



**Mukue v Naboboi & 4 others (Environment & Land Case
147 of 2018) [2022] KEELC 3386 (KLR) (26 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3386 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 147 OF 2018
MN GICHERU, J
MAY 26, 2022
FORMERLY MACHAKOS ELC NO. 11 OF 2019)**

BETWEEN

NCHOOKA OLE MUKUE PLAINTIFF

AND

MASENDE OLE NABOBOI 1ST DEFENDANT

LAPPSINTO STRATEGIQUE 2ND DEFENDANT

LAPEZOLIA O 3RD DEFENDANT

LAND REGISTRAR, KAJIADO NORTH 4TH DEFENDANT

ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. Nchoonka Ole Mukue, the plaintiff seeks the following reliefs from Masande Ole Naboboi (first defendant) Lappsinto Strategique (second defendant), the Land Registrar, Kajiado North (fourth defendant) and the Honourable the Attorney General (fifth defendant);
 - a. A permanent injunction restraining the defendants by themselves, their agents or servants from interfering with, encroaching, wasting, evicting and/or trespassing over the plaintiffs land known as Kajiado/Loodariak/6971 and 6872 respectively.
 - b. A declaration that the breach of this order be deemed as unlawful and illegal.
 - c. An order of removal and/or lifting of the caution registered on the suit land by the first defendant at the Land Registrar, Kajiado North.



- d. The compliance of these orders be effected by the office in charge (OCS) Kiserian Police Station.
 - e. Any other order the court may deem fit.
2. The plaintiff's case is as follows. He was a member of Loodoriak Group Ranch when the area was declared a Land Adjudication Section in 1986. When the Group Ranch was subdivided, the plaintiff was allocated LR Kajiado/Loodariak/1041 measuring 40.0 hectares.
- On February 11, 2013, the plaintiff subdivided LR No 1041 into two parcels namely Kajiado/Loodariak/2719 and 2720 measuring 20.23 and 21.23 hectares respectively.
- In due course, the plaintiff found that there was a problem with his land. He caused the problem to be rectified by the Land Registrar and a surveyor.
- After rectification, the plaintiff surrendered his two title deeds and he was issued with the following title deeds;
- i. Kajiado/Loodariak/6971 and 6972 measuring 57.88 hectares and 20.23 hectares respectively.
- Between June and October 2014, a boundary dispute determination took place. It was conducted by a private surveyor named Lapezolio AO. The conclusion was that the plaintiff's land is bigger than it should be. In January 2014, the first defendant registered a caution against the plaintiff's land.
3. In support of his case, the plaintiff filed the following evidence.
- i. His own witness statement.
 - ii. Certificate of thumb printing dated January 20, 2015.
 - iii. Copy of title deed for LR 2719 measuring 20.23 hectares. It is dated February 11, 2013.
 - iv. Copy of title deed for LR 2720 measuring 21.23 hectares. It is dated February 11, 2013.
 - v. Copy of mutation form whose dates are not clear.
 - vi. Copy of title deed for LR 6971 dated January 17, 2014. The land measures 57.88 hectares.
 - vii. Copy of letter dated 18/7/2014 written by Kiserian Land Surveyors and Consultants saying that Land Parcels Numbers 2719 and 2720 do not encroach on Elangata Oltepesi Group Ranch.
 - viii. Copies of certificates of official search for LR 6971 and 6972 dated 3rd and June 4, 2014 respectively.
 - ix. Copies of boundary dispute summons issued by the Land Registrar, Kajiado North to the plaintiff dated June 4, 2014, July 25, 2014 and 300/9/2014.
4. The first, second and third defendants filed a written statement of defence dated June 14, 2019 in which they aver that 40.47 hectares forming part of Kajiado/Loodariak/6971 (57.58 hectares) was fraudulently acquired from Elangata Oltepesi Group Ranch and that the plaintiff participated in this fraud.
5. The second and third defendants aver that they are wrongly joined in this suit because they do not own the suit land or any part thereof and the first defendant concluded by saying that he cannot be restrained from his own land. The defendants called for the dismissal of the plaintiff's suit.



The third defendant, in a written statement of defence dated November 6, 2015 generally denied the plaintiffs claim and called for the dismissal of the suit.

The first defendant filed the following evidence;

- i. His own statement dated June 14, 2019.
- ii. A certificate of incorporation of Elangata Oltepesi Group Ranch.
- iii. Copy of surveyors report dated November 7, 2012 showing the plaintiffs encroachment onto the land of the first defendant.
- iv. Copy of the area list.

6. The fourth and fifth defendants filed the following evidence;

- i. Copy of witness statement by Robert Gichuki Gathondu dated March 9, 2020.
- ii. Copies of green card for land parcels Kajiado/Loodariak/6971 and 6972.
- iii. Copy of the order of injunction restricting the two suit parcels 6971 and 6972 dated November 21, 2015.

7. At the trial, only the plaintiff, the first defendant and the third defendant testified. All the three (3) witnesses generally adopted their witness statements and their documents.

8. Counsel for the filed written submissions on December 14, 2021 and April 14, 2022 respectively. The issues raised in the submissions are as follows;

- i. Whether the plaintiff has proved his case to warrant the orders sought?
- ii. Whether the defendants' report dated November 7, 2012 is admissible?
- iii. Whether the plaintiff's title to the suit land should be cancelled and the register rectified?

9. I have carefully considered all the evidence adduced in this case by both sides as well as the submissions by their counsel. I agree with the counsel for the parties that the three issues as identified by both of them will determine the dispute.

10. On the first issue, I find that the plaintiff has not proved that he is entitled to any of the orders sought for the following reasons;

Firstly, the burden was always on the plaintiff to prove his case on a balance of probabilities. He has not proved how his land which was originally 40.0 hectares when it was LR Kajiado/Loodariak/1041 increased to 57.88 and 20.23 Hectares making a total of 78.11 hectares when it became Kajiado/Loodariak/6971 and 6972 measuring 57.88 hectares and 20.23 hectares respectively.

Did he purchase the extra acreage? Where is the evidence of lawful acquisition of the extra land? None has been adduced.

Secondly, there is evidence by the third defendant to prove that there was inaccuracy in the surveying of the land. This inaccuracy could have been by a genuine mistake or with intention to defraud. The plaintiff was the beneficiary of this mistake.

11. On the second issue, I find that the report of November 7, 2012 is admissible because the witness who prepared it actually testified in court, produced it and was cross-examined.



12. On the third and final issue, I find that the dispute in this case concerned a boundary between parcels of registered land. Under section 18 of the [Land Registration Act](#), the jurisdiction to determine such disputes is vested in the Land Registrar. The Land Registrar actually determined the dispute vide his report dated July 16, 2015 where he stated as follows;

"Ruling

After considering the statements of all parties and the observations and findings of the surveyor, I adopt the surveyor's report and fix the boundaries of all the parcels of land and rectify the resurvey of Loodariak/ 1041 which was done without following the set procedures of inviting the neighbors for the same.

Any party aggrieved has right of appeal allowed within 28 days from the date hereof.

Dated August 12, 2014.

RK Kalama

District Land Registrar

Ngong."

13. I find that the above ruling is the one to be implemented because the plaintiff did not challenge it in any court of law.
14. For the above stated reasons, I dismiss the plaintiff's suit with costs to the defendants.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26TH DAY OF MAY, 2022.

MN GICHERU

JUDGE

