



Sein & another v Land Registrar, Kajiado County & 3 others (Environment & Land Case 188 of 2018) [2022] KEELC 13673 (KLR) (19 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13673 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 188 OF 2018
MN GICHERU, J
OCTOBER 19, 2022**

BETWEEN

NICHOLAS LALTA OLE SEIN 1ST PLAINTIFF

ROBERT RAPOSHI OLE SEIN 2ND PLAINTIFF

AND

LAND REGISTRAR, KAJIADO COUNTY 1ST DEFENDANT

DISTRICT SURVEYOR, KAJIADO COUNTY 2ND DEFENDANT

JOHN MARUNA SANKAIRE 3RD DEFENDANT

LESHAN SANKAIRE 4TH DEFENDANT

JUDGMENT

1. Nicholas Lalta Ole Sein and Robert Raposhi Ole Sein, the plaintiffs, seek the following orders against the Land Registry, Kajiado County, the District Surveyor, John Maruna Sankaire and Leshan Ole Sankaire, the first, second, third and fourth defendants respectively.
 - i. A permanent injunction do issue against the 3rd and 4th defendants and/or their agents restraining them from interfering/developing and or in any way dealing with the purported numberless portion on Kajiado/Olchoro Onyore/234 (suit land).
 - ii. A declaration that the purported numberless portion is part of the suit and belongs to the plaintiffs.
 - iii. An order of rectification of the Registry Index Map by inserting the omitted brace.
 - iv. A resurvey of the numberless portion.
 - v. Costs of the suit.



- vi. Any other or further relief that the court deems fit and just.
2. The plaintiffs' case is as follows. Both of them are sons of the late Jason Ole Sein. In the year 1981, their late father bought the suit land from the original owner Maruna Sankaine. The suit land was a subdivision of LR Kajiado/Onchoro-Onyore/25. When the plaintiffs' father died, they inherited the suit land from him.
3. In the course of time, the plaintiffs discovered that the first and second defendants had knowingly omitted a brace of the suit land on the registry index map as a result of which a large chunk of the suit land appears as numberless.

The plaintiffs were deprived of their land by this action of the first and second defendants. When the plaintiffs raised a complaint with the first and second defendants, they treated the dispute as one relating to a boundary.

A report to that effect was prepared by the first and second defendants in 2016.
4. The plaintiffs made several attempts to have the first and second defendants rectify the mistake and revert the numberless portion to the plaintiffs, but the defendants did not listen. Instead, they ruled that the numberless portion reverts to the original owner of the property.

This action of the defendants amounts to an infringement of the plaintiffs' right to property and sanctity of title. Even though this decision by the first and second defendants was made on November 9, 2017, it was not until November 1, 2018 that the plaintiffs were notified of it.
5. The third and fourth defendants who are beneficiaries of the estate of the Maruna Sankaire have purported to claim and deal with the numberless portion as their own in blatant disregard of the plaintiffs' right to the same property, making the filing of this suit necessary.
6. In support of their case, the plaintiffs filed the following evidence.
 - i. Witness statement by Nicholas Lalta Ole Sein.
 - ii. Copy of mutation form for LR Kajiado/Olchoro- Onyore/25 dated September, 1981.
 - iii. Copy of certificate of official search for the suit land dated July 26, 2018 showing that it is in the names of the plaintiffs.
 - iv. Copy of the land certificate for the suit land dated February 4, 1983 in the name of the plaintiffs' father Jason Kirruti Ole Sein.
 - v. Copy of title deed for the suit land dated February 15, 2013 in the names of the plaintiffs.
 - vi. Copy of report by the second defendant dated September 30, 2016 saying that the dispute related to a land claim and the land registrar was to make the final ruling.
 - vii. Copy of report by the district land registrar saying that the numberless portion be reverted to the original parcel as per the adjudication scheme of 1973.
 - viii. Copies of sketch maps.
 - ix. Copy of receipt No 5144901 dated October 30, 2018.
7. In their written statement of defence dated April 30, 2019, the first and second defendants deny the plaintiffs claim in its entirety and call for the dismissal of the suit with costs.



They did not file any witness statements or documents.

8. On their part, the third and fourth defendants filed a defence and counterclaim dated May 21, 2019 in which they aver as follows.

The property known as Kajiado/Olchoro- Onyore/25 comprising approximately 150 acres was allotted to the fourth defendant and his deceased brother, Maruna Ole Sangare in 1973 vide a share certificate.

In February 1983, the deceased sold the suit land totaling 5 acres to Kiruti Ole Sein. Before then, he had sold other parcels to other individuals. The total area sold was 44 acres.

9. Several boundary disputes arose between the original owner and some of the purchasers. The disputants included Kiruti Ole Sein who claimed 12.96 hectares (approximately 32 acres). The land registry resolved the dispute and found that that the suit land measured 4.57 acres and there existed a numberless portion measuring 12.18 acres. The numberless portion reverted to the original portion in terms of the adjudication scheme of 1973.

10. The third and fourth defendants aver that the residue of the unsold portion of LR 25 rightfully reverted to the estate of Maruna Ole Sangaine and no possibility of transactions being undertaken over the land without letters of administration. Transfer of title to the numberless portion would be invalid without a valid consent or authority.

Any title held by the first and second plaintiffs for LR 234 measuring 12.96 hectares was obtained by fraud and false documents and is therefore invalid, null and void ab initio.

They call for the nullification of the title held by the first and second plaintiffs and an order of injunction restraining them from interfering with the suit land comprising 12.18 acres.

The third and fourth defendants did not file any evidence in form of witness statements and documents.

11. At the trial on April 20, 2022, only the first plaintiff testified where he produced the documents in paragraph (6) above as his evidence. He also adopted his witness statement as his oral evidence and he was cross-examined by counsel for the first and second defendants. No other evidence was adduced at the trial.

12. Counsel for the parties were to file and exchange written submissions by August 22, 2022. They did not comply with the above timeline. I have written this judgment without the benefit of any submissions from the learned counsel for the parties.

I find that the following issues come up for determination.

- i. How much land did Jason Kiruti Ole Sein buy from the late Ole Maruna Sankaire?
 - ii. How did the land certificate for the suit land dated February 4, 1983 in the name of Jason Kiruti Ole Sein change to the title deed dated February 15, 2013 in the names of the plaintiffs?
13. On the first issue, I find that the plaintiffs' have failed to prove how much land Jason Kiruti Ole Sein purchased from Maruna Ole Sangaine. They have no agreement for sale of land between the two men who are now deceased. Without such critical evidence, the size of land bought remains uncertain. Yet, it was upon the plaintiffs to prove this fact.



When the first plaintiff was cross-examined by the counsel for the first and second defendants on April 20, 2022, he said that the land purchased was 32 acres. This is much bigger than the numberless portion which is 12.18 acres and the current portion occupied by the plaintiffs which measures 4.52 acres.

The first plaintiff also said that they do not occupy the numberless portion.

From the above, I find that the late Jason Kiruti Ole Sein purchased only 5 acres of land from the late Maruna Sangaine and that does not include the numberless portion.

14. On the second issue, I find that the plaintiffs have not explained how the land certificate for the suit land in the name of Jason Kiruti Ole Sein dated February 4, 1983 changed to the title deed dated February 15, 2013 which is in their joint names. They have also not explained how the acreage in the title deed came to be.

All the above was expected of the plaintiffs if they were to preponderate their care to the required standards of proof on a balance of probabilities. Without clear and cogent evidence, the averments by the plaintiffs remain unproved.

Finally, the plaintiffs have not proved that the action of the land registrar of ordering that the numberless portion reverts to the original owner was wrong because that was the right thing to do.

The plaintiffs cannot lawfully claim land that never belonged to the late Jason Kiruti Ole Sein or which they have not been able to prove that he purchased from the late Maruna Ole Sangaine.

For the above stated reasons, I dismiss the plaintiffs suit with costs to the defendants.

I also allow the third and fourth defendants counterclaim in terms of prayer (a), (b), (c), and (d) of paragraph 11 of the defence and counterclaim dated May 21, 2019.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF OCTOBER, 2022.

M N GICHERU

JUDGE

