



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAJIADO

ELC CASE NO. 960 OF 2017

MUNKET PULEI (suing as personal and legal representative of

KASAINI PULEI KINYOEI alias KASAINI OLE PULEI deceased).....PLAINTIFF

-VERSUS-

MENTA ENERISA RISA PULEI.....1ST DEFENDANT

MATIPEI OLE RISA.....2ND DEFENDANT

KIPIRORI OLE RISA.....3RD DEFENDANT

MPOYE OLE RISA.....4TH DEFENDANT

KIPENO ENERISA.....5TH DEFENDANT

KONGO OLE RISA MUNII.....6TH DEFENDANT

COUNTY LAND REGISTRAR, KAJIADO DISTRICT.....7TH DEFENDANT

COUNTY SURVEYOR, KAJIADO DISTRICT.....8TH DEFENDANT

JUDGMENT

The Plaintiff's claim against the Defendants is as follows;

- (a) A declaration that the subdivision of land parcel no. KAJIADO/KIPETO/347 into parcels Numbers KAJIADO/KIPETO/1792,1793, 1794, 1795 1796 and 1797 was fraudulent and therefore null and void.
- (b) An order in terms of paragraph 14 of the plaint which is to the effect that an order issues directing the 7th and 8th Defendants to recall and revoke Title Deeds for land parcels numbers KAJIADO/KIPETO/1792, 1793, 1794, 1795, 1796 and 1797 together with their subsequent subdivisions, reverting the same to the parent title number 347, resurvey land parcels numbers 347 and 348 to establish total acreage, dividing the same into two equal portions and re-establish boundary beacons.
- (c) Costs of the suit.
- (d) Any other relief the Court may deem just.

The Plaintiff's case is as follows;

He is a son of Kasaine Pulei Kinyoei also known as Kasaine Ole Pulei. On 17th July, 1983, the Plaintiff's father and one Risa Ole Munii Pulei were registered as joint proprietors of L.R. KAJIADO/KIPETO/44 measuring approximately 232.5 Hectares.

On 30/10/1991, the two joint proprietors of the land sold 20.24 hectares to one Moses Tinga. They were left with 212. 26 hectares which they divided between themselves. Each of them got 106. 13 hectares.

Following the sale and the subdivision of the land number 44, the register was closed and three new parcels were created namely;

- (a) KAJIADO/KIPETO/347 in the name of Risa Ole Munii Pulei
- (b) KAJIADO/KIPETO/348 in the name of Kasaine Pulei Kinyoei
- (c) KAJIADO/KIPETO/349 in the name of Moses Ting'a.

The land registrar Kajiado issued Title Deeds for the three (3) parcels. Parcels 347 and 348 were said to be 103.2 hectares each while parcel no. 349 was said to be 20.24 hectares.

Land Parcel No. KAJIADO/KIPETO/347 was subdivided to create the following parcels and new owners;

1. KAJIADO/KIPETO/1792 - 1st Defendant
2. KAJIADO/KIPETO/1793 - 2nd Defendant
3. KAJIADO/KIPETO/1794 - 3rd Defendant
4. KAJIADO/KIPETO/1795 - 4th Defendant
5. KAJIADO/KIPETO/1796 - 5th Defendant
6. KAJIADO/KIPETO/1797 - 6th Defendant

The six Defendants may have subdivided their parcels further.

Recently, the Plaintiff surveyed land number 348 and found that it was 103.2 hectares. With the permission of the six Defendants, the original parcel number 347 was also surveyed and found to be 125.73 hectares instead of 103. 13.

Since the land was to be shared equally between Kasaine Pulei Kinyoei and Risa Ole Manii Pulei, the Plaintiff has tried talking to first to sixth Defendants, to have the dispute settled amicably but they have refused to cooperate.

It is for this that they filed this suit.

In support of his case, the Plaintiff filed the following

- A witness statement dated 11th December, 2017
- Copy of Grant dated 23/2/2016 issued by Kajiado Magistrate's Court in Succession Cause no. 99 of 2015.
- Authority to plead issued by Mako Ole Kasaine Pulei.
- Sketch Maps showing approximate acreage of LR. KAJIADO/KIPETO/347, 348 and 249.
- Copy of Title Deed for LR NO. 348
- Copy of Acme Land Surveyors and Consultants Report dated 13/11/2017
- Copy of Certificate of Death of Risa Ole Munii Pulei
- Copy of mutation form for KAJIADO/KIPETO/44

The first to six Defendants through their counsel on record filed a joint statement of defence dated 26/4/2019 in which they deny any wrong doing on their part.

The Defendants aver that the claim by the Plaintiff is time barred by virtue of **Section 7** of the **Limitation of Actions Act**. Finally, they conclude by saying that the third parties who may be affected by the orders issued in this case have not been joined as parties.

The third Defendant filed a witness statement dated 3rd June, 2019 in which he says that all the parties are relatives and the land in dispute was to be shared equally between the two families of the plaintiff and the Defendants.

He disputes that the two parcels are not equal in size. He concludes by saying that there are third parties, who have not been joined in this case and they are innocent purchasers for value.

In addition to the witness statement by the third Defendant, the Defendants filed 5 copies of register for land parcels numbers KAJIADO/KIPETO/1792, 1794, 347, 2290 and 4203.

On 10/1/2019, the Land Registrar Kajiado North filed a report dated 30th October, 2018 which shows that there is indeed a big difference between land reference number 347 and 348. The sizes are as follows;

1. KAJIADO/KIPETO/347 – 96.77 Ha.
2. KAJIADO/KIPETO/348 – 123.63 Ha.
3. KAJIADO/KIPETO/349 – 22.496 Ha

Counsel for the parties filed written submissions on 28/7/2021 and 12/7/2021 respectively.

I have carefully considered all the evidence adduced by both sides including their witness statements, documents, testimonies in Court and the reports by Land Registrar and the Surveyor.

It is not in dispute that L.R. NO. 348 is bigger than L.R. NO. 347 by approximately 26.86 hectares. This is because L.R. 347 is 96.77 hectares while 348 is 123.63 hectares. I say it is not in dispute because the report of the Land Registrar is not disputed by either party.

Secondly, it is not in dispute that the original joint owners were to share the land that remained after sale to Moses Ting'a equally.

I find that there are only two issues to be decided in this case.

Firstly, can the Plaintiff's claim for an equal share be defeated by limitation?

Secondly, can failure to join third parties who may have bought land from the Defendants be fatal to the Plaintiff's case?

On the first issue, I find that the Plaintiff's claim is not time barred. There must have been a mistake in the subdivision of the two parcels the result of which is that the Defendants' parcel is 26.86 hectares bigger than that of the Plaintiff's.

Section 26 of the **Limitation of Actions Act** provides as follows;

“Where, in the case of an action of which a period of limitation prescribed, either

(c) the action is for relief from the consequences of a mistake, the period of limitation does not begin to run until the Plaintiff has discovered the fraud or the mistake or could have with reasonable diligence have discovered it”

I need not say more.

On the second issue, I find that it was not necessary to join third parties because the relief sought can be recovered from the Defendants. The land that the Plaintiff lost due to the mistake is still in the custody of the defendants.

The defendants cannot be heard to say that there are other parties who ought to have been joined in this case because under **Order 1 Rule 15 Civil Procedure Rules**, it was incumbent upon them to join those other parties. It was not the duty of the Plaintiff but that of Defendants who know such third parties better.

On costs, it is pleaded that the Plaintiff sought to settle the matter out of Court but the Defendants would not budge. The Defendants have not denied this or disproved this averment. For the above reasons, I enter judgement as prayed for in the plaint.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE