



REPUBLIC OF KENYA



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Masea & another v Sitei & 3 others (Environment and Land Case Civil Suit 719 of 2017) [2022] KEELC 3071 (KLR) (25 May 2022) (Judgment)

Neutral citation: [2022] KEELC 3071 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 719 OF 2017**

MN GICHERU, J

MAY 25, 2022

(FORMERLY NAIROBI ELC NO. 847/2013)

BETWEEN

**MATON ENE MASEA 1ST PLAINTIFF
TALE ENE KESEA 2ND PLAINTIFF**

AND

**DICKSON YIAILE SITEI 1ST DEFENDANT
KIPINO SITEI 2ND DEFENDANT
KELENGO SITEI 3RD DEFENDANT
NKIRIMBA SITEI 4TH DEFENDANT**

JUDGMENT

1. Maton Ene Masea and Tale Ene Kesa the Plaintiffs herein seek the following reliefs from Dickson Yiaile Sitei (First Defendant), Kipino Sitei (Second Defendant), Kelengo Sitei (Third Defendant), Nkirimba Sitei (Fourth Defendant), National Land Commission (Fifth Defendant), Land Registrar Kajiado (Sixth Defendant) and the Honourable the Attorney General;
 - a. An order of injunction restraining the Defendants, their agents, servants and/or employees from interfering, leasing, subdividing, selling, trespassing and in any way interfering with the Plaintiffs quiet use and enjoyment of title no. Kajiado/Ewuaso-Kedong/1983.
 - b. A declaration that the Plaintiffs herein are validly issued and are legally within their properties.
 - c. Any other order that this Court may deem fit to grant.



2. The Plaintiffs' case is as follows. She is the registered owner of L.R. No. Kajiado/Ewaso – Kedong/1983. She has always lived on the suit land. The same applies to other Plaintiffs on the related suits that is to say, Talita Ole Kitikai in Case No. 121 of 2018, Leru Ole Mbisikany in Case No. 123 of 2018.
3. The Plaintiffs have title deed to their respective parcels which include Kajiado/Ewaso –Kedong/1986, 1993 and 1982. They have utilized the land parcels for long and some of their deceased kin are buried there.
4. On 2/7/2018, the first, second, third and fourth Defendants confronted the Plaintiffs. They said they wanted to enter the Plaintiffs land with a surveyor, and curve out some of the land. The Defendants claimed some of the Plaintiffs land. Both the Plaintiffs and the Defendants got their land from Ewaso Group Ranch.
5. Soon after the Defendants claimed part of the Plaintiffs' land, the Plaintiffs filed a case at Kajiado Magistrates Court and obtained orders of injunction in Civil Case No. 139 of 2008. The injunction restrained the Defendants from entering the Plaintiffs parcels pending the outcome of this case.
6. In support of their case, the Plaintiffs filed their witness statements and copies of the title deeds for the suit parcels.
7. At the trial Saiko Ole Mututua and Isaya Tauta Ole Ketikai testified on behalf of the other Plaintiffs. They produced a certificate of official search dated 10/11/2012 as their evidence.
8. The Defendants through counsel on record filed a defence and counterclaim dated 1/10/2013. They aver that they own L.R. Kajiado/Ewaso Kedong/1421 which is a clean title but the Plaintiffs titles are not clean since they overlap the Defendants land.
9. In the counterclaim, the Defendants aver that it is only a surveyor who can determine the boundaries and the acreage between the parcels in dispute. They plead fraud on the part of the Plaintiffs in obtaining title deeds to their land without visiting the ground and causing the overlap.
10. In support of their case, the Defendants filed four (4) witness statements, maps, copy of title deed for parcel No. 1421 and copy of grant in succession cause No. 1986 of 2013.
11. At the trial Dickson Ole Sitei testified and produced the exhibits mentioned above.
12. In the course of the proceedings, the case was referred to the District Surveyor Kajiado who prepared a report dated 19th October, 2014. At the trial on 1/3/2022, Mr. Werunga Masinde testified and said that he found an overlap between the Plaintiffs' parcels and the defendants land. His visit to the suit land locality did not determine the actual sizes of the eight (8) parcels in dispute. He concluded by saying that the problem of Ewaso Kedong area is well known even by the Director of Survey at the Headquarters in Nairobi.
13. I have carefully considered all the evidence adduced in this case by both sides. I find that essentially, the dispute revolves around the boundaries of the eight (8) parcels in dispute.
14. Boundaries relating to registered land are, by virtue of Section 18 of the *Land Registration Act* (Act No. 3 of 2012) to be determined by the Land Registrar and not by the Court. The dispute in this case remains unresolved and it will be resolved by Kajiado Land Registry.
15. Consequently, I refer the case back to the District Land Registrar Kajiado for determination. There will be no need for any report to be filed back to Court.



16. Pending the determination of the dispute by the District Land Registrar, I will allow the Plaintiffs' claim in terms of prayer (a) of the amended plaint dated 20th March, 2015.

No order as to cost.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF MAY, 2022.

M.N. GICHERU

JUDGE

