



REPUBLIC OF KENYA



**Katampe & another v Sinkori & 4 others (Environment & Land Case
9 of 2018) [2023] KEELC 19839 (KLR) (19 September 2023) (Judgment)**

Neutral citation: [2023] KEELC 19839 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 9 OF 2018
MN GICHERU, J
SEPTEMBER 19, 2023
(FORMERLY NAIROBI ELC NO. 1020 OF 2015)**

BETWEEN

JEREMIAH KATAMPE 1ST PLAINTIFF

MATIPEI OLE LEKAYA KODONYO 2ND PLAINTIFF

AND

JOHN LANTAN OLE SINKORI 1ST DEFENDANT

LAND REGISTRAR, KAJIADO 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

SALAU OLE LOLOMUNANTAUWA 4TH DEFENDANT

MATIKO OLE MAILOIYA 5TH DEFENDANT

JUDGMENT

1. The two Plaintiffs seek the following reliefs against the five Defendants jointly and severally.
 - a. A revocation and or cancellation of the title deeds commonly described as Kajiado/Kipeto A 2818, A 2819, A 2820 and A 2821 fraudulently issued to the first, fourth and fifth Defendants respectively in respect to the suit property.
 - b. A declaration that the title document acquired by one John Landan Ole Sinkori, the first Defendant herein over title no. Kajiado/Kipeto/A1168 was irregularly acquired and the same is null and void including the four subdivisions.
 - c. A declaration that the Plaintiffs are the legal owners of the original parcel No. A1168 including the subsequent subdivisions.



- d. An order of rectification directing the second and third Defendants to rectify the land register by cancelling the names of the first, fourth and fifth Defendants as the registered proprietors and restoring the names of the Plaintiffs as the registered proprietors of the suit property.
 - e. An order of permanent injunction restraining the Defendants whether by themselves, their servants, agents or otherwise from selling, disposing of, transferring, charging, pledging, leasing, wasting, developing or in any manner whatsoever or howsoever from interfering with or dealing with the suit premises.
 - f. The costs of this suit together with interest thereon at court rates from the date of filing of the suit until the date of payment in full. This is as per the amended plaint dated 19/6/2017.
2. The Plaintiffs' case is as follows. The first Plaintiff is the son of Mpoika Ole Kodonyo while the second Plaintiff is his brother. Mpoika Ole Kodonyo died on 20/5/2002. He was the original allottee of L.R. Kajiado/Kipeto A1168 measuring 52 acres by virtue of being a member of Oloiyankalani Group Ranch.
 3. By the time the deceased died, he did not tell anybody including the family members that he had sold the suit land. No person had come to the suit land to claim ownership or to occupy it. It is the family of the deceased that occupied and still occupies the suit land.
 4. In November 2014, the first Defendant went to the suit land and claimed that he had purchased it from the deceased. He added that he was in the process of selling it to third parties. This news from the first Defendant was a big surprise to the family of the deceased.
 5. Following the shocking revelation by the first Defendant, the family of the deceased visited the Ngong Land Registry to confirm the status of the suit land. They discovered that the first Defendant was at first registered as the proprietor of the suit land on 7/1/1997. He then subdivided it into four parcels as follows:-
 - i. Kajiado/Kipeto A 2818
 - ii. Kajiado/Kipeto A 2819
 - iii. Kajiado/Kipeto A 2820
 - iv. Kajiado/Kipeto A 2821The first Defendant then transferred L.R. A 2819 and A 2820 to the fourth Defendant and A 2821 to the fifth Defendant. He retained A 2818.
 6. The Plaintiffs contend that the fourth and fifth Defendants have occupied approximately twenty (20) acres of the suit land when this case is pending in court. They accuse the first, fourth and fifth defendants of many instances of fraud in their registration as owners of the suit land which include the following.
 - a. Causing the suit land to be transferred to themselves without the consent to subdivide or transfer from the relevant land control board.
 - b. Purporting to buy the suit land from the deceased owner without a sale agreement contrary to the law.
 - c. Failing to pay any consideration to the deceased owner of the suit land.
 - d. Many others.



7. In support of their case, the Plaintiffs filed the following evidence.
- i. Two witness statements dated 19/6/2017.
 - ii. Twenty seven documents which include a limited grant of letters of administration, demand letter, certificates of official search, statutory notice to the Attorney General, copies of register, copies of title deeds, copies of receipt, copies of application for consent and consents of the land control board among other exhibits.

8. The first, fourth and fifth Defendants filed a written statement of defence dated 26/12/2018 in which they aver as follows.

Firstly, the Plaintiffs have no proof that they represent the estate of the deceased since all that they have is a limited grant of representation without the consent of all dependants of the deceased.

Secondly, the first Defendant denies transferring the suit land illegally to himself and says that he bought it from the deceased through a sale agreement dated 20/9/2005.

Thirdly, the fourth and fifth Defendants are innocent purchasers for value who have already settled on the land they bought from the first Defendant.

Finally, they pray for the dismissal of the Plaintiffs' suit with costs.

9. In support of their case, the Defendants filed the following evidence.

- i. Witness statement by the first Defendant dated 24/10/2022.
- ii. Documents similar to those filed by the Plaintiffs with a few additions primarily being the agreements for sale between the first Defendant and the fourth and fifth Defendants.

In summary, the first Defendant's defence is that he bought the suit land from the deceased in 1997. At first he bought 25 acres. For consideration, he gave the deceased 25 cows, 40 goats and Kshs. 15,000/-. For the other 25 acres, he gave the deceased 25 cows and 35 goats. They both appeared before the Land Control Board which granted the necessary consent. A broker assisted him to obtain registration and he got a title deed for the suit land on 7/10/1999.

During the lifetime of the deceased he visited the suit land on several occasions and nobody complained. In the year 2005, he sold some of the suit land to his co-defendants. The fourth and fifth Defendants are neighbors to the Plaintiffs who are well aware that the suit land belongs to the first Defendant and that he sold part of it to the Co-defendants. He prays for the dismissal of the Plaintiffs' suit since there is no evidence of fraud on his part.

10. The second and third Defendants filed a written statement of defence dated 24/11/2016 in which they support the action of the second Defendant in registering the first, fourth and fifth Defendants as the owners of the parcels in their names. Regarding the transfer between the deceased and the first Defendant, the Attorney General has this to say;

“On 7th January 1997 the suit land was transferred to John Lantan Ole Sinkori by way of gift and a title deed issued on the same day”.

In support of his case, the Attorney General filed a total of 37 documents which are similar to the ones filed by the Plaintiffs and the other Defendants.

11. At the trial which lasted between 1/12/2019 and 8/11/2022, six witnesses testified. They included the two Plaintiffs, the first, fourth and fifth Defendants as well as the Land Registrar. They adopted their pleadings and they were then cross - examined by the adverse parties.



12. Counsel for the parties filed written submissions on 18/4/2023 and 19/4/2023 respectively. They identified the following issues for determination.
- i. Whether the first Defendant acquired L.R. Kajiado/Kipeto/A 1168 lawfully?
 - ii. Whether the Plaintiffs are the true representatives of the estate of the deceased?
 - iii. Whether the fourth and fifth Defendants are innocent purchasers for value of the parcels that they occupy?
 - iv. Others.

13. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents, evidence at the trial, the written submissions and the issues raised therein.

I find that the three issues identified above will resolve the dispute. The other issues are corollary to the three core issues.

14. On the first issue, I find that the first Defendant did not acquire the suit land, that is to say, Kajiado/Kipeto/A 1168 lawfully. The reasons for saying so are as follows.

Firstly, I find that there is no agreement for sale of the land between the first Defendant and the late Mpoika Ole Kodonyo. The absence of an agreement for sale of land is fatal to the legality of the transaction. My understanding of Section 3(3) of the *Law of Contract Act* is that all contracts for disposition of an interest in land must be in writing. The only exceptions to this legal requirement are mentioned in the proviso to the subsection as follows.

“Provided that this subsection shall not apply to a contract made in the course of a public auction by an auctioneer...nor shall anything in it affect the creation of a resulting, implied or constructive trust”.

Secondly, I am satisfied that the Defendants did not occupy the land during the lifetime of the deceased. Had they done so, they would be exempt from the provision of Section 3(3) of the *Law of Contract Act*. I find that the first Defendant sought to bring in his Co-Defendants to the land long after the deceased had died.

Thirdly, the first Defendant has not proved by cogent and credible evidence that he paid any consideration for the suit land. He did not call any witness to prove that he gave cash and livestock to the deceased for the land.

15. On the second issue, I find that the Plaintiffs have not proved that they are the only dependants of the deceased. They have not mentioned any other dependant anywhere in the pleadings yet in prayers numbers (c) and (d) of the amended plaint dated 19th June 2017, they are asking the court to declare them the legal owners of the original suit land. They are also asking that an order be made restoring their names as the registered owners of the suit land. Restoring is not the right word to use because the land was never in their names in the first place. It was in the name of Mpoika Ole Kodonyo. Restoration would be to him and not the Plaintiffs.



16. On the third issue, I find that the fourth and fifth Defendants are not innocent purchasers for value without notice of any defect in the first Defendant's title to the suit land. This is especially so due to Article 40(6) of the *Constitution of Kenya* which provides as follows.

“The rights under this Article do not extend to any property that has been found to have been unlawfully acquired”.

My understanding of this provision of the *Constitution* is that while the *Constitution* protects the right to own property, that protection does not extend to unlawfully acquired property. In the case of *Dina Management Limited –versus- County Government of Mombasa and Others* Petition No. 8 (E010) of 2021, the Supreme Court of Kenya had this to say on Article 40 of the *Constitution* at paragraphs 111 of the judgment dated 21/4/2013.

“Article 40 of the *Constitution* entitles every person to the right to property, subject to the limitation set out therein. Article 40(6) limits the rights as not extending them to any property that has been found to have been unlawfully acquired. Having found that the first registered owner did not acquire title regularly, the ownership of the suit property by the appellant thereafter cannot therefore be protected under Article 40 of the *Constitution*. The root of the title having been challenged, as already noted above the appellant could not benefit from the doctrine of bona fide purchaser”.

Similarly, in this case, the fourth and fifth Defendants cannot be protected by the doctrine of bona fide purchaser because the first Defendant who sold part of the suit land to them did not acquire the suit land lawfully.

17. For the above stated reasons, I find that the Plaintiffs have proved their case against the Defendants on a balance of probabilities. I enter judgment for them against the Defendants as prayed for in the amended plaint dated 19/6/2017 with an amendment to prayers (c) and (d) such that the suit land will revert to the estate of Mpoika Ole Kodonyo to be distributed to all his lawful heirs and not to Plaintiffs alone.

It is so ordered.

DATED,SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 19TH DAY OF SEPTEMBER, 2023.

M.N. GICHERU

JUDGE

HON. JUSTICE M.N. GICHERU

