



Sarinke (Suing as a legal representative of the estate of Nkutoto Ene Sarinke (deceased) v Sarinke & 4 others (Environment & Land Case 49 of 2018) [2022] KEELC 2188 (KLR) (6 June 2022) (Judgment)

Neutral citation: [2022] KEELC 2188 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 49 OF 2018**

MN GICHERU, J

JUNE 6, 2022

BETWEEN

MUNTELEU MARDADI SARINKE (SUING AS A LEGAL REPRESENTATIVE OF THE ESTATE OF NKUTOTO ENE SARINKE (DECEASED)) PLAINTIFF

AND

LAMO OLE MARDADI SARINKE 1ST DEFENDANT
SANAEK LAMO SARINKE 2ND DEFENDANT
EVANS MBOTO OMBUI 3RD DEFENDANT
LAND REGISTRAR, KAJIADO 4TH DEFENDANT
ATTORNEY GENERAL 5TH DEFENDANT

JUDGMENT

1. Munteleu Mardadi Sarinke, the Plaintiff, seeks the following reliefs against Lamo Ole Mardadi Sarinke, first Defendant, Sanaek Lamo Sarinke, second Defendant, Evans Mboto Ombui, third Defendant, Land Registrar Kajiado, fourth Defendant and the Attorney General, fifth Defendant both jointly and severally;
 - (a) A declaration that the original registration of land parcel No. KJD/ILDAMAT/313 into parcel No. KJD/ILDAMAT/313 into the first Defendant's name is illegal and of no effect in law for want of letters of administration to the estate of Nkutoto Ene Sarinke (deceased).
 - (b) A declaration that all the succession dealings with the suit property are null and void and of no effect for want of proper title by the first Defendant.



- (c) A declaration that no land sale transaction between the first and third Defendants was permissible for want of Land Control Board Consent.
 - (d) An order that the property identified as KJD/ILDAMAT/313 but now subdivided into parcels KJD/ILDAMAT/5673, 6311,6156, 6159 and 6312 be consolidated and distributed upon ascertainment of proper beneficiaries among them the Plaintiff herein following properly instituted succession proceedings.
 - (e) An order that the fourth Defendant cancels all Title Deeds acquired after the fraudulent acquisition of the deceased's property so as to give effect to prayer 'd' herein above.
 - (f) Any other relief.
 - (g) Costs of this suit.
2. The Plaintiffs' case is as follows. He is a son of the late Nkutoto Ene Sarinke, the estate of whom, he brings this action in a representative capacity.
- At the time of her death the deceased was the owner of L.R. KJD/ILDAMAT/313 (The suit land). It was part of the Oloyiankalani Group Ranch. Upon the dissolution of the Group Ranch, the first Defendant took over the entire land instead of sharing it equally with his siblings who include the Plaintiff, yiai Ene Sarinke and Morisiet Ene Murunya.
- When the siblings requested for a share of the suit land, the first Defendant refused and instead, he sold a portion to the third Defendant and had the rest registered either in his name or that of his wife, the second Defendant. It is for the above reasons that the Plaintiff filed this suit in order that he and his two sisters may get their rightful share of their mother's property.
3. In support of his case, the Plaintiff filed the following evidence;
- (a) Witness statements by himself and his two sisters.
 - (b) Copy of Limited Grant dated 26/10/2016 issued in Kajiado High Court, Succession Cause No. 75 of 2015.
 - (c) Copy of title deed for the suit land dated 3/1/1995 in the name of the first Defendant.
 - (d) Copy of title deed for L.R. KJD/ILDAMAT/5972 dated 29/1/2014 in the name of the first Defendant.
 - (e) Copy of letter dated 9/10/1990 from Oloyiankalani Group Ranch showing that Nkutoto Sarinke had two (2) parcels of land in the ranch.
 - (f) Copy of certificate of official search showing the second Defendant as the registered proprietor of L.R. ILDAMAT/6159 measuring 18.88 Hectares. It is dated 3/6/2016.
 - (g) Copy of notice of intention to sue issued by the Plaintiffs' counsel to the Honourable the Attorney General and dated 2/6/2017.
4. In a written statement of defence dated 17th May, 2018, the first and second Defendants through their counsel on record generally deny the Plaintiffs' claim averring that the first Defendant was allocated the suit land by the Group Ranch in his own right and not on behalf of his siblings.
- Secondly, the Plaintiff was also allocated L.R. Kajiado/Ildamat/312 and he is not therefore entitled to the suit land.



In addition to the defence, the first and second Defendants filed a counterclaim seeking that they be declared as absolute proprietors of their parcels.

5. In support of their defence and counterclaim, the first and second Defendants filed the following;
 - (a) Their own witness statements.
 - (b) Copy of Title Deeds for each of the following parcels Kajiado/Ildamat/313, 5972, 6156, 6159, 6311 and 312.
 - (c) Copy of certificate of official search for Kajiado/Ildamat/6311.
 - (d) Copy of Oloiyanikalani Group Ranch list of members and area list.
 - (e) Copy of ruling and orders in Kajiado High Court Succession Cause No. 75 of 2015 dated 8/2/2016.
 - (f) Copy of chief's letter dated 14th April, 2014.
 - (g) Copy of minutes of a mediation meeting held on 10/9/2016 under the chairmanship of the chiefs of Ildamat Location and Oloyianikalani Location.
 - (h) Copies of 2 letters dated 21/7/2015 and 25/5/2017 addressed to the Land Registrar, Kajiado in respect to a caution registered by the Plaintiff against the suit land.
 - (i) Copy of ruling by the Land Registrar dated 23/8/2017 lifting the caution registered by the Plaintiff.
6. The third Defendant, through counsel on record filed a written statement of defence dated 14th May, 2018 in which he avers that he is registered owner of parcels numbers 5972 and 6312 which he purchased from the first Defendant and that he is an innocent purchaser for value without notice of any defect in the first Defendant's title.

In support of his defence, he filed the following evidence;

 - (a) Witness statement dated 14/5/2018.
 - (b) Copies of agreement for sale of the two parcels dated 30/9/2013 and 17/1/2015.
 - (c) Copy of certificate of official search dated 3/9/2013.
 - (d) Application for consent and consent of the Land Control Board.
 - (e) Copy of acknowledgment dated 5/1/2016.
 - (f) Funds transfer forms.
 - (g) Copy of cheque dated 22/10/2013.
 - (h) Copies of Title Deeds for the Defendants' parcel numbers 5972 and 6312.
7. In their written statement of defence dated 31/5/2018, the fourth and fifth Defendants deny the particulars of the Plaintiffs' claim, put him to strict proof and call for the dismissal of the suit.
8. At the trial on 9/3/2021 and 7/3/2022, the Plaintiff, his sister Moriset Ene Mereno, the first Defendant and the third Defendant testified. In their testimonies, the four witnesses, reiterated what is already in their filed evidence.



9. Only counsel for the third Defendant filed written submission by the timeline given by the Court. Other counsel did not file at all, even after the timeline set.

The issues raised in the submissions relate to the following;

- (i) The exemption of Kajiado County from Section 32 and 33 of the Law of Succession Act relating to intestacy.
 - (ii) Registration and issuance of title to land.
 - (iii) Fraud and misrepresentation.
 - (iv) Whether the third Defendant is a bonafide purchaser for value without notice.
10. I have carefully considered all the evidence adduced in this case by all parties including the witness statements, documents, oral testimony at the trial and the submissions by learned Counsel for the third Defendant.

I find that the following issues arise;

- (i) Whether the Plaintiff and his married sisters enjoy any overriding interest including customary trust over the suit land namely Kajiado/Ildamat/313?
 - (ii) Whether the third Defendant is a bonafide purchaser for value without notice of any defect in the first Defendants title?
 - (iii) Whether the Plaintiff has proved his case against the Defendants on a balance of probabilities?
11. On the first issue, I find that the Plaintiff and his married sisters are not entitled to any share of the suit land Kajiado/Ildamat/313.
12. The reason why the Plaintiff is not entitled to a share of the suit is that he himself got his own land namely, Kajiado/Ildamat/312 measuring 57.22 hectares. This land, together with the suit land belonged to the father of the parties. When the father died, their mother and their brother Sayian Ole Mardadi were to be registered as the proprietors of the two parcels as trustees for the whole family.
13. When the two died, the Plaintiff and the first Defendant were allocated the two parcels not in their own rights but as children of Mardadi Sarinke. The two parcels were more or less equal in size. The customary trust became extinguished the moment each of the two got his own separate parcel. That customary trust resided in the parties mother and Sayiani Ole Mardadi.
14. The Plaintiff could only claim from either the mother or the brother but not both. If he were to claim from both, the first Defendant would also be entitled to claim from both. He would also claim a share of L.R. KAJIADO/ILDAMAT/312.
15. I find that the parties sisters namely Yiai Ene Sarinke and Morisie Ene Meseno Murunya are not entitled to a share of the suit land. I agree with the first Defendant's evidence at the trial where he said;

“My sisters got land through their husbands. They are all married. My wife did not get land from the Group Ranch. The Group Ranch gives land to women without husbands.”

This evidence by the first Defendant remains unchallenged by any other evidence.

In his book, Restatement of African Law Volume 2 at page 151, Eugene Cotran had this to say;

“The restatement in this chapter covers the Kajiado Masai, the Narok Masai, the Samburu, the Njemps and the Mukogodo.



Inheritance under Masai Law is patrilineal. The pattern of inheritance is based on the distribution of all a man's property (with few exceptions) to his eldest son of age (not necessarily the eldest son of the first wife). Widows are entitled to retain the property they received during their husband's lifetime, but do not share in the inheritance. Daughters, if married, receive a very small share (one cow). In the absence of sons, the heir is the brother, half-brother etc."

16. On the second issue, I find that it is superfluous as to whether the third Defendant is a bonafide purchaser for value without knowledge of any defect in title. This is because of the favourable finding in favour of the first Defendant on the first issue which also covers the third Defendant.
17. Had I found against the first Defendant on the first issue, I would also have found against the third Defendant because of Article 40(6) of the Constitution which provides;

"The rights under this Article do not extend to any property that has been found to be unlawfully acquired."
18. On the third and final issue, I find that the Plaintiff has not proved any of the averments in paragraphs 9, 10, 11, 12, 15 and 16 of the plaint. No evidence of wrong doing on the part of the Defendants has been proved.
19. Finally, on the counterclaim by the first and second Defendants, I find it to be superfluous because in it they are seeking for something that they already have.
20. For the above reasons, I dismiss the Plaintiff's suit against the Defendants with costs.
21. I also dismiss the counterclaim with no order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 6TH DAY OF JUNE, 2022.

M.N. GICHERU

JUDGE

