

REPUBLIC OF KENYA
ENVIRONMENT AND LAND COURT
AT KILGORIS

ELCLC E005 OF 2023

ROBERT ERAMPAU LE LIAULO.....
.....PLAINTIFF

VERSUS

FRANCIS LERIONKA SAKAJA (Suing as the legal representative of
Estate of RAPHAEL KOYAKI SAKAJA (Deceased)).....1ST
DEFENDANT

REGISTRAR OF LANDS, TRANSMARA.....2ND
DEFENDANT

THE ATTORNEY
GENERAL.....3RD
DEFENDANT

JUDGMENT

1. Vide the Amended Plaint dated 26th day of October 2023, the Plaintiff Robert Erampau Le Liaulo sued 3 defendants, Francis Lerionka Sakaja who was sued as a legal representative of the Estate of the late Raphael Koyaki Sakaja, the Registrar of Lands Transmara and the Attorney General and as against the said defendants sought for
 - (a) Declaration that the plaintiff is the lawful owner of the parcel of land known as Transmara/Moita/54.
 - (b) An order directing or compelling the 2nd Defendant to amend and/or rectify the register and have the plaintiff registered as the legal and rightful owner of the parcel of land known as Transmara/Moita/54.
 - (c) A permanent injunction restraining the defendants and any other person from interfering with the plaintiff's ownership of the suit property being Transmara/Moita/54 or otherwise from quiet enjoyment and possession of the suit property.
 - (d) Costs.

Plaintiff's case

2. It is the Plaintiff's case

- (i) That he was allocated Transmara/Moita/54 during the adjudication of Moita adjudication section in 1985, that the 1st Defendant raised an objection that was dismissed in 1993, but the Defendant was fraudulently registered in 1997 and a title issued to the 1st Defendant on 08.09.2023.
- (ii) That the Plaintiff discovered the fraud on 12.09.2023, and he pleaded particulars of Fraud against the Defendants and sought the reliefs set out at paragraph 1 of this judgment.

Plaintiff's evidence

3. The Plaintiff testified as P.W.1 he testified in the Maa language through a translator, he adopted his witness statement dated 26.10.2023 as part as his evidence in chief.
4. He stated that he was a member of the Moita adjudication section. He stated and produced a demarcation record as P.Exhibit 1, in which he was the allottee, that there were objection proceedings filed by Raphael Sakaja which Objection was dismissed and he produced the same as P.Exhibit 2.
5. He further produced a copy of green card dated 12.09.2023 as P.Exhibit 3 certificate of official search as P.Exhibit 4, and copies of letters of administration as P.Exhibit 5.
6. In cross-examination, the witness stated that the suit property was registered in the name of Raphael Sakaja now deceased.
7. He indicated that it was his brother James Lilaulo who defended the objection proceedings, he was not aware of Appeal No. 144/1997 and neither was he aware of letter dated 29th July 1998. The witness said he was not aware of an appeal to the Minister from the decision of the Land Adjudication Officer on the Objection proceedings.
8. In further cross-examination by Ms. Osebe, the witness stated that he was not present during objection proceedings and that he had suspected fraud, did not report to the police but filed this suit. The

witness stated that he was aware that Raphael Sakaja had a right to appeal but was not aware that he had exercised the said right.

9. The witness indicated that he did not agree with the decision of the Minister but he had not appealed against the decision.
10. The witness confirmed filing of a caution as a licence on the green card. The witness was not aware whether his advocates had paid for certification for his green card, as well the demarcation book.
11. P.W.1 was the only witness for the Plaintiff and after his testimony, the Plaintiff's case was closed.

1st Defendant's case

12. The 1st Defendant filed a statement of Defence and counterclaim dated 23rd November 2023 in which he pleaded *inter alia*
 - (i) That he filed an objection in the tribunal in 1993 which was upheld and was registered in 1997 and the Plaintiff never challenged the same.
 - (ii) That the Appeal to the Minister lodged by the Plaintiff was heard and lost, and the decision was never challenged and the Plaintiff suit having been filed after 20 years is thus time barred.
13. Vide his counterclaim, the Defendant pleaded that the Plaintiffs were trespassers and ought to be evicted.
14. The Defendant thus sought the following reliefs.
 - (i) A declaration that all that parcel of land known as Transmara/Moita/54 belong to Estate of Raphael Koyiaki Sakaja.
 - (ii) Eviction order do issue against the Plaintiff now defendant in the counterclaim together with all people claiming under him.
 - (iii) Costs and interests of this suit.

1st Defendant's Evidence

15. D.W.1, Francis Lerionka Le Sakaja testified that he was testifying on behalf of the Late Raphael Koyianko Sakaja, and he adopted his witness statement, as part of his evidence in chief.
16. It was his further testimony that the adjudication of Moita was done in 1985, and Raphael Sakaja was given No. 54, to which the Plaintiff disputed and filed Objection proceedings, Erampau appealed to the Minister which appeal was dismissed and property given to Sakaja. He produced the Minister's proceedings as D.Exhibit 1 and letter dated 27.01.1998 as D.Exhibit 2.
17. The witness was stood down and leave to 1st Defendant to file a further list of documents.
18. It was his further testimony after being recalled
 - (i) that Raphael Sakaja had been appointed as an administrator and was registered on behalf of their father's (the late John Kitono Kipila Sakaja) Estate vide Nakuru High Court Succession Cause No. 65/1987.
 - (ii) The suit property had been demarcated to Robert Erampau but Raphael Sakaja filed a complaint with the adjudication committee which complaint was dismissed. The adjudication committee found in favour of Robert Erampau.
 - (iii) Raphael Sakaja was dissatisfied by the decision of the adjudication committee and filed an appeal to the Arbitration Board where he was unsuccessful and thereafter filed Objection proceedings. The Objection was filed against Raphael Erampau who was a minor, but his elder James Le Liaulo was the one who had testified.
 - (iv) The witness stated that Raphael Sakaja had filed the Objection proceedings timeously but there was a delay but there was a delay in hearing the same leading to him (Raphael) write of a complain to Nairobi, where it was directed that the Objection

proceeding be expedited and the Land Adjudication Officer gave a verdict in his favour.

- (v) Hence the adjudication register was amended pursuant to the decision of the Objection Proceedings.
- (vi) The witness stated that Robert Le Liaulo filed an appeal to the Minister through Appeal No. 143 of 1997.
- (vii) A decision of the Minister dismissed the Appeal and thus confirmed the land belonged to Raphael Sakaja after which he was registered as proprietor.
- (viii) The decision of the Minister was made on 22.05.1997.
- (ix) The witness produced the documents in the list of documents dated 29.05.2025 as D.Exhibit 3 to D.Exhibit 11
Certified copies of typed proceedings dated 1989 - D.Exhibit 3.
Reply to complaint by Sakaja vide letter dated 18th January 1996 - D.Exhibit 4.
Certified copies of proceedings and judgments on parcels 2, 12, 13, 14, 19, 20, 21, 30, 53, 54, 67 and 34 - D.Exhibit 5.
Receipt No. 235812 dated 07.03.1997 for Appeal to Minister - D.Exhibit 6.
Judgments/findings in Appeal to Minister, on Appeal Nos. 143, 144 and 145 - D.Exhibit 7.
Letter to implement Minister's decision dated 29th July 1998 - D.Exhibit 8.
Letter dated 15th January 1998 for Amendment of Register in respect of Appeal Nos. 143, 144 and 145 - D.Exhibit 9.
Copies of green card of Transmara/Moita/54 - D.Exhibit 10.
Copies of Area map - D.Exhibit 11, and document on list dated 26.05.2025 as D.Exhibit 12. It was his testimony that Raphael Sakaja was not registered fraudulently, but procedurally.

19. The witness was cross-examined by Mr. Kiprotich for the Plaintiff, and he stated

- (i) that he was a brother to their late Raphael Sakaja and that the original owner of the suit property was the late father who had died in 1981 and in respect of whose Estate Raphael Sakaja had been appointed as an Administrator and registered as proprietor of Transmara/Moita/54.
 - (ii) That the Plaintiff was a resident of Moita but was not staying on suit parcel during adjudication but was recorded on the adjudication register as the owner of the suit property leading to a complaint being filed by Raphael Sakaja which complaint was dismissed, and thereafter Objection proceedings which Raphael Sakaja won, and an Appeal to the Minister was preferred, which dismissed the Appeal although there was no record of Appellants testifying. He stated that the Plaintiff was the one currently living on suit property.
 - (iii) On further cross-examination by Mr. Ranah for 2nd Defendant, the witness stated that the Objection was filed by Mr. Raphael Sakaja who was his brother, and at the committee stage Robert Le Liaulo the Plaintiff won, and Mr. Sakaja appealed to the Land Adjudication Board when he won. Robert Le Liaulo filed an Appeal to the Minister which Appeal was heard by the District Commissioner and the appeal was dismissed. The land was thus Registered to Raphael Sakaja.
 - (iv) On re-examination by the Mr. Machage, the witness confirmed that Raphael Sakaja was the registered owner, of the suit property.
 - (v) D.W.2, Mr. Justus Levu the subcounty Land Adjudication and Settlement Officer, Transmara East, West and South equally testified.
20. It was his evidence that
- (i) He had been summoned to testify in respect of the adjudication process of Transmara/Moita/54. He testified on the adjudication

process generally stating that an adjudication process commenced once an adjudication section was declared and a committee was formed from residents in the section so as to help determine the land owners.

- (ii) The said committee assists in determining owners and disputes that arise therefrom. Decisions of committee are appealable to the Arbitration Board and any party that is aggrieved by the Arbitration Board awaits the completion of the demarcation, so that the adjudication register is published, the aggrieved thereafter is at liberty to file an Objection; Objections are heard by the Land Adjudication officer and a party aggrieved by the decision of the Land Adjudication officer has a right of Appeal to the Minister.
- (iii) A party aggrieved by the Minister's decision thereafter can apply to the court.
- (iv) With regard to the dispute at a hand, it was D.W.2's testimony that he had seen the proceedings, from the committee level and arbitration committee, objection proceeding, the cases were heard in 1988, and it dismissed the case, a right of Appeal granted to the Plaintiff who was Raphael Sakaja while defendants were 5 in number including Erampau Le Liaulo, Mr. Raphael Sakaja filed an Appeal to the Arbitration Board which was dismissed, the Aggrieved party (Raphael Sakaja) filed Objection proceedings being Objection 23/1990 which were heard on 14.06.1996 and the Objection was allowed; in terms that the combined cases involving the plots to wit, numbers 7, 2, 13, 14, 19, 20, 21, 30, 53 and 54 within Moyoi adjudication section the said plots combined were registered to the Plaintiff (Raphael Sakaja) and his brothers according to the their father's will. The public utilities donated by the Plaintiff's father were to remain, to wit Moita Primary school and Nassary Hospital.

- (v) The records were to be amended, i.e the demarcation Book and the adjudication Register. In respect of Objection proceedings No. 23/90, the Defendant Mr. Erampau Le Liaulo was present and his brother filed an Appeal to the Minister after he was aggrieved by the decision of the Objection proceedings in 23/90 the Appeal was No. 143/997 whose outcome was that the Appeal was dismissed.
 - (vi) Whereafter orders for implementation of the Minister's decision were issued by the Chief Lands Registrar to remove the restriction on parcel so as to pave way registration. The decision was implemented and due process was followed the due process. The witness confirmed that D.Exhibit 3-11 emanated from his office and he placed reliance on the same.
21. On cross-examination by Mr. Rana for the 2nd Defendant, the witness indicated that he was the Lands Adjudication and Settlement officer for Transmara having been in the position for 1 year and he found that the adjudication process had been finalised. the witness did not have a copy of the demarcation Book. He confirmed that there had been an Objection No. 23/90 in respect of parcel 54, filed by Raphael Sakaja after the publication of the register, which was allowed after hearing and Raphael Sakaja was given the land. the parcel was subjected to an Appeal to the Minister lodged by Erampau Le Liaulo, filed in March 1997, against decision delivered on 14.06.1996.
22. The Appeal was time barred having been filed after the 60 days allowed to lodge an Appeal.
23. The decision of the Minister was implemented on 28.07.1998 and Mr. Raphael Sakaja was thus registered as the rightful owner.
24. The witness was further cross-examined by Mr. Kiprotich and stated that he did not have the adjudication register since once a section is registered the adjudication register is sent to the Chief Lands Registrar and can only be obtained from that office. The adjudication

register was published in 1998, and on objection could not be filed in absence of the adjudication register.

25. He stated that the decision of Objection was finalised in 1996 while the filing had been done in 1993, Objections fees were paid and a receipt issued whose number was captured by handwriting, but the actual receipt was missing.
26. The witness stated that the fonts on the Objection proceedings were different. He stated that the adjudication committee usually guides the allocation and the will of the family is considered.
27. As at 10.12 1997, the Registrar had been opened but title was subject to an Objection, as there was a pending Appeal to the minister. There was no other appeal other than Minister's appeal. The demarcation record was not amended.
28. Re-examination by Mr. Machage, the witness stated that he had not been requested to avail the adjudication register. The parcel was subject of an Appeal to the Minister, hence it was restricted till the decision of the Appeal is made. The restriction appears at Entry No. 3 on the strength of the letter from Chief Lands Registrar. Objection must be paid for and receipts issued. Receipts had been mentioned in the letter in 1996.
29. The 1st Defendant's case was closed after the testimony of D.W.2.

2nd and 3rd Defendant's case

30. The 2nd and 3rd Defendants filed their defence dated 11th of December 2023. It is their defence that the Plaintiff was only identified during the commencement of the adjudication process, and if his Objection was dismissed under the Provisions of the Land Adjudication Act.

31. The 2nd and 3rd Defendants further plead that adjudication register and/or record is a primary document and not the substantive ownership documents.
32. The Defence denied all the particulars of fraud, and that the suit was time barred.
33. The 2nd and 3rd Defendants did not call any witnesses to testify in the favour.
34. After hearing the witnesses and close of the respective cases parties filed submissions which the court summarises as follows; -

Plaintiff's Submissions

35. The Plaintiff framed and submitted on three issues for determination as follows
36. Issue 1 - whether the process that led to the registration of Raphael Sakaja as proprietor of land registration No. Transmara/Moita/54 was fair and just.
37. As regard to this issue, it is the Plaintiff's case that the receipt No. 235812 dated 07.03.1997 the foundation of the Objection proceedings were impugned and thus the process leading to Registration of Raphael Sakaja was flawed.
38. The Plaintiff submits that the process leading to the registration of Raphael Sakaja was flawed and hence it was not just and fair.
39. The Plaintiff quoted Article 47(1) and (2) of the Constitution, but did not submit how the said Article related and/or assisted the Plaintiff's case.
40. The Plaintiff in further reliance of order 3 Rule 9, submitted that his suit should not be dismissed merely because it was declaratory in nature. The Plaintiff thus urged the court to uphold his case and dismiss the counterclaim.

1st Defendant's Submissions

41. The 1st Defendant framed and submitted on the following three issues for determination
42. The 1st Defendant narrated the history of the matter in his submissions, indicating that the Appeal to the Minister is final under section 29 of Land Adjudication Act and that no challenge to the same was metted. The 1st defendant places reliance on the decision in the case in Malindi ELC Constitutional Petition E021/2024, Dofu and 3 Others Vs. Ngone and 7 Others and Sopia Vs. Cabinet Secretary for Ministry of Lands Kilgoris ELC Petition No. E001of 2024 to buttress the points.
43. The 1st Defendant thus urged the court to dismiss the plaintiff's suit and uphold the counterclaim.
44. The 2nd and 3rd Defendants represented by the Attorney General's office Kisii did not file any submissions in the matter.

Issues for Determination

45. Having analysed the pleadings, evidence on record as well as considered the law the court frames the following as issues for determination
 - (i) Whether or not the plaintiff's suit is merited, in determining this the court shall consider (a) whether or not Raphael Sakaja was lawfully registered as proprietor of Transmara/Moita/54.
 - (ii) Whether or not the defence and counterclaim should be upheld;
 - (iii) What reliefs ought to issue.
 - (iv) Who bears the costs of this suit.

Analysis and Determination

46. Both the plaintiff as P.W.1 and 1st Defendant as D.W.1 produced copies of Objection proceedings whose authenticity was confirmed by D.W.2. It follows therefrom that both parties agree on the existence of

the Objection proceedings filed by Raphael Sakaja and that the same is thus undisputed.

47. The Gravaman of the Plaintiff's suit is that one Raphael Sakaja (deceased) whose Estate is administered by his brother Francis Sakaja, the 1st Defendant was without any legal foundation and in fact fraudulently registered as the proprietor of Transmara/Moita/54 and the court is asked to make a finding to that effect and grant the Plaintiff the reliefs set out at paragraph 1 of this Judgment in support of this averments, the Plaintiff testified as the sole witness, he produced the Demarcation record as P.Exhibit 1, Objection proceedings as P.Exhibit 2, copy of green card of Transmara/Moita/5 as P.Exhibit 3, certificate of official search as P.Exhibit 4.

48. In his defence the 1st Defendant pleaded *inter alia*, that Raphael Sakaja had challenged the demarcation of Transmara/Moita/54 to the Plaintiff, initially at the committee and Land Adjudication Board stages, where he was unsuccessful but he filed Objection proceedings in which he was successful and an Appeal by the Plaintiff to the Minister was dismissed. The 1st Defendant testified, and was stood down, recalled again and gave his testimony to that effect. He called D.W.2, the Land Adjudication and Settlement officer Kilgoris, D.W.1, produced in evidence the following documents that he had listed in his list of documents.

Copies of proceedings dated 14.06.1996 (incomplete) as D.Exhibit 1

Letter dated 27.01.1998 D.Exhibit 2.

Certified copies of proceedings dated 1989 - D.Exhibit 3.

Letter dated 18th January 1996 - D.Exhibit 4.

Certified copies of proceedings and judgment - D.Exhibit 5.

Receipt No. 235182 in respect of Appeal to Minister - D.Exhibit 6.

Judgment/finding in Appeal to Minister on Appeal Nos. 143, 144 and 145 - D.Exhibit 7.

Letter to implement decision dated 29th of July 1998 - D.Exhibit 8.

Letter dated 15.01.1998 – D.Exhibit.

Copies of green card Transmara/Moita/54 – D.Exhibit 10.

Copies of Area map – D.Exhibit 11.

49. Taking into account that there were objection proceedings which fact is not in dispute and that the objection proceedings were determined in favour of the Raphael Sakaja on 14.06.1996 as evidenced by D.Exhibit 5, and as stated by D.W.2, an aggrieved party had a right of Appeal to the Minister as provided for in section 29 of the Land Adjudication Act.
50. The aggrieved party herein was the Plaintiff Robert Erampau who exercised his right of Appeal to the minister, and a filed appeal on 07.03.1997 as evidenced by the copy of the receipt 235812 (D.Exhibit No. 6).
51. The Plaintiffs Appeal to the Minister was therefore filed out of time, the decision having been rendered on 14.06.1996 and appeal filed on 07.03.1997 and hence the Appeal to the Minister was dismissed for being time barred. The Plaintiff's Robert Le Liaulo Appeal was Appeal No. 143/1997 and the verdict was that
- “All the above appeals to the Minister Nos. 144, 146, 145 and 143 have been dismissed, with costs.***
- Accordingly, all the disputed parcels will remain the property of the Respondent Mr. Raphael Sakaja”***
52. The Minister's decision on an Appeal is in terms of section 29(1) (b) of the Land Adjudication Act final and the same was implemented by the letter dated 29.07.1998 (D.Exhibit 9).
53. In light of the testimony of D.W.1 and D.W.2 and the documentary evidence produced it follows that the Late Raphael Sakaja was regularly and procedurally registered as the proprietor of Transmara/Moita/54 after an adjudication process following after he successful lodged Objection proceedings in accordance with section 26

of Land Adjudication Act, and whose challenge was by an Appeal to the Minister was dismissed.

54. Consequently, the allegations of fraud levelled against Raphael Sakaja that he obtained registration by collusion and fraud were not proven either.

55. The Plaintiff case having being pegged largely on the alleged fraudulent registration of Raphael Sakaja has thus not been proved on the balance of probabilities and it therefore lacks merits.

56. In answer to issue No. 1, the court finds that the Plaintiff did not discharge his evidential burden as required under section 107-109 of the Evidence Act and his case lacks merit.

57. In answer to issue No. 2, it was the 1st Defendant's defence that Raphael Sakaja's registration as proprietor of the suit property was procedural and lawfully done.

58. The 1st Defendant testified and call a witness. He produced documentary evidence as to events leading to Raphael Sakaja's registration as the proprietor of the suit property.

59. The Plaintiff posed a challenge as to when the Objection proceedings were filed, timeously. DW2 stated that an appeal from the Land Arbitration Board would be by way of Objection proceedings once the adjudication register was published. D.Exhibit 4, the letter dated 18th of January 1996, seems to give a clue that Raphael Sakaja had complained earlier that his Objection had not been heard. The said letter referred to previous letters of 30th of June 1995 and 9th of July 1995. If indeed the Objection had been filed out of time, the same would have been captured by the said letters; noting that the letter dated 15th January 1998 (D.Exhibit 9) was specific on whether the Appeals to the Minister had been filed within time; as both the D.Exhibit H and D.Exhibit 9 originated from the headquarters.

60. The 1st Defendant thus proved that the registration of the Transmara/Moita/54 was done procedurally and lawfully and his title is thus protected under section 25-26 of the Land Registration Act.
61. The Plaintiff testifying as PW1 as well as the 1st Defendant as DW1 confirmed that the plaintiff was in occupation of the suit property. That occupation of the plaintiff on the suit property without any colour of right but under a mistaken belief that he owned the suit property, constitutes a continuous trespass as defined in Black's law dictionary 8th edition which defines the same as ***"trespass in the nature of a permanent invasion on another's property"***.
62. It follows therefrom that the 1st Defendant has proven his counterclaim and is entitled to the reliefs sought.
63. On what reliefs ought to issue, the plaintiff having failed to prove his case, his case instituted by the Amended Plaint dated 26th of October 2026 is hereby dismissed with costs; and judgment is entered for the 1st Defendant in the following terms; -
- (a) A declaration that all that parcel of land known as Transmara/Moita/54 belongs to the Estate of Raphael Kuyiaki Sakaja.
 - (b) An eviction order issues against the plaintiff and all people claiming under him.
 - (c) The 1st Defendant shall issue the requisite notice under section 152 of the Land Act before effecting the eviction.
 - (d) Costs of the suit and counterclaim are awarded to the 1st Defendant.

Dated at Kilgoris this 11th day of May 2026

Hon. M.N. Mwanyale
Judge

In the presence of

CA - Sylvia/Clara

Mr. Machage for 1st Defendant

Mr. Kiprotich for the Plaintiff

Mr. Ranah for the 2nd and 3rd Defendants