



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 80 OF 2018**

**(Formerly Nairobi ELC No. 1340 of 2013)**

**SIKEMPEI SUYIANGA( Suing as legal representative of the estate of  
JEROMANI KAISE – deceased).....PLAINTIFF**

**VERSUS**

**MUTUNKEI OLE LESINKO.....1<sup>ST</sup> DEFENDANT**

**LORNGUSUA GROUP RANCH.....2<sup>ND</sup> DEFENDANT**

**KAJIADO LAND REGISTRAR.....3<sup>RD</sup> DEFENDANT**

**JUDGEMENT**

By a Plaint dated the 29<sup>th</sup> October, 2013 the Plaintiff prays for judgment against the Defendants jointly and severally for:

- a) A declaration that JEROMANI KAISE is the owner of land no. Kajiado/ Lorgusua/ 184 and the registration of the Defendant is null and void.
- b) An order directing the 3<sup>rd</sup> Defendant to rectify the register by deleting the names of the 1<sup>st</sup> Defendant and inserting the name of JEROMANI KAISE (deceased) or the Plaintiff SIKEMPEI SUYIANGA ; or
- c) In the alternative, an order directing the 1<sup>st</sup> Defendant to transfer LR. No. Kajiado/ Lorgusua/ 184 to JEROMANI KAISE (deceased) or to the Plaintiff SIKEMPEI SUYIANGA in default the Executive Officer do execute transfer forms (conveyance) thereof:
- d) Eviction of the 1<sup>st</sup> Defendant from the suit property.

The Defendants though duly served and acknowledged as evidenced by the affidavit of service sworn on 16<sup>th</sup> December, 2013, failed to enter appearance or file their Defences. The matter proceeded undefended with the Plaintiff calling one witness.

**Evidence of the Plaintiff**

The Plaintiff as PW1 testified that her late father Jeromani Kaise was a member No. 55 of the Lorgusua Group Ranch where he had been allocated Land No. 184 as per the Area List. She confirmed being issued with Limited Grant of Letters of Administration Ad Litem in respect to her father's estate on 18<sup>th</sup> September, 2013. She discovered that upon her father's demise the Group Ranch Chairman proceeded to sell his land to the 1<sup>st</sup> Defendant who was not a member of the Lorgusua Group Ranch. It was her testimony that the 1<sup>st</sup> Defendant proceeded to be irregularly and fraudulently registered as owner of land parcel number Kajiado/ Lorgusua/ 184 which was her father's land. She produced an extract from the register of members for Lorgusua Group Ranch confirming her father OLE KAISE JERUMANI as member No. 55. She further produced an extract of the Area List, Limited Grant of Letters of Administration Ad Litem, her father's Death Certificate; Demand Letter dated the 3<sup>rd</sup> October, 2013 to the Defendants; Certificate of Official Search for Kajiado/ Lorgusua/ 184 and Certificate of Title for Kajiado/ Lorgusua/ 184 as her exhibits.

The Plaintiff closed her case and filed submissions.

**Analysis and Determination**

Upon consideration of the Plaintiff, Plaintiff's testimony and exhibits including submissions the following are the issues for determination:

- i. Whether the 1<sup>st</sup> Defendant was unlawfully and fraudulently registered as owner of suit land. Kajiado/ Lornigusua/ 184 in place of JEROMANI KAISE
- ii. Whether the 3<sup>rd</sup> Defendant should rectify the register and delete the name of the 1<sup>st</sup> Defendant and insert the name JEROMANI KAISE as owner of suit land.
- iii. Whether the 1<sup>st</sup> Defendant should be evicted from the suit land.

As to whether the 1<sup>st</sup> Defendant was unlawfully and fraudulently registered as owner of suit land. Kajiado/ Lornigusua/ 184 in place of JEROMANI KAISE. It was the Plaintiff's testimony that the Chairman of the Lornigusua Group Ranch fraudulently and unlawfully registered the 1<sup>st</sup> Defendant as the owner of the suit land which was allocated to JEROMANI KAISE. She produced the Certificate of Official Search and Certificate of Title to prove this averment. On perusal of the two documents, it is evident that the 1<sup>st</sup> Defendant was registered as the owner of the suit land on 12<sup>th</sup> February, 2008. From the copy of the Death Certificate, I note JEROMANI KAISE died on 15<sup>th</sup> January, 1993. As per the extract of the Members' Register from Lornigusua Group Ranch, it emerges that the deceased was member No. 55 as per the register. It was the PW1's testimony that the 1<sup>st</sup> Defendant was not a member of the Group Ranch and yet the Chairman proceeded to register him in place of the deceased. I find the extract of the Members Register for 2<sup>nd</sup> Defendant and Area list produced by the Plaintiff as prima facie proof of the said documents in accordance with the provisions of the repealed Land (Group Representatives) Act which was in place at the time the deceased was indicated as member No. 55 and allocated land. Further, section 8(2) of the said repealed Act gave the Group Representative of a Ranch the mandate to hold property on behalf of its members and they were required to represent members and consult them on any issues. In the current case, the Group Ranch Officials without consulting the deceased family proceeded to act contrary to the benefit of its member by transferring the deceased share of land to a third party without considering the deceased family.

In the case of **James Njoroge Gitau V Lucy Chepkurui Kimutai (2018) eKLR**, Justice Sila Munyao held as follows: **'What is before me is a straight contest over who between the plaintiff and the defendant ought to own the land. For either litigant to succeed, they need to demonstrate to me, the root of their title, and the root of their title must originate from the shares held at Kalenjin Enterprises. I have already outlined that the plaintiff purchased shares from Mr. Chumo who had in turn purchased shares from Mr. Morogochi. This is affirmed by the company through its director, Mr. Chelaite who testified as PW-2. Mr. Chelaite produced a register of the company, and I have absolutely no reason to doubt that register. The register shows the name of the plaintiff and assigns him the plot No. 7. This evidence is coming from the company itself, and cannot be taken lightly. It is the company which knows its members and which knows what land it has assigned to the members. If the company refutes that one is a member, then that person needs to rebut this, through cogent evidence. I am afraid that the defendant had not delivered any evidence to me that Kimutai held any shares at Kalenjin Enterprises. She has not delivered any share certificate, nor any receipt for payment for survey so as to be assigned the suit land. All that the plaintiff had was a document, titled "Rift Valley Enterprises (Koelel Farm) List of Allottees" as proof that the suit land was assigned to the deceased.'**

Further in the case of **Munyu Maina Vs Hiram Gathiha Maina, Civil Appeal No.239 of 2009**, the Court of Appeal held that:- **"We have stated that when a registered proprietor root of title is challenged, it is not sufficient to dangle the instrument of title as proof of ownership. It is that instrument of title that is challenged and the registered proprietor must go beyond the instrument to prove the legality of how he acquired the title to show that the acquisition was legal, formal and free from any encumbrances including any and all interests which would not be noted in the register."**

Based on the evidence before me as well as associating myself with the decisions cited above, I find that since the root of the 1<sup>st</sup> Defendant's title in respect to the suit land is challenged as he was not a member of the Lornigusua Group Ranch whose officials were allocating land to its members based on the members' register, there is no proper evidence to prove the legality of his title. Further, from the Area List, the land had been allocated to JEROMANI KAISE. I opine that no wonder the 1<sup>st</sup> and 2<sup>nd</sup> Defendants failed to file their response to the suit herein. Since the Defendants failed to attend Court to controvert the evidence of the Plaintiff, and based on the evidence before me, I find that the 1<sup>st</sup> Defendant was unlawfully and irregularly registered as owner of the suit land which was initially allocated to the deceased, who had been its member no.55.

As to whether the 3<sup>rd</sup> Defendant should rectify the register and delete the name of the 1<sup>st</sup> Defendant and insert the name JEROMANI KAISE as owner of suit land. Since I have already held that the 1<sup>st</sup> Defendant was irregularly registered as the owner of the suit land which should have formed part of the deceased estate. I wish to make reference to section 143 of the Registered Land Act (repealed) that was the regime in place at the time of registration of 1<sup>st</sup> Defendant's title, which stipulated thus: **'(1) Subject to subsection (2), the court may order rectification of the register by directing that any registration be cancelled or amended where it is satisfied that any registration (other than a first registration) has been obtained, made or omitted by fraud or mistake. (2) The register shall not be rectified so as to affect the title of a proprietor who is in possession and acquired the land, lease or charge for valuable consideration, unless such proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by his act, neglect or default.'** These provisions are replicated in section 80 of the Land Registration Act which provides that: **'(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake.'**

**(2) The register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land, lease or charge for valuable consideration, unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which the rectification is sought, or caused such omission, fraud or mistake or substantially contributed to it by any act, neglect or default.'**

Based on the uncontroverted evidence before me and relying on the legal provisions cited above, I find that it is pertinent for the Land

Register in respect of the suit land to be rectified with the Certificate of title held by the 1<sup>st</sup> Defendant cancelled and replaced with the name of JEROMANI KAISE (deceased) as it was illegally as well as unprocedurally obtained.

As to whether the 1<sup>st</sup> Defendant should be evicted from the suit land. Since I have already directed that the Certificate of title issued to him should be cancelled, I find that he is not entitled to the protection of the law and should hence vacate the suit land. However, I hold that he should be given ample notice of a minimum of three (3) Months before being evicted therefrom.

On the issue of costs, this generally follows the cause, and bearing in mind that the Plaintiff herein has been inconvenienced with the Defendants' actions, I will award her the costs of the suit.

In the circumstances, I find that the Plaintiff has proved her case on a balance of probability and will proceed to enter judgement in her favour against the Defendants in the following terms:

1) An Order of declaration be and is hereby issued that JEROMANI KAISE (deceased) is the owner of **LAND PARCEL NO. KAJIADO/ LORNGUSUA/ 184** and the registration of **MUTUNKEI OLE LESINKO** the 1<sup>st</sup> Defendant herein is null and void.

2) An order be and is hereby issued directing the Land Registrar Kajiado to rectify the register in respect to KAJIADO/ LORNGUSUA/ 184 by deleting the names of the **MUTUNKEI OLE LESINKO** and inserting the name of JEROMANI KAISE (deceased) .

3) Eviction Orders do issue after 90 days from the date hereof against the 1<sup>st</sup> Defendant **MUTUNKEI OLE LESINKO** from KAJIADO/ LORNGUSUA/ 184.

4) The Costs of the suit is awarded to the Plaintiff to be borne by the 1<sup>st</sup> and 2<sup>nd</sup> Defendants only.

**Dated, Signed and Delivered in Kajiado this 27th November, 2019.**

**CHRISTINE OCHIENG**

**JUDGE**