IM, Principal Magistrate Kajiado dismissed the appellants' suit in Kajiado Chief Magistrate's ELC Case No 115 of 2018.
2. The reason for dismissal of the appellants' suit was his failure to prove his case against the respondents as required by section 107 (I) of the *Evidence Act*.
3. The dispute before the court was simply who between the appellant, Arthur Kahurani Ng'ang'a, and the second respondent, Lillian Atieno Dickson owned the disputed ground.

I say ground because each one of them had official documents issued by the first respondent showing that they owned specified land parcels. In the case of the appellant, his documents show that he owns plot number 185 located within Noonkopir Trading Centre (commonly known as Kitengela).

In the case of the second respondent, her documents show that she owns plot No 2121 Residential/ Noonkopir TC otherwise called Kitengela.

4. Neither of the two main antagonists in this dispute adduced evidence on how the land was originally allocated to the persons who they bought it from. While the appellant said he bought from one Naomi



N Barnoti, the second respondent's evidence is to the effect that she bought hers from Paul Lenana Nakuo and David Kimiti Kasiromo. None of these original sellers was called as a witness at the trial.

Had they testified, they would have proved which of the two disputants owns the disputed ground. They would have shed light on the procedure of acquisition of the ground by each one of them.

The first respondent did not help the court either. As the custodian of the records, it filed nothing to resolve the simple dispute before the court. Its witness, Mr Wesley S Risancho gave very short evidence. He implied that the ground belonged to the appellant.

The report dated February 28, 2019 is however not categorical. It does not say that the Plaintiff owns the ground. It only says that the area plot is found is zoned as commercial. It does not say who the owner is. In addition, this finding contradicts the letter dated April 24, 2012 written by the first respondent to the appellant asking him to remove his structure from plot No 2121 and pave way for the owner to occupy the plot as the legitimate owner.

This letter was produced as exhibit No 7 by the second respondent by one Nickson Toto, administrative officer, Isinya Division.

5. From the foregoing, it is clear that the dispute was not resolved at all. While the first respondent recognizes the appellant and second respondent as legitimate land owners of separate land parcels, it does not specify which party owns which plot.

The dispute could as well be on the boundary between plot No. 185 and 2121 if the letter dated April 24, 2012 is anything to go by. It could also be about residential and commercial zoning. It could also be about double allocation.

All the above uncertainties could have been resolved at the trial if the first respondent had adduced credible, consistent and cogent evidence of ownership and location of the two plots namely 185 and 2121.

Under section 78 (1) (a) of the *Civil Procedure Act*, I make the following orders.

- a. The judgment and decree dated September 9, 2020 issued in Kajiado Chief Magistrates' Court Case No 115 of 2018 be and is hereby set aside.
- b. The first respondent to resolve the dispute as to the location of Plots Numbers 185 Noonkopir trading centre and 2121 Residential Noonkopir trading centre using registered maps and official records copies of which to be supplied to the appellant and second respondent on payment of the requisite fees or charges.
- c. Costs of this appeal and those of the lower court suit to be borne by the first respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF JANUARY, 2023

M.N. GICHERU

JUDGE

