



**Ngossorr v Kumari & 4 others (Environment & Land Case
E108 of 2022) [2024] KEELC 502 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 502 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E108 OF 2022
LC KOMINGOI, J
FEBRUARY 1, 2024**

BETWEEN

JOSEPH KETASHEI OLE NGOSSORR PLAINTIFF

AND

KISIOKI OLE KUMARI 1ST DEFENDANT

KIMANA TIKONDO GROUP RANCH 2ND DEFENDANT

DANIEL M NINA 3RD DEFENDANT

LAND REGISTRAR 4TH DEFENDANT

LAND ADJUDICATION DEPARTMENT 5TH DEFENDANT

RULING

1. In the Notice of Motion application dated 13th December 2022, the Applicant seeks orders;
 - i. Spent
 - ii. That the Plaintiff is the legal and bona fide owner of plot number previously Ltk/Kimana Tikondo/3333 and now Ltk/Kimana Tikondo/3331.
 - iii. That the Applicant has been in possession of the said parcel since 28th July 2010 till now, completely uninterrupted.
 - iv. That the 1st Defendant's sons and 3rd Defendant who is the chief decision maker and custodian of all documentation of the 2nd Defendant has fraudulently colluded with other parties to subvert the law by alleging that the parcel sold was half of the acres claimed by the Plaintiff.



- v. That the Applicant is apprehensive that Ltk/Kimana Tikondo/3331 is being transferred malicious (sic) with issuance of a fake title number by the 3rd Defendant confirming all the malice and greed by the Defendants.
 - vi. That unless restrained by the Hon. Court, the 1st Defendant's family, 2nd Defendant and 3rd Defendant may cause chaos as they attempt to dispossess or even transfer the land parcel Ltk/Kimana Tikondo/3331.
 - vii. That if the orders sought are not granted the Plaintiff will suffer significant prejudice and irreparable damage having acquired the property lawfully.
 - viii. That the Applicant has successfully placed a caution at the Land Registry.
 - ix. That the costs for the application be in the cause.
2. The grounds are on the face of the application. It is supported by Affidavit of Joseph Ketashei Ngossorr who claims that on 28th July 2010 he entered into an agreement with the 1st Defendant/ Respondent Kisioki Ole Kumari, (deceased) to purchase property Loitoktok/Kimana Tikondo/3333 measuring approximately 60 acres registered in the 1st Defendant/ Respondent's name which is part of parcels of land owned by the 2nd Defendant/Respondent. That notwithstanding, during adjudication and allocation the 2nd Defendant/Respondent with consent from the members changed the allocated land 3333 from the 1st Defendant/Respondent to 3331 which was the adjacent land. This change was confirmed and counter signed by the 3rd Defendant/Respondent and parcel number 3333 was assigned to a different person who has since subdivided it. The Plaintiff/Applicant claims that upon issuance of title, the land indicated was less than the land he purchased and that the 1st and 3rd Respondents have refused to complete the transfer of the land to him adding that the 1st Defendant/Respondent's family has interest over the parcel and he stands to suffer substantial loss and damage if the transfer is not effected.
 3. The Application is opposed. There is a Replying Affidavit sworn by Nalani Ene Kision (the wife of the late Kisioki Ole Kumari). She claims that suit property 3331 is her matrimonial home where she lived together with her late husband and their children and there was never an agreement to sell it to the Plaintiff/Applicant. She further avers the sale agreement is in reference to parcel number 3333 which is separate and distinct from their parcel 3331. She also avers that parcel number 3331 has neither been transferred to anyone nor has she consented to such transfer. She also pointed out that the signature on the sale agreement was different from the one on the transfer form where one was a signature while the other one was a finger print. It is her case that if any title is held by the Plaintiff/Applicant, it was acquired illegally and fraudulently in a quest to dispossess her and her family of their property. She prays that, the application be dismissed with costs and a permanent injunction be issued restraining the Plaintiff/Applicant from interfering with the suit property.
 4. The 3rd Defendant/Respondent filed grounds of opposition stating that the application was fatally defective as it lacked prayers and it was hard to discern the reliefs sought and ought to be dismissed with costs.
 5. The application was canvassed by way of written submissions.

The Plaintiff/Applicant's Submissions

6. The Applicant did not file his submissions.



The 1st Defendant/ Respondent's Submissions

7. On whether there was transfer of interest of land Loitoktok/Kimana Tikondo/3331 counsel submitted that the documents adduced by the Plaintiff/Applicant were marred with discrepancies such as the sale agreement which was for land 3333 which was different from land 3331. As such, there was no sale agreement for land 3331 as stipulated by Section 3(3) of the Law of Contract Act and there was also no spousal consent on the application for Land Control Board consent which was a requirement under Section 28 and 93 of the Land Registration Act when the alleged agreement was entered in 2010. Therefore, the transfer was defective citing Peter Mbiri Michuki vs Samuel Mugo Michuki [2014] eKLR, Patrick Tarzan Matu vs Nassim Shariff Abdulla & 2 others [2009] eKLR and Kadzo Mkutano vs Mukutano Mwamboje Kadosbo & 2 others [2016] eKLR.
8. Counsel added that the alleged transfer documents also made reference to land 3333 and there was no evidence of payment of stamp duty. Therefore, the title in possession of the Applicant was fake and illegally/ un-procedurally acquired and the Applicant should be permanently restrained from interfering with the suit property and the suit be dismissed with costs.
9. The 2nd Defendant/Respondent's counsel intimated to the court on 7th November 2023 that they would not be filing any submissions, but would rely on the 1st and 3rd Defendants/Respondent's submissions.

The 3rd Defendant/Respondent's Submissions

10. Counsel submitted that parties are bound by their pleadings and the application was fatally defective as it did not spell out orders sought and the defect could not be cured by Article 159(2)(d) of the Constitution. The court could not therefore not grant orders not sought and the application should be struck out with costs as was held in Geoffrey Kinja v Gilbert M'Mbijiwe & another [2015] eKLR, Francis Omondi Odhiambo v Hippolitus Omondi Ochieng [2022] eKLR, PMM v MGM [2021] eKLR, Mary Muthoni Nyamu vs Adephine Nyabikari [2022] eKLR, Esate of Simiyu Nawanga (Suing through Peter Patrice Wafula Simiyu) v Shem Siya Kororia & Peter Kiminyi [2022] eKLR and the Court of Appeal in Caltex Oil (Kenya) Limited vs Rono Limited [2016] eKLR.

Analysis and determination

11. I have considered the pleadings, the Notice of Motion, the response thereto, the rival submissions, and the authorities cited. The issues for determination are:
 - i. Whether this application is merited;
 - ii. Who should bear the costs of this application?
12. Counsel for the 3rd Defendant/Respondent has sought striking out of the application on the ground that it only outlines facts of the case but does not specify the reliefs it sought.
13. Upon meticulous scrutiny of the instant application, I have labored a decipher the exact nature of the reliefs sought by the Plaintiff/Applicant. Regrettably, I find myself in concurrence with the learned Counsel representing the 3rd Defendant/Respondent who submitted that, apart from the prayer seeking the application to be certified as urgent, the remaining 'orders' presented in the application are, in essence, factual assertions regarding the circumstances of the case and does not seek any particular relief.



14. It is a well settled principle in that parties are strictly bound by the their pleadings. The courts, in their noble role as arbiters of justice, are precluded from granting reliefs that have not been explicitly pleaded and substantiated by the parties involved. Justice Mohammed Ibrahim, SCJ in the Supreme Court *Muriithi (Suing as the Legal Representative of the Estate of Mwangi Stephen Muriithi) v Janmohamed SC, (Suing as the Executrix of the Estate of Hon. Daniel Toroitich Arap Moi) & another* [2023] KESC 61 (KLR) remarked: "... it is by now well settled by precedent that parties are bound by their pleadings and the court is bound to resolve the case as presented by the parties..." Even the Constitutional mandate enshrined in Article 159(2)(d) that empowers courts to administer justice based on substantial justice without undue regard to technicalities finds itself unable to resuscitate the current predicament. This is because the absence of clearly outlined reliefs strikes at the very core of the application.
15. I also take note that the 1st Defendant/Respondent's Replying Affidavit was sworn by Nalani Ene Kision who claims to be the wife of the late Kisioki Ole Kumari who passed away after the suit was instituted. Whereas Section 82(a) of the *Law of Succession Act* grants Personal representatives' powers to act on behalf of the estate of a deceased person no evidence was placed before court to show that the alleged wife indeed has legal authority to represent the estate of the deceased.

Section 82(a) of the *Law of Succession Act* provides that;

"Personal representatives shall, subject only to any limitation imposed by their grant, have the following powers- (a) to enforce, by suit or otherwise, all causes of action which, by virtue of any law, survive the deceased or arising out of his death for his personal representative."

16. In absence of this, any dealing with a deceased person's property amounts to intermeddling as espoused by Section 45(1) of the *Law of Succession Act* which provides that; (1) Except so far as expressly authorized by this Act, or by any other written law, or by a grant of representation under this Act, no person shall, for any purpose, take possession or dispose of, or otherwise intermeddle with, any free property of a deceased person.
17. Until her legal status is proved before this court and in the absence of Grant of Letters of Administration Nalani Ene Kisioni herein has no locus standi to defend the suit on behalf of Kisioki Ole Kumari.
18. In conclusion, I find no merit in this application and the same is dismissed with costs to the 1st – 3rd Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF FEBRUARY 2024.

L. KOMINGOI

JUDGE.

IN THE PRESENCE OF:

N/A for the Plaintiff/Applicant.

Mr. Monda for the 1st Defendant/Respondent.

N/A for the 2nd Defendant/Respondent.

Mr. Sankale for the 3rd Defendant/Respondent.

N/A for the 4th & 5th Defendants.



Court Assistant – Mutisya.

