



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC NO. 106 OF 2018**

**KUKU GROUP RANCH.....PLAINTIFF**

**-VERSUS-**

**ILPARAKUO RANCHING CO-OPERATIVE SOCIETY LIMITED.....1<sup>ST</sup> DEFENDANT**

**COUNTY GOVERNMENT OF KAJIADO .....2<sup>ND</sup> DEFENDANT**

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

**JUDGMENT**

The Plaintiff claims the following reliefs from the Defendants;

- a. An order compelling the Land Registrar Kajiado County to expunge entries numbers 2 and 3 entered against L.R. KAJIADO/KUKU/19.
- b. A declaration order that the Plaintiff is the rightful owner of all that parcel of land known as KAJIADO/KUKU/19 and therefore entitled to exclusive use, possession and occupation.
- c. Costs of this suit together with interest thereon at such rate and for such period of time as the Court may deem fit to grant
- d. Any other relief.

The Plaintiffs case is that they are registered as members of all that parcel of land known as KAJIADO/KUKU/33.

In 1975, the Plaintiff set aside several portions of land for public utility purposes such as water points, health centres, cattle dips, schools, trading centres and livestock holding grounds.

Among the parcels allocated for public utility was land parcel KAJIADO/KUKU/19 which was set aside as a holding ground at Inkisanyani Area within the Group Ranch.

The second Defendant was to hold the said land as a trustee for the people ordinarily residing in that area and the larger Loitoktok.

Contrary to the above expectations, it was found out in the year 2014, by the Plaintiff that the second Defendant had transferred the suit land known as Inkisanyani Holding Ground to the first Defendant.

This act of the third Defendant was done in breach of trust and fiduciary obligations. This suit was filed to reverse the unlawful action by the third Defendant.

In support of its case, the Plaintiff filed the following;

- i. 3 witness statements by John Susen, Saruni Muleu Mukishoe and Henry Ole Kanai all of whom are members of the Plaintiff.
- ii. A copy of the Title Deed for L.R. Kajiado/Kuku/23

- iii. A copy of the Green Card extract of Title No. KAJIADO/KUKU/19
- iv. A copy of Certificate of Incorporation number 0339-Kuku B Group Ranch.
- v. Copy of an extract of the first and last pages of the register of members.
- vi. Letter of authority to John Susen to swear all affidavits.
- vii. Copy of certificate of registration no. 3560 for Iparakuo Ranching Cooperative Society.
- viii. Copy of Certificate of official search showing the first Defendant to be the proprietor of KAJIADO/KUKU/19
- ix. Petition by members of Kuku "B" Group Ranch to various entities expressing their complaint over the loss of their land.
- x. Copy of complaint by the Plaintiffs to the National Land Commission over the same land dated 16/3/2014.
- xi. A complaint similar to number (x) above but to the Governor Kajiado dated 24/3/2014.

In a defence dated 14<sup>th</sup> November, 2018, the first Defendant's case is that land parcel KAJIADO/KUKU/19 was registered to the first Defendant on 5<sup>th</sup> May, 1975 before the Plaintiff's land parcel number KAJIADO/KUKU/23 was registered in 1978.

Secondly, the registration of the first Defendant's land having come earlier in time, their land cannot be a product of land that was registered later.

Thirdly, the first Defendant acquired the suit land legally and procedurally.

The first Defendant called for the dismissal of the Plaintiff's suit.

In support of the defence the first Defendant filed the following;

- i. Witness statement by the first Defendant's chairman Metoyi Ole Loomba Parmoya.
- ii. Certificate of Registration dated 8/9/1981.
- iii. Renewed Certificate dated 19/3/2014.
- iv. List of members of the first Defendant.
- v. Land Certificate dated 23/12/1986.
- vi. Letters dated 7/10/1982, 3/2/1983 and 8/7/86.
- vii. Copy of Green Card
- viii. Letters dated 24/3/2014, 8/7/2016, 10/8/2016 and 9/9/2016.

The second Defendant also filed a Statement of Defence on 11/10/2018. A summary of the defence is that the land in dispute was procedurally and lawfully allocated to the first Defendant and the second Defendant had the power to allocate it as it did.

The second Defendant filed a witness statement by one Francis Sakuda, its County Secretary and two documents namely a letter dated 7/10/1982 and a copy of the register for the suit parcel (Green Card).

At the trial on 2/12/2012 only the first Defendant turned up. Other parties who were present when the hearing date was taken by consent did not come to Court. There was no explanation for their absence.

The Plaintiffs case was deemed to be closed because there was evidence filed and it was properly on record.

The first Defendant did not admit any part of the Plaintiff's claim and went ahead to adopt the witness statements and documents on record.

No submissions were filed by any of the parties.

I have carefully considered all the evidence adduced in this case by both sides including what each party filed.

I find that the following issues come up for determination.

1. Who owned the suit land before allocation?
2. Did the second Defendant have authority to allocate land to the first Defendant?
3. Did the Plaintiff have a better claim to the suit land than the first Defendant?

On the first issue, I find that land in dispute belonged to the local community. The evidence adduced before me does not define who exactly were the members of the local community.

On the second issue, I find that the second Defendant had authority to allocate the land to the first Defendant. The power to administer and allocate land falling under the County Council vested in the predecessor to the first Defendant the County Council of Kajiado.

On the third issue, I find that the Plaintiff did not have a better claim to the land in dispute than the first Defendant. If they had, they would have raised the complaint at the time the same was being allocated to the first Defendant.

For the above reasons, I find that the Plaintiff has not proved its case against the Defendants to the required standard.

I dismiss the Plaintiff's suit with costs to the Defendants.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 28<sup>TH</sup> DAY OF FEBRUARY, 2022**

**M.N. GICHERU**

**JUDGE**