



**Kerayiet v Kurrarru & 7 others (Environment & Land Case  
143 of 2018) [2023] KEELC 16227 (KLR) (20 March 2023) (Judgment)**

Neutral citation: [2023] KEELC 16227 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 143 OF 2018**

**MN GICHERU, J  
MARCH 20, 2023**

**BETWEEN**

**NGOONDA OLE KERAYIET ..... PLAINTIFF**

**AND**

**NOAH MONERIA OLE KURRARRU ..... 1<sup>ST</sup> DEFENDANT**

**GEORGE LUKAS OTIENO OWINO ..... 2<sup>ND</sup> DEFENDANT**

**AMOS NYARIBO KERONGO ..... 3<sup>RD</sup> DEFENDANT**

**STRADDLE INVESTMENTS LIMITED ..... 4<sup>TH</sup> DEFENDANT**

**SONJEK LIIMITED ..... 5<sup>TH</sup> DEFENDANT**

**CEPHAS MACHANGI KARANJA ..... 6<sup>TH</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO NORTH ..... 7<sup>TH</sup> DEFENDANT**

**HONOURABLE ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants both jointly and severally.
  - a. An order directing the land registrar Ngong to revoke title L R no Kekonyokie/Ilkisumet/1004, 1006, 1009, 1011, 1005, 1008 and 1010 and any title emanating from L R Keekonyokie/Ilkisumet/408 registered in the names of the defendants and register L R no 408 in the names of the plaintiff.
  - b. Any other relief the court may deem fit to grant.
  - c. Costs of this suit.



2. The plaintiff's case is as follows. He was the registered owner of L R 408 measuring 127.63 hectares. In the month of November 2011, he met the first defendant at his office in Kiserian and asked him to sell 40 acres on his behalf which was to be excised from the suit land. The plaintiff gave the first defendant the original title deed for the suit land. Thereafter, the plaintiff visited the first defendant's office to confirm whether the defendant had found a purchaser for the land but he would find the office closed. He was unable to find the first defendant.

The plaintiff decided to carry out a search at the land registry Ngong and he was surprised to find that his land had fraudulently been transferred to the first defendant who subdivided it into nine portions which he had sold to some third parties. He also found out that the first defendant had used a photograph in the transfer form that did not belong to the plaintiff.

It is for the above stated reasons that he filed this suit.

3. In support of his case, the plaintiff filed the following evidence.
- i. His own witness statement dated September 20, 2018.
  - ii. A copy of the title deed dated April 3, 2009 for the suit land.
  - iii. Copy of the mutation form dated April 8, 2013.
  - iv. Copy of the register dated September 14, 2017.
  - v. Copy of the application for the consent of the Land Control Board.
  - vi. Copy of the consent by the Land Control Board dated March 19, 2013.
  - vii. Copy of the transfer form dated February 28, 2013.
  - viii. Copies of certificates of official search for the nine (a) resultant parcels.
  - ix. Witness statement by Loitei Ole Tumanga Napierak.
4. The first defendant entered appearance on October 16, 2018 through his counsel on record but he did not file any defence or participate in the suit.
5. The fourth defendant through counsel on record filed a written statement of defence dated April 9, 2019 in which he avers that he bought L R no, 1009 measuring 2.02 hectares from the first defendant. He adds that he paid kshs 750.000/- to the first defendant and he is therefore an innocent purchaser for value.
6. In support of his case, the fourth defendant filed the following.
- i. A witness statement by Justin Mwai Murage.
  - ii. Copy of board resolution for Straddle Investments Limited dated April 9, 2019.
  - iii. Copy of title deed for L R 1009 in the name of the first defendant.
  - iv. Copy of title deed L R 1009 in the name of the fourth defendant.
  - v. Evidence of payment of stamp duty.
  - vi. Copy of receipts for payment dated May 19, 2015 being receipt no 4018515.
  - vii. Copy of transfer form between the fourth defendant and the first defendant registered on March 19, 2015.



- viii. Copy of sale agreement dated April 28, 2015.
7. The seventh and eighth defendants filed a notice of appointment dated October 12, 2018 but filed no other pleadings.
  8. On May 28, 2019, interlocutory judgment was entered against the defendants who did not enter appearance.
  9. At the trial on October 29, 2020 only the plaintiff and his witness testified. They said that the transfer of the suit land from the plaintiff to the first defendant was fraudulent because the plaintiff did not execute the transfer document. No evidence was adduced by any of the defendants including the fourth defendant.
  10. Counsel for the parties filed written submissions on March 4, 2022 and November 4, 2022 respectively.
  11. I have carefully considered all the evidence adduced in this case by the plaintiff, the submissions by learned counsel for the parties as well as the case law cited therein. I find that there is only issue to be decided in this case namely – whether the transfer of L R 408 from plaintiff to first defendant was lawful and regular?
  12. I find that transfer of L R 408 from the plaintiff to the first defendant was irregular and unlawful for the following reasons.  
  
Firstly, the transfer form registered on February 28, 2018 does not bear the photograph of the plaintiff but that of Lotei Ole Tumanga Napierak. This is highly irregular. It is also fraudulent. Only the photograph of the seller and not any other person should be appended to the transfer form.
  13. Secondly, I find that investigation carried out by P C Dickson Ogala (PW2) established fraud perpetrated by the first defendant.
  14. Thirdly, under section 26(1) of the *Land Registration Act*, any registration acquired through fraud, misrepresentation, illegally, unprocedurally or through a corrupt scheme should not be allowed to stand. In this case, I find that the registration of the first defendant as the proprietor of L R 408 is tainted with all the illegalities mentioned above.
  15. Finally, under article 40(6) of the *Constitution*, the protection of the right to property does not extend to any property found to have been unlawfully acquired. In this case L R no 408 was unlawfully acquired by the first defendant.
  16. For the above stated reasons, I find that the plaintiff has proved his case on a balance of probabilities. I enter judgment against the defendants jointly and severally as prayed for in paragraph 18 of the plaint dated September 20, 2018.

It is so ordered.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF MARCH, 2023.**

**M N GICHERU**

**JUDGE**

