



REPUBLIC OF KENYA



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**Sadira & 2 others v Parsiria (Environment and Land Appeal 38 of 2021)
[2022] KEELC 14622 (KLR) (3 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14622 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL 38 OF 2021**

EM WASHE, J

NOVEMBER 3, 2022

BETWEEN

LETEIPA SADIRA 1ST APPELLANT

ANTONIO LERIMBA SADIRA 2ND APPELLANT

TANYALE OLE SADIRA 3RD APPELLANT

AND

KESEI ENE PARSIRIA RESPONDENT

JUDGMENT

1. The appellants herein have filed a memorandum of appeal dated August 8, 2019 (hereinafter referred to as “the present appeal) challenging the entire judgement delivered on the July 11, 2019 (hereinafter referred to as “the trial court judgement”) by Hon R.O Oanda in Kilgoris PMC No 15 of 2018.
2. The trial court judgement emanated from a suit which was filed by the respondent at the Environment & Land Court in Kisii as Case No 261 of 2016 and thereafter transferred to the Environment & Land Court in Narok before finally transferred to the Principal Magistrate’s Court in Kilgoris for hearing and determination.
3. The plaint filed in the trial court by the respondent against the appellants herein was dated August 24, 2016 (hereinafter referred to as “the plaint”).
4. The respondent in the plaint was seeking a total of five (5) prayers which were namely;
 - a. A declaration that the plaintiff is the sole and exclusive owner and/or proprietor of the suit properties herein otherwise known as Nkararo Adjudication Section/197 & 198 by way of demarcation and adjudication process.



- b. Permanent injunction restraining the defendants herein, their agents, servants, and/or employees either jointly and/or severally from, trespassing into, interfering with the plaintiff's peaceful use or occupation of the suit land, encroaching into or in any manner whatsoever meddling, curtailing and or using violence to prevent the plaintiff from use and peaceful occupation of the suit land.
 - c. An order of eviction do issue against the defendant and/or their agents or servants in the event that any of them has taken occupation of any portion of the suit land at the time of the judgement in the suit herein.
 - d. An order directing the OCS Kilgoris Police Station to implement the decree of this court by putting the plaintiff in actual use and occupation of the suit land and accordingly her security.
 - e. Costs of the suit and interest thereof.
5. The plaint was accompanied by a list of witnesses dated August 24, 2016, then a statement by respondent dated August 24, 2016, statement by Peter Pererua Ole Nturu dated August 24, 2016 and a list of documents dated August 24, 2016.
 6. The plaint was then served on the appellants who in response filed a memorandum of appearance dated September 19, 2016 and a statement of defence and counter-claim dated the same day (hereinafter referred to as "the defence and counter-claim").
 7. The defence and counter-claim was accompanied by a list of witnesses dated September 19, 2016, a statement by the 3rd appellant dated September 19, 2016, a statement by the 1st appellant dated September 19, 2016, a statement by the 2nd appellant dated September 19, 2016 and the appellants' bundle of documents dated September 19, 2016.
 8. The counter-claim filed by the appellants sought for the following orders;-
 - a. Declaration that the defendant to the counter-claim holds the suit properties, on trust for and on behalf of the counter-claimant herein, who has been in occupation of the suit properties long before the marriage of the defendant to the counter-claimant to the Lekilabu Ole Tanyae, now deceased.
 - b. An order to terminate the trust and rectify the register in respect of the suit properties namely, plot numbers 197 and 198, Nkararo Adjudication Section, respectively and the inclusion of the name of the counter-claimant as the legitimate and lawful proprietor thereof.
 - c. Permanent injunction restraining the defendant to the counter-claim either by herself, agents, servants and/or anyone claiming under the defendant to the counter-claim, from entering upon, trespassing onto, re-entering, building on, cultivation, alienating, selling and/or otherwise interfering with the plot numbers 197 & 198, Nkararo Adjudication Section, whatsoever and howsoever.
 - d. Costs of the cross suit to be borne by the plaintiff/defendant to the counter-claim.
 9. The respondent upon being served with the defence and counter-claim by the appellants, filed a reply to defence and defence to counter-claim on the December 19, 2016.
 10. Pleadings therefore closed and the matter proceeded for pre-trial and thereafter a full hearing before the trial court.



11. The record of appeal filed on the July 7, 2021 (hereinafter referred to as “the record of appeal”) contain the proceedings of the trial court which commenced on the August 23, 2018.
12. The first witness during the trial was the respondent herein.
13. The respondent started her evidence by indicating that she is a resident of Transmara currently residing in Kimintet where she was born and raised.
14. However, sometime ago, she got married to one Lekilabu Ole Tanyae(now deceased) (hereinafter referred to as “the respondent’s late husband”).
15. The marriage between the respondent and the late husband brought forth six (6) children.
16. However, before the demise of the respondent’s late husband, the Government of Kenya declared Nkararo Area to be an Adjudication Section for purposes of demarcation and adjudication to the residents thereof.
17. The respondent’s late husband was then identified as the occupant and beneficiary of the plot No 197 Within Nkararo Adjudication Section(hereinafter referred to as “the plot No 197”).
18. Similarly, the respondent’s late husband had one brother known as Ledoinyo Ole Sadira (hereinafter referred to as “the respondent’s late brother in law”) who was identified as the occupant and beneficial owner of plot No 198 Within Nkararo Adjudication Section.
19. The respondent testified that both plot No 197 & 198 within Nkararo Adjudication Section(hereinafter referred to as “the joint suit properties”) were occupied by the respondent’s late husband and the respondent’s late brother in law.
20. Unfortunately, after the demise of the respondent’s late husband, the appellants herein invaded the suit properties and chased away the respondent thereby depriving her of the ownership and occupation of the said suit properties.
21. The respondent further stated that the appellants demolished her matrimonial and/or family home and instead built their own which they have been occupying to the exclusion of the respondent and the children thereof.
22. As a result of this illegal and unlawful acts, the respondent was forced to move back to her birth place and/or live with her family in Kimintet as a destitute yet she had all the rights to own and occupy the suit properties.
23. The respondent therefore sought the trial court to grant the prayers in the plaint and costs of the suit.
24. During the testimony in chief, the respondent produced the following documentary exhibits in support of her testimony; -
 - i. Plaintiff Exhibit No 1- Letter dated August 24, 2016 from the Ministry of Lands & Urban Development conforming that plot Nos 197 & 198 Nkararo Adjudication Section belong to the respondent and the relevant payment receipt No 876408.
 - ii. Plaintiff exhibit No 2- consent letter to institute civil proceedings against the 3rd appellant in regards to the plots No 197 & 198 within Nkararo Adjudication Section issued by the Ministry of Lands, Housing and Urban Development dated August 11, 2016.



- iii. Plaintiff exhibit No 3- a letter from Senior Chief Samson S.Kitirrap to the Deputy County Commissioner Transamara West confirming the death of Parsidia Sadira and identifying the immediate family who were the respondent and the six children named in the said letter.
 - iv. Plaintiff exhibit No 4 -a certified copy of the proceedings and judgement issued on the 16-01-2016 by the Land Adjudication Officer regarding the objection No 600 filed by the respondent against Lendoinyio Ole Sadera (deceased) appertaining to plot No 198 within Nkararo Adjudication Section.
 - v. Plaintiff exhibit No 5- A certified copy of the proceedings and judgement issued on the January 19, 2016 by the Land Adjudication Officer regarding the objection No 599 filed by the respondent against the late Lekilabu Ole Tanyae (deceased) appertaining to plot No 197 within Nkararo Adjudication Section.
25. On cross-examination, the respondent confirmed that both suit properties belonged to the respondent's late husband and his brother.
 26. The respondent indicated that as a family, they occupied plot No 197 within Nkararo Adjudication Section.
 27. The plot No 198 belonged to the respondent's brother in law who had passed without leaving a family of his own and therefore the respondent's late husband used this portion for grazing.
 28. The respondent further elaborated the relationship with the appellants.
 29. The 1st and 2nd appellants are the respondents late husband's step brothers from the 2nd wife while the 3rd appellant is the father in law.
 30. The respondent stated that after the demise of her husband, she has never remarried or given birth to any other children.
 31. The respondent's testimony was that the appellants actions of demolishing her matrimonial and/or family home were therefore illegal and they had no right to inherit the suit properties.
 32. In re-examination, the respondent stated that she went to the adjudication offices and legally got assigned the suit properties.
 33. The respondent further indicated that she was chased away from the suit properties by the appellants jointly but its only the 1st appellant who built his house thereon.
 34. The respondent testified that at the time of her forceful eviction, she was in use and occupation of both suit properties.
 35. The plaintiff's second witness was one Peter Tererua Nturu.
 36. The plaintiff 2nd witness testified before the trial court that he was one of the members of the adjudication committee dealing with Nkararo Adjudication Section.
 37. Similarly, in terms of the family tree, the witness was a brother to the respondent's mother in law.
 38. The plaintiff's 2nd witness confirmed in his statement that the respondent was the legal and beneficial owner of both suit properties as provided in the letter dated August 24, 2016 (plaintiff exhibit No 1)
 39. The plaintiff's 2nd witness confirmed that the respondent lived on the suit properties with her late husband and their six children.



40. Unfortunately, after the demise of the respondent's husband, the appellants invaded the suit properties and evicted the respondent thereby forcing her to relocate to her parents home in Kimintet.
41. The plaintiff's 2nd witness confirmed visiting the respondent and her late husband on the suit properties where they stayed.
42. The respondent's family occupied the plot No 197 within Nkararo Adjudication Section and also grazed their cattle on plot No 198 within Nkararo Adjudication Section.
43. According to the plaintiff's 2nd witness, plot No 198 had been allocated and assigned to the late Ledoinyo Ole Sadira who was a brother in law to the respondent.
44. However, Ledoinyo Ole Sadira passed away before he could marry and/or got children and therefore the respondent's late husband took occupation and use of the said plot No 198 within Nkararo Adjudication Section and grazed on it.
45. Consequently therefore, when the respondent filed the objection No 599 and 600 regarding plot 197 & 198 respectively within Nkararo Adjudication Section before the Land Adjudication Officer the judgments were in her favour.
46. Both suit properties were then assigned to the respondent thereof as the occupant and beneficial owner.
47. The plaintiff's 2nd witness indicated that no appeal has been filed by the appellants to challenge the judgements of the Land Adjudication Officer and therefore the respondent should be allowed to enjoy occupation of the suit properties.
48. On cross-examination, the plaintiff's 2nd witness confirmed to be a beneficiary to a portion of the plot No 198 within Nkararo Adjudication Section.
49. The witness indicated that the portion had been sold to him so that the respondent would be financially stable to institute the objection proceedings.
50. The witness further confirmed to have given evidence during the objection proceedings but did not participate in the decision making because he was only a member of the Adjudication Committee and not the objection proceedings.
51. According to the witness's recollection, the respondent's mother in law had been allocated plot No 192 within Nkararo Adjudication Section and had been built a house by the 3rd appellant.
52. The 3rd appellant similarly has been allocated plot No 178 with Nkararo Adjudication Section.
53. In re-examination, the witness indicated that the respondent's problems began after the death of her husband.
54. The witness testified that he was not aware the respondent's mother in law had built a house on plot No 197 within Nkararo Adjudication Section.
55. The witness further testified that his acquisition of a portion on plot No 198 within Nkararo Adjudication Section was not illegal or in bad faith.
56. In conclusion therefore, the witness testified that the suit properties belong to the sons of the 1st wife and not members of the 2nd wife.
57. The respondent thereafter closed her case and the matter was slated for defence hearing on the November 1, 2018.



58. On the November 1, 2018, the trial court took the evidence of three defence witnesses.
59. The 1st defence witness was the 3rd appellant.
60. The 3rd appellant confirmed that the respondent was his daughter in law.
61. The 3rd appellant could not remember filing any proceedings against the respondent in relation to plot No 197 within Nkararo Adjudication Section.
62. However, the 3rd appellant indicated that plot No 198 within Nkararo Adjudication Section belonged to his 1st wife.
63. The 3rd appellant testified that the plaintiff's 2nd witness had assisted the respondent to have the suit properties transferred and registered in her names.
64. The 3rd appellant nevertheless admitted that the plaintiff's 2nd witness was a brother to his 1st wife.
65. The 3rd appellant further testified that he is currently in occupation and works on the suit properties.
66. According to the evidence adduced at the trial court by the 3rd appellant, the respondent left the matrimonial home after the demise of her husband with three (3) children.
67. The 3rd appellant denied chasing the respondent away.
68. However, when the respondent came back, she had a total of six (6) children.
69. The 3rd appellant informed the trial court that he is not aware of how the suit properties were allocated to the respondents and had not participated in any objection proceedings thereof.
70. Similarly, the 3rd appellant was not sure whether the respondent obtained any letters of administration before dealing with the suit properties.
71. The 3rd appellant therefore sought the trial court to declare him the rightful owner of the suit properties.
72. The 3rd appellant further indicated his other family members were already staying on the suit property.
73. The 3rd appellant in his evidence in chief produced the following documentary evidence in support of this case;-
 - i. Defence exhibit No 1-certified copy of the proceedings and judgement dated January 19, 2016 relating to objection No 600 dealing with plot No 198.
 - ii. A letter dated September 17, 2016 from the firm of Oguttu-Mboya & Company, Advocates to the District Land Adjudication & Settlement officer, Transmara District regarding the objection proceedings No 600 of 2016, plot No 198 within Nkararo Adjudication Section.
 - iii. Defence exhibit No 3- photographs of the homestead and farming activities undertaken by the appellants on suit properties.
74. In conclusion, the 3rd appellant indicated that the respondent stays in Mara in her own land and there has been no criminal charges that have been preferred against him due to the occupation of the suit property.
75. In cross-examination, the 3rd appellant began by also claiming that plot No 197 belongs to him.
76. The 3rd appellant further stated that he actually built a house for the 1st wife on plot No 198.



77. The 3rd appellant indicated that the respondent only had three (3) children with his deceased son.
78. The 3rd appellant also testified that he had given the respondent's late husband and the respondent a piece of land in a place called Masurura but the same was sold off.
79. As appertains the objection proceedings, the 3rd appellant indicated that he was never notified and/or invited for hearing.
80. Similarly, no appeal has been preferred against the decision of the judgment of the Land Adjudication Officer dated January 19, 2016.
81. Nevertheless, the 3rd appellant confirmed that the developments contained in the photographs produced as defence exhibit 3 belong to the 1st appellant.
82. The 3rd appellant repeated the allegation that the respondent left the matrimonial home after the death of her husband but has not remarried.
83. The 3rd appellant indicated that his intention is to eventually sub-divide the suit properties.
84. The 3rd appellant also confirmed that there was a small house built by the respondent before they were allocated the Masurura piece of land.
85. In re-examination, the 3rd appellant indicated that both the 1st wife and 2nd wife have homes in his land.
86. Secondly, the 3rd appellant stated that he was not aware of the objection proceedings and that is why he did not appeal against the said judgement.
87. On the November 8, 2018, the 2nd defence witness who is also the 2nd appellant gave his testimony at the trial court.
88. The 2nd appellant confirmed that the respondent was the wife to his brother.
89. The 2nd appellant indicated that the respondent's late husband died in the year 2005.
90. Similarly, the 2nd appellant further confirmed that the respondent and her family resided on plot No 197 within Nkararo Adjudication Section.
91. The 2nd appellant testified that the 3rd appellant's 1st wife also resided on the parcel No 197 but has since passed on.
92. The 2nd appellant further testified that both the respondent's late husband and Lendonyo Ole Sadira were children of the 1st wife.
93. According to the 2nd appellant, the respondent's late husband was staying somewhere else and never used any of the suit properties.
94. The 2nd appellant was therefore surprised to find that the respondent had been allocated the suit properties in her name.
95. The 2nd appellant indicated that plot No 198 was being used for grazing and farming.
96. The 2nd appellant prayer was that both suit properties be reverted back to the family and the respondent's name removed from the adjudication records.
97. On cross-examination, the 2nd appellant indicated that he knew where plot No 197 was within Nkararo Adjudication Section.



98. The 2nd appellant further confirmed that the originally person assigned plot No 197 within Nkararo Adjudication Section was the respondent's late husband.
99. Similarly, plot No 198 was assigned to Olendoinyo Ole Pariria Sadera who was a brother to the respondent's late husband.
100. Both the respondent's late husband and Olendoinyo Ole Pariria Sadera were the sons of the 1st wife.
101. According to the evidence of the 2nd appellant, the 3rd appellant lives on plot No 192 within Nkararo Adjudication Section.
102. In re-examination, the 2nd appellant indicated that they were never informed of the objection proceedings.
103. Similarly, the 2nd appellant denied ever sending away the respondent and her children from the suit property.
104. The 2nd appellant indicated that the respondent's husband was buried in a neighbour's homestead because there were clashes.
105. The 2nd appellant further stated that he did not intend to take away the respondent's suit properties.
106. The defence 3rd witness was the 1st appellant.
107. The 1st appellant again confirmed that the respondent was the wife of his deceased brother.
108. The 1st appellant indicated that when the respondent's late husband passed away, he was a young boy aged around 8 years.
109. Nevertheless, the 1st appellant stated that he knew where plot No 197.
110. According to the evidence of the 1st appellant, both the 1st and 2nd wives of the 3rd appellant lived on plot No 197 within Nkararo Adjudication Section.
111. The first appellant further testified that no structure or house belonging to the respondent was ever destroyed and/or demolished because the respondent and her late husband have never occupied plot No 197 within Nkararo Adjudication Section.
112. As regards plot No 198 within Nkararo Adjudication Section, the 1st appellant indicated the name of Ledoinyo.
113. The Ledoinyo was a brother to the respondent's late husband but passed away without a wife and/or child.
114. The 2nd appellant indicated that he was not aware of how the respondent procured the allocation of the suit properties into her name.
115. The 2nd appellant stated that the objection proceedings had proceeded without him being notified and/or being an opportunity to participate.
116. Nevertheless, no appeal has been preferred by the appellants in relation to the judgments of the Land Adjudication Officer as appertains appeals No 599 and 600.
117. In re-examination, the 2nd appellant reiterated that the respondent's late husband passed away in the year 2005 when he was 8 years old.



118. At that time, the 2nd appellant testified that the 1st wife to the 3rd appellant had built her home on plot No 197 within Nkararo Adjudication Section.
119. In 2007, the 1st appellant indicated that he built the house currently on plot No197 within Nkararo Adjudication Section.
120. Nevertheless, during the adjudication process, the suit properties were allocated and assigned to the two step brothers.
121. There was no evidence that the said suit properties were being held in trust for the other family members.
122. Lastly, the 1st appellant confirmed that the family and children of the step brothers had a right to accommodation on the land and they were not chased away.
123. The appellants thereafter closed their case at the trial court.
124. Parties were granted leave of 21 days to prepare and filed their written submissions and on the March 31, 2019, the court fixed a date for the judgment.
125. The judgement was subsequently pronounced on the July 11, 2019 and a memorandum of appeal filed on the August 9, 2019.
126. The court has looked at the pleadings, the testimonies of the witnesses and the documentary evidence contained in the record of appeal filed herein, the issues for determination in this appeal can be crystallized as follows; -
 1. Who were the original allottees & occupants of plots No 197 & 198 within Nkararo Adjudication Section?
 2. Was the allotment of plots No 197 & 198 within Nkararo Adjudication Section to the respondent lawful?
 3. Do the appellants have any proprietary rights and/or to plots No 197 & 198 Within Nkararo Adjudication Section?
 4. Are the appellants entitled to the orders sought in the appeal?
 5. Are the respondents entitled to the orders granted in the judgement of July 11, 2019?
 6. Who bears the costs of this appeal?

Issue No.1 – Who Were The Original Allottees & Occupants Of Plots No 197 & 198 Within Nkararo Adjudication Section?

127. The first and cardinal issue for determination in this appeal is the ownership of plot No 197 & 198 within Nkararo Adjudication Section.
128. According to the evidence adduced at the trial court by the respondents as well as the appellants herein, the beneficial interests in plot No 197 had been recorded in the name of the respondent's late husband Lekilabu Ole Tanyae.
129. This evidence has further been collaborated by the respondent's 2nd witness namely Peter Tererua Nturu who was a member of the Adjudication Committee of Nkararo Adjudication Section.



130. The respondent's 2nd witness also testified that plot no 197 was occupied by the respondent's late husband family which included the respondent herein and their six (6) children.
131. Similarly, according to the testimony of the respondent and the respondent's witness known as Peter Tererua Ntururu, plot No 198 had been recorded to belong to Lendoinyo Ole Sadira.
132. A perusal of the record of appeal and/or proceedings contained therein, the court fails to find any oral evidence and/or documentary evidence to challenge the recording of the respondent's late husband as the beneficial owner of plot 197.
133. However, as appertains plot No 198 within Nkakarar Adjudication Section, the 3rd appellant at the trial court testified that the same belongs to his 1st wife.
134. The appellants statement of defence & counter-claim dated September 19, 2016 does not challenge the recording of plot No 197 & 198 within Nkarar Adjudication Section in the names of Lekilabu Ole Tanyae & Lendoinyo Ole Sadira as the beneficial owners of the same but only seeks to challenge the manner in which plot No 197 and 198 within Nkarar Adjudication Section were after their demised transferred to the respondent's name.
135. It is therefore clear in the court's mind that plot No 197 within Nkarar Adjudication Section was recorded in the name of Lekilabu Ole Tanyae.
136. As regards plot No 198, the 3rd appellant's allegations that the same was recorded in the name of the 1st wife, the court has gone through the defence exhibits produced at the trial court which include (i) a copy of the certified copy of the proceedings and judgement dated January 19, 2016 relating to objection No 600 dealing with plot 198 and the letter dated September 17, 2016 by the firm of Oguttu Mboya & Company, Advocates.
137. The letter dated September 17, 2016 in particular at paragraph 2 confirms that plot No 198 Within Nkarar Adjudication Section had been recorded in the name of Lendoinyo Ole Sadira who was the 3rd appellant's son.
138. The 3rd appellant's testimony at the trial court is therefore inconsistent with the instructions and contents the letter dated September 17, 2016 which was his exhibit No 2.
139. In essence therefore and based on the 3rd appellant's own admission, the court makes a finding that plot No 198 Within Nkarar Adjudication Section had been recorded in the name of Lendoinyo Ole Sadira as the beneficial owner thereof.

Issue No. 2- Was The Allotment Of Plots No 197 & 198 Within Nkarar Adjudication Section To The Respondent Lawful?

140. The court in issue No 1 has conclusively determined the original persons recorded as the beneficial owners of plot No 197 & 198 Within Nkarar Adjudication Section.
141. However, according to the plaint dated August 24, 2016, the respondent alleges that both plot No 197 & 198 Within Nkarar Adjudication Section were lawfully recorded in her name as the beneficial owner after the demise of the original owners namely Lekilabu Ole Tanyae & Lendoinyo Ole Sadira.
142. As relates to plot No 197 Within Nkarar Adjudication Section, the respondent made a claim of the same by virtue of being the original owner's wife and beneficiary.



143. According to the respondent's testimony and documentary evidence contained in the plaintiff's exhibit No 5, the respondent seems to have filed an objection before the Adjudication Committee for name of the late husband to be deleted and her name to be recorded as the beneficial owner.
144. The proceedings and judgement relating to the objection No 599 relating to plot No197 is found in the plaintiff's supplementary list of documents dated March 6, 2018 on pages 85 and 86 of the record of appeal.
145. A perusal of this proceeding confirms that the respondent was the claimant therein on the basis of being a wife and/or beneficiary of the late husband Lekilabu Ole Tanyaewho was the recorded beneficiary of plot No197 within Nkararo Adjudication Section.
146. The finding and judgement of the Land Adjudication Officer was to the effect that indeed the respondent being the wife of the late Lekilabu Ole Tanya and already being in occupation and possession of plot No 197 within Nkararo Adjudication Section was therefore lawfully and legally entitled to the said plot.
147. Consequently therefore, the name of the late Lekilabu Ole Tanyae was deleted and the name of the respondent was accordingly entered into the Adjudication Register. A148. s appertains plot No 198 Within Nkararo Adjudication Section, the name of Lendoinyo Ole Sadera which had been originally recorded was also challenged by the respondent through objection No 600.
149. The proceedings and the judgement by the land adjudication officer are contained in pages 74 and 75 of the record of appeal.
150. A perusal of this objection confirms that the objector was the respondent in this appeal.
151. The witness in support of the objection and/or the respondent was again Peter Pererua Ole Ntururu.
152. The respondent claim on plot No 198 Within Nkararo Adjudication Section was that she was the only remaining relative of Lendoinyo Ole Sadera in the ground.
153. The respondent stated that Lendoinyo Ole Sadera's relatives namely the brother and the mother had passed away leaving only a sister who had already been married elsewhere.
154. Based on the above representation, the Land Adjudication Officer ruled the respondent to be the only heir to plot No 198 within Nkararo Adjudication Section and thereafter deleted the name of Lendoinyo Ole Sadera and entered the name of the respondent.
155. The appellants on the other hand are challenging the manner and process which was applied in deleting the names of Lekilabu Ole Tanyae (deceased) and Lendoinyo Ole Sadera (deceased) from the records of plot No 197 & 198 within Nkararo Adjudication Section respectively.
156. The appellants position is that the respondent's actions amounted to fraud and have gone further to give particulars of the fraud in paragraph 6 of the defence.
157. The summary of the grounds of fraud pleaded in paragraph 6 of the statement of defence is to the effect that upon the death of Lekilabu Ole Tanyae and Lendoinyo Ole Sadirawho were the children of the 3rd appellant, the respondent caused the cancellation and thereafter insertion of her own name without carrying out any succession proceedings and/or notifying the 3rd respondent in particular.
158. The other ground of fraud pleaded by the appellants is that the objection proceedings were lodged and/or undertaken way after the completion of the adjudication and demarcation process within Nkararo Adjudication Section.



159. Looking at the pleadings and the evidence adduced in the trial court, this court reiterates its finding in issue No 1 on the ownership of plots No 197 & 198 within Nkararo Adjudication Section.
160. Consequently therefore, the cardinal question for determination before the trial court and this court is who is the rightful heir to the plots No 197 & 198 within Nkararo Adjudication Section.
161. Referring to the proceedings and judgements in objection No 599 relating to plot No 197 within Nkararo Adjudication and objection No 600 relating to plot No 198 within Nkararo Adjudication Section, the Land Adjudication Officer therein made the alterations on the name of the beneficiaries upon making a finding that the respondent was the lawful heir to both Lekilabu Ole Tanyae (deceased) and Lendoinyo Ole Sadira (deceased) respectively.
162. In other words, the core issue for determination is who is or are the lawful beneficiaries of plot No 197 Within Nkararo Adjudication Section belonging to Lekilabu Ole Tanyae (deceased) and plot No 198 Within Nkararo Adjudication Section belonging to Lendoinyo Ole Sadira.
163. Unfortunately, objections proceeding under the *Land Adjudication Act*, cap 284 do not deal and/or establish who the heir of a beneficiary should be.
164. Objections filed under section 26 of the *Land Adjudication Act*, cap 284 cater for disputes between competing interests over the registration of rights on a particular plot.
165. The respondents actions of filing an objections against a deceased person who had already been recognised as the lawful beneficiary was in fact a short cut to unilaterally getting registered as a beneficiary without following the law of succession which deals with assets of a deceased person.
166. In other words, the issue before the trial court was not demarcation and/or adjudication but that of inheritance.
167. This issue for determination in the court's considered opinion is not within the powers and jurisdiction of this court.
168. The parties herein should therefore approach the rightful court for a hearing and determination of who is the rightful heir to both properties known as plot No 197 Within Nkararo Adjudication Section and plot No 198 Within Nkararo Adjudication Section.
169. The court in its considered view is that the respondent did not have the appropriate locus standi to file any objections on both plot No 197 And 198 Within Nkararo Adjudication Section until appropriate letters of administrations had been obtained in relation to both Lekilabu Ole Tanyae (deceased) and Lendoinyo Ole Sadira (deceased) respectively.
170. In essence therefore, the court makes a finding that the proceedings and/or judgements undertaken in objection No 599 and objection No 600 filed by the respondent before the Land Adjudication Officer were not proper and/or regular.

Issue No. 3- Do The Appellants Have Any Proprietary Rights And/or To Plots No 197 & 198 Within Nkararo Adjudication Section?

171. On this issue, the court is clear that both plot No 197 & 198 Within Nkararo Adjudication Section were the properties of Lekilabu Ole Tanyae & Lendoinyo Ole Sadira how have since passed away.
172. Consequently therefore, both plot No 197 & 198 Within Nkararo Adjudication Sections should remain as assets of the estate of Lekilabu Ole Tanyae & Lendoinyo Ole Sadira until succession is undertaken and completed in accordance to the *Law of Succession*, cap 160.



173. However, looking at the evidence adduced at the trial court, it is clear that plot No 197 Within Nkararo Adjudication Section belonging to Lekilabu Ole Tanyae (deceased) was occupied together with the respondent and their children at the time of his demise.
174. This fact has also been affirmed by the letter dated January 18, 2016 which was authored by the Senior Chief of Nkararo Location.
175. The respondent during the hearing at the trial court stated that the appellants herein forcefully evicted her from the matrimonial home within plot No 197 Within Nkararo Adjudication Section thereby making her a destitute and forcing her to go back to her parents' home in Kimintet.
176. The respondent's allegations that she was evicted by the appellants was collaborated by the respondent's witness who also denied that the respondent deserted the matrimonial home located on plot No 197 Within Nkararo Adjudication Section and remarried elsewhere.
177. Either way, this court is of the considered view that the appellants had no right to make claim, enter and/or interfere with the quiet occupation and/or possession of the either plot No 197 & 198 Within Nkararo Adjudication Section before succession had been undertaken.
178. The appellants actions either intentional or accidental of entering into and/or occupying both plot No 197 & 198 Within Nkararo Adjudication Section at this point in time without having undertaken and completed the succession process are illegal and unlawful.

Issue No 4- Are The Appellants Entitled To The Orders Sought In The Appeal?

179. Looking at the memorandum of appeal dated August 8, 2019 and the determinations made hereinabove, the court is of the considered view that the appellants have only been successful in prayer No. 1 & 2 of this appeal.

Issue No 5- Are The Respondents Entitled To The Orders Granted In The Judgement Of July 11, 2019?

180. As appertains the judgement and decree of Hon R Oanda (PM) pronounced and issued on the July 11, 2019 and September 24, 2019 respectively, the same be and is hereby set-aside forthwith.

Issue No 6- Costs Of The Appeal?

181. On the issue of costs, the court is of the considered view that each party should bear its own costs due to the orders that will emanate from this appeal.

Conclusion

182. In conclusion therefore, the court hereby makes the following orders as appertains the memorandum of appeal dated August 8, 2019; -
- i. The judgement and decree of Hon R.O Oanda (PM) pronounced on the July 11, 2019 and issued on the September 24, 2019 respectively be and is hereby set-aside and/or vacated.
 - ii. The proceedings undertaken by the Land Adjudication Officer of Nkararo Adjudication Section pursuant objection No 599 relating to plot No 197 Within Nkararo Adjudication Section and the subsequent judgement pronounced on the January 19, 2016 be and are hereby set-aside and/or vacated.



- iii. The proceedings undertaken by the Land Adjudication officer of Nkararo Adjudication Section pursuant objection No 600 relating to plot No 198 within Nkararo Adjudication Section and the subsequent judgement pronounced on the January 19, 2016 be and are hereby set-aside and/or vacated.
- iv. The Land Adjudication Officer is further directed to rectify the Adjudication Records of both plot No 197 and 198 within Nkararo Adjudication Section by deleting the names of the respondent as the recorded beneficiary and replacing the same with that of Lekilabu Ole Tanyae (deceased) And Lendoinyo Ole Sadira (deceased) respectively forthwith.
- v. The appellants herein are hereby ordered to yield vacate, remove, demolish and yield vacant possession of plot No 197 Within Nkararo Adjudication Section to the respondent and/or her immediate family within the next sixty (60) days from the date of this judgement.
- vi. The appellants, respondents and/or one Peter Pererua Ole Nturuu of Kenyan identification card No 1xxxx4 be and are hereby directed to stop meddling, trespassing, occupying and/or interfering with the occupation and ownership of plot No 198 Within Nkararo Adjudication Section pending the hearing and determination of the succession proceedings thereof.
- vii. The appellants are also prohibited by way of a temporary injunction from meddling, trespassing, occupying and/or interfering with the occupation of the respondent and/or her immediate family occupation of plot No 197 Within Nkararo Adjudication Section pending the hearing and determination of the succession proceedings thereof.
- viii. Each party to bear its own costs of both the proceedings of the trial court and this appeal.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 3RD NOVEMBER 2022.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT:

ADVOCATE FOR THE APPLICANT:

ADVOCATE FOR THE RESPONDENT:

