



REPUBLIC OF KENYA



**KENYA LAW**  
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**Karei v Kisoso & 2 others (Environment & Land Case 55 of 2020)  
[2024] KEELC 6785 (KLR) (15 October 2024) (Judgment)**

Neutral citation: [2024] KEELC 6785 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 55 OF 2020  
MN GICHERU, J  
OCTOBER 15, 2024**

**BETWEEN**

**APURETI KAIPE KAREI ..... PLAINTIFF**

**AND**

**MUKAAMPA LELETA KISOSO ..... 1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, KAJIADO ..... 2<sup>ND</sup> DEFENDANT**

**HON ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants as per the amended plaint dated 165/3/2022.
  - a. A declaration that the plaintiff is lawful registered proprietor of L.R. Kajiado/Kaputiei-Central/571 situated in Kajiado County.
  - b. A declaration that the 1<sup>st</sup> defendant's acquisition of the title, if at all, was unlawful and fraudulent and as such no legal interest in the property can accrue to them.
  - c. A declaration that any entries in the register at the land registry that is inconsistent with the plaintiff's proprietorship as the owner thereof, is illegal, null and void.
  - d. An order for permanent injunction restraining the defendants whether by themselves or their servants, employees and or agents from entering, suing, transferring or in any other manner dealing adversely with the suit land.
  - e. An order that the officer commanding Mashuru Police Station do ensure compliance with any orders issued by the court in regard to prayer (d) above.
  - f. Damages for trespass and wrongful possession.



- g. Costs of and incidental to this suit.
  - h. Any other or further relief that the court may deem appropriate to award.
2. The plaintiff's case is as follows. He is the registered owner of the suit land which he acquired from Erankau Group Ranch and which he has owned and occupied for over 30 years. On 13/8/2020, the defendant suddenly, forcefully and illegally entered the suit land through proxies who cut down vegetation, dug holes and used poles to fence the suit land. It is then that the plaintiff became aware that the 1<sup>st</sup> defendant had fraudulently transferred the suit land to himself and other people. He is not aware of any cancellation of the title for the suit land. He is an innocent proprietor who is entitled to the protection of his right to property. The plaintiff pleads the following particulars of fraud and illegality against the defendants. Procuring a forged title to his property, purporting to claim ownership of the suit land yet there is trespass, purporting to acquire property rights over the suit land without paying any consideration and colluding with unscrupulous government officers in committing the irregularities and illegalities as aforesaid.
3. In support of his case, the plaintiff filed the following evidence.
- a. Witness by the plaintiff dated 22/2/2022.
  - b. Copy of title deed for L.R. KJD/Kaputiei/1057 in the name of the defendant.
  - c. Copy of title deed for L.R. KJD/Kaputiei-Central/1036 in the name of the plaintiff.
  - d. Copy of letters dated 5/6/2020 to the District Land Adjudication and settlement officer.
  - e. Copy of Erankau Group Ranch register as at 1/10/1968.
  - f. Copy of green card for L.R. No. 1036 and 1037.
  - g. Copy of receipt no. 586 1491 dated 17/3/2021.
4. The 1<sup>st</sup> defendant, in his written statement of defence and counterclaim dated 11/4/2022 denies the plaintiff's claim generally and then avers as follows. Firstly, the plaintiff is not owner of L.R. 571 because it does not exist as it was closed on subdivision into parcel numbers Kajiado/Kaputiei-Central/1036 and 1037. The former parcel is owned by the plaintiff and the latter by the 1<sup>st</sup> defendant. Secondly, it is the plaintiff himself who transferred LR. No. 1037 to the 1<sup>st</sup> defendant. Secondly, the 1<sup>st</sup> defendant has occupied L.R. No. 1037 since the year 2005 where he has been carrying out his pastoral and agricultural activities within the boundaries of his land and he has never trespassed onto the plaintiff's land. Thirdly, the 1<sup>st</sup> defendant owned L.R. Kajiado/Kaputiei-Central/808 which measured approximately 41.22 hectares which he exchanged with L.R. 1037 which measures 40.48 hectares. This exchange took place in the year 1985. The plaintiff took possession of the land which belonged to the 1<sup>st</sup> defendant and sold it to third parties while it was still in the 1<sup>st</sup> defendant's name. Fourthly, the 1<sup>st</sup> defendant's acquisition of L.R. No. 1037 was procedural, regular and lawful as the plaintiff signed all the instruments of transfer including the application for land control board consent and the mutation forms.
5. In the counterclaim, the 1<sup>st</sup> defendant prays for the following orders against the plaintiff.
- a. An order of permanent injunction restraining the plaintiff whether by himself or his family members, their servants, agents, employees and or anybody acting on their behalf from entering or interfering in any manner whatsoever with the 1<sup>st</sup> defendant's occupation, possession and use of L.R. 1037.
  - b. Dismissal of the plaintiff's suit with costs.



- c. Costs of the counterclaim.
  - d. Any other order that this court deems fit.
6. In support of his case, the 1<sup>st</sup> defendant filed the following evidence.
- i. Witness statement by himself, Kyule Kawai Mbatia, Korio Karumba Koyiet, Joseph Kingoo Kimuyu and Alex Mutevu Kalinge.
  - ii. Copy of mutation form for L.R. Kajiado/Kaputiei-Central/571 and also 808.
  - iii. Copy of title deed for L.R. 1037.
  - iv. Copies of green cards for L.R. 1036 and 1037.
  - v. Copies of agreements for sale of land between the plaintiff and David Kawai dated 23/9/1987, the plaintiff and Joseph Kingoo dated 15/2/1993 and the plaintiff and Norman Kiluilu dated 22/9/1993.
7. At the trial on 15/4/2022 and 27/5/2024, the plaintiff testified by adopting his witness statement and documents. He was then cross-examined by the 1<sup>st</sup> defendant's counsel. The 1<sup>st</sup> defendant just like the plaintiff also adopted his witness statement and documents as exhibits. He too was cross examined by the plaintiff's counsel. In addition to his testimony, he called two of his witnesses namely Korio Karumba Koyiet and Joseph Kingoo Kimuyu who testified as per their witness statements. The testimony of Joseph Kingoo is to the effect that he bought land from the plaintiff. The land that he bought from the plaintiff was in the name of the 1<sup>st</sup> defendant. The evidence by Korio Karumba is that in the year 1985 the plaintiff and the 1<sup>st</sup> defendant exchanged their two parcels of land each of which measured about 100 acres. Later on, the plaintiff sold all the land that he bought from the 1<sup>st</sup> defendant while the 1<sup>st</sup> defendant retained his.
8. Counsel for the parties filed written submissions dated 15/7/2024 in the case of the defendant and 16/8/2024 in the plaintiff's case. The plaintiff's counsel identified five issues as follows.
- a. Whether there was a valid sale of the suit land.
  - b. Whether the subdivision of the suit land and the acquisition of title to L.R. Kajiado/Kaputiei-Central/1037 was the result of fraud.
  - c. Whether there was trespass and if so by whom.
  - d. Whether the plaintiff is entitled to the reliefs sought including permanent injunctive orders.
  - e. Who is entitled to the costs of this suit.
- The defendants' counsels' submissions touched on the standard of proof where fraud is pleaded and urged that the plaintiff did not discharge the heavy burden of proof placed on him by the law.
9. I have carefully considered all the evidence adduced in this case by both sides including the witnesses statements, documents, and testimony at the trial. I have also considered the written submissions by the learned counsel for the parties. I find that there are only two issues to be determined in this case. They are as follows.
- i. Whether the plaintiff has proved fraud on the part of the defendants.
  - ii. Whether the 1<sup>st</sup> defendant has proved his counterclaim against the plaintiff.



10. On the first issue, I find that the plaintiff has not proved fraud on the part of the defendant for the following reasons. Firstly, the standard of proof where a party alleges fraud is higher than in ordinary cases. In such cases, fraud is required to be proved to a standard higher than a balance of probabilities but below proof beyond reasonable doubt like in criminal cases. See *Ndolo v Ndolo* (2008) KLR. In this case, the plaintiff has vide paragraph 22 of the plaint given four particulars of fraud. These are the particulars that I find not proved because there is evidence from the 1<sup>st</sup> defendant himself that he exchanged his land L.R Kajiado/Kaputiei-Central/808 with L.R. 1037. I believe this evidence which I find credible and consistent. It is also corroborated sufficiently in material particulars by the evidence of two old men, Korio Karumba and Joseph Kingoo who I found to be truthful. The exchange must have taken place because the land that the plaintiff sold to mzee Joseph Kingoo was in the name of the 1<sup>st</sup> defendant. Secondly, I do not believe that the 1<sup>st</sup> defendant suddenly invaded the plaintiffs land in year 2020. I am satisfied that the 1<sup>st</sup> defendant occupied the land that he exchanged with the plaintiff at the time of the exchange. I find the first defendant truthful. The plaintiff did not call even a single witness to corroborate his evidence.

For the above reasons, I find that the exchange between the plaintiff and the 1<sup>st</sup> defendant was voluntary and that the plaintiff signed all the necessary transfer documents in favour of the 1<sup>st</sup> defendant. The burden was on the plaintiff to produce the evidence of the forged documents. He fell short of this basic duty.

11. On the second issue, I find that the 1<sup>st</sup> defendant has proved his counterclaim against the plaintiff to the required standard on a balance of probabilities. He has called credible witnesses who know of the exchange of the land. One of the witnesses bought land from the plaintiff yet this land was in the name of the 1<sup>st</sup> defendant. The plaintiff has nothing to say about this strong and cogent evidence. He did not even file a reply to defence and defence to the 1<sup>st</sup> defendant's counterclaim or evidence to counter the overwhelming evidence on record. The first defendant, being the lawfully registered owner of L.R, No. 1037 is entitled to absolute ownership of his land together with all the privileges belonging or appurtenant thereto as per Sections 24 and 25 of the *Land Registration Act (Act No. 3 of 2012)*.

12. For the above stated reasons, I dismiss the plaintiff's suit against the defendants with costs. Secondly, I enter judgment for the 1<sup>st</sup> defendant against the plaintiff as prayed for in paragraph 29 of the defence and counterclaim dated 11/4/2022.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 15<sup>TH</sup> DAY OF OCTOBER 2024.**

**M.N. GICHERU**

**JUDGE**

