



REPUBLIC OF KENYA



**Bett v Olamroi & 2 others (Environment & Land Case 370 of 2017)
[2022] KEELC 14644 (KLR) (7 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14644 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 370 OF 2017
MN GICHERU, J
NOVEMBER 7, 2022**

BETWEEN

ANNE KAREGI BETT PLAINTIFF

AND

MERIO OLAMROI 1ST DEFENDANT

HASSAN TAJEU ALIAS MZUNGU 2ND DEFENDANT

SOPHILAL ALIAS MZUNGU 3RD DEFENDANT

JUDGMENT

1. Anne Karegi Bett, the Plaintiff, seeks the following reliefs against the Defendants Merio Olamroi, Hassan Tajeu alias Mzungu and Sophilal alias Mzungu, referred to as the first, second and third Defendants respectively.
 - a. A permanent injunction restraining the Defendants by themselves, their agents, servants or employees from entering upon, remaining on, removing from, wasting, subdividing, digging on, excavating, fencing, erecting or building any structure whatsoever or otherwise dealing with all that known as Kajiado/Lorngusua/1299 (suit land).
 - b. A permanent injunction compelling the Defendants by themselves, their agents, servants or employees to vacate the suit property and demolish any structures put up by the Defendant.
 - c. An order compelling the Defendants, their agents, servants to vacate the suit land.
 - d. An order allowing the Plaintiff to demolish any structure unlawfully built by the Defendants, their servants or agents on the suit land.
 - e. An order directing the OCS Kajiado Police Station to enforce the orders prayed for above once granted.



- f. General damages.
 - g. Costs of this suit.
 - h. Interest on (g) above.
2. The Plaintiff's case is as follows. She and her husband Joseph Kibet Tanui are the registered owners of the suit land. They got registered on September 15, 2006 and they were issued with a title deed of the same date. The land measures 46.50 hectares.

The seller of the land was Sarinke Lempesai. Before buying the land, the Plaintiff and her husband did due diligence and confirmed that the seller was the registered owner of the suit land. This was through the Land Registry and the neighbors.

The couple got vacant possession of the land from the date of purchase. They would regularly visit the land and they would find the neighbours who knew that they had bought the land from Sarinke Lempesai.

Around November, 2014, the couple received information that some unknown people had invaded and trespassed onto the land. When they visited the land, they found the unknown people to be the Defendants who claimed to be the owners. They made a report at Kajiado Police Station and later filed this suit.

3. In support of her case, the Plaintiff filed six witness statements by herself, her husband, Sarinke Ole Lempesai Murre, Lemono Ntekese Napirug, Tupet Ole Kauweti Murne and Samuel Sopon Parashuru.

In addition to the witness statements, the Plaintiff filed a total of 23 documents which include the following.

- i. Certificate of official search dated September 22, 2006.
- ii. Copy of title deed issued to Sarinke Ole Lempesai Murre on March 30, 2001.
- iii. Copy of agreement for sale dated August 25, 2006.
- iv. Application for consent of Land Control Board.
- v. Letter of Consent dated September 6, 2006.
- vi. Copy of title deed for the suit land in the name of the Plaintiff and her husband.
- vii. Copy of letter from Chief Land Registrar, Kajiado dated April 12, 2000.
- viii. Copy of court order dated May 19, 2006 issued in Civil Case No 418 of 2006.
- ix. Copy of charge sheet in criminal case no. 8 of 105 Kajiado where the Defendants were charged with forcible detainer and forgery in relation to the suit land.
- x. Copy of charge sheet in Kajiado Criminal Case No 1711 of 2015 where the seller of the suit land, Sarinke Lempesai and other witnesses for the Plaintiff were charged with conspiracy to defraud in relation to the suit land.
- xi. Copy of ruling dated February 27, 2015 in ELC Machakos Case No 235 of 2014 which is the current case.
- xii. Copy of police file in criminal case no 731/01/2015 (Kajiado Criminal Case No 8 of 2015).



- xiii. Other documents.
4. The Defendants, through counsel on record, filed an amended defence and counterclaim dated September 27, 2017. The key averments in the defence are as follows.
- Firstly, the first Defendant's name is Merio Ole Lekumok Lempisai and not Merio Olamroi while the third Defendant is Emily Sophilal Marasua and not Sophilal alias Mzungu.
- Secondly, they aver that the Plaintiff and her husband were registered as owners of the suit land where there was a court order forbidding such registration. This was in Case No 561 of 2000, in the High Court of Kenya sitting in Nairobi. Thirdly, in an attempt to defeat the decree in HCCC 561 of 2000, the officials of Ilpartimaro Group Ranch filed case no 418/2006 in Nairobi which was transferred to Machakos and given number 177 of 2008 and again transferred to Kajiado where the new number is 679 of 2017.
- Fourthly, in case numbers 233 of 2001, 1098 of 2001 and 679 of 2017 there are counterclaims seeking the cancellation of the decree in 561 of 2000 and the Plaintiff's title is one of those to be cancelled.
- Fifthly, the first Defendant has been in occupation of the suit land at all material times together with his grandson, the second Defendant.
- Sixthly, Sarinke Lempisai who purported to sell the suit land to the Plaintiff and her husband was not the owner and he swore a false affidavit that the first Plaintiff had died.
- This is how the first Defendant's name was deleted from the list of members of the group ranch and Sarinke's name inserted.
- Seventhly, the seller, Sarinke has been charged in Chief Magistrate's Court at Kajiado in Criminal Case No 1711 of 2015, with an offence of fraud in respect of the suit land.
- For the above reasons, the Defendants pray for the following orders in the counterclaim.
- a. A declaration that the first Defendant is the owner of the suit land.
 - b. An order of the rectification of the register for the suit land by cancelling the name of the Plaintiff and her husband and replacing them with that of the first Defendant.
 - c. A permanent injunction restraining the Plaintiff by herself, her agents and or servants from trespassing, from entering, alienating, erecting structures or building thereon or from committing acts of waste on the suit land.
 - d. Costs and interest.
 - e. Any other or further relief that the court deems fit.
5. In support of their case, the Defendants filed the following evidence.
- i. Witness statements by the first and second Defendants and another one by Stephen Ole Sepere.
 - ii. Other statements are by Emily Sopilal Murre, Moses Shipo Njenga and Koirishisho Ole Kekaye Kekai.
 - iii. Copy of register of members of Ilpartimaru Group Ranch certified as a true copy of the original. It shows entry number 167 where the name Lempesai Oloriki has been deleted and replaced by that of Sarinke Ole Lempesai Murre.
 - iv. Area list of Ilpartimaro Group Ranch.



- v. Copy of letter dated June 29, 2015 written by National Land Commission to Ilpartimaru Group Ranch.
 - vi. Copy of proceedings and ruling in Tribunal Case No 366/09/10.
 - vii. Copy of letter dated April 29, 2015 from Kajiado County Land Management Board to the DPP.
 - viii. Copy of letter dated September 16, 2015 from DPP to CCIO Kajiado County.
 - ix. Copy of letter dated May 21, 2015 by the County Land Adjudication and Settlement Officer.
 - x. Copy of decree in Nairobi HCCC 561 of 2000 in Nairobi HCCC No 233 of 2001.
 - xi. Copy of ruling and order in Nairobi HCCC No 233 of 2001.
 - xii. Copy of ruling in Nairobi HCC No 1098 of 2001.
 - xiii. Copy of ruling in Machakos HCCC No 177 of 2008 (formerly Nairobi HCCC 418 of 2006) and currently Kajiado ELC 679 of 2017.
 - xiv. Copy of charge sheet in Criminal Case No 8 of 2015.
 - xv. Copy of charge sheet in Criminal Case No 1711 of 2015.
6. At the trial on February 1, 2022, the Plaintiff testified and called four witnesses who included her husband, Salinke Ole Lempesai Murre, Lemomo Ntenkese Tupet Ole Kauweti and Samuel Sapon Parashoru.
- Their evidence is to the effect that the suit land belonged to Ole Lempesai Oloriki who told the group ranch officials that his land should be inherited by Salinke Ole Lempesai. That is how Salinke came to own the land before he sold it to the Plaintiff.
- On the other hand the second Defendant testified and called one witness by the name of Stephen Parasanka Sempere son of Kereto. Their evidence is to the effect that the suit land belonged to Mario Lempesai Murre alias Oloriki. He had no son and his only child was the second Defendant's mother.
- Salinke Ole Lempesai lied to the group ranch that Mario Kempasai had died. At that time, Merio was away in Tanzania. Salinke took advantage of Merio Lempesai's absence to acquire the land and sell it to the Plaintiff. Salinke was a step-brother to the first Defendant's father.
7. Counsel for the parties filed written submissions on May 4, 2022 and September 19, 2022 respectively. The Plaintiff identified four issues for determination namely,
- i. Who is the lawful proprietor of the suit property?
 - ii. Whether the Defendants have any legitimate claim to the suit property?
 - iii. Whether the counterclaim is merited?
 - iv. Whether the orders sought in the plaint dated December 29, 2014 should be granted?
8. The Defendants on the other hand identified four issues for determination. They are as follows.
- a. Was the first Defendant a member of Ilpartimaru Group Ranch?
 - b. Did the purported seller Sarinke Lempesai obtain title to the suit land fraudulently?



- c. Who was the lawful owner of the suit property?
 - d. Is the Plaintiff entitled to the reliefs sought?
9. I have carefully considered all the evidence adduced in this case by the Plaintiff, the Defendants and their witnesses including the witness statements, the documents and the oral testimony at the trial.

I have also considered the submissions by the learned counsel for the parties including the statutory provisions and the case law cited. I make the following findings on the issues raised by the parties.

Firstly, on the Plaintiffs first issue, I find that the lawful owner of the suit land is Merio Ole Lemukok Lempesai. There are many reasons for this.

In the Kajiado Land Disputes Tribunal Case Number TC 366/09/10 it was found as follows at page 1;

“The land in question was allocated to the claimant Merio Lekumok Lempesai by Ilpartimaru Group Ranch Committee Member No 167 of the Register.

That his name was deleted from the register and replaced with Sarinke Ole Lempesai Murre by use of pen without consent of the original owner”.

In addition to the above, the County Land Management Board vide a letter dated April 29, 2015, found as follows.

“That the Group Ranch officials colluded with his step-brother Mr.Sarinke Ole Lempesai Murre who swore a false affidavit GR/26/137/56 dated 28/10/1989 (see attached copy of the register) declaring that Lempesai Oliriki is dead”.

Further to the above, all the witnesses from the Group Ranch called by the Plaintiff are suspects charged in Criminal Case Number 1711 of 2015 Kajiado Chief Magistrates Court.

On the second of the Plaintiff’s issues, I find that the Defendants have a legitimate claim to the suit property because as was found by the Tribunal and the County Land Management Board, the suit land belongs to the first Defendant who bequeathed it to the second Defendant, his own grandson.

On the third issue, I find that the counterclaim is merited because as already found in the two other issues, the land belongs to the first Defendant.

On the final of the Plaintiff’s issues, I find that the orders sought in the plaint dated December 29, 2014 should not be granted because the Plaintiff who had the burden of proof to establish her claim on a balance of probabilities did not do so in the face of proved fraud on the part of the person who sold her the suit land.

10. On the first of the Defendants’ issues, I find that the first Defendant was a member of Ilpartimaru Group Ranch. The register of members, the area list, the proceedings from the Tribunal as well as the findings of the Kajiado County Land Management Board all prove that the first Defendant was a member of the Group Ranch.

The Defendants witness by the name Stephen Parsanka Sempere son of Kereto confirmed the same in his evidence in court. I found the witness consistent and credible. He was not tainted with any case unlike the Plaintiffs witnesses.

His evidence also corroborated the findings of the Land Disputes Tribunal and those of Land Management Board.



On the second of the Defendant's issues, I find that Sarinke Lempesai obtained the title to the suit land fraudulently within the meaning of Section 26(a) of the *Land Registration Act* (Act No 3 of 2012).

I find that the Defendants third issue has been addressed when addressing the Plaintiffs first issue. The lawful owner of the suit land is the first Defendant.

On the last of the Defendant's issues, I find that the Plaintiff is not entitled to the reliefs sought because of the reasons already given above.

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

Secondly, I enter judgment for the second and third defendants because the first defendant is deceased.

Costs of the counterclaim to the defendants.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 7TH DAY OF NOVEMBER, 2022.

M.N. GICHERU

JUDGE

