



Lenaipoya & another v Karbolo & 5 others (Environment & Land Case E004 of 2020) [2023] KEELC 21271 (KLR) (2 November 2023) (Judgment)

Neutral citation: [2023] KEELC 21271 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E004 OF 2020
MN GICHERU, J
NOVEMBER 2, 2023**

BETWEEN

MUTERIAN OLE LENA IPOYA 1ST PLAINTIFF

MELITA LENA IPOYA KARBOLO 2ND PLAINTIFF

AND

DANIEL LANKEO KARBOLO 1ST DEFENDANT

JUDITH KAGWIIRIA GATAYA 2ND DEFENDANT

MARGARET KAATHI MWINGIRWA 3RD DEFENDANT

ANNE MAKANDI 4TH DEFENDANT

DISTRICT LAND REGISTRAR, KAJIADO 5TH DEFENDANT

HON. ATTORNEY GENERAL 6TH DEFENDANT

JUDGMENT

1. The Plaintiffs seek the following reliefs against the Defendants.
 - A. A declaration that the second Plaintiff and the first Defendant were holding the suit property, Kajiado/Ildamat/1901, in trust for the first Plaintiff.
 - B. A declaration do issue that the sale and subsequent transfer of the suit land by the first Defendant to the second and third Defendants is fraudulent, illegal, null and void.
 - C. An order do issue cancelling and or revoking the title deed issued on 18/5/2012 by the fifth Defendant to the second and third Defendants.
 - D. The 5th Defendant be ordered to cancel all the entries in the register subsequent to the transfer of the suit property to the 2nd and 3rd Defendants.



- E. The 5th Defendant be ordered to re-issue and or restore the title issued on 11/11/2011 in the joint names of the second Plaintiff and the first Defendant.
- F. The second Defendant be ordered to transfer to the first Plaintiff the suit land and in default the Deputy Registrar of this court to execute the transfer instruments.
- G. An order of permanent injunction do issue restraining the first, second, third and fourth Defendants, their agents, servants and or employees from interfering with the peaceful occupation and use of the suit property.
- H. Costs of the suit.
- I. Any other order that this court may deem fit to grant.
2. The first Plaintiff's case is as follows. The suit land is his inheritance from his father. The first Defendant who is the Plaintiffs' elder brother was appointed as an administrator of the estate of their late father. The estate comprised of L.R. Kajiado/Ildamat/47 which measured 140 acres. The family land was subdivided and the first Plaintiff was allocated L.R. 1901 which is the suit land. He got the original title deed and kept it in a box at his home. The first Defendant, using trickery, stole the first Plaintiff's title deed, forged his signature and transferred the suit land to the first, second and third Defendants. When the fraud was discovered he was arrested and charged in criminal case No. 112 of 2013 at the Magistrates Court at Kajiado. He was convicted on 24/12/2019 of the offence of giving false information to a person employed in the public service contrary to Section 129(a) of the [Penal Code](#).
3. In support of their case, the Plaintiffs filed the following evidence.
- i. Witness statements by the two Plaintiffs and Sangok Muterian.
 - ii. Nine documents which include transfer documents for the suit land, copy of title deed for the suit land, copy of proceedings and judgment in Kajiado Magistrates Case No. 112 of 2013, copy of sale agreement dated 24/10/2014 and copies of acknowledgment of payments.
4. The first Defendant did not enter appearance or file a defence. The second, third and fourth Defendants filed a memorandum of appearance dated 8/12/2020, a written statement of defence and witness statement through their counsel on record but their counsel latter applied to cease acting for them. The three Defendants did not participate in the suit after their counsel ceased from acting for them.
5. The fifth and sixth Defendants filed a written statement of defence dated 18/1/2022 in which they generally deny the Plaintiffs' claim. They did not file any witness statements or documents.
6. At the trial on 17/1/2023 only the Plaintiffs appeared. They testified on oath and produced their documents as their exhibits.
7. The Plaintiffs' counsel filed written submissions on 24/4/2023. In the submissions he identified two issues for determination namely,
- i. Whether the suit land was fraudulently sold by the first Defendant,
 - ii. Whether the second, third and fourth Defendants are innocent purchasers of the suit land.
8. I have carefully considered all the evidence adduced in this case by the Plaintiffs. I have also considered the evidence filed by the second, third and fourth Defendants even though they did not testify in this case. I have also considered the submissions filed by the Plaintiffs' counsel and the issues raised therein. I agree with the Plaintiffs' counsel that the two issues as identified will resolve the dispute.



9. On the first issue, I find that the suit land was fraudulently sold by the first Defendant. This is because it did not belong to him but to the first Plaintiff. The first Defendant did not have the authority of the registered owner to sell the land. He therefore sold it fraudulently. Under Section 26(I) (b) of the [Land Registration Act](#) where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme, then it will be subject to challenge. In this case the title deeds issued to the second, third and fourth Defendants have been successfully challenged by the Plaintiffs.
10. Regarding the second issue, I find that the second, third and fourth Defendants are not innocent purchasers for value without notice of defect in title. It was incumbent upon the said two Defendants to investigate the first Defendant's title and get to the root thereof. This is because Article 40(6) of the [Constitution](#) does not protect property that has been found to have been unlawfully acquired. It provides as follows.

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

11. In the case of *Dina Management v County Government of Mombasa* Petition No. 8 (E010) of 2021, the Supreme Court had this to say about Article 40(6) of the [Constitution](#).

“Article 40 of the [Constitution](#) entitles every person to the right to property, subject to the limitations 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 we have already noted above the Appellant could not benefit from the doctrine of bona fide purchaser”.

12. Likewise in this case, the title deeds obtained by the three Defendants having been so acquired unlawfully are not protected by Article 40(6) of the [Constitution](#).
13. For the above stated reasons, I enter judgment for the Plaintiffs as prayed for in the plaint.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 2ND DAY OF NOVEMBER, 2023.

M.N. GICHERU

JUDGE

