



United Kenya Limited v Mereu & 5 others (Environment & Land Case 959 of 2017) [2022] KEELC 13261 (KLR) (3 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13261 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 959 OF 2017
MN GICHERU, J
OCTOBER 3, 2022**

BETWEEN

UNITED KENYA LIMITED PLAINTIFF

AND

JOHN LAMISON OLE MEREU 1ST DEFENDANT

RUKIYA ENE LAMISON 2ND DEFENDANT

NGAYAMI OLE MEREU 3RD DEFENDANT

NANKOYA ENE NGAYAMI 4TH DEFENDANT

LEKUTUK OLE SIMPALA 5TH DEFENDANT

RESIATO ENE LEKUTUK 6TH DEFENDANT

JUDGMENT

1. United Way Kenya Limited and Magadi Solar Plant Limited, the Plaintiffs, seek the following reliefs against the Defendants John Lamison Ole Mereu (first), Rukiya Ene Lamison (second), Ngayami Ole Mereu (third), Nankoya Ene Ngayami (fourth), Leketuk Ole Simpala (fifth), and Resiatio Ene Leketuk (sixth);
 - a. An order against the Defendants by themselves, their livestock, servants, agents, employees and/or person claiming under them to vacate the Plaintiffs' property L.R. Kajiado/ Loodariak/638, suit land.
 - b. An order that the Defendants and anybody claiming through them to demolish all their temporary residential structures, their livestock pens and all other structures that they have put up on the suit land.



- c. General damages for trespass, wastage and destruction as per paragraph 22 in the plaint amended on 30th April, 2018.
- d. Costs of the suit.

This is as per the amended plaint dated 30th April, 2018.

2. The Plaintiffs' case is as follows. They are the registered proprietors of the suit land which the first Plaintiff bought from Elmirisho Group Ranch in the year 2011. It measures 50 hectares. Later the two Plaintiffs became the joint owners through a mutual agreement.

At the time of purchase, the land was vacant. All legal processes including consent of the relevant Land Control Board were complied with. Eventually, the first Plaintiff was issued with a title deed.

The first Plaintiff embarked on an intensive commercial development project which included the drilling of a borehole and construction of a hotel.

3. When the workers for the first Plaintiff went to the land, they were resisted by the Defendants who had recently moved into the suit land illegally after they had been evicted from a neighbouring parcel.

The first Plaintiff reported the matter to District Commissioner Kajiado North who summoned the Defendants. After listening to the dispute, the District Commissioner found the Defendants to be unlawfully occupying the suit land.

He issued them with a notice to vacate. The said notice is dated 2nd May, 2013. When the Defendants failed to heed the notice by the District Commissioner, the first Plaintiff filed this suit. While the suit was pending, the first Plaintiff transferred the suit land to the second Plaintiff.

4. In support of their case, the Plaintiffs filed the following evidence;
 - a. Copy of Title Deed for the suit land dated 22/9/2008 when it was in the name of Elmirisho Men Group.
 - b. Copy of stamp duty valuation form dated 10th November, 2011.
 - c. Copy of receipt No. 2540553 for transfer fees dated 24/11/2011.
 - d. Copy of receipt dated 24/11/2011 for Kshs. 125, 440/- being payment of stamp duty.
 - e. Copy of title deed for the suit land dated 25/7/2012 in the name of the first Plaintiff.
 - f. Copy of building plan.
 - g. Quotation for borehole drilling and related costs.
 - h. Copies of letters dated 18/1/2012, 22/1/2013, 15/4/2013 and 2/5/2013 between the first Plaintiff, the Defendants and the District Commissioner, Kajiado North.
 - i. Copy of letter by Elmisho Men Group to the Land Registrar, Kajiado North dated 4th April, 2012 requesting for the release of the Title Deed to the suit land to the Plaintiff.
 - j. Copy of CR 12 for the second Plaintiff dated 29/6/2016 showing the names of the shareholders and the shares that they own.
 - k. Copy of Title Deed for the suit land dated 4th January, 2016 in the name of the second Defendant.



1. Copy of letter by the Principal Secretary Ministry of Energy and Petroleum dated 17th September, 2015 approving the development of a 40 megawatt Solar PV Power Plants on the suit land.
5. The Defendants filed a memorandum of appearance on 13th August, 2013, through their then counsel on record. They did not file any defence even though they were given ample opportunity to do so. The suit therefore proceeded as undefended.
6. At the trial on 21/3/2022, neither the Defendants nor their counsel attended. They had been served with a hearing notice on 29/10/2021 as per the affidavit of service dated 3rd November, 2021.
7. I have carefully considered the pleadings, the evidence and the submissions in the entire suit and I find that the following issues arise;
 - a. Are the Plaintiffs the registered proprietors of the suit land?
 - b. Are the Plaintiffs entitled to the rights of proprietors under Sections 24 and 25 of the Land Registration Act?
 - c. Do the Defendants have any lawful justification for occupying the Plaintiff's land?
 - d. Are the Plaintiffs entitled to the orders sought?
8. On the first issue, I find that the Plaintiffs are the registered proprietors of the suit land. In this regard, I have relied on the evidence adduced in form of title deeds dating back from when the land was registered in the name of Elmirisho Men Group in the year 2008, to the current period when it is registered in the name of the second Plaintiff.

On the second issue, I find that the Plaintiffs are entitled to enjoy all the interests and rights of a proprietor conferred by Sections 24 and 25 of the Land Registration Act. Such rights and privileges include occupation without hindrance by any person.
9. On the third issue, I find that the Defendants do not have any lawful justification for occupying the suit land. They do not have the authority of the Plaintiffs to occupy the land. Only Plaintiffs can allow the Defendants to occupy the suit land.

On the fourth and final issue, I find that the Plaintiffs are entitled to prayers (a), (b), and (d) in the plaint. As for prayer (c) I find that it is not proved for two reasons;
10. Firstly, no evidence was adduced either orally or by documents as to what property on the land was destroyed and how much it is worth. The number of trees destroyed and the value of charcoal made from such trees was not well pleaded or proved.

Secondly, the wastage and destruction was pleaded as per paragraph 22 in the plaint amended on 30th April, 2018. Paragraph 22 of the said plaint states as follows:

22. The cause of action arose in Kajiado within the jurisdiction of this Honourable Court”.
11. Clearly, the above paragraph does not prove wastage or damage.

For the above stated reasons, I find that the Plaintiffs have proved their case against the Defendants on a balance of probabilities. I consequently enter judgment for the Plaintiffs against the Defendants as prayed for in paragraph 22 (a), (b) and, (d) of the plaint amended on 30th April, 2018.



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

M.N. GICHERU

JUDGE

