



**Nteka v Sokoiyuni (Environment & Land Case 801 of 2017)
[2023] KEELC 20852 (KLR) (19 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20852 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 801 OF 2017
MN GICHERU, J
OCTOBER 19, 2023**

BETWEEN

SARPHINE OLE NTEKA PLAINTIFF

AND

LENDEKI OLE SOKOIYUNI DEFENDANT

JUDGMENT

1. The Plaintiff's claim against the Defendant is as follows.
 - a. An order that the Defendant was registered as proprietor of land parcel No. Kajiado/Olchoro-Onyore/59 suit land in trust for himself and for the Plaintiff.
 - b. An order that the Defendant do transfer a 67 acre portion out of the suit land to the Plaintiff.
 - c. Costs of this suit.
 - d. Any other relief this court deems fit to grant.
2. The Plaintiff's case is as follows. He is a younger brother to the Defendant. Their father was Sokiyoni Ole Nteka who is now deceased. The father had three (3) wives. Each of the three wives had two sons. In one household, we had Kamishna Ole Nteka and Kanjai Ole Nteka. In the other one, we had Kennedy Ole Nteka and Julius Ole Nteka. In the household of the senior wife, we had the parties herein.
3. When Sokoyioni Ole Nteka was alive, he applied for land within Olchore- Onyore Scheme. He was allocated land but he died before he could subdivide it between his family members. After his death, the deceased's land was shared between his three households equally. The household of the two parties herein was allocated land parcel No. Kajiado/Olchoro-Onyore/59. The land was registered in the name of the Defendant because he was an adult while the Plaintiff was still a minor. The registration of the Defendant as the proprietor of the suit land was not in his own right. He was registered as a trustee for his younger brother the Plaintiff who was entitled to half of the land.



4. When the Plaintiff came of age the Defendant subdivided L.R. 59 into two parcels namely Kajiado/ Onchoro-Onyore/282 and 283. He transferred No. 283 to the Plaintiff while he restrained L.R. No. 282. He told the Plaintiff that the entire parcel was 90 acres and that he had given the Plaintiff 45 acres and retained 45 acres for himself. Later on, the Plaintiff discovered that the Defendant had not told him the truth about the acreage of L.R. No. 59. The truth was that it measured 225 acres and not 90 acres as the Defendant had made him believe. The Plaintiff filed this case so that he may get a fair share of his father's land and the balance that the claims from the Defendant is 67 acres.
5. In support of his case, the Plaintiff filed the following evidence.
 - i. Witness statements by himself, Meja Ole Nchoki, Kibubuki Ole Murkuku, Kanjai Ole Ndeka and Julius Nteka Sokoyioni.
 - ii. Area confirmation list for L.R. 282 which shows the ground area as 104.21 hectares and the registered area as 72.39 hectares.
 - iii. A copy of mutation for L.R. 282 dated 25/6/2017.
6. The Defendant through counsel on record filed a written statement of defence dated 21/7/2017 in which he generally denies the Plaintiff's claim and avers as follows.

Firstly, their father Sokoyioni Ole Nteka who died in 1975 was not allocated any land at Olchoro-Onyore Group Ranch.

Secondly, the Defendant was registered as the owner of L.R. 59 in his own right but not as a son of Sokoyioni Ole Nteka to hold it on behalf of the Plaintiff.

Finally, he gave L.R. 283 to the Plaintiff out of his own free will but not because of any trust. He therefore prays that the Plaintiff's suit be dismissed with costs.
7. In support of his case, the Defendant filed the following evidence.
 - i. Witness statement by himself, Lenka Ole Mbeti, Momia Ole Toimasi and Parmuati Ole Kone.
 - ii. Ol Choro –Nyori scheme adjudication 1973 list.
 - iii. Copy of adjudication record for L.R. 59 dated 26/1/1977.

The evidence by the Defendant's witnesses is to the effect that L.R. 59 was allocated to the Defendant alone and not as a trustee for his younger brother the Plaintiff. Land in the area was allocated in two phases. Phase one was to the older men while phase two was for the younger men and the Plaintiff should have applied for land in phase two when he came of age. He was not otherwise entitled to any land from his brother.
8. At the trial on 30/5/2022, the Plaintiff called three witnesses who included his two brothers Kantai Ole Nteka, Julius Nteka Ole Sokoyoini and a neighbour and former Olchoro-Onyore Committee Member Kibubuki Ole Murkuku.

In summary, their evidence is that the Defendant should share the land with the Plaintiff because it belonged to their father and not to the Defendant. On the other hand, the Defendant called three witnesses who included Nancy Isatia, a Land Adjudication Officer, Mumia Ole Toimasi who was a committee member of the Group Ranch and Leunka Ole Mbeti. The sum total of their evidence is that the Defendant did not get the land in question on behalf of the Plaintiff but in his own right.
9. Counsel for the parties filed written submissions on 24/11/2022 and 16/1/2023 respectively. The Plaintiff's counsel identified two issues for determination.



- i. Whether the Defendant fraudulently misrepresented to the Plaintiff the total acreage of the suit land.
- ii. Whether the suit land was held in trust for the Plaintiff.

As for the Defendant's counsel, he posed the question as to whether the orders sought should issue and he also submitted that there are ten (10) undisputed facts which he enumerated at pages 1 and 2 of his written submissions.

10. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and the oral testimony of the trial. I have also considered the submissions filed by learned counsel for the parties as well as the issues raised therein including the case law.

I make the following findings on the issues raised by the learned counsel for both sides.

11. On whether the Defendant was registered as the proprietor of the suit land in trust for himself and the Plaintiff, I find that he was. There are three reasons for this.

Firstly, all the members of the family of Sokoiyon Ole Nteka are agreed on this issue. They include Kanjai Ole Nteka and Julius Nteka Sokoyioni. These are the step- brothers of the parties. I find that they know the family history better than outsiders do. The Defendant did not call even a single family member as a witness. He called peripheral witnesses. I believed the Plaintiff's witnesses and I found them more candid than the Defendant and his witnesses.

Secondly, the adjudication record produced as an exhibit by the adjudication officer at the trial has the names of the three sons of Sokoiyoni Ole Ndeka named at paragraphs 6 and 9 thereof as the landowners. They include Kamishina Ole Ndeka, Kennedy Sokoiyoini Ole Ndeka and the Defendant himself. This ties up very well with the family history that the three elder sons of each household were registered as trustees for their younger brothers. If the land was meant for the Defendant alone, only his name would be appearing on the adjudication record. The appearance of the other heads of the other two households together with their thumbprints is proof that the land belonged to their father Sokoiyoni Ole Ndeka and not to the Defendant.

Thirdly, I believe the Plaintiff when he says that the Defendant misrepresented to him that the suit land was 90 acres only and that he should take 45 acres. The fact that the Defendant gave the Plaintiff what he said was half means that the Plaintiff was entitled to half of the entire land. I do not believe the Defendant when he says that he gave the Plaintiff the 45 acres out of his own free will. He did so as a trustee and he gave the Plaintiff less than his entitlement.

12. Having decided on that single issue, I find that there is really no other issue that remains undecided or unclear. Consequently, I enter judgment for the Plaintiff against the Defendant as prayed for in the plaint. Since the actual size of the land is in doubt following the confirmation of L.R. 282 which shows that the ground and registered area differ by 31.82 hectares, I direct that the whole of parcel No. 59 be resurveyed and to be shared equally between the Plaintiff and the Defendant. To encourage the parties to live harmoniously, there will be no order as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF OCTOBER, 2023.

M.N. GICHERU

JUDGE

