



Karori (Administrator Ad Litem of the Estate of Late Nyambura Karori Kobitha) & another v Loontasati & another (Environment & Land Case 545 of 2017) [2024] KEELC 4548 (KLR) (3 June 2024) (Judgment)

Neutral citation: [2024] KEELC 4548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 545 OF 2017**

MN GICHERU, J

JUNE 3, 2024

BETWEEN

JOSEPH NDEGWA KARORI (ADMINISTRATOR AD LITEM OF THE ESTATE OF LATE NYAMBURA KARORI KOBITHA) 1ST PLAINTIFF

NJERI KARURI JOHN THIMBA KARORI (ADMINISTRATOR AD LITEM OF THE ESTATE OF LATE MUTHONI KARORI) 2ND PLAINTIFF

AND

ELIUD LOONTASATI 1ST DEFENDANT

ANDREW LETIA MOOKE 2ND DEFENDANT

JUDGMENT

1. The plaintiffs seek the following reliefs against the defendants.
 - a. Eviction orders against the 1st and 2nd defendants from all the land known as Kajiado/Elangata-Wuas/604, suit land.
 - b. Permanent injunctions restricting the 1st and 2nd defendants from entering and/or interfering with the suit land in any manner whatsoever.
 - c. General damages.
 - d. Costs of this suit and interest thereon.
 - e. Any other relief as the court may deem fit and just so to grant.

This is as per the amended plaint dated 1/2/2021.



2. The plaintiffs' case is as follows. The suit land belonged to the late Karori Kobitha but he died before the land was registered. The deceased had five wives namely Nyambura Karori, Muthoni Karori, Wairimu Karori, Wanjiku Karori and Njeri Karori. The first four wives are deceased and only Njeri Karori the second defendant is alive. This is the reason why the 1st and 3rd plaintiffs are parties by virtue of being the administrators of the estates of their mothers.

The five wives of the deceased are the registered owners of the suit land which measures approximately 109.3 hectares. The 1st defendant is the registered owner of L.R. Kajiado/Elangata/Wuas/374. He and the 2nd defendant trespassed upon the suit land and occupied 50 acres without the consent of the plaintiffs. The plaintiffs filed this suit so that the defendants may be evicted from the suit land.

3. In support of their case, the plaintiffs filed the following evidence.
- i. Witness statements by Nyambura Karori, Njeri Karori, Muthoni Karori, Njogu Karori Koipitat, Samuel Ngugi Karori, David Letela, Haron Karori and John Karori.
 - ii. Copy of limited grant in the estates of Muthoni and Nyambura Karori.
 - iii. Certified copies of title deed for L.R. Elangata/Wuas/1,606 and 2245.
 - iv. Copy of minutes of Elangata – Wuas group ranch meeting held on 29/4/1999.
 - v. Copy of Elangata Wuas members register.
 - vi. Copy of members allocation sheet.
 - vii. Copy of map for the entire group ranch.
 - viii. Copy of green card for L.R. 374.
4. The defendants, through counsel on record filed a written statement of defence dated 24/7/2013 in which they aver as follows.

Firstly, in the year 1989 they were members of Elangata Wuas Group Ranch which owned L.R. Kajiado/Elangata-Wuas/1.

Secondly, some members of the Group Ranch filed HCCC No. 385 of 2002 where an order was made that the members of the ranch be allocated land in accordance with the wishes of the majority.

Thirdly, the wishes of the majority had already been expressed through a meeting of the group ranch in October 1989 that agreed that upon subdivision of the ranch, the 1st defendant be allocated parcel no. 171 measuring 38 hectares being the area that he had occupied uninterrupted for 24 years by then and which he had extensively developed. The plaintiffs had also been allocated land that they had occupied for years.

Fourthly, when the subdivision of the ranch took place, the defendants found themselves having been issued with title deed for L.R. 374 which did not correspond with the area they had been occupying which had been given number 171 and was 70 kilometers away from the area they were in occupation of.

Fifthly, the plaintiffs were allocated L.R. No. 604 which was in the very place that the defendants had occupied for 24 years.



Sixthly, no verification was carried out to establish the extent of occupation by the defendants before allocating land that they had occupied and developed to the plaintiffs. It would therefore be unconstitutional to evict the defendants from the suit land.

5. In addition to the defence, the defendants filed a counterclaim against Nyambura Karori Kobitha, Njeri Karuri, Muthoni Karuri, District Land Registrar Kajiado, The Attorney General, Sinkeen Ole Kamau Parsayo, Wanjiku Karuri Kubitha, Sarah Wairimu, Joseph Mopel Kisenya, Ntakai Lelit, Wambui Tinina Ole Kamau, Hanana Tinina Ole Kamau, Joseph Kisenya and Lemindo Wuama in which they seek the following orders.

- i. A declaration that title Numbers Kajiado/ Elongata-Wuas/543, 582, 603, 604, 631, 632, 633 and 636 were wrongfully or fraudulently or in disregard of the law and therefore conferred no rights to the holders.
- ii. Title Numbers Kajiado/Elongata-Wuas/543, 582, 603, 604, 631, 632, 633 and 636 be cancelled.
- iii. The Registrar of Titles be compelled to issue a title deed in respect to the allotment and subdivision 171 issued to members of the Group Ranch and in conformity with the law and the court order in HCCC 385/2002.
- iv. Costs of this suit and counterclaim be given to the defendants.
- v. Further or other relief that the court would deem fit.

6. In the counterclaim the defendants aver as follows.

Firstly, they were born in the portion that they now occupy and they became members of ranch by virtue of occupation of the land.

Secondly, it was agreed and understood by all members of the group ranch that allocation would be on the land occupied by the allottee and the developments thereon.

Thirdly, it was the duty of the Land Registrar to issue title deeds according to development and occupation but the registrar disregarded all this.

Fourthly, the defendants were allocated land 70 Kilometers away from where they have lived and the land allocated does not have roads, school or hospitals and it is hostile and inhabitable (sic).

Fifthly, there was fraud in issuing title deeds without carrying out physical survey, without consultation, without considering occupation and without following the law.

Finally, the only suit between the parties was HCCC 1678/2005 which was dismissed for want of prosecution without determining the rights of the parties.

For the above and other reasons, the defendants pray for the dismissal of the plaintiffs suit and for judgment to be entered as per the counterclaim.

7. In support of their case, the defendants filed the following evidence.

- a. Witness statements by Eliud Simel Loontasati and Andrew Letia Mooke dated 13/8/2013.
- b. Elangata Wuas Group Ranch subdivision parcels area list.
- c. Copy of court order dated 19/5/2005 in HCCC 385/2002.
- d. Copy of minutes for land allocation in relation to the 1st defendant and Mbogua Koipitat.



- e. Copy of map on the proposed subdivision of the group ranch dated May 1997.
 - f. Copies of court orders dated 11/3/2005 and 4/4/2005.
 - g. Copies of title deed for Kajiado/Elangata-Wuas/1 and 374.
 - h. Copy of receipt for Kshs. 21, 300/- dated 30/5/2005.
8. At the trial on 22/11/2023 two witnesses namely John Karori and Haron Karori testified on behalf of the plaintiffs. They reiterated their case as per the witness statements and pleadings. They were then cross-examined by counsel for the defendants. On the part of the defendants, it is only Eliud Singeen Loontasati who testified. He too adopted his witness statement and pleadings before he was cross – examined by the plaintiffs’ counsel.
9. As required by Order 18 Rule 2 (2) of the *Civil Procedure Rules*, the defendants’ counsel was directed to file and serve written submissions first and to do so by 15/2/2024 and the plaintiffs’ counsel by 7/4/2024. Counsel for the defendants did not comply and at the time of writing this judgment in late May, only the plaintiffs’ counsel’s submissions are on record.
10. The issues identified by the plaintiffs’ counsel for determination in this case are as follows.
- i. Whether the defendants are in unlawful occupation of the plaintiffs’ land.
 - ii. Whether the eviction orders sought herein should issue.
 - iii. Whether the 1st defendant’s counter claim has merit.
 - iv. Whether the defendants should be condemned to pay damages.
 - v. Whether the defendants should pay the costs of the suit.
11. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and testimony at the trial. I have also considered the issues identified by the plaintiffs’ counsel and I find that they are sufficient to determine the dispute. I make the following findings on the issues.

On the first issue, I find that the defendants’ occupation of the plaintiffs and is not lawful for the following reasons.

Firstly, the defendants who have the burden of proof have not produced the minutes of the group ranch meeting that said that they be allocated the land that they occupied prior to the subdivision of the ranch. Such evidence is very crucial and would form the core of their defence and counterclaim. Before the subdivision of the group ranch, all members were tenants in common and none of them owned any particular land before allocation. It is the allocation that determined which particular parcel a member owned.

Secondly, it is at the allocation stage that the defendants would have complained about being moved from the land they had always occupied to the one they say is 70 Kilometers away. At that stage, the decision of the majority of the group ranch members would have determined the dispute one way or the other. It is now too late in the day to complain about allocation.

Thirdly, if the decision of the High Court in HCCC 385 of 2002 was that land in group ranch be allocated in accordance with the wishes of the majority and that decision was made after the year 2002, there is no way that the defendants can say that the decision of the majority had already taken place in 1989 which was about 13 years earlier. The decision of the majority of members referred to must be a decision after the order of the court but not one made before.



Finally, on this issue, the rights of a proprietor of land as envisaged in Sections 24 and 25 are absolute and the trespass by the defendants on the suit land is inconsistent with such rights of the plaintiffs.

12. On the third issue of whether the 1st defendant's counterclaim has merit, I find that it does not have merit. In the counterclaim the 1st defendant has pleaded four instances of fraud. Fraud must be proved to a standard higher than the ordinary standard in a civil case. This means proof to a degree between balance of probabilities and beyond reasonable doubt. See the Case of Ndolo –versus- Ndolo Civil Appeal No. 128 of 1995. The defendants have not proved any fraud in the issue of title deeds, that nobody was supposed to move from the area occupied or that any court order was disobeyed. If a court order had been disobeyed at the time, it was up to the aggrieved party to seek redress from the court that had issued the order alleged to be breached. That court would surely have punished the party in breach of its lawful order.
13. As for general damages, the plaintiffs would ordinarily be entitled to such damages. However a look at the plaint and the witness statements by the plaintiffs does not bring out the claim on general damages. Not a single paragraph in the plaint or in the witness statements is devoted to the claim for damages. The witnesses have not said anywhere that they have lost grazing or farming land and for how long. The claim for damages is more elaborate in the submissions than where it ought to be, in the pleadings and evidence.
14. On the issue of the orders that are appropriate in the circumstances of the case, I find the plaintiffs are entitled to orders in prayers (a), (b) and (d) of the amended plaint dated 1/2/2021. They are also entitled to the costs of the counterclaim.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 3RD DAY OF JUNE 2024.

M.N. GICHERU

JUDGE

