



Sayaya & 2 others (All Suing as the Dully Appointed Officials of the Maasai Stock Farmers' Co-operative Society) v Keekonyokie Community Trust Land & 3 others (All Sued in their Capacity as Board of Trustees of Keekonyokie Community Trust); National Land Commission (Interested Party) (Environment & Land Case 79 of 2019) [2023] KEELC 22040 (KLR) (5 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22040 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 79 OF 2019**

**MN GICHERU, J
DECEMBER 5, 2023**

BETWEEN

**KAPOLONDO OLE SAYAYA 1ST PLAINTIFF
JOSEPH TINO KISOTU 2ND PLAINTIFF
JOSEPH KIIDIS ROMOINE 3RD PLAINTIFF
ALL SUING AS THE DULLY APPOINTED OFFICIALS OF THE MAASAI
STOCK FARMERS' CO-OPERATIVE SOCIETY**

AND

**KEEKONYOKIE COMMUNITY TRUST LAND 1ST DEFENDANT
MOSES PARANTAI 2ND DEFENDANT
SAMUEL MATINA 3RD DEFENDANT
JOEL NGIROTA 4TH DEFENDANT
ALL SUED IN THEIR CAPACITY AS BOARD OF TRUSTEES OF
KEEKONYOKIE COMMUNITY TRUST**

AND

NATIONAL LAND COMMISSION INTERESTED PARTY



RULING

1. This ruling is on the notice of motion dated 12/1/2023. The motion which is by the plaintiffs is brought under Sections 1A, 1B and 3A of the [Civil Procedure Act](#), Order 42 Rule 6, Order 51 Rule 1 of the [Civil Procedure Rules](#) and all other enabling provisions of the law.
2. The motion seeks the following orders.
3. That a mandatory injunction restraining the 1st, 2nd and 3rd defendants herein by themselves, any other official of Keekonyokie Community Trust, its agents and or servants from dealing in any manner, interfering, encroaching, subdividing, wasting, alienating, developing and/or trespassing over L.R. 12418 Kibiko Holding Grounds and plot numbers 18 and 19 at Kibiko Trading Centre pending the hearing and determination of the main suit.
4. An order to issue to the officer commanding police division (OCPD) Ngong and the officer in commanding station (OCS) Kibiko Police Station to ensure compliance with these court orders.
5. Any other orders that the court may deem fit.
6. That costs of this application to follow the event.
3. The motion is based on thirteen grounds, a supporting affidavit sworn by Kapolondo Ole Sayaya, the first plaintiff which has thirteen (13) annexures. The gist of the above material is as follows.
4. Firstly, the Plaintiffs are officials of Maasai Stock Farmers' Co-operative Society, which was allocated the suit land in the year 1963 by the Government of Kenya.
5. Secondly, the membership of the society comprises livestock farmers from both Kajiado and Narok Counties.
6. Thirdly, on 10/8/1971 the Ministry of Co-operative and Society Services approved the allocation for the suit land which measures 6 acres (plot Numbers 18 and 19) and 1085.5 hectares in respect of plot no. 12418.
7. Fourthly, on 31/1/1973 Olkejuado County Council approved the allocation of the suit land to the plaintiffs and the society has been paying land rates to County Government of Kajiado since then.
8. Fifthly, the society has been in possession of the suit land since 1963 and its members have been utilizing it peacefully.
9. Sixthly, in the year 2012, some members of the society led by the three defendants opted to leave the society and formed their own trust called Keekonyokie Community Trust Land.
10. Seventhly, the said Keekonyokie Community Trust Land fraudulently, illegally and unlawfully acquired a title deed for L.R. No. 12418 and had it irregularly, illegally and unlawfully registered in the names of the three defendants as trustees of the Keekonyokie Community Trust Land.
11. Eighthly, both the National Land Commission and the District Land Registrar have found out that the said title deed was issued to Keekonyokie Community Trust unprocedurally and have written to the Trust asking for the title deed in order that it may be revoked.



12. Finally, the County Government of Kajiado has issued notice to the public warning against falling prey to the defendants and purporting to by the suit land or portions thereof. For the foregoing and other reasons, the applicants pray for the orders.
13. The first defendant, through his counsel on record filed six grounds of opposition dated 21/2/2023. They read as follows.
 - i. The suit is an abuse of the court process.
 - ii. The suit is filed against deceased defendants.
 - iii. The orders in the application dated 12/1/2023 cannot be granted against non-existent parties.
 - iv. The allegations in the pleadings (both main suit and application are against deceased defendants).
 - v. The suit is scandalous, frivolous or vexatious and ought to be dismissed with costs.
 - vi. The leadership of Keekonyokie Community Trust is in question in ELC Suit No. 410 of 2017 awaiting the ruling of the court on who are the rightful leaders to sue and be sued.
14. Counsel for the parties filed written submissions dated 27/3/2023 and 17/5/2023. They raised the following issues.
 - i. Whether the suit is filed against deceased persons and if it is sustainable.
 - ii. Whether ELC Case No. 410 of 2017 affects this suit.
 - iii. Whether the orders sought are merited.
 - iv. Whether the suit is an abuse of the court process.
15. I have carefully considered the motion in its entirety including the grounds in support, affidavit in support, grounds of opposition, the submissions by learned counsel for the parties and the law cited thereon. I make the following findings.
16. On the first issue, I find that there is no pleading to show that any of the parties is deceased. The defendants' grounds of opposition are not anchored on any pleadings. They hang in the air.
17. Regarding the second issue, there are no pleadings in this case touching on ELC Case No. 410 of 2017. It has only been mention in the grounds of opposition without any other material to support it. It is not pleaded what the relationship between this suit and 410 of 2017 is or who the parties are and what is in issue therein.
18. Finally, on whether the motion has merit, I find that it has even though it has been brought under Order 42 Rule 6, which deals with appeals instead of Order 40 Rule 1 *Civil Procedure Rules*, which deals with injunctions, the motion has merit for the following reasons.
19. Firstly, the Plaintiffs' have established a prima facie case with a probability of success. They have adduced evidence to show that the land was allocated to them sixty (60) years and that allocation has never been revoked.
20. Secondly, they have shown that the suit land has been registered in the names of the defendants in circumstances that have been questioned by the National Land Commission, the County Government of Kajiado and the Land Registrar. If the defendants are not restrained, they could alienate the suit



land to the detriment of the applicants who will suffer loss that cannot be adequately compensated with an award of damages.

21. Finally, I find that the balance of convenience tilts in favour of the applicants.

For the above stated reasons, I find that the prerequisites to the grant of an injunction as per the case of *Giella –versus- Cassman Brown* (1973) EA have all been met. Consequently, I hereby issue an order of temporary injunction restraining the defendants from dealing with the suit land in any manner pending the hearing and determination of the suit. Costs in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5TH DAY OF DECEMBER 2023.

M.N. GICHERU

JUDGE

