



Kasikua & another (Suing as Widow and Personal Representative of Mula ole Nkurne Kasikua - Deceased) v National Land Commission & 20 others (Environment & Land Case 950 of 2017) [2024] KEELC 6928 (KLR) (16 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6928 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 950 OF 2017
MN GICHERU, J
OCTOBER 16, 2024**

BETWEEN

**NTETEI MULA KASIKUA 1ST PLAINTIFF
JOSEPH RAKARO MULA 2ND PLAINTIFF
SUING AS WIDOW AND PERSONAL REPRESENTATIVE OF MULA OLE
NKURNE KASIKUA - DECEASED**

AND

**NATIONAL LAND COMMISSION 1ST DEFENDANT
CHIEF LAND REGISTRAR, KAJIADO 2ND DEFENDANT
COUNTY LAND REGISTRAR, KAJIADO 3RD DEFENDANT
STEPHEN KARIMI MURUGA 4TH DEFENDANT
JOSEPH NDEGWA KAMAU 5TH DEFENDANT
DANIEL KINYANJUI NJENGA 6TH DEFENDANT
HENRY HINGA KAREITHI 7TH DEFENDANT
GIDEON LENANA NAKUO 8TH DEFENDANT
MILLENIUM THENGE COMPNAY LIMITED 9TH DEFENDANT
JOSEPH WARARI GATHOGA 10TH DEFENDANT
PETER KABIRO KOMU 11TH DEFENDANT
MURITHI ADSON 12TH DEFENDANT
SAMUEL ANTHONY OUYA 13TH DEFENDANT
DOROTHY CLEMENTINE OTIENO 14TH DEFENDANT**



BETTY OMBUNGU DADO	15 TH DEFENDANT
PERCY CHEPKOSGEI	16 TH DEFENDANT
MOSES KIPNGENO RUGUT	17 TH DEFENDANT
EVA JEPCHIRCHIR MAINA KITARIA	18 TH DEFENDANT
MICHAEL WANGAI WAIHENYA	19 TH DEFENDANT
LUCY MURUGI MIANO	20 TH DEFENDANT
JANE WANJA NDWIGA	21 ST DEFENDANT

JUDGMENT

1. The plaintiffs seek the following reliefs against the defendants both jointly and severally.
 - a. An order under Section 26 of the *Land Registration Act* cancelling title deeds to L.R. Kajiado/Kisaju/1597, 1598, 1599, 1600, 1601, 1602, 1603 and all further and subsequent subdivisions/ title deeds namely, Kajiado/Kisaju/1623 – 1624, Kajiado/Kisaju/2992 – 2993, Kajiado/Kisaju/1966 – 1969, Kajiado/Kisaju/2277 – 2279, Kajiado/Kisaju/5762 – 5773, Kajiado/Kisaju/9083 – 9106 and all transactions accruing therefrom be declared null and void.
 - b. A mandatory injunction directed to the Chief Land Registrar that all entries in the register and/or green cards from the date of the deceased’s death on 8/9/1993 be and are hereby cancelled and declared null and void.
 - c. A permanent injunction restraining the defendants, their kin, agents, servants or anyone claiming under them from trespassing, ingressing, cultivating, selling, transferring, further subdividing, building, disposing or in any other manner interfering with L.R. No. Kajiado/Kisaju/598 or any subsequent subdivision thereof.
 - d. A declaration that L.R. No. Kajiado/Kisaju/598 or any subsequent subdivisions and title deeds accruing therefrom are illegal, null and void.
 - e. A declaration that L.R. No. Kajiado/Kisaju/598 and any subsequent subdivisions thereof belong to the deceased’s estate and the rightful beneficiaries to the exclusion of the defendants or anyone claiming title under them whatsoever.
 - f. A permanent injunction restraining the defendants, their kin, agents, servants or anyone claiming under them from doing or suffering to be done any act or omission that will in any way interfere with the extent, boundaries and/or acreage of the suit land or any subsequent subdivisions thereof.
 - g. General damages for fraud and loss of use.
 - h. Mesne profits since 1996.
 - i. Costs of this suit.
 - j. Interest on (g), (h) and (i) above until payment in full.
 - k. Any other relief that this court may deem just and fair to order.

This is as per the amended plaint dated 11/5/2017



2. The plaintiffs' case is as follows. They are wife and son of Mula Ole Nkurne Kasikua now deceased. The late Mula was the registered owner of L.R. Kajiado/Kisaju/598. He got registered on 31/7/1989. The land measured 20.242 hectares or 50 acres. Mula died on 8/9/1993 when the suit land was intact. Soon after his death, his house was broken into under suspicious circumstances and several crucial documents including the original title deed for the suit land was stolen.
3. In the year 2010, the 1st plaintiff petitioned for the letters of administration vide Kajiado Succession Cause No. 53 of 2010. She was issued with the letters of administration including a certificate of confirmation of grant. When she set out to distribute the estate of the deceased, she was shocked to find out from the Land Registry that the suit land which was the only property that the deceased owned, had been fraudulently subdivided and distributed without her knowledge as wife and without any grant of letters of administration whatsoever. Upon making inquiry, she learnt that on 18/10/1996, the suit land had been fraudulently subdivided at the instance of and for the benefit of the 4th to 21st defendants who became the new registered proprietors of the suit land in varying acreages. She was issued with copies of green cards which confirmed how much land each of the 18 defendants got. The 1st plaintiff blames the 2nd and 3rd defendants for carelessness, negligence and being compromised so as to condone the registration of improper, incomplete and fraudulent documents. The fraud was reported to the Kajiado CID office who took action. The defendants are guilty of criminal and fraudulent traits and they are wasting and diminishing the deceased's estate.
4. At paragraph 12 of the plaint, many particulars of fraud have been pleaded. They include deliberately and fraudulently subdividing the suit land without letters of administration; forging the deceased's signature on the mutation form dated 18/10/1996 and on the transfer forms 3 years after the death as well as or other relevant documents, taking possession of the deceased's original title deed and concealing the same from his personal representatives, misleading of the Land Registrar and other authorities that the signatures belonged to the deceased; registering two of the subdivisions in the names of the deceased's sons without their knowledge in a bid to conceal the irregularities and blatant fraud and other particulars.

For the above and other reasons, the plaintiffs filed this suit praying for the orders enumerated in paragraph (1) above.
5. In support of their case, the plaintiffs filed the following evidence.
 - i. 1st plaintiff's witness statement dated 19/5/2015.
 - ii. Copy of certificate of confirmation of grant in Succession Cause No. 53 of 2010 Kajiado CM's Court dated 22/10/2013.
 - iii. Copy of amended certificate of confirmation of grant dated 23/2/2016.
 - iv. Copies of green cards for L.R. Nos Kajiado/Kisaju/598, 1597 – 1603, 1624, 1966 – 1969, 2277 – 2279, 5762 – 5773, 9083 – 93, 9095 – 9099.
 - v. Copies of title deed for L.R. Kajjado/Kisaju/ 598 and 3191.
 - vi. Copy of certificate of official search for L.R. 3191.
 - vii. Copy of certificate of death.
 - viii. Copy of mutation form for L.R. No. 598.
 - ix. Copy of letter by Senior Chief Kisaju Location dated 6/5/2015.



- x. Copy of letter by Joseph Rakaro Mula dated 16/10/2024 to Kajiado County Land Management Board.
 - xi. Copy of letter by Kajiado County Land Management Board L.R. Kisaju/598 dated 20/8/1996.
 - xii. Copies of consent and application for consent for L.R. Kisaju/598 dated 20/8/1996.
 - xiii. Copy of receipt no. 716358 dated 13/10/1996 issued by Ministry of Lands for L.R. No.598.
6. If the Attorney General filed a written statement of defence on behalf of the 2nd and 3rd defendants, I did not see it on record. What I have seen is a witness statement by Paul Tonui, Land Registrar dated 16/8/2018 and the following documents.
- i. Copies of green card for L.R. Kajiado/Kisaju/598, 1597, 1598, 1599, 1600, 1601, 1602 and 1603.
 - ii. Copy of presentation book.
 - iii. Mutation forms for Kajiado/Kisaju/598, 1597, 1598, and 1599.
 - iv. Transfer forms for Kajiado/Kisaju/1599, 1601 and 1603.
7. In the witness statement, the District Land Registrar states as follows. Firstly, L.R. No. 598 was first registered in the name of Mula Ole Nkurne Kasikua on 31/7/1989 and a title deed issued in his favour on the same date. Secondly, on 18/10/1996, a mutation form was presented and booked for registration under Day Book No. 262. Thirdly, on the basis of the said mutation L.R. No. 598 was closed on subdivision and it gave rise to Kajiado/Kisaju/1597, 1598, 1599, 1600, 1601, 1602 and 1603 all registered in the name of Mula Ole Nkurne Kasikua. Fourthly, on the same date of 18/10/1996, a transfer was also booked for registration under day book No. 264 transferring L.R. No. 1603 to Lucy Murugi Miano who transferred it to Jane Wanja Ndwiga on 11/4/2012 and it was finally closed on subdivision on 27/3/2013 and its new numbers were 9083 – 9106. Fifthly, on 24/10/1996, land parcels Numbers 1602, 1601 and 1600 were transferred under day books 339, 338 and 340 to Michael Wangai Waihenya, Dorothy Clementine Otieno and Samuel Anthony Duya respectively. Sixthly, L.R. No. Kajiado/Kisaju/1601 was later closed on subdivision and its new numbers were 5762 – 5773. Seventhly, L.R. No. Kajiado/Kisaju/1597 under day book 121 was closed on subdivision on the same date and its new numbers were 1623 and 1624. Eighthly, on 16/10/1999 L.R. No. Kajiado/Kisaju/1596 was transferred to Joseph Kararu Mula and later Stephen Karimi Muruga under day book Numbers 76 and 77 respectively. It was closed on subdivision on 11/8/2000 and its new numbers were 1966 – 1969. Ninthly, L.R. No. Kajiado/Kisaju/1599 was transferred to Gideon Lenana Nakuo on 27/8/2001 under day book No. 360. It was later transferred to Millenium Thenge Company Limited, Joseph Warari Gathoga and Peter Kibiru Kamau on 15/11/2001 and finally closed on subdivision on the same date and its new numbers were 2277 – 2279. Tenthly, some of the above subdivisions have already been transferred to other people. Eleven, the mutation for L.R. No. 598 was properly presented and there was nothing in the register to show that the registered owner was deceased. Twelve, the transfers were also executed by Mula Ole Nkurne Kasikua himself hence no suspicion that he might have passed on. Thirteen, the people who purchased these parcels should explain how they obtained the transfers when the owner of the L.R./Kajiado-Kisaju/598 is purported to have already passed on. Finally, the 2nd and 3rd defendants acted within their mandate and on the basis of documents presented at the land registry and therefore the suit against them should be dismissed with costs.



8. The 4th and 5th defendants filed a written statement of defence dated 3/7/2015 in which they averred as follows. Firstly, they aver that Mula Ole Kurne Kasikua did not die on 8/9/1993. Secondly, they deny any fraud on their part and any involvement in subdividing the estate of the deceased. Thirdly, it is their contention that it is the deceased who signed for the subdivision in the mutation form, the land control board, the transfer form and the person that they dealt with was the registered owner himself. Finally, they deny all the averments in the plaint dated 11/5/2017. The two defendants did not file any other material except the defence.
9. I have seen a replying affidavit by the 7th defendant on record. It is dated 25/11/2015 and it was filed by Ochieng Omolo Advocates. In the affidavit the 7th defendant says that he bought L.R./No. Kajiado/Kisaju/1969 from one Joseph Ndegwa Kamau, the 5th defendant. He denies any fraud on his part. I have not seen any other pleading filed by this defendant.
10. The 8th defendant filed a written statement of defence dated 10/9/2017 in which it is averred as follows. Firstly, the plaintiffs were involved in the transaction involving L.R. No. Kisaju/598.
Secondly, the particulars of fraud are denied and it is the contention of the 8th defendant that the subdivision was done with knowledge of the 1st plaintiff and her sons who are not parties to this suit. Thirdly, the 8th defendant avers that the suit land was divided into the parcels as pleaded but this was before he himself purchased them. Fourthly, all the defendants who bought the land are innocent purchasers for value. Finally, it is contended that the plaintiffs knew about the transactions and that is why they took no action for close to 17 years and the court should not take away land from the bonafide purchasers. For the above and other reasons, the 8th defendant prays for the dismissal of the plaintiffs' suit.
11. In support of his case, the 8th defendant filed the following evidence.
 - i. Witness statements by himself and Sue Angela Mwaura.
 - ii. Copies of sale agreements dated 20/10/1996, 23/9/1999 between the 8th defendant and Daniel Nkiiju Mula, Samuel Matasha Mula and Joseph Rakaro Mula.
 - iii. Copies of application for consent, letter of consent and mutation for the subdivision of the suit land all dated August and October 1996.
 - iv. Certified copy of the green card for L.R. 598 and a copy of the cancelled original title for the land.
 - v. 29 petty cash vouchers showing that Samuel Mula and Joseph Mula received a total of Kshs. 348,000/- from the 8th defendant between 2/4/1999 and 29/9/2000 for L.R No. 1599 and 1598 respectively.
 - vi. Copy of statutory declaration dated 5/4/2016 by Edward Joseph Singe.
 - vii. Copy of letter from Kibera Law Courts showing that the 8th defendant stood surety for Samuel Matasha Mula in Criminal Case No. 4345 of 2003.
12. The 13th and 14th defendants through their counsel on record filed a written statement of defence dated 23/11/2015 in which they aver as follows. Firstly, they deny the plaintiffs' claim in its entirety. Secondly, they are bonafide purchasers of their parcels. Finally, they did not receive any notice of intention to sue. In addition to the written statement of defence, the two plaintiffs filed the following evidence.
 - i. Copy of sale agreement dated 30/9/1996 between the 8th and 13th defendants.



- ii. Copy of sale agreement dated 30/9/1996 between the 8th and 14th defendants.
 - iii. Copy of charge for L.R. Kajiado/Kisaju/1601 dated 27/11/1996.
 - iv. Copies of title deeds for L.R. Nos. Kisaju/1600 and 1601 dated 24/10/1996 in the names of the 13th and 14th defendants respectively.
 - v. Copy of judgment in Kajiado CM Criminal Case No. E1705/2015 dated 25/5/2023.
 - vi. Copy of verification of fingerprint impression of Daniel Nkijju Mula ID No. 11680961.
13. The 20th defendant, through counsel on record filed a written statement of defence dated 24/7/2017 in which she avers as follows. Firstly, the plaintiffs' case is denied in its entirety. Secondly, she bought 2 hectares of land from the 8th defendant for Kshs. 350,000/- in the year 1993 and received the title deed in the year 1996. In the year 2012 the 20th defendant sold her parcel to the 21st defendant. Thirdly, the plaintiffs reside in the same locality of the suit land so they cannot pretend that they are not aware of the purchase of the land by the 20th defendant. Fourthly, this suit has been filed as an afterthought because since 1996, the plaintiffs have known about the defendants' ownership of the land. For the above and other reasons, the 20th defendant prays for the dismissal of the plaintiffs' suit.
14. In support of her case, the 20th plaintiff filed the following evidence.
- i. Her witness statement dated 21/1/2019.
 - ii. Copy of title deed for L.R. No. Kisaju/1603 dated 18/10/1996.
 - iii. Copy of receipt dated 28/4/2011.
 - iv. Copy of application for consent of the Land Control Board, which is undated.
15. The 21st defendant filed a written statement of defence dated 17/7/2017 in which she states as follows. Firstly, she denies the plaintiffs' claim in toto. Secondly, the plaintiffs are total strangers to her and she has never had any dealings with them as she purchased L.R. No. Kisaju/1603 from the 20th defendant for Kshs. 13 million in the year 2012. Thirdly, she is an innocent purchaser for value without any notice of any defect in title of the seller. Fourthly, the plaintiffs' claim is time barred for having been brought more than 12 years since the 21st defendant acquired title to her land.
- For the above and other reasons, the suit should be dismissed against her with costs.
16. In support of her case, the 21st defendant filed a witness statement dated 17/7/2017 and a copy of the sale agreement between her and the 20th defendant dated 15/3/2012.
17. At the trial which lasted from 24/7/2018 to 30/10/2023 Joseph Rakaro Mula testified on the part of the plaintiffs. On the part of the defendants, Lucy Murugi, Gideon Lenana, Samuel Ouya and June Wanja testified. All these witnesses reiterated what they have said in the pleadings even when they were under intense cross-examination.
18. Counsel for the parties filed written submissions between 24/11/2023 and 21/5/2024. The plaintiffs' counsel identified the following issues for determination.
- i. Whether L.R. No. Kajiado/Kisaju/598 was legally and regularly subdivided.
 - ii. Whether the defendants obtained their respective title deeds fraudulently and illegally.
 - iii. Whether the defendants are bona fide purchasers for value without notice.



iv. Whether the suit is time barred in view of Section 7 of the *Limitation of Actions Act*.

The submissions by learned counsel for the defendants are in agreement that the issues as identified by the plaintiffs' counsel will resolve the dispute. I find that the issues identified by learned counsel will resolve the dispute.

19. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and the testimony at the trial. I have also considered the law cited by learned counsel in the written submissions. On the first issue, I find that the suit land, namely Kajiado-Kisaju/598 was not irregularly subdivided. At paragraph 12 of the amended plaint a total of fourteen particulars of fraud have been pleaded. When a party pleads fraud, he is expected to prove fraud not merely on a balance of probabilities but to a higher standard. This was the holding in the case of Elizabeth Kamine Ndolo –versus- George Matata Ndolo Civil Appeal No. 128 of 1995.

“We start by saying that it was the respondent who was alleging that the will was a forgery and the burden to prove that allegation lay squarely on him. Since the respondent was making a serious charge of forgery or fraud, the standard of proof required of him was obviously higher than that required in ordinary civil cases, namely proof upon a balance of probabilities, but the burden of proof on the respondent was certainly not one of beyond a reasonable doubt as in criminal cases...”

There is evidence which I believe to show that both Samuel and Joseph Mula received substantial amounts of money amounting to over Kshs. 350,000/- from the 8th defendant between 2/4/1999 and 29/9/2000. The plaintiffs have not been able to explain why they received this money from the 8th defendant. In the absence of any explanation from them, I find that it was for the sale of the two parcels of land mentioned in the 30 or so petty cash vouchers that were produced as exhibits in this case and which show that the two sons of the registered owner of the suit land were selling land parcels numbers Kajiado/Kisaju/1598 and 1599. Secondly, in the criminal case whose judgment was produced as an exhibit by the 13th and 14th defendants in this case, the witness from the National Registration Bureau, Filbert Liwa found that the fingerprint impression affixed on page 2 of the mutation form registered on 18/10/1996 was identical to the left-hand thumbprint of Daniel Mula ID No. 11680961 as confirmed by the extract of the register printed on 26/8/2022. (see page 12 of the judgment in Criminal Case No. Kajiado MCCR/E1705/2015). At page 16 of the same judgment the learned trial Magistrate had this to say.

“even though PW2, PW3 and PW4 denied knowledge of the subject sale agreements, I find this to be untrue for the reasons that their personal details such as identity card number could not have been obtained in any other way save for the fact that they were willingly given out. Similarly, the title deed for the suit land in the name of Mula Ole Nkurne Kasikua (deceased) was cancelled following the mutation. I believe the lands office would not have done so unless issued with the original title deed which could only have been illegally accessed by PW1's close relatives following her complaint that it was lost...”

PW1 in the case was Ntetei Ene Mula, PW2 Joseph Mula, PW3 Daniel Mula and PW 4 Samuel Mula. These are the same people who received money from the 8th defendant and who thumb printed the mutation form for the subdivision of their father's land. Thirdly, under Section 32 of the *Law of Succession Act*, Kajiado County is one of the counties excluded from intestacy proceedings when it comes to agricultural land and livestock. Under Section 33 of the same Act the applicable law is custom applicable to the deceased's community or tribe.



In his book, Restatement of African Law, Engene Cotran had this to say at page 151,

“Inheritance under Maasai law is patrilineal. The pattern of inheritance is based on the distribution of all a man’s property (with few exceptions) to his eldest son of age (not necessarily the eldest son of his first wife). Widows are entitled to retain the property they received during their husbands’ lifetime but do not share in the inheritance”

This may explain why it is the sons of the deceased and not their mother, who took centre stage in selling the suit land. There can therefore be no fraud on the part of the defendants if it is the second plaintiff and his brothers who were selling the land and signing or thumb printing the mutation form.

20. Regarding the second issue, I find that the defendants’ obtained their respective title deeds procedurally and lawfully because it is the children of the deceased owner who obtained the consents of the Land Control Board among other procedures. The transactions involving the suit land, L.R. 598 are captured in all the records in the Land Registry including the presentation book. Officially, the lands office believed that it was the landowner transacting but it turned out that it was his sons led by Daniel Nkiiju Mula.

At page 16 of the judgment in the criminal case the learned trial Magistrate had this to say.

“On his part PW3 (the second plaintiff) confirmed to have seen the third parties constructing on the suit land but believed that his late brother one Matingoi had sold some parcels to them. However, it is my view that he lied with the sole purpose of diverting suspicion from himself as the main culprit to the dead who cannot speak. Turning to PW4 he vehemently denied knowledge of accused 1 (the 8th defendant) yet the latter stood surety for him in a criminal case at Kibera five years after the subject sale agreements had been executed...What is puzzling is the fact that ten years down the road PW 2 had a change of tune and proceeded to file a complaint against accused 1 (the 8th defendant) and other innocent buyers of the suit land”

At page 20 of the judgment, the learned trial Magistrate recommended that Joseph Mula, David Mula and Samuel Mula be investigated for giving false information, forgery and obtaining money by false pretenses. She found them unworthy of any credit. I too find that PW1 did not tell the truth and his evidence is materially false.

21. As for the third issue, I find that all the defendants paid valuable consideration for the suit land and they all obtained good titles to the land that they bought. The authenticity of their title deeds is confirmed by the evidence filed by the Attorney General which proves that all the procedural requirement were met.
22. The suit is not time barred if Ntetei Mula Kasikua is to be believed. This is because under Section 26 (b) of the *Limitation of Actions Act*, where an action is based on the fraud of the defendant or his agents, time does not begin to run until the discovery of the fraud. The plaintiffs claim to have discovered the fraud in 2010 when they petitioned for the grant of letters of administration. If that is the case, then they are not time barred. However, looking at the facts of this case, it is doubtful that the plaintiffs were not aware of the occupation of the suit land by the defendants. In the criminal case, Joseph Rakaro Mula said that he thought the defendants bought from his deceased brother Matingoi but we know this to be false because he was one of the sellers. It is also very suspicious how the grant was obtained. A grant cannot be confirmed before the administrators obtain a copy of certificate of official search for the land that they seek to administer. In 2010 when they filed the succession cause, L.R. No. Kajjado/Kisaju/597 was non-existent. Does the succession case file contain a certificate of official search for L.R.



No. 598 and if so, is it a genuine certificate? That question will linger and the plaintiffs should have answered it.

23. In conclusion and for the reasons already given, I find no merit in the plaintiffs' case and I dismiss it with costs to the defendants.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 16TH DAY OF OCTOBER 2024.

M.N. GICHERU

JUDGE

