



**Mubasu & another v Ekesa (Environment & Land Case E007 of 2022)  
[2023] KEELC 900 (KLR) (13 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 900 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT BUSIA  
ENVIRONMENT & LAND CASE E007 OF 2022  
BN OLAO, J  
FEBRUARY 13, 2023**

**BETWEEN**

**ALLAN CLEMENT MALO MUBASU ..... 1<sup>ST</sup> PLAINTIFF**

**PAMELA ALUSO MUBASU ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**CHARLES MORIS ODUNGA EKESA ..... DEFENDANT**

**JUDGMENT**

1. Recently in the case of *William Ongaria Okello-v-Benga Emokoli Esike*, Busia Elc Case No 82 of 2013, I had occasion to smoke out a land fraudster who plies his trade within the corridors of Busia Land Registry. Many more are still seeking shelter there. Charles Moris Odunga Ekesa (the defendant herein) is the latest culprit. Indeed according to paragraphs 3 and 4 of the affidavit of service by Stephen Otaget Ofula a process server of this Court, the defendant appears to have found shelter and good company in that office. It is deponed in those paragraphs as follows:

- 3: “That on May 17, 2022 while in Busia Town and in the company of the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs, we visited the Lands Registry offices where the plaintiffs informed me that the defendant does land brokerage business.”
4. “That while at the car park within the compound of Lands Registry premises on the said May 17, 2022, the 2<sup>nd</sup> plaintiff pointed out a gentleman whom she identified as the defendant herein.”

A gentleman is defined in the *Concise Oxford English Dictionary* as:

“1: a courteous or honourable man 2: a man of good social position especially one of wealth and leisure. 3: (in polite or formal use) a man.”



The process server was being overly generous in his description of the defendant as “a gentleman.” As will soon become clear, he is the epitome of fraud.

2. Allan Clement Malo Mubasu and Pamela Aluso Mubasu (the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs herein) are the children of John Odipo Mubasu (the deceased) who until his demise on December 23, 2017 was, and still is, the first registered proprietor of the land parcel No Bukhayo/mundika/11701 (the suit land). Following the demise of their father, the 1<sup>st</sup> plaintiff commenced succession proceedings vide Busia Chief Magistrate’s Court Succession Cause No 194 of 2019 and the plaintiffs’ share of the deceased’s Estate was the suit land. However, when they visited the Lands Registry at Busia to have the suit land registered in their names by way of transmission, their application was declined on the ground that the deceased was not the registered proprietor of the suit land. On investigation, the discovered that the defendant had been registered as the proprietor of the suit land on April 19, 2018 some 4 months after the demise of the deceased and holds another title thereto. The plaintiffs therefore approached this Court vide their plaint dated May 4, 2022 and filed on May 11, 2022 seeking judgment against the defendant in the following terms:
  - a. Cancellation of Charles Moris Odunga Ekesa’s registration and title issued on April 19, 2018 in respected of the land parcel No Bukhayo/Mundika/11701.
  - b. Costs of the suit.
3. The basis of the plaintiff’s claim is as already summarised in the introduction above. It is their case that the defendant obtained registration of the suit land in his names fraudulently and illegally. Particulars of that fraud and illegality have been pleaded in paragraph 7(i) to (vii) as follows:
  - i. John Odipo Mubasu died on December 23, 2017 thus he could not have executed transfer documents or transferred the subject matter from the grave on April 19, 2018.
  - ii. Dealing with the Estate of the deceased in total disregard to the Law of Succession.
  - iii. Effecting/causing the defendant to be registered without transfer documents from the deceased.
  - iv. Dealing with the subject matter and/or agricultural land and/or a controlled transaction in total disregard to the *Land Control Act*.
  - v. Disinheriting the heirs of the Estate including the plaintiffs.
  - vi. Registering the defendant without having paid any registration fee, stamp duty or other transfer fees.
  - vii. Disregarding all the requirements of the law and procedure in the transfer of the subject matter from the deceased and subsequent registration of the defendant.
4. The plaintiffs filed a joint statement also dated May 4, 2022 in which they confirmed that they are the children and heirs of the deceased who died on December 23, 2017 leaving the suit land as among the properties of the Estate. Having obtained a confirmed Grant vide Busia Chief Magistrate’s Court Succession Cause No 194 of 2019, they presented it to the Lands Registry Busia for purposes of transferring the suit land into their names only to discover that the defendant had been fraudulently registered as the proprietor of the suit land on April 19, 2018 and had been issued with a title on the same day. The defendant is a total stranger to them and his title should be cancelled.
5. The plaintiffs also field the following documents in support of their case:



1. Certificate of Death of John Odipo Mubasu.
2. Confirmed Grant issued in Busia Chief Magistrate's Court Succession Cause No 194 of 2019.
3. Copy of Register for the Land parcel No Bukhayo/Mundika/11701.
4. Title deed for the land parcel No Bukhayo/Mundika/11701 issued to John Odipo Mubasu.
5. Letter dated April 5, 2022 addressed to the Land Registrar by plaintiff's counsel.
6. Letter dated April 11, 2022 addressed to the plaintiff's counsel by the Land Registrar.
6. The record shows that the defendant, though served with summons to Enter Appearance, plaint, verifying affidavit, plaintiffs' list of witnesses and statements as well as list of documents, he did not enter any appearance nor file defence to the suit.
7. The matter was therefore listed for formal proof on February 6, 2023 when the 1<sup>st</sup> plaintiff testified and also called as their witnesses Nicholas Obiero (PW1) the Land Registrar Busia.
8. In his testimony, he told the Court that the suit land was first registered in the name of the deceased on April 24, 2016. Two years later on April 19, 2018, it was transferred in the name of the defendant although there are no documents in the Lands Office at Busia showing how that transfer was effected. Following a complaint received from the plaintiffs, he discovered that there was another title deed to the same land in their office which he confirmed was obtained fraudulently (Plaintiff's Exhibit No 8). They tried to trace the defendant but were unsuccessful and so they advised the plaintiffs to file this suit.
9. The first plaintiff Allan Clement Malo Mubasu (PW2) adopted as his testimony the joint statement with his sister Pamela Aluso Mubasu contents of which I have already referred to above. He also produced as the plaintiffs' documentary evidence the list of documents dated May 4, 2022.
10. I have considered the evidence by the plaintiffs, un-controverted as it is, together with that of the Land Registrar Busia. There is no doubt that the title deed issued to the defendant in respect to the suit land on April 19, 2018 is a forgery. The suit land has since April 20, 2016 been registered in the name of the deceased who held a title deed issued on December 9, 2016. He passed away on December 23, 2017 and there is no evidence to suggest that he had, prior to his demise, transferred the same to the defendant or anybody else for that matter. It even formed part of his Estate when the Grant thereto was confirmed on November 28, 2019 and the proprietorship was supposed to pass to the plaintiffs by way of transmission. That was when the fraud was discovered.
11. Like many fraudsters, the defendant gave these proceedings a wide berth. It is astonishing how these fraudulent activities through which fake title deeds are prepared at the Land Registry in Busia are carried out with such ease but with serious ramifications. Families have been left destitute and homeless when their only land is stolen through such devious schemes. There is no doubt that some crooked officers at the Land Registry in Busia were complicit in the fraudulent activities leading to the registration of the suit land in the name of the defendant. When I enquired from Mr Nicholas Obiero (PW1) as to the whereabouts of the Land Registrar who had issued the forged title deed, he informed me that he had since left that office. He is probably still in service creating confusion in another Lands Registry. All that I can tell him, and his brother in crime, the defendant herein, is to read the Book of Micah 2:1-3:

“Woe unto those who devise wickedness and work evil upon their beds! When the morning dawns, they perform it because it is in the power of their hands.



They covet fields and seize them; and houses and take them away; they oppress a man and his inheritance.

Therefore, thus says the Lord; Behold, against his family I am devising evil from which you cannot remove your necks; and you shall not walk haughtily for it will be an evil time.”

And in Proverbs 10:2-3:

“Treasures gained by wickedness do not profit, but righteousness delivers from death. The Lord does not let the righteous go hungry, but he thwarts the craving of the wicked.”

If that Land Registrar and the defendant profess Islam, the Holy Quran frequently condemns fraud. In Sura Shúara No 26 Verse 181 to 183 it says:

“Give just measure, and cause no loss (to others by fraud). And weigh with scales true and upright. And withhold not things justly due to men nor do evil in the land making mischief.”

This Court has been informed through the process server’s affidavit of service dated May 18, 2022 that the defendant herein “does land brokerage business” at the Land Registry Busia. He is therefor most probably well known in that Registry and while there is nothing wrong in being a broker, it should be confined to legitimate business. Not theft of land. It will do well for this Registry to smoke him out and declare him “persona non grata” before he drags it’s integrity deeper in the mud.

12. The plaintiffs have established their case as required in law. They are therefore entitled to the order that the title deed issued to the defendant in respect to the suit land be cancelled.
13. With regard to costs, even if the suit was not defended, costs follow the event. The plaintiffs must have incurred expenses prosecuting their case and there is no reason why they should be denied their costs which, in any event, are within my discretion.
14. The up-shot of all the above is that there shall be judgment for the plaintiffs as against the defendant as follows:
  1. The title deed to the land parcel No Bukhayo/Mundika/11701 issued in the name of Charles Moris Odunga Egesa on April 19, 2018 is hereby cancelled.
  2. The defendant shall meet the plaintiffs costs.

**JUDGMENT DATED, SIGNED AND DELIVERED BY WAY OF ELECTRONIC MAIL AT BUSIA ON THIS 13<sup>TH</sup> DAY OF FEBRUARY 2023.**

**BOAZ N. OLAO**

**JUDGE**

**13<sup>TH</sup> FEBRUARY 2023**

