



Sakaya & 9 others v Ministry of Internal Security & another (Environment & Land Case 230 of 2017) [2023] KEELC 17616 (KLR) (25 May 2023) (Judgment)

Neutral citation: [2023] KEELC 17616 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 230 OF 2017
MN GICHERU, J
MAY 25, 2023
(FORMERLY MACHAKOS ELC NO. 12 OF 2013)**

BETWEEN

**JOSEPH SAKAYA 1ST PLAINTIFF
SANARE MUINYA TENKE 2ND PLAINTIFF
JOSEPHAT K. KATEMBO 3RD PLAINTIFF
ELIUD PURSSAREN NTOMBO 4TH PLAINTIFF
JAMES SUMAILI SANKAIRE 5TH PLAINTIFF
LETIA KOYIA MELIKI 6TH PLAINTIFF
PHILIP LESHAO MASIKONTE 7TH PLAINTIFF
LEMANTA NTIAKI 8TH PLAINTIFF
LONKOI NANTIRE 9TH PLAINTIFF
PETERO LEKUMUK OTUI (SUING AS THE REPRESENTATIVE OF
OLDONYO-NYOKIE GROUP RANCH) 10TH PLAINTIFF**

AND

**MINISTRY OF INTERNAL SECURITY 1ST DEFENDANT
ATTORNEY GENERAL 2ND DEFENDANT**

JUDGMENT

1. The Plaintiffs seeks the following reliefs against the two Defendants jointly and severally.
 - a. A declaration that the purported acquisition is null and void for want of a public inquiry.



- b. A declaration that the Plaintiffs are entitled to quiet possession and use Land Title Number Kajiado/Oldonyo-Nyokie/3, suit land, for the benefit of the 1,157 members.
 - c. General damages for trespass.
 - d. Costs and interest on (c) at court rates.
 - e. A declaration that the Defendants are entitled to no more than 500 acres for use as a training camp in any event, if at all.
 - f. A declaration that the Plaintiffs are entitled to adequate compensation for the 500 acres occupied by GSU Training Camp at the current market price.
 - g. An order directing the District Land Registrar Ngong to rectify the register relating to the suit land by cancelling the purported transfer to the Defendants.
 - h. A declaration that the Plaintiffs are entitled to the surrender of the unutilized portion of the land measuring 3, 260 acres.
2. The Plaintiffs' case is as follows. They are officials and members of Oldonyo Nyokie Group Ranch which is registered as Kajiado/Oldonyo-Nyokie/3 comprising 68,468 hectares. Its membership is 1,157.
 3. The Defendants occupy part of the group ranch where they have constructed permanent structures for the training of General Service Unit Cadets. This happened without the authority of the Group Ranch or its representatives. There was a time when the Defendants approached the group ranch for a grant of a lease but the matter was not concluded as the Defendants did not pursue the matter further. They however allowed the Defendants to continue using the land hoping to formalize the arrangement.
 4. In October, 2011, the Plaintiffs engaged Geotop Surveys Limited, a surveying company to survey the suit land with a view to subdividing it amongst its members and issue them with title deeds. Geotop Surveys purchased the Registry Index Map for the property. They were surprised to find that the land excised by the Defendants was in excess of 4500 acres even though the land they occupied as at October, 2011 was 1500 acres. The parcel excised by the Defendants is now registered as L.R. Kajiado/Oldonyo Nyokie/6. It is the Plaintiffs' case that they were not involved in the excision of their land and their consent was not sought and they still have the original title deed for L.R. Kajiado/Oldonyo-Nyokie/3.
 5. It is the Plaintiffs' contention that in the year 1996, through their group ranch officials, they allowed the Defendants to use part of the group ranch as a shooting range for a limited period of time. The area allowed to the Defendants was only 1500 acres.
 6. Unbeknown to the Plaintiffs the Defendants on 22nd March, 1996 through Kenya Gazette Notice No. 1609 of 1996 published their intention to acquire a portion of the suit land. This acquisition was obtained through misrepresentation because the difference between an acre and a hectare was not well explained to the members of the group ranch.
 7. In support of their case, the Plaintiffs filed the following evidence:-
 - i. Witness statement by Joseph Sakaya, Philip Leposo Nkala, Eliud Ntampo Pursaren and Cephass Kamande Mwaura.
 - ii. Certificate of incorporation of the Group Ranch dated 23/6/2010.
 - iii. Copy of land certificate of the suit land dated 6/10/1978.



- iv. Copy of minutes of a meeting of the group ranch held on 19/5/2011.
 - v. Copy of letter dated 30/8/2011 by the Land Adjudication Officer Kajiado.
 - vi. Copy of application for the dissolution of the Group Ranch dated 30/8/2011.
 - vii. Copy of letter by Director Land Adjudication and Settlement dated 2/9/2011.
 - viii. Copy of survey agreement between the group ranch and Geotop Surveys dated 13/10/2011.
 - ix. Copy of letter by Plaintiffs' counsel dated 4/1/2012 addressed to the commandant GSU.
 - x. Copy of application for consent and letter of consent for the subdivision of the suit land amongst its members.
 - xi. Copy of notice of intention to sue issued by the Plaintiffs' counsel to the second Defendant dated 16/1/2012.
 - xii. Copy of reply to the notice of intention to sue dated 18/1/2012.
 - xiii. Three maps.
8. The Defendants filed a written statement of defence dated 9/7/2013 in which they generally deny the Plaintiffs' claim. They add that the government is the owner of L.R. Kajiado/Oldonyo-Nyokie/7 registered in the name of the permanent secretary of the treasury. The acquisition was lawful and in accordance with the law. They pray for the dismissal of the Plaintiffs' suit.
9. In support of their defence the Defendants filed the following evidence.
- i. Witness statement by chief Inspector Sammy Nyongesa.
 - ii. Copies of letters dated 22/12/1980, 6/8/1987, 11/7/1988, 12/7/1995, 20/5/1996, 16/7/1996, 7/6/1996, 29/7/1996, 13/8/1999, 14/9/1999, 18/10/1999, 30/5/2001, 4/9/2002, 18/10/2002, 7/11/2002, 30/6/2004, 25/4/2006, 9/6/2006, 20/12/2011, 29/12/2011, 5/3/2012, 7/6/2012 and 12/6/2012.
 - iii. Copy of gazette notices no. 1609 and 1610 of 22/3/1996.
 - iv. Copy of field diagram and observation on site dated 4/11/1996.
 - v. Mutation form for the suit land.
 - vi. Copy of proceedings and ruling in Kajiado Magistrates Court Civil Case No. 34 of 1990.
 - vii. Copy of certificate of official search dated 7/6/2012.
 - viii. Copy of certificate of lease for L.R. KJD/Oldonyo-Nyokie/7.
10. The Defendants contend that the officials of the group ranch obtained a loan with Agricultural Finance Corporation which they did not service. They had used the entire group ranch land as security. The whole of the ranch was in danger of being auctioned when the Government stepped in and paid the entire loan of Kshs. 2, 464,292 and paid Kshs. 3, 535, 708 to the Plaintiffs. This was on 29/7/1996. The valuation of the land at Kshs. 6 million was made by Commissioner of Lands in May, 1996. The land that the Defendants occupy was therefore acquired lawfully and compensation duly paid.
11. At the trial that lasted between 10/10/2018 and 4/10/2022, the Plaintiffs called two witnesses who reiterated their case as per the witness statement and documents. The witnesses were cross-examined by



the Defendants' counsel. On the other hand, only one witness testified on the part of the Defendants and he produced the Defendants' exhibits. He too was cross-examined by the Plaintiffs' counsel.

Counsel for the parties were to file written submissions by 15/12/2022 but as I write this judgment in mid-May, 2023, I do not see any submissions on record.

12. I have carefully considered all the evidence adduced by the parties including the witness statements, documents and the oral evidence at the trial. I find that the following issues arise in this case.
 - i. Who has the burden of proof and why?
 - ii. What was the value of the land when it was saved from the auctioneers by the Government?
 - iii. Were the Plaintiffs compensated?
 - iv. Were all the requisite procedures to acquisition complied with?
 - v. Who should bear the costs?
13. On the first issue, I find that it is the Plaintiffs who have the burden of proof. This is because they are ones alleging that their land was acquired by the Defendants without compensation. They are also the ones who would fail if no evidence was adduced by either party because the Defendants not only occupy the land but they also are the registered lessees of the same. Sections 107 and 108 of the *Evidence Act* show that it is the Plaintiffs with this burden.
14. On the second issue, I find that the Plaintiffs have not adduced any evidence to prove what the value of the land acquired by government was at the time it was saved from auction. It was incumbent upon the Plaintiffs to prove that the land was valued at a higher amount than they received from the Government. Having failed to adduce such evidence, the Plaintiffs cannot be heard to say that the amount of Kshs. 6 million paid by the Government was not sufficient. They should have refused to take the money at the time and proved through evidence that the value of land was higher than as per the Government's valuation. Having accepted the compensation in 1996, they are now estopped from re-opening the matter as they have done in this suit.
15. On the third issue, I find that the Plaintiffs were duly compensated and they have not denied this anywhere in their pleadings or evidence.
16. On the fourth issue, I find that the correct procedure was followed because in the letter dated 22/5/1996 it is stated in part as follows:-

“...the Commissioner of Lands has now completed all the modalities of acquisition and recommended to this office a figure of Kshs. 6 million as compensation. The amount is acceptable to us...

Apparently, the issue needs to be handled rather swiftly since M/S. Oldoinyo-Onyokie Group Ranch have acquired a substantial loan using the ranch as collateral. The loan is already in arrears and the financier ... has advertised the whole ranch for sale by auction on 5th June, 1996. This move will obviously include the portion occupied by the G.S.U. The committee entrusted with the management of this ranch has made a compassionate appeal to His Excellency the President for assistance. It is the intention of this office, therefore to transact this issue as soon as possible...”

This was the Permanent Secretary Provincial Administration and Internal Security writing to the Permanent Secretary, Ministry of Finance. The Plaintiffs have not adduced any evidence to controvert



this strong evidence of compensation by the Government and the mismanagement of the ranch by their predecessors who acquired huge loans which they did not repay.

17. For the above stated reasons, I find that the Plaintiffs have not proved their case to the required standard. The witnesses do not seem to have firsthand evidence on the acquisition of the land by the government. It is the Government which has better evidence on the entire question of the acquisition. I dismiss the Plaintiffs' suit with costs to the Defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF MAY, 2023.

M.N. GICHERU

JUDGE

