



Kureto & another v Nguli & 2 others (Environment and Land Case 114 of 2024) [2025] KEELC 7166 (KLR) (16 October 2025) (Judgment)

Neutral citation: [2025] KEELC 7166 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE 114 OF 2024
LC KOMINGOI, J
OCTOBER 16, 2025**

BETWEEN

JOSEPH TENES KURETO 1ST PLAINTIFF

CATHERINE NAISIAE ENE PARTOTI 2ND PLAINTIFF

AND

TOM JULIUS NGULI 1ST DEFENDANT

LANDS REGISTRAR KAJIADO WEST 2ND DEFENDANT

THE HON ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. By the Plaint dated 28th February 2023 this suit was first filed at the ELC Ngong’ Magistrates Court. It was later transferred to this Court for lack of pecuniary jurisdiction by the Lower Court.
2. The Plaintiffs claim that through a sale agreement dated 4th July 2010 between them and the 1st Defendant, the 1st Defendant agreed to purchase 10 acres of their land. This was excised from Kajiado/Loodariak/1621 forming parcels Kajiado/Loodariak/11339, Kajiado/Loodariak/11340, Kajiado/Loodariak/11342 and Kajiado/Loodariak/11343 which were registered in the Plaintiffs’ names. However, the 1st Defendant ‘disappeared’ before paying the full purchase price. They thus approached Court seeking termination of the said agreement on grounds that it was unenforceable because it did not specify the purchase price; spousal consent was not sought at the time of the agreement; Land Control Board consent had never been obtained; and that any disputes arising from the agreement ought to have been instituted within 6 years as per Section 4(1)(a) of *Limitation of Actions Act*. They therefore sought that:
 - a. The sale agreement between the Plaintiffs and the 1st Defendant dated 4th July 2010 be terminated.



- b. Any existing or future caution, caveat, restriction and/or encumbrance lodged or registered by the 1st Defendant herein and/or any other person authorised by or claiming through him against parcels Kajiado/Loodariak/11339, Kajiado/Loodariak/11340, Kajiado/Loodariak/11342 and Kajiado/Loodariak/11343 and emanating from the sale agreement dated 4th July 2010 be revoked and/or stopped by the Land Registrar Kajiado West Registry.
 - c. Costs of the suit and interest thereon.
 - d. Any other relief that this Hon. Court may deem fit to grant.
3. From the court record, the 1st Defendant neither filed a defence nor entered appearance despite being served by substituted service through advertisement in the Daily Nation Newspaper dated 27th September 2023.
 4. The 2nd and 3rd Defendants in their Statement of Defence dated 8th April 2024 stated that they were not privy to the contract entered between the Plaintiff and the 1st Defendant and this dispute was purely between the two parties hence the suit against them should be dismissed with costs.
 5. The suit was set down for formal hearing.

Evidence of the Plaintiffs

6. PW1, Joseph Tenes Kureto, the 1st Plaintiff, adopted his witness statement dated 28th February 2023 as his evidence in chief and produced his bundle of documents which was marked as P. Exhibit 1-6 respectively. It was his testimony that the 1st Defendant approached him with the intention of buying ten (10) acres of his land; Kajiado/ Loodariak 1621 which measured approximately thirty (30) acres and was subdivided into four portions. The 1st Defendant wanted to buy ten (10) acres. He stated that he was selling each acre for Kshs. 150,000 and acknowledged that the 1st Defendant had paid Kshs. 400,000 in cash. However, he disappeared from 2015 and they did not know his whereabouts. They later learnt from the Land registrar that the 1st defendant had put a caution against the entire parcel, hence they could not carry out any transactions. He therefore sought that the agreement be terminated and the restriction lifted.
7. At the close of the oral testimony, the Plaintiffs tendered final written submissions.

Submissions of the Plaintiff

8. Counsel for the Plaintiff submitted that the sale agreement dated 4th July 2010 entered between the Plaintiffs and the 1st defendant was fatally defective since it did not have a specific purchase price indicating that the amount stated in the contract was unambiguous because it states: “the agreed price is not more than Kshs. 150,000 per acre...” It was also submitted that the amount paid by the 1st Defendant was about Kshs. 400,000 or 500,000 and that the land Control Board consent had not been obtained within six months of the agreement as espoused under Section 6(1) and 8(1) of the [Land Control Act](#). Reference was made to the cases of SBI International Holdings Ag (Kenya) v Reuben Kipkorir J.T. Bore [2014] eKLR, Omuse Onyapu vs. Lawrence Opuko Kaala Civil Appeal No. 21 of 1992 and Silas Bartonje Kiptala v James Kipkemboi Murei (2013) eKLR which held that if the LCB consent is not obtained, parties should be restored to status quo with the refund on the consideration being a recoverable debt.
9. Counsel submitted that by the time of filing of this suit, it was more than 13 years since the agreement was signed and it was no longer enforceable for being time barred under Section 4(1) [Limitation of](#)



Actions Act. Therefore, the restriction placed on the land should be lifted and the Plaintiffs be allowed to utilise their land as they please.

Analysis and Determination

10. I have considered the pleadings, the evidence on record, the written submissions, and the authorities cited. I find that the issues for determination are:
 - i. Whether the agreement dated 4th July 2010 should be terminated;
 - ii. Whether the restriction registered against parcels Kajiado/Loodariak/11339, Kajiado/Loodariak/11340, Kajiado/Loodariak/11342 and Kajiado/Loodariak/11343 should be lifted;
 - iii. Whether this suit is time barred;
 - iv. Who should bear costs of the suit?
11. The Plaintiffs have approached the Court seeking termination of the Sale Agreement dated 4th July 2010 on the grounds that it was unenforceable because it did not specify the purchase price of the parcel of land. The Plaintiffs produced the said sale agreement which was duly executed by the sellers, purchaser as well as two witnesses. The agreement indicated that the sellers have agreed to sell to Tom Julius Nguli ten (10) acres of land to be demarcated from land LR No. Kajiado/Loodariak/1621. “The agreed price is not more than Kshs. 150,000 per acre...” While the Plaintiffs claim that the purchase price of the land was not specified, this Court finds that the above clause duly specifies the purchase price. However, it is ambiguous. Ambiguity notwithstanding, the Court should consider if the elements of a valid contract being offer, acceptance and consideration were established. In addition, the intention of parties should also be considered in unclear contracts as held by the Court of Appeal in *Michira v Gesima Power Mills Ltd* [2004] KECA 61 (KLR):

“...As Apoloo, J.A. said in *Shah v Shah* [1988] KLR 289 at page 292 paragraph 35, in respect of an agreement drawn by laymen:

“One must bear in mind that this agreement was drawn up by laymen. They did not use any legal language and the court can only interpret the sense of their agreement and not interpolate it with any technical legal concept ...”

If the words of the agreement are clearly expressed and the intention of the parties can be discovered from the whole agreement then the court must give effect to the intention of the parties.”
12. The 1st Plaintiff in his testimony acknowledged that he received about Kshs. 400,000 or 500,000 in cash from the 1st Defendant and excised portions of his parcel as agreed. The title deeds for Kajiado/Loodariak/11339, 11340 both measuring approximately 2.66 hectares, and Kajiado/Loodariak/11342 and 11343 both measuring approximately 1.74 hectares all issued on 3rd September 2014 were produced as exhibits.
13. The Plaintiffs also claimed unenforceability of the contract on ground that spousal consent was not procured. This ground cannot stand because the land in question is held by both Plaintiffs- Catherine Naiseae ene Partot and Joseph Tenes ole Rureto who duly signed the sale agreement dated 4th July 2010.
14. It is the Plaintiff’s case that the 1st Defendant, applied for a caution to be placed upon the suit parcels hence he is unable to utilize them. I note that there is not certificate of official search attached to confirm the said caution. If indeed there is, then the same ought to be removed.



15. Section 7.3 (1) of the *Land Registration Act* provides that;

“A caution may be withdrawn by the cautioner or removed by order of the court on, subject to subsection (2), by order of Registrar.”

The Plaintiff has approached this court to have the said caution removed.

His case is uncontroverted.

16. It is also the Plaintiff’s case that the Sale Agreement was entered into in the year 2010. He told the court that the 1st Defendant did not pay the balance of the purchase price. In my view the said Sale Agreement is not valid. No further steps were taken to complete the transaction. I believe the same expired by effluxion of time. The same stands terminated.

17. It is the Plaintiff’s case that the 1st Defendant is not in possession and or occupation.

18. In conclusion, I find that the Plaintiff has proved his case on a balance of probabilities as against the Defendants.

19. Accordingly Judgement is entered for the Plaintiff as against the Defendants as follows;

- a. That the Sale Agreement between the Plaintiff and the 1st Defendant dated 4th June 2010 stands terminated.
- b. That the Land Registrar Kajiado West is hereby ordered to remove caution, caveat, restriction and or encumbrance lodged or registered at the 1st Defendant request and or any other person authorized by or claiming through him against parcels Kajiado/ Loodarak.11339/11340/11342 and 11342 forthwith.
- c. That costs of the suit be borne by the 1st Defendant.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 16TH DAY OF OCTOBER 2025.

L. KOMINGOI.

JUDGE

IN THE PRESENCE OF:

Mr. Kuria for Mr. Taliti for the Plaintiffs.

N/A for the 1st Defendant.

N/A for 2nd, 3rd Defendants.

Court Assistant – Peter.

