



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 767 OF 2017**

**MATILONG OLE KOIPATEK.....PLAINTIFF**

**-VERSUS-**

**CHRISTINA MUENI JOHN OLE TINKOI.....1ST DEFENDANT**

**SAJILONI GROUP RANCH (Herein Represented By Its Officials).....2ND DEFENDANT**

**G.K. SAPUR (Secretary).....3<sup>RD</sup> DEFENDANT**

**TIYIES OLE SEKEYIAN (Treasurer).....4TH DEFENDANT**

**LAND REGISTRAR, KAJIADO DISTRICT.....5TH DEFENDANT**

**JUDGMENT**

In the Plaintiff dated 12<sup>th</sup> June, 2017, the Plaintiff Christina Mueni John Ole Tinkoi seeks the following reliefs from the Defendant Matilong Ole Koipatek;

- a. An Eviction Order against the Defendant to have him evicted from the Plaintiff's land parcels known as KAJIADO/DALALEKUTUK/4886 and KAJIADO/DALALEKUTUK/4887.
- b. Costs of this suit.

The Plaintiff's case is as follows;

She is the registered proprietor of the two parcels of land and the Defendant who is her brother in law has trespassed onto the land and occupied it by force. For this reason, she prays that he be evicted.

In support of her case, the Plaintiff filed several documents on various dates. They include;

- i. Copies of Title Deeds for the suit parcel.
- ii. Copy of the Plaintiffs identity card.
- iii. Copy of judgment in Criminal Case No. 880 of 2012 at Kajiado Magistrates' Court where the Defendant was convicted of forcible detainer on 20/11/2017 and sentenced to serve under probation for 2 years.
- iv. KANU Membership Card dated 6/1/2005.
- v. A photograph that is not clear
- vi. A document issued by Sajiloni Group Ranch dated 21/1/1985 addressed to one Kipetwan Ole Tinkoi informing him that he had been allocated land number 194 at a place called Eith.

vii. A list showing Koipatek Ole Nkinorn Tinkoi as member number 277 and register number 234 allotted 27.89 hectares.

viii. A document issued by the Land Registrar Kajiado dated 7<sup>th</sup> July, 2010.

The Defendant filed a defence and counterclaim on 17<sup>th</sup> July, 2017 in which the Plaintiff is the first Defendant. The other Defendants are Sajiloni Group Ranch through its officials Rimon Ole Tetta, G.K. Sapur and Tiyies Ole Sekeyian as Chairman, Secretary and Treasurer and the Land Registrar Kajiado Land Registry as the fifth Defendant.

In the Counterclaim, Matilong Ole Koipatek accuses the Defendants of fraudulently acquiring and transferring land meant for the whole family to a purported widow of Kipetuan Ole Tinkoi, the eldest Son.

He challenges the transfer by the Group Ranch to the first Defendant in the Counterclaim as she did not have Letters of Administration or even a Certificate of Death. According to him, his brother, the purported husband of Christina Mueni Ole Tinkoi is alive and he lives in Arusha.

The land should be transferred to the said Kipetuan Ole Tinkoi so that he can distribute it to his other family members as expected of him.

Matilong adds that he lives on the suit land with his mother and his own family and that his father who is also the father of Kipetwan Ole Tinkoi is buried on the land.

At the trial, Matilong Ole Koipatek, Christina Mueni Ole Tinkoi and Gideon Kinya Ole Sapur testified.

According to Matelong, his brother never married Christina Mueni because she was married to Ntimput Meshuko with whom she got two children namely Kiberenke Meshuko and Maria Meshuko. Mueni's former husband had employed Kipetwan as a driver.

Although the Honourable the Attorney General filed a defence denying the Counterclaim, no evidence was filed by the Attorney General.

Counsel for the Plaintiff filed written submissions on 11<sup>th</sup> June, 2021 while the one for the Defendants filed his on 5<sup>th</sup> June, 2021. The issues raised in those submission are as follows;

1. Can the Plaintiff's title to the suit parcel be defeated in view of **Section 26 of the Land Registration Act** which provides that the Certificate of Title is conclusive evidence of proprietorship?
2. Has fraud been proved?
3. The effect of the conviction of the Defendant Matilong Ole Koipatek in Criminal Case No. 880 of 2012 at Kajiado Magistrate's Court.

I have carefully considered all the evidence adduced in this case by both sides including the pleadings, witness statements, documents and the oral evidence at the trial.

I have also considered the submissions by the learned Counsel for the parties and the authorities cited therein. I find that the three issues cited above would determine the dispute in this case.

Before I make my findings, I wish to state as follows. The following facts are not in dispute;

Firstly, it is the Defendant in the main suit, Matelong Ole Koipatek and his family who are in occupation of the suit land. The Plaintiff, Christina Mueni John Ole Tinkoi has never been in occupation.

Secondly, Christina Mueni John Ole Tinkoi did not file any Probate and Administration Cause in order to be appointed the Administratrix of the Estate of Kipetwan Ole Tinkoi.

Thirdly, no Certificate of Death of Kipetwan Ole Tinkoi is available and no presumption of death under **Section 118A** of the **Evidence Act** has been declared by a Court or any other authority.

I now come to the issues of determination.

On the first issue of **Section 26**, it is provided as follows in the **Land Registration Act (Act No. 3 of 2012)**,

**“(1) The Certificate of Title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by Courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, subject to the encumbrances, easements, restrictions and conditions contained or endorsed in the Certificate, and the title of that proprietor shall not be subjected to challenge, except,**

a. ....

**b. Where the Certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme”.**

In this case, I find that the acquisition of the title to the suit land by Christina Mueni John Ole Tinkoi was done so unprocedurally because she did not have the requisite letters of administration to the estate of Kipetwan Ole Tinkoi. In fact, there is no proof that Kipetwan Ole Tinkoi is dead.

On the second issue, I find that fraud is not the only ground under which registration can be challenged as misrepresentation, illegality and unprocedural acquisition among others are sufficient grounds of nullifying title even where a Certificate to that title has been issued.

On the third issue of the conviction in the Magistrates Court of forcible detainer, I find that the Magistrates Court dealt with a very narrow issue of who had the title deed to the suit land. The issue of how the title deed was acquired did not feature in the trial.

The decision of the Lower Court is not binding on this Court at all. This Court has considered the broader issue of how the title deed was acquired.

Finally, **Section 28 of the Land Registration Act** provides as follows;

**“Unless the contrary is expressed in the register, all registered land shall be subject to the following overriding interests as my for the time being subsist and affect the same, without their being noted in the register (b) Trusts including customary trusts”**

In my view, the meaning of the above provision is that, even if Christina Mueni John Ole Tinkoi had acquired the suit land procedurally, which she did not, the same would have been subject to the occupation by Matilong Ole Tinkoi and other family members who are actually occupying the suit land.

For the above stated reasons, I dismiss the Plaintiff’s suit with costs. I enter judgment for the Plaintiffs in the counterclaim as per the counterclaim.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9<sup>TH</sup> DAY OF DECEMBER, 2021**

**M.N. GICHERU**

**JUDGE**