



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC JUDICIAL REVIEW NO. 3 OF 2021

IN THE MATTER OF AN APPLICATION FOR LEAVE TO COMMENCE JUDICIAL REVIEW

PROCEEDINGS PURSUANT TO ORDER 53 OF THE CIVIL PROCEDURE RULES OF 2010

AND

IN THE MATTER OF THE LAND REGISTRATION ACT NO. 6 OF 2012

AND

IN THE MATTER OF LAND ACT, NO. 3 OF 2012

BETWEEN

JULIUS NTETE KALEIYA (suing as the legal representative and beneficiary of the

Estate of the late KALEIYA TUMPES AND LASOI KALEIYA TUMPES.....APPLICANT

AND

TOM OLE KALEIYA.....1ST RESPONDENT

LAND REGISTRAR KAJIADO COUNTY.....2ND RESPONDENT

JUDGMENT

This Judgment is on the Notice of Motion dated 10th June, 2021 which seeks the following orders;

1. *AN ORDER OF PROHIBITION*, pursuant to leave granted on the 3rd of June 2021 to bring to this Court to prohibit the Respondents by themselves, their servants or agents from expunging, dealing or interfering with land title Number KAJIADO/KAPUTIEI-SOUTH/994.

2. *AN ORDER OF MANDAMUS*, pursuant to leave granted on 3rd June, 2021 to bring to this Court to compel the second Respondent to produce title documents to the suit property and to issue in the Register of Land Entries relating to the Applicant's ownership of all that land known as KAJIADO/KAPUTIEI SOUTH/994 on behalf of himself and other beneficiaries of the late Kaleiya Tumpes with the exclusion of Tom Kaleiya Tumpes.

3. *AN ORDER OF CERTIORARI*, pursuant to leave granted on 3rd June, 2021 to bring this Court to quash previous transactions by the second Respondent in respect of KAJIADO/KAPUTIEI-SOUTH/994 from 9th June, 2005 to date.

The motion is supported by ten grounds, a supporting affidavit with many annexures, a statutory statement and a verifying affidavit.

In summary, the Applicants' case is that he and the first Respondent are half brothers. They have one father, Kaleiya Tumpes but different mothers. The Applicants' mother was the Junior Wife while the mother to the Respondent was the Senior Wife.

The father died in the year 1985 while the Applicant's mother died in the year 1990. The Applicant was therefore orphaned at a very early age.

The first Respondent being Senior to the Applicant in age took advantage of his seniority and partitioned LR. NO. KAJIADO/KAPUTIEI-SOUTH/3154 measuring 33.59 Hectares and transferred it, unlawfully, to third parties without the knowledge of the Applicant and other siblings.

The said L.R. NO. KAJIADO/KAPUTIEI-SOUTH/3154 was registered in the name of Lasoi Kaleiya Tumpes, the Applicants' mother jointly with the 1st Respondent. Mutation forms dated the year 2012 which is 22 years since the death of Lasoi Kaleiya bear her signature.

The first Respondent has not been transparent in dealing with the family property and it is for this reason that the current notice of motion was filed.

The Respondents, though served with the Notice of Motion dated 10th June, 2021, did not oppose it.

Having carefully considered the entire Notice of Motion together with the accompanying materials, I find that there is prima facie evidence to prove that the Applicant may be disposing off family land without the consent of other family members.

I therefore find merit in the Notice of Motion dated 10th June, 2021 and allow it in terms of prayers 1, 2 and 3.

Orders accordingly.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 29TH DAY OF NOVEMBER, 2021

M.N. GICHERU

JUDGE