



**Lemeiruko (Suing as the Duly Appointed Legal Administrator to the Estate of Patrick Lemeiruko Ole Marangura - Deceased) v Koinange & 3 others (Environment & Land Case 632 of 2017) [2023] KEELC 20911 (KLR) (23 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20911 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 632 OF 2017  
MN GICHERU, J  
OCTOBER 23, 2023**

**BETWEEN**

**SAMMY KELOI LEMEIRUKO (SUING AS THE DULY APPOINTED LEGAL ADMINISTRATOR TO THE ESTATE OF PATRICK LEMEIRUKO OLE MARANGURA - DECEASED) ..... PLAINTIFF**

**AND**

**DANIEL WUANTAI KOINANGE ..... 1<sup>ST</sup> DEFENDANT**

**LAND SURVEYOR KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**THE LAND REGISTRAR, KAJIADO ..... 3<sup>RD</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiff seeks the following reliefs against the Defendants jointly and severally.
  - a. A permanent injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants herein by themselves, their agents or servants from entering, encroaching, wasting, evicting and/or trespassing over the land known as Kajiado/Kitengela/92075 and the resultant 123 subdivisions being L.R. 10011-100134 suit parcels, situated within the County of Kajiado.
  - aaa. An order of eviction against the Defendants and all the persons in occupation of the suit parcels.
  - ab. An order of revocation and cancellation of the certificates of title to the suit parcels on the ground that the same were acquired through fraudulent means and were hived off from L.R. Kajiado/Kitengela/1730.



- c. A declaration that the breach of these orders be deemed as unlawful and illegal.
  - cc. An order directing the officer in charge Kitengela Police station and the County Commander of police, Kajiado to ensure compliance of the orders and to provide security.
  - ccc. An order compelling the first Defendant to surrender all the certificates of title for all the suit parcels to the 3<sup>rd</sup> Defendant for cancellation and correction of entries in the register to reflect the Plaintiff as the legal and absolute owner to the land.
  - cccc. General damages for the loss of user.
  - ccccc. Damages for loss of income and mesne profits.
  - (d) Any other order the court may deem fit.
2. The Plaintiff's case is as follows. He is the administrator of the estate of Patrick Lemeiruko Ole Marangura( deceased) who was his father and the registered owner of L.R. Kajiado/Kitengela/1730 measuring 150.6 hectares. There used to be a boundary dispute over the suit land but it was resolved by the Kajiado Land Disputes Tribunal and the award filed in the Magistrates Court and adopted as a judgment of the court.
  3. In April 2016, the Plaintiff found out that first Defendant had unlawfully caused about 15 acres at the extreme end of the land to be hived off and a register for the same created in favour of the said Defendant. The illegally hived off land is now registered as L.R. No. Kajiado/Kitengela/92075 and it is in the name of the first Defendant. In creating the land, the first Defendant colluded with the second Defendant who prepared a report dated 9/3/2016 informing the third Defendant that she had visited L.R. 1730 and found discrepancies. On the basis of this flawed report the third Defendant proceeded to prepare a title deed for L.R. 92075.
  4. The Plaintiff raised a complaint with County Minister for Lands who wrote a letter to protest to the Land Registrar and then advised the Plaintiff to seek legal redress.
  5. In support of his case, the Plaintiff filed the following evidence.
    - i. His own witness statement which is not dated.
    - ii. Copy of his identity card.
    - iii. Copy of grant of letters of administration dated 10/3/1992.
    - iv. Copy of letter dated 16/10/2003.
    - v. Copy of sketch map for L.R. Kajiado/Kitengela/75 (1729 and 1730).
    - vi. Copy of section map for Oloolotikoshi/Kitengela 75.
  6. The first Defendant, through counsel on record filed a written statement of defence dated 4/4/2019 in which he denied all the averments by the Plaintiff and prayed for the dismissal of the Plaintiff's suit.
  7. In support of his case, the first Defendant filed a witness statement dated 4/4/2019 in which he states that he applied for registration of some unregistered land to the Ministry of Lands. The Ministry acted upon his request and registered him as the proprietor of L.R. 92075. The Plaintiff's land is intact and fenced.

In addition to the witness statement, the 1<sup>st</sup> Defendant filed a copy of letter dated 16/12/2015, another one dated 9/3/2016, a copy of mutation form no. 04242635 and six black and white photographs one



of which shows a grave whose epitaph is not clear. Further to the above, there is a witness statement signed by the following, Mutenkere Ole Nkaka Ngatait, Ibrahim Lei Elesondai and Thomas Katuru Likam who say that they are officials of Olooloitikosh/Kitengela Group Ranch as chairman, treasurer and secretary respectively and they allocated Koinange Wuantai Osikeli land measuring 5.87 hectares and he was an immediate neighbor to Ntooki Ole Papu and Patrick Lemeiruko Ole Marangura.

8. The second, third and fourth Defendants did not enter appearance or file a defence in this case.
9. At the trial, it is only the Plaintiff and the first Defendant who testified. They gave their evidence on oath and they were then cross-examined by the counsel for the other party.
10. Counsel for the parties filed written submissions on 7/2/2023 and 8/3/2023 respectively. The Plaintiff's counsel identified three issues for determination.
  - a. Whether L.R. No. 92075 hived from L.R. 1730 was illegally, unlawfully and/or fraudulently obtained by the first Defendant.
  - b. Whether the Plaintiff is entitled to have the third Defendant cancel and revoke title to L.R. 92075.
  - c. Who should bear the costs of the suit.The Defendants' issues are not clearly identified in the submissions but they seem to me to be as follows.
  - a. Whether the Plaintiff has proved fraud on the part of the first Defendant.

11. I have carefully considered all the evidence adduced in this case by the two parties including the witness statements, documents and the testimony at the trial. I have also considered the issues raised by the learned counsel for the parties in their written submissions and the law cited therein. I make the following findings on the issues.

12. On the first issue raised by the Plaintiff, I find that the Plaintiff has not proved that L.R. Kajiado/Kitengela/92075 was hived off L.R. No. Kajiado/Kitengela/1730. He did not adduce any evidence from a surveyor showing the size of L.R. 1730 before and after the alleged encroachment. He should have adduced credible evidence to show that L.R. 1730 has been encroached upon and by what size. He did not call a surveyor or a Land Registrar as his witness. It is a cardinal rule of the law of evidence that he who alleges must prove. It is the Plaintiff who desires the court to find that his land was encroached on by the first Defendant. He is therefore the one to prove. Since he has made allegation of fraud and forgery vide paragraph 10 of the amended plaint, the burden of proof is higher than in ordinary cases. In the case of *Elizabeth Kamene Ndolo v George Matata Ndolo* Civil Appeal No. 128 of 1995 it was held as follows.

“...since the Respondent was making a serious change of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities, but the burden of proof on Respondent was certainly not one beyond a reasonable doubt as in criminal cases”.

13. On the second of the Plaintiff's issues, I find that the Plaintiff has not made out a case to have the third Defendant cancel and revoke the title to L.R. 92075. The reason is that the Plaintiff has not discharged the burden placed on him by the law.



14. In paragraph 3 of his witness statement, the Plaintiff had this to say,

“There has existed a protracted land boundary dispute over the stated land. The boundary dispute has been dealt with by the Kajiado Land Disputes Tribunal and the award filed before the Senior Principal Magistrate’s Court at Kajiado where it was adopted”.

This statement raises more questions than answers. What was the dispute about? Who were the parties? Which land parcels were involved? How was the dispute resolved? Why was it referred to the Land Disputes Tribunal and not to the Land Registrar as the law requires? Why did the Plaintiff not include the tribunal proceedings and decision in this case? What is the relationship between the dispute herein and the one before the tribunal? These questions will linger and as long as they do, the Plaintiff will not be seen to have discharged the burden of proof placed on him by the law.

For the above stated reasons, I find no merit in the Plaintiff’s case and I dismiss it with costs to the first Defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 23<sup>RD</sup> DAY OF OCTOBER, 2023.**

**M.N. GICHERU**

**JUDGE**

