



**Maamai v Mohamed & 4 others (Environment & Land Case
91 of 2018) [2025] KEELC 1007 (KLR) (5 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 1007 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 91 OF 2018
MN GICHERU, J
MARCH 5, 2025**

BETWEEN

LERIONKA OLE MAAMAI PLAINTIFF

AND

OMAR RAMADHANI MOHAMED 1ST DEFENDANT

CATHERINE MUTHINI MUTINDA 2ND DEFENDANT

ISMAIL MOHAMED OMAR 3RD DEFENDANT

JOHN GACHEGA MWANGI 4TH DEFENDANT

LAND REGISTRAR KAJIADO 5TH DEFENDANT

JUDGMENT

1. The Plaintiff seeks the following reliefs against the Defendants.
 - a. A declaration that the 4th Defendant breached the agreement dated 17th October, 2011.
 - b. Damages for breach of Agreement in paragraph (a) above.
 - c. A declaration that the 4th Respondent acted fraudulently by falsifying land transfer documents for title No. Kajiado/Lorngusua/2025, suit land, and all resultant subdivisions.
 - d. An order of permanent injunction do issue restraining the 1st, 2nd and 3rd Defendants from trespassing upon and/or alienating their purported respective titles L.R No Kajiado/Lorngusua/2249,2450,2451, 6140, 8344 and 8345.
 - f. An order for cancellation of the title deeds in Paragraph (d) above issued in favour of Catherine Muthini Mutinda which are titles No. 2450, 8444 and 8345 while numbers 2449 and 2451



are in the names Ismail Mohamed Omar. Any transfer or title deed issued for L.R. 2448 and 2452 unless they are in the names of the Plaintiff.

- f. Costs of this suit.
 - f. Interest on (b) and (g) above at Court rates.
 - f. Any other Order the Court may issue to meet the ends of justice.”
2. The Plaintiffs’ case is as follows. Firstly, he was the registered owner of the suit land which measured 24.97 hectares. Secondly, on 17-10-2011, he entered into a sale agreement with the 4th Defendant for sale of ten (10) acres out of the suit land. The consideration was the construction of a borehole and installation of a 10,000 litres plastic tank by the 4th Defendant on the Plaintiff’s land. Thirdly, the 4th Defendant constructed the agreed facility but not as per the agreement. There were two(2) tanks of 3000 and 2500 litres respectively instead of the agreed 10,000 Litres. The other complaint by the Plaintiff was about the workmanship which was not of the agreed quality. The 4th Defendant agreed to call a water expert to undertake the necessary corrective works. Fourthly, all the above happened after the Plaintiff had already excised the ten acres which the 4th Defendant had proposed that they be subdivided into three(3) parcels. The three(3) parcels bore the names of the Plaintiff because the 4th Defendant had not yet completed his part of the bargain. The title deeds were parcels numbers Lorngusua/2449, 2450 and 2451. Fifthly, in November 2021 the 4th Defendant requested the Plaintiff to release the three(3) title deeds to him to show the bank so that he could get finances to complete the project. The 4th Defendant on receiving the title deeds from the Plaintiff did not return them as agreed. On 2-10-2012, the 4th Defendant was summoned by Kajiado Police Station at the behest of the Plaintiff. He promised to complete the project. He even visited the site but soon after that he disappeared. Sixthly, the Plaintiff discovered that the 4th Defendant had transferred the three suit parcels to the 1st, 2nd and 3rd Defendants around September 2012. Seventhly, the transfer of the land parcels to the 1st, 2nd and 3rd Defendants by the 4th Defendant was fraudulent because the Plaintiff did not apply for the consent of the Land Control Board, did not furnish the 4th Defendant with passport size photographs since he had not completed the work as agreed. Even though the Plaintiff has reported the matter to the Lands Office Kajiado and to the police, no action has been taken against the 4th Defendant. The documents that support a title deed like the consent of the Land Control Board, the transfer of land instrument and the evidence of payment of stamp duty have not been supplied to the Plaintiff despite demand. The Land Registry officials are therefore complicit and that is why they have not supplied the above mentioned documents which are by law supposed to be in their custody. Eighthly, the 1st, 2nd and 3rd Defendants knew the Plaintiff personally and they did not bother to find out from him if the suit land was on sale. They cannot therefore be called innocent purchasers for value without notice of the 4th Defendant’s defective title. Finally, at Paragraph 7 of the Plaint, the Plaintiff pleaded eight particulars of fraud. For the above and other reasons, the Plaintiff prays for the orders as per paragraph 25 of the Amended Plaint dated 10-3-2023.
3. In support of his case, the Plaintiff filed the following evidence.
- i. His witness statement dated 3rd September 2013 and further statement dated 10-3-2023.
 - ii. Copy of Sale Agreement dated 17-10-2011.
 - iii. Copies of register for L.R. No. Lorngosua 2449, 2450 and 2451.
 - iv. Copies of letters to Land Registrar Kajiado dated 12-9-2012 and 29-5-2023.
 - v. Copy of demand letter dated 3-9-2013.



- vi. Copy of letter dated 4-10-2022.
 - vii. Certified copies of Green Card for L.R. No. Kajiado/Lorngosua /2025, 2450-1, 6140 and 8344-5.
4. The 1st, 2nd and 3rd Defendants filed a written statement of Defence dated 28-3-2019 in which they aver as follows.
- Firstly, the claim by the Plaintiff is denied generally in its entirety. Secondly, the 4th Defendant sold the three parcels with the consent of the Plaintiff in compliance with the Sale Agreement between the two. Thirdly, the Plaintiff was present during all the transactions and he willingly and voluntarily signed and witnessed every sale agreement. Fourthly, all the statutory fees was paid for every transaction. Fifthly, no report was made to the Police or the Land Registrar and there has been no inquiry since all requisite processes were complied with. Finally, the three Defendants prayed for the dismissal of the Plaintiff's suit and they prayed for a permanent order restraining the Plaintiff from interfering with their rightful enjoyment of the land that they lawfully acquired.
5. In support of their case, the 1st, 2nd and 3rd Defendants filed the following evidence.
- i. Witness statements by each one of the 3 Defendants and two others by Shapashina Tonkei and Silai Paita.
 - ii. 5 copies of sale agreements dated 17-10-2011, 25-10-2011 and 15-10-2015.
 - iii. 2 Copies of Land Control Board consent dated 1-12-2017 and 22-6-2012.
 - iv. 2 copies of Mutation Forms for L.R. No. 2025 and 2449.
 - v. Copies of title deeds for L.R. Nos. 2450-1, 6140 and 8344-5.
6. The 4th Defendant filed a Memorandum of appearance dated 28-3-2019 through his Counsel. He did not file anything else.
7. The 5th Defendant filed a written statement of defence dated 25-5-2023 in which it is averred as follows.
- Firstly, the Plaintiff's claim is denied generally. Secondly the transfer and registration done over the suit property was based on documents presented before the 5th Defendant's offices who believed them to be genuine. Thirdly, the 5th Defendant was not privy to the transactions. Finally, all the particulars of fraud and illegality are denied. For the above reasons, the 5th Defendant called for the dismissal of the Plaintiff's suit as against it.
8. In support of its case, the 5th Defendant filed the following evidence.
- i. Witness Statement of Rosemary Mwangi, dated 12-3- 2024.
 - ii. Certified Copies of the Green Cards for L.R. No. Kajiado/Lorngosua /2025, 2449, 2450,6139 and 6140, 8541-45, 8344-5 and 2451-2.
 - iii. Certified copy of consent of the Land Control Board for the subdivision of L.R. No. 2450 and copy of application for its subdivision.
 - iv. Certificate of compliance for subdivision of L.R. No. 2450 dated 23/5/2023.
 - v. Copy of Mutation form Serial Number 04239005 -dated 11-9-2017.
9. At the trial on 19-3-2024 and 13-11-2024, the Plaintiff testified on oath, adopted his written witness statement and documents as his evidence. He was then cross-examined by the Counsel for the



Defendants. He did not change what he recorded in his pleadings. He denied that he was handed over the borehole and its infrastructure, operated it for two years, failed to maintain it and it broke down. He further denied that he occupies the water office with his youngest wife.

10. The first and second Defendants also testified as per their witness statements and documents. They too reiterated their case as per the evidence on record. The following came out of their testimony. Firstly, the Plaintiff confirmed to the 1st Defendant that the 4th Defendant bought 10 acres from him and he had no objection to the 1st Defendant buying the land. He is, in fact, a witness to the agreement between the 1st and 4th Defendants dated 25-10-2011. Secondly, the Plaintiff wanted each of the Defendants to give him one acre. The first Defendant accepted. After this the Plaintiff said he did not want just one acre but the whole land back. He wanted the Defendants to seek a refund of the purchase price from the 4th Defendant. Thirdly, it was the Plaintiff who asked Shapashina Tonkei and Silai Paitah (DW 3) to get someone to sink a borehole for him. They are the ones who looked for the 4th Defendant who drilled a borehole for the Plaintiff which was operational for 2 years. The Plaintiff sold the water, used it for farming and making bricks and when he failed to maintain it, it broke down and he wanted the 1st and 2nd Defendants to build him another borehole. At first, they were willing but when the Plaintiff became greedy and wanted all their land, they refused to cooperate. It is then that he decided to file this suit.
11. The 5th Defendant called a Land Registrar as its witness. The sum total of her evidence is that all the necessary documents to support the registration and transfer of the parcels in question are available and that the 5th Defendant had no reason to doubt that the said documents were executed by the appropriate parties.
12. Counsel for the parties filed written submissions. The submissions by Counsel for the 1st, 2nd and 3rd Defendants are dated 18-12-2024. The same with those of the 5th Defendant. Finally the submission by the Plaintiff's Counsel are dated 30-1-2025. It was envisaged as per Order 18 Rule 2(2) Civil Procedure Rules that the Plaintiff would reply to the issues raised by the Defendants but he raised his own issues. Be that as it may, I will make a determination on all the issues. I will start with the Plaintiff's issues.
13. On the first of the Plaintiff's issues, I find that the 4th Defendant did not breach the agreement between him and the Plaintiff and he did not conduct himself fraudulently. There is credible oral and documentary evidence to prove that the Plaintiff sold the ten acres to the 4th Defendant who paid him in kind. I believe that the Plaintiff was handed over a complete borehole together with an office which he took over and operated for two years. In this regard I believe the evidence of the 1st and 2nd Defendants which is consistent and credible. This evidence is also corroborated sufficiently in material particulars by the evidence of Silai Paitah (DW 3). The Plaintiff's evidence stands above uncorroborated and incredible yet it is the Plaintiff who has the burden of proof. The standard of proof is one higher than a balance of probabilities.

It is the one set in the case of Ndolo vs Ndolo Civil Appeal 128 of 1995. The standard is one beyond a balance of probabilities but not as high as beyond reasonable doubt as in criminal cases. The reason why this burden is higher than the normal one is because at Paragraph 17 of the amended plaint dated 10th March 2023, the Plaintiff has pleaded seven(7) instances of fraud. That is the fraud that he was expected to prove and he did not.

14. On the second issue, I find that the 5th Defendant did not act negligently in registering the transfers and the subdivisions. Again it was incumbent upon the Plaintiff to prove that the signatures on the Sale Agreements dated 17-10-2011, 15-10-2011 and 25-10-2015 were not his. The same with the signatures on application forms for consent of the Land Control Board to transfer L.R. No. 2450 and 2451 to the 2nd and 3rd Defendants respectively. The easiest way was to subject the said documents to examination



by a documents examiner to prove that those signatures are not his. The Plaintiff opted not to take this route. This means that his averments remain unproved by cogent evidence.

15. A look at the third issue brings one to the inevitable conclusion that the 1st, 2nd and 3rd Defendants have good title to land parcels numbers 6140, 2451, 8344 and 8345. They all have good title which they trace to the 4th Defendant who sold the land to them. The 4th Defendant traces his title to the Plaintiff himself who got a borehole and a water infrastructure from the 4th Defendant without paying any cent having exchanged the project with ten acres as per the agreement dated 17-10-2011. The case of Dina Management vs the County Government of Mombasa Petition 8 EO10 of 2010 has no application in this case because the suit property has not been found to have been unlawfully acquired under Article 40 (6) of the Constitution of Kenya.
16. Having decided on those three issues by the Plaintiff, I find that the central issue at the heart of the dispute has been decided upon. This issue was simply whether the evidence by the Plaintiff that he did not execute the transfer and subdivisions was to be believed or not. The other issue was whether the Plaintiff received a working borehole together with an office from the 4th Defendant. Since the court doubted the Plaintiff and believed the evidence of the Defendant, then the Plaintiff's case is not proved.
17. In conclusion therefore, I find that the Plaintiff's suit has no merit at all and I dismiss it with costs to the Defendants.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF MARCH, 2025.

M.N. Gicheru

JUDGE.

5/03/2025

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs' Counsel – Mr. Loitong

1st, 2nd and 3rd Defendants Counsel - Mr. Kimanzi

5th Defendant's Counsel - No appearance.

