



**Rupande & another (suing as the Administratrices of the Estate of the late Joseph Sironga Rupande) v Seya (Environment & Land Case 177 of 2018) [2022] KEELC 3445 (KLR) (5 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3445 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 177 OF 2018**

**MN GICHERU, J**

**MAY 5, 2022**

**BETWEEN**

**MARY WAMBUI SIRONGA RUPANDE ..... 1<sup>ST</sup> PLAINTIFF**

**MARY NJERI KARUGIA ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATRICES OF THE ESTATE OF THE LATE  
JOSEPH SIRONGA RUPANDE**

**AND**

**RAPHAEL MAINKA OLE SEYA ..... DEFENDANT**

**JUDGMENT**

1. Mary Wambui Sironga Rupande and Mary Njeri Karugia (the plaintiffs) suing as administratrices of the estate of the late Joseph Sironga Rupande (the deceased) seek the following reliefs against Raphael Mainka Ole Seya (the defendant).
  - a. A permanent injunction to issue restraining the defendant herein, his servants, agents or any other person authorized by or claiming through him from trespassing into, entering, selling, subdividing, leasing, depositing building materials, constructing, building, cultivating or by any other means using the parcel of land known as Kajiado/Kitengela/15100 within Kajiado county which is owned by the late Joseph Sironga Rupande.
  - b. A declaration that the late Joseph Sironga Rupande is the rightful, legal and beneficial owner of the land known as Kajiado/Kitengela/15100 within Kajiado county.
  - c. Any title deed of land known as Kajiado/Kitengela/15100 within Kajiado county, registered in the name of the defendant, Raphael Mainka Ole Seya or any other person authorized by or claiming through him be revoked and or cancelled by the land registrar, Kajiado.



- d. Costs of suit and interest thereon.
  - e. Any other relief that this court may deem fit to grant.
2. The plaintiffs' case is as follows. Both of them are widows of the late Joseph Sironga Rupande who died on July 4, 2009. The deceased was the owner of the suit land, Kajiado/Kitengela/15100 which was excised from Kajiado/Kitengela/1838 which was also owned by the deceased.

On August 20, 2018, the plaintiffs were issued with a grant of letters of administration in the estate of the deceased *vide* Ngong Chief Magistrates' Succession Cause No 49 of 2018.

On an unspecified date, the defendant trespassed onto the suit parcel after he caused it to be irregularly transferred to him and registered it in his name. The said transfer and registration of the suit land in the name of the defendant was done without a written sale agreement or consent of the land control board hence illegal and irregular.

Owing to the defendant's wrongful acts, the plaintiffs and the beneficiaries of the estate of the deceased have been denied the use, benefit, enjoyment and proper utility of the suit land as the beneficiaries of the estate of the deceased thus suffering damage. It is for the above reasons that they filed this suit.

3. In support of their case, the plaintiffs filed the following;
- i. Witness statement by Mary Njeri Karuga dated November 1, 2018.
  - ii. Copy of deceased's certificate of death dated July 30, 2010.
  - iii. Copy of grant dated August 20, 2018.
  - iv. Copy of mutation form that created the suit land from LR Kajiado/Kitengela/1838.
  - v. Copy of authority to plead issued to Mary Njeri Wambui Sironga Rupande dated November 1, 2018.

4. The defendant, through his counsel on record filed a written statement of defense dated April 15, 2021 in which he denies all the plaintiffs' averments in the plaint.

His defence is to the effect that on April 11, 2002, he entered into an agreement for sale of 101 hectares of land which was to be excised from LR Kajiado/Kitengela/1838 which itself measured 177 hectares.

The purchase price was Kshs 5, 500, 000/-. On April 7, 2002, he applied for and obtained the letter of consent from Purka land control board. He then paid the full purchase price and the land was lawfully transferred to him after the transfer forms were executed by him and the deceased.

Thereafter, the defendant moved into the suit land, fenced it and reared cattle therein. He possessed the land in the lifetime of the deceased who never complained of the defendant's occupation and this suit was filed seven years after the demise of the deceased.

It is the defendant's case that he acquired the suit land with his hard earned money and the plaintiffs' are insincere and malicious in their claim as they both knew that he bought the suit land from the deceased who was the defendants' friend.

He therefore calls for the dismissal of the plaintiffs case against him.

5. In support of his case the defendant filed the following;
- i. His own witness statement dated April 14, 2021.
  - ii. Copy of certificate of official search dated April 2, 2007.



- iii. Copy of the register of the suit land dated April 10, 2002.
  - iv. Copy of agreement for sale of the suit land dated April 11, 2002.
  - v. Copy of acknowledgement by the deceased of receipt of Kshs 1.5 million from the defendant dated May 8, 2002.
  - vi. Copy of undertaking by Josephine Isele Kuluo dated August 19, 2002 and another dated October 18, 2002 acknowledging receipt of a total of Kshs 950, 000/- from the defendant on behalf of the deceased.
  - vii. A copy of acknowledgement by the deceased of receipt of Kshs 150,000/= from the defendant on November 7, 2002.
  - viii. A copy of acknowledgement by the deceased of Kshs 500,000/= from the defendant. It is undated.
  - ix. Copy of acknowledgement by the deceased of Kshs 500,000/= of which Kshs 200,000 was in cheque and Kshs 300,000/= by cash. It is dated September 30, 2003.
  - x. Copy of letter of consent dated April 30, 2002.
  - xi. Copy of application for consent dated April 30, 2002.
  - xii. Copy of transfer instrument duly executed by the deceased and the defendant but undated.
  - xiii. Copy of the title deed for the suit land dated May 28, 2002.
6. At the trial on November 9, 2021, the second plaintiff Mary Njeri Karugia testified by adopting her witness statement and documents as evidence. She was then cross-examined by the defendant's counsel. Similarly, the defendant testified, adopted his witness statement and documents and was cross-examined by the plaintiffs' counsel.
7. The defendant's counsel filed her written submissions on December 6, 2021 while the plaintiffs' counsel filed his on December 20, 2021. The issues raised in the said submissions are as follows;
- a. Do the defendant's documents like the sale agreement, application for consent of the land control board, letter of consent and transfer instrument meet the lawful and legal required standards?
  - b. Did the defendant properly and lawfully acquire the parcel of land known as Kajiado/ Kitengela/15100 within Kajiado county from the late Sironga Repande?
  - c. Is the suit time barred and does the court have jurisdiction to entertain it?
- The above issues though raised by the defendants counsel are similar to the ones raised by the plaintiffs' counsel and I believe that they will determine the dispute.
8. I have carefully considered the evidence adduced by both sides, the submissions by learned counsel for the parties, the applicable law including the case law cited and I make the following findings;
- Firstly, from the outset, the burden is on the plaintiffs to prove their case against the defendant on a balance of probabilities. The defendant has no burden at all.
- Secondly, on the issue of the defendant's documents, I find that they meet all the required legal standards. Starting with the agreement for sale of the suit land, it meets the requirements of the Law



of Contract Act in that it is signed by the buyer and the seller and each signature is witnessed by L S Sane Advocate.

The advocate has stated that the two parties signed in his presence. That is all that the law requires of an agreement for sale of land.

The consent of the land control board is *prima facie* valid. It has all the fundamental essentials like the signature of the chairman, land parcel number, names of the seller and the buyer and the dates.

The plaintiffs at paragraph 5 of the plaint averred that the transfer was done without the consent of the land control board. The burden was on them to prove this and they have not done so.

I find nothing fundamentally wrong with the defendant's documents. All are valid and the plaintiffs have adduced no evidence to dent their authenticity.

Finally, the defendant has demonstrated that he paid the full purchase price as agreed. He had adduced sufficient evidence in this regard.

On the third issue, I find that the suit is not time barred. Though the plaint did not allege or plead any particulars of fraud as required under order 2 rule 10 (1) (a) of the Civil Procedure Rules, the plaint generally alleged fraud though not specifically and under section 26 of the Limitation of Actions Act, there is no time limit within which to bring an action. Time only starts running from the date of discovery of the fraud.

I found the defendant to be a convincing, credible and consistent witness who was able to back his averments with documentary evidence. I believe that he occupied the suit land for a while and for now it is unoccupied.

For the above stated reasons, I dismiss the plaintiffs suit with costs to the defendant.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5<sup>TH</sup> DAY OF MAY, 2022.**

**M.N. GICHERU**

**JUDGE**

