



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC NO. 197 OF 2018**

**PARSIMEI MAKAROT (suing as the duly appointed Legal**

**Administrator to the Estate of Noondasati**

**Makalto Makalo (deceased).....PLAINTIFF**

**VERSUS**

**LIARKET OLE SILANKEI LOOLAMALA.....1<sup>ST</sup> DEFENDANT**

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

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

**JUDGEMENT**

The Plaintiff seeks the following reliefs against the Defendants both jointly and severally;

- (a) A permanent injunction restraining the first Defendant herein either by himself, his agents and/or servants, from interfering, encroaching, wasting, evicting and/or trespassing over L.R. KAJIADO/DALALEKUTUK/3019, 9510 and 9511, the suit parcels.
- (b) An order for revocation of the title deeds to all the suit parcels.
- (c) An order that the parties apply for a Grant of Letters of Administration to the deceased's estate as provided for under the Law of Succession.
- (d) A declaration that the breach of these orders shall be deemed unlawful and illegal.
- (e) Cost of the suit.

The Plaintiff's case is as follows. He is a son of the late Noondasati Makalto Makalo who was his mother and who died on 22/4/2006.

In her lifetime, the Plaintiff's mother was a member of Sajiloni Group Ranch as member number 449. She was also blessed with the following children;

- (1) Siranto Seki
- (2) Elijah Sosire
- (3) Ntari Nkopiya
- (4) Ronou Kapande
- (5) Ipayon Kiroka
- (6) Lempeton Ndosho

(7) Manyishoi Nasianta

(8) Liarket Makarot

(9) Parsimei Makarot

Following the death of the Plaintiff's mother who is also the mother to the first Defendant, it was expected that the title deed to the land that she owned at Sajiloni Group Ranch would be issued in her name.

It recently came to the attention of the Plaintiff that the mother's land which is KAJIADO DALALEKUTUK/3019 had wrongfully been registered in the name of the first Defendant who had then subdivided it into two parcels namely KAJIADO/DALALEKUTUK/9510 and 9511.

The Plaintiff prays that the land which measures 102 acres be registered in the name of his late mother so that it may be shared by all beneficiaries of her estate.

Before filing this suit, the Plaintiff complained to the authorities against the first Defendant. The authorities that he complained to include the chief's office, the Land's Office and the Directorate of Criminal Investigations.

In support of his case, the Plaintiff filed the following;

- (1) An undated witness statement by himself.
- (2) Limited Grant in SPM's Court at Kajiado Succession Cause No. 32 of 2016 issued to him. It is dated 1/7/2016.
- (3) Authority to plead duly executed by four of his siblings namely Ntari Nkopiya, Ronou Kapande and Lempeton Ndosho.
- (4) Copy of Register of the Group Ranch showing the Plaintiff's mother as member number 449.
- (5) Copies of Register for L.R. 9510 and 9511.
- (6) Copy of letter by the Assistant Chief Inkinachart Sub location dated 15/11/2014 showing that the deceased had nine (9) children.
- (7) Copy of Certificate of Death for the Plaintiff's mother.
- (8) Copy of application for Registration of caution dated 9/11/2015.
- (9) Copy of letter by the National Land Commission to the first Defendant dated 23/10/2015.
- (10) Copy of letter by the Ministry of Lands Kajiado County Government dated 6/11/2015 to the Chief of Sajiloni Location.
- (11) Copy of letter by the Deputy County Commissioner Kajiado Central dated 8/11/2015 to the Chief of Sajiloni Location asking him to ensure that the status quo is maintained regarding the suit land.

The first Defendant filed defence through Counsel on record. It is dated 6/2/2019.

In the defence, he says that he subdivided the suit land in accordance with the wishes of his late mother. He denied perpetrating any fraud at all and concludes by saying that the land was officially registered to him as per the wishes of his late mother.

In support of his defence the first Defendant filed the following;

- (1) His own witness statement dated 6/2/2019.
- (2) Copy of an undated will.
- (3) Copy of title deed for L.R. KAJIADO/DALALEKUTUK/3019.
- (4) Copy of title deed for L.R. KAJIADO/DALALEKUTUK/9510
- (5) A sketch map.
- (6) Witness Statement by Gideon Kuya Ole Sapur, Jason Tiesi Sekeiyani and Rimoine Ole Terta.

The second and third Defendants filed a defence dated 5<sup>th</sup> March, 2019 in which they deny all the averments in the plaint. They however add that if there was any illegality, it was due to a mistaken belief caused by a misrepresentation by the first Defendant.

At the trial on 7/10/2021 it is only the Plaintiff and the first Defendant who testified. The Plaintiff insisted that his claim be allowed as per the plaint. He refused to take half of the suit land.

The first Defendant reiterated that he merely acted as per the wishes of his late mother.

Counsel for the parties filed written submissions on 15/10/2021 and 20/11/2022 respectively.

The first Defendant's Counsel urges that fraud has not been proved on the part of the first Defendant to warrant the revocation of the title deed issued to the first Defendant.

On the other hand, the Plaintiff's counsel urges, that the two title deeds were not procedurally acquired because the purported will of the original land owner was not valid for failure to comply with **Section 11** of the **Law of Succession Act** and breach of **Section 45** of the same act.

I have carefully considered all the evidence adduced in this case by both sides as well as the submissions by learned Counsel for the parties.

I agree with the submissions by the Plaintiff's Counsel that the only issue for determination is whether the first Defendant obtained registration of the suit parcels procedurally.

I find that he did not obtain such registration procedurally for the following reasons;

Firstly, I find that the purported will of the deceased mother of the Plaintiff and the first Defendant is invalid on many grounds such as failure to be witnessed and dated.

Secondly, without a valid will, the first Defendant had no authority to exclusively inherit his mother's land without the involvement of his siblings.

Thirdly, the first Defendant has not explained why their mother's land should be inherited by two beneficiaries when there are other siblings who have been left out.

For the above stated reasons and under **Section 26(1) (b)** of the **Land Registration Act (Act No. 3 of 2012)** I revoke the titles issued to the first Defendant.

I enter Judgment for the Plaintiff against the Defendants in terms of prayer (b) of paragraph 16 of the plaint.

Further, I order that the Title Deed to the entire suit land reverts to the name of Noondasati Makalto Makalo to be distributed to all her rightful heirs in accordance with the law.

Costs to the plaintiff.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 3RD DAY OF MARCH, 2022.**

**M.N. GICHERU**

**JUDGE**