



Sein & another v Land Registrar (Kajiado County & 3 others (Environment & Land Case 188 of 2018) [2023] KEELC 21236 (KLR) (6 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21236 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 188 OF 2018
MN GICHERU, J
NOVEMBER 6, 2023**

BETWEEN

NICHOLAS LALTA OLE SEIN 1ST PLAINTIFF

ROBERT RAPOSHI OLE SEIN 2ND PLAINTIFF

AND

THE LAND REGISTRAR (KAJIADO COUNTY 1ST DEFENDANT

THE DISTRICT SURVEYOR(KAJIADO COUNTY 2ND DEFENDANT

JOHN MARUNA SANKAIRE 3RD DEFENDANT

LESHAN SANKAIRE 4TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 22/12/2022. The motion which is by the plaintiffs seeks the following orders.
3. Review and setting aside of the judgment/decree dated 19/10/2022.
4. Reinstatement of the Plaintiffs’ suit against the four (4) Defendants for hearing on merit where the Defendants shall be called upon to defend their statements of defence and be cross-examined on the same.
5. Any other or further order the court deems fit and just.
2. The motion which is brought under Orders 40, 45(1), 2 and 23, and 51 *Civil Procedure Rules*, Sections 1A, 1B, 3A and 63(e) of the *Civil Procedure Act* and all other enabling provisions of the law is supported by two affidavits dated 22/12/2022 and 20/4/2023 both sworn by the first Plaintiff, five grounds and nineteen (19) annexures. The gist of the entire motion is as follows.



Firstly, there are clear and fundamental mistakes and errors apparent on the face of the record which include failure to allow the evidence of a surveyor, failure to call upon the Defendants to give their evidence and then relying on their unproven and untested evidence to take away a large portion of the Plaintiffs' land thereby making a manifest or clear constitutional error which has infringed on due process of law and rights.

Secondly, there was failure to observe the rules of material justice and finally, the Defendant will suffer no prejudice if the orders prayed for are granted.

3. The motion is opposed by third and fourth Defendants whose counsel has sworn a replying affidavit dated 6/4/2023. In the affidavit, counsel explains why the case proceeded the way it did on the hearing date and adds that the Plaintiffs who had the burden of proof failed to discharge that burden hence the dismissal of their case.
4. Counsel for the parties were to file written submissions by 30/9/2023. The only submissions on record and those by the plaintiffs' counsel.
5. I have carefully considered the motion dated 22/12/2022 in its entirety including the affidavits, grounds and annexures and I find that it has merit primarily because the counterclaim by the third and fourth Defendants was allowed without having been proved. I find that this amounts to an error apparent on the face of the record and ought to be reviewed under Order 45 (1) of the Civil Procedure Rules. The motion dated 22/1/2022 is therefore allowed in terms of prayer 3, 4 and 5.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 6TH DAY OF NOVEMBER, 2023.

M.N. GICHERU

JUDGE

