



REPUBLIC OF KENYA



**Tutui v Noonchingeni (1st Administrator of the Estate of Suyianka
Oloiboni Lenooliadat) & 15 others (Environment & Land Case
911 of 2017) [2023] KEELC 21618 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21618 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 911 OF 2017
MN GICHERU, J
NOVEMBER 21, 2023**

BETWEEN

PATRICK KOINERY TUTUI PLAINTIFF

AND

**RAINGOT SAYIANKA NOONCHINGENI (1ST ADMINISTRATOR OF THE
ESTATE OF SUYIANKA OLOIBONI LENOOLIADAT) 1ST DEFENDANT**

**NAIRONI ENE SUYIANKA OLOIBONI (2ND ADMINISTRATOR OF THE
ESTATE OF SUYIANKA OLOIBONI LENOOLIADAT) 2ND DEFENDANT**

**THE HONOURABLE ATTORNEY GENERAL (SUED FOR AND ON BEHALF
OF THE LAND REGISTRAR AT KAJIADO) 3RD DEFENDANT**

SUSAN NAICHANU GITINKA 4TH DEFENDANT

PHILIP SAMUEL ODERA 5TH DEFENDANT

BIPIN JAYANITLAL KANJI PARMAR 6TH DEFENDANT

MEETA HARILAL LALJI CHOHAM 7TH DEFENDANT

THAARA ORCHARDS LIMITED 8TH DEFENDANT

CHRISTINE CHEBAT TIRIONGO 9TH DEFENDANT

PRESTON NGIGI MUKURIA 10TH DEFENDANT

OTUMA SIYIANKA 11TH DEFENDANT

OLOONTAKIUA INVESTMENT LTD 12TH DEFENDANT

MOSES NAROK 13TH DEFENDANT

SAIMO NTASIKOI NOONKANAS 14TH DEFENDANT



DAVID MUKUI KARUNGU 15TH DEFENDANT
FELISTAS WANGARI NJOROGE 16TH DEFENDANT

RULING

1. This ruling is on the Notice of Motion dated November 1, 2022. The motion which is by the 8th defendant is brought under sections 1A, 1B and 3A of the *Civil Procedure Act*, orders 1 rule 10, 2 rule 15 and 51 rule 1 of the *Civil Procedure Rules* and all other enabling provisions of the law. It seeks the following orders.

- i. Striking out of this suit against the 8th defendant.
- ii. The costs of this application be borne by the plaintiff and the 14th defendant.

2. The Motion is premised on six (6) grounds, a Supporting Affidavit by Charles Theuri Maina dated October 1, 2022 and one annexure. The gist of the above material is as follows.

Firstly, the 8th defendant is not the owner of land parcels number Kajiado/Mailua/1918, 1919, 2071 and 3041 as it exchanged them with LR Kajiado/Mailua/4762, 4766 and 7439 as per the agreement dated May 2, 2018 between it and the 14th defendant.

Secondly, unless the 8th defendant is struck off the suit and the court eventually making an order affecting it in relation to the said parcels, such an order cannot be enforced against it.

Finally, the 8th defendant is not a necessary party and allowing this motion will allow the court determine the suit on merit and between the necessary parties.

3. Though the motion is served upon the respondents, it was not opposed by them in any manner.

4. I have carefully considered the motion in its entirety and I find that it has no merit for the following reasons.

Firstly, it is immaterial that the applicant is not the current owner of the four parcels. As long as it owned them, that ownership was unlawful for the reasons given at pages 12 and 13 of the judgment dated October 6, 2022. Page 12 paragraph 4 reads.

“While the *Constitution*, under article 40 protects the right to property, such article (6) of the same Article provides as follows.

“The rights under this article do not extend to any property that has been found to have been unlawfully acquired”.

5. In the recent case of *Dina Management Limited –versus- County Government of Mombasa and 5 others*, No 8 (E010) of 2021, the Supreme Court of Kenya removed any doubt on the applicability of the doctrine of innocent purchaser for value without notice of the sellers defect in title. It said the following in paragraph 111 of the Judgment dated 21.4.2023.

“Article 40 of the *Constitution* entitles every person to the right to property subject to the limitations set out therein. Article 40(6) limits the rights as not extending to any property that has been found to have been unlawfully acquired. Having found that the 1st registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under article 40 of the *Constitution*. The root of



the title having been challenged, as we already noted above, the appellant could not benefit from the doctrine of *bona fide* purchaser”.

6. Secondly, it is not true to say that the decree in this suit cannot be enforced against the 8th defendant. Prayer (c) of the amended plaint dated August 14, 2019 was for compensation of the plaintiff in the sum of Kshs 122,220, 000/- which was the market value of the suit land without developments thereon as at October 12, 2017. This money decree can certainly be enforced against the 8th defendant.
7. Finally, the 8th defendant is a necessary party in the suit as it was a beneficiary of the land that was unlawfully acquired from the plaintiff. It also goes without saying that the suit has already been decided and liability apportioned. It cannot therefore be correct to say that striking out the 8th defendant will allow the court determine the suit on merit and between the necessary parties. The suit has already been decided and the 8th defendant is a necessary party.

For the foregoing reasons, the Motion dated November 1, 2022 is dismissed with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 21ST DAY OF NOVEMBER, 2023.

M.N. GICHERU

JUDGE

