



Tokoin ((Suing as the legal representative of Tokoin Ole Maison)) v Land Registrar Kajiado & 2 others (Environment and Land Miscellaneous Application E064 of 2021) [2023] KEELC 20411 (KLR) (3 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20411 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E064 OF 2021
MN GICHERU, J
OCTOBER 3, 2023

BETWEEN

NELSON TINIRET TOKOIN APPLICANT
(SUING AS THE LEGAL REPRESENTATIVE OF TOKOIN OLE MAISON)

AND

LAND REGISTRAR KAJIADO 1ST RESPONDENT
LAND ADJUDICATION OFFICER, KAJIADO 2ND RESPONDENT
NATAA ENE MEISON RAPATO 3RD RESPONDENT

RULING

1. This opinion is given pursuant to Section 86(1) of the [Land Registration Act](#) (Act No. 3 of 2012) which provides as follows:

“If any question arises with regard to the exercise of any power or the performance of any duty conferred or imposed on the Registrar by this Act, the Registrar or any aggrieved person shall state a case for the opinion of the court and thereupon the court shall give its opinion, which shall be binding upon the parties”.
2. Pursuant to the above provision, the original applicant Tokoin Ole Maison (now deceased and substituted by Nelson Tintimet Tokoin his eldest son) filed a case statement dated 18/10/2021 through his counsel on record. The case statement poses the following questions for the opinion of the court.
 - i. Whether the parcel of land comprised in the title No. Kajiado/Kaputiei – South 2226 is a derivative of Nkama Group Ranch?



- ii. Was Tokoin Ole Maison a member of the Nkama Group Ranch and if so, was he entitled as such member to benefit from its adjudication?
 - iii. Was Nataa ene Meison Rapatao a member of the Nkama Group Ranch and if not, was the basis on which she was registered as a beneficiary of parcel No.2226 in common with Tokoin Ole Maison lawful?
 - iv. Did the Land Registrar Kajiado err in the exercise of his powers by registering Nataa ene Meison Rapato, a non member of Nkama Group Ranch, as a co-proprietor of parcel No.2226?
 - v. Did the Land Registrar Kajiado fail in the duty conferred or imposed on him by the *Land Adjudication Act* to only cause registration to be effect in accordance with the adjudication register?
 - vi. Is Tokoin Ole Maison entitled to an order of this court that the register of parcel No.2226 be rectified by deleting the name Nataa ene Meison Rapato as a co-proprietor thereof and restore the title to Tokoin Ole Maison as the sole registered proprietor of the said parcel of land?
 - vii. By whom are the costs of this application payable?
3. In support of the proposition that the applicant should have been registered as the sole proprietor of land in question and not jointly with the third respondent, the applicant filed a supporting affidavit dated 18/10/2021 together with six annexures. In brief the applicant is saying that he got registered as a member of Nkama Group Ranch in his own right and not as a trustee for his siblings. His late father was allocated LR Kajiado/Kaputiei – South/1727 and that is the land meant for the family while LR No.2226 should be exclusively his.
4. In reply, Nataa ene Meison Rapato, the third respondent, has filed a replying affidavit dated 8/7/2022 in which she deposes that the applicant was not a member of the Group Ranch prior to the death of his father and he does not therefore qualify to be registered as the sole proprietor of the land. His registration was meant to take his father’s place and not to replace him. The Applicant was not in the adjudication register as an original member and is not therefore entitled to the prayer for rectification of the register of the suit land by deleting his mother’s name as a co-proprietor.
- Finally, if the register were rectified as desired by the applicant, this would disinherit the applicant’s siblings who include four sisters and two brothers. The applicant has previously attempted to evict the third respondent from the suit land through litigation in Kajiado ELC 176 of 2017.
5. In rebuttal of the reply by the third respondent, the applicant filed a replying affidavit dated 13/6/22 and added two annexures. What he says in the rebuttal is that his grandfather Ole Kela Meison was allocated LR 1727 and that is the land that his siblings are entitled to as his grandfather’s dependants.
6. Counsel for the parties filed written submissions on 26/10/22 and 29/3/2023 respectively. The issues raised in the submissions are as follows:
- i. Did the Land Registrar Kajiado prepare the register in respect6 to the suit land as per the adjudication record?
 - ii. Do the Land adjudication records for Nkama Group Ranch contain the name of the third defendant as a member of the Group Ranch?
 - iii. Whether the applicant has proved fraud and collusion on the part of the respondents.



7. I have carefully considered the entire case including the affidavits, annexures, the submissions by Learned Counsel for the parties and the law cited therein. I make the following findings on the issues raised in the case as well as the seven (7) questions raised by the applicant.
8. On the first question, I find that the suit land is a derivative of Nkama Group Ranch.
9. On the second question, I find that Tokoin Ole Meison was not a member of Nkama Group Ranch in his own right but as the eldest son of Ole Keila Meison.

In this regard I believe what the third respondent says in her replying affidavit. She is not an ordinary person to the applicant. She is his mother.
10. Regarding, the membership of the third respondent in the group ranch, I find that she too was not an original member but that she got registered by virtue of being the wife of Ole Keila Meison.
11. As for the registration of the third respondent as a co-proprietor of the land in question, I find that the land registrar did not err because she represented her deceased husband.
12. When it comes to the Land Registrar Kajiado, I find that he did not fail in his duty and that he did the right thing to register both the applicant and the third respondent as co-owners of the land in question as trustees for all the dependents of Ole Keila Meison.
13. In regard to the sixth question, I find that the applicant and his dependants are not entitled to an order of sole proprietorship of the suit land. I am convinced that the applicant was registered as co-proprietor only because he was the eldest son of the family. This is line with Maasai Customary Law. Eugene Cotran in his book, *“Restatement of African Law: 2 Law of Succession”*, has this to say about the appointment of an administrator, see page 152 second paragraph from the bottom.

“No administrator is appointed in Maasai Law. Any functions connected with the administration of an estate are performed by the heir, i.e., the eldest son (olopeny engang). If the son is not an adult, the functions of the administrator are performed by the deceased’s next younger brother. Apart from being the administrator, the olopeny engang also acts as guardian of the minor children”.

From the above, it is clear why the applicant was registered as a co-proprietor with his mother. It is because that is what Maasai Law demands. The applicant does not therefore enjoy any better right to his father’s property than his siblings do. The parcel in question being family property cannot be registered solely in the name of the applicant since he is a mere trustee.

14. Finally on the burden of proof, I find that it was upon the applicant to prove that he was entitled to more family land than his siblings. Due to the evidence from his mother to the contrary, the applicant was unable to discharge this burden.

For the above stated reasons, I am of the opinion that the status quo should be maintained.

I award the costs of these proceedings to the third respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3RD DAY OF OCTOBER 2023.

M.N. GICHERU

JUDGE



In the presence of:

Mr. Githuka for the Applicant present.

Miss Nzilani for the 3rd Respondent present.

Court Assistant – Mpoye.

