



**Ndorko v Puuti & 3 others (Environment and Land Case  
293 of 2017) [2025] KEELC 5471 (KLR) (17 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5471 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND CASE 293 OF 2017  
LC KOMINGOI, J  
JULY 17, 2025**

**BETWEEN**

**NTIATA OLE NDORKO ..... PLAINTIFF**

**AND**

**KUYIETA ENE MERERU PUUTI ..... 1<sup>ST</sup> DEFENDANT**

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

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

**THE ATTORNEY GENERAL ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. This suit was first filed at ELC Machakos vide the Complaint dated 27<sup>th</sup> March 2017, before it was transferred to this Court. The Plaintiff then filed an Amended Complaint dated 2<sup>nd</sup> November 2021.
2. The Plaintiff claims that he is the sole registered owner of property Kajiado/Lorongosua/368 and that 2<sup>nd</sup> and 3<sup>rd</sup> Defendants illegally hived off approximately 28 hectares from his land to create Kajiado/Lorongosua/369 and then gave it to the 1<sup>st</sup> defendant. The Plaintiff claims that these actions were illegal because the hiving off was carried out ten (10) years after the Group Ranch had been dissolved. It is his case that this was abuse of office, ultra vires, illegal, null and void.
3. The Plaintiff therefore sought for the following orders against the Defendants:
  - a. The Defendants by themselves, their agents, servants and/or employees be restrained permanently from interfering with the Plaintiff's quiet use and enjoyment of his land Kajiado/Lorongosua/368.
  - b. An order be directed to the 3<sup>rd</sup> Defendant to cancel title no. Kajiado/Lorongosua/369 and the 28 hectares be transferred back to Kajiado/Lorongosua/368.



- c. An order of eviction from Kajiado/Lorngosua/369 be directed to Kuyieta Ene Mereru Puuti.
  - d. Costs of this suit.
  - e. Interest on the above.
4. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants in their Statement of Defence dated 28<sup>th</sup> March 2022 contested the Plaintiff claim stating that her late husband Mareru Ole Puuti was member number 280 of the 2<sup>nd</sup> Defendant. Upon his demise, she succeeded him at the Group Ranch as was given parcel Kajiado/Lorngosua/369 measuring 28 hectares. Upon his demise in 2006, she succeeded him and the suit property is rightfully hers. She stated that the Plaintiff was duly allocated 75.5 hectares, which is parcel known as Kajiado/Lorngosua/368 and that it was the Plaintiff who was interfering with her possession. She therefore sought declaration as the lawful owner of parcel Kajiado/Lorngosua/369 and that the Plaintiff be restrained from interfering with her possession together with costs and interest.

### **Evidence of the Plaintiff**

5. PW1, Ntianta Ole Ndorko, the Plaintiff adopted his witness statement dated 2<sup>nd</sup> November 2022 as his evidence in chief and produced his bundle of documents marked P. Exhibit 1 to 14.
6. On cross examination he stated that as a member of the Lorngosua Group Ranch, he was given land measuring approximately 75 Hectares and had been in occupation until recently when the 1<sup>st</sup> Defendant was settled on part of his land by the Committee members of the Group Ranch. He claimed that he saw the subdivision of his parcel taking place and that the acreage on ground had reduced although no evidence was tendered to confirm. He stated that after the subdivision, he reported the matter to the police and the officials of the Group Ranch. He could not confirm this. He also indicated that he was not aware if the 1<sup>st</sup> Defendant was a member of the Group Ranch, because her origin was in Tanzania.
7. On re-examination he restated that his land ought to be 75 Hectares and not 46.5 Hectares.

### **Evidence of the Defendants**

8. DW1 Kuyieta Ene Mereru Puuti, the 1<sup>st</sup> Defendant adopted her witness statement as her evidence in chief and produced her bundle of documents marked D. Exhibit 1 to 5. She prayed that the plaintiff's suit be dismissed so that she can enjoy peaceful and quiet possession of her land.
9. DW2 Daniel Lemomo Matunge the former Chairman and current Secretary of the 2<sup>nd</sup> Defendant-Lorngosua Group Ranch- adopted his witness as his evidence in chief and produced his bundle of documents which was marked as D. Exhibit 6 to 9. He stated that he knew that the Plaintiff and the 1<sup>st</sup> Defendant's husband were both members of the Lorngosua Group Ranch. He stated that he was the Chairman from 1999 to 2010. Upon completion of the subdivision, the parcels were transferred to the members and title deeds issued. The subdivision and titling process started from 1992 and was completed in 2001 and he was aware that the Plaintiff was given parcel 368, while the 1<sup>st</sup> defendant was given parcel 369. He produced the area list which showed that the Plaintiff was allocated 46.45 hectares and the 1<sup>st</sup> Defendant 28 hectares. On being shown the Plaintiff's title which showed that his land was 75.5 hectares, he stated that no group member was given 75 hectares but 46.45 hectares. He went on to state that they had tried to resolve the dispute several times and wrote a letter to the Land Registrar to visit the suit properties to ascertain the area on the ground. This was yet to be done.
10. At the close of the oral testimonies, the parties tendered their final written submissions.



### **Submissions of the Plaintiff**

11. By the time of writing this Judgement the Plaintiff's submissions were not on record.

### **Submissions of the 1<sup>st</sup>, 2<sup>nd</sup> Defendants**

12. Counsel outlined that the only issue for determination was whether the Plaintiff had proved his case on a balance of probabilities and was entitled to the prayers sought?
13. It was submitted that the Plaintiff did not tender evidence to prove that parcel 369 was subdivided from his parcel 368. There were no survey or mutation forms as proof. And that the 1<sup>st</sup> defendant's title was valid as per Section 26 of the *Land Registration Act*, unless fraud or illegality in its acquisition was proved with reference to *Wachegu v Vindo Multipurpose Cooperative Society Limited & 2 others* [2022] KEELC 2923 (KLR).
14. Counsel also submitted that the Plaintiff ought to have proved his claim on the required threshold as espoused under Section 107, 109 and 112 of the *Evidence Act* and as held in *Jennifer Nyambura Kamau v Humphrey Mbaka Nandi* [2013] eKLR and *Anne Wambui Ndiritu vs Joseph Kiprono Ropkoi & Another* [2005] 1 EA 334.
15. Counsel went on to make reference to the case of *William Kabogo Gitau vs George Thuo & 2 Others* [2010] 1 KLE 526 where Kimaru J. held that: "... civil cases a case may be determined in favour of a party who persuades the court that the allegations he has pleaded in his case are more likely that not to be what took place..."
16. The Plaintiff therefore did not discharge his burden and the suit should be dismissed and the 1<sup>st</sup> defendant's prayers in the statement of defence allowed.

### **Analysis and Determination**

17. 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 Plaintiff has proved that he is the legal owner of property Kajiado/Lorngosua/368;
  - ii. Whether the Plaintiff is entitled to the reliefs sought;
  - iii. Who should bear costs of the suit?
18. The Plaintiff claims that he was allocated 75 Hectares of land by the Lorngosua Group Ranch being parcel Kajiado/Lorngosua/368 and had been in possession until 28 Hectares were unlawfully hived off by the officials of the Group Ranch and given to the 1<sup>st</sup> Defendant. He stated that the officials hived off 28 hectares of his land and caused title deed; Kajiado/Lorngosua/369 to be issued in the 1<sup>st</sup> Defendant's name. He indicated that he saw the subdivision being undertaken and reported the matter to the police. He tendered no evidence to prove he had made a report to the police.
19. "He who alleges must prove" is a foundational legal principle that places the burden of proof on the party who makes an allegation. This is etched under Section 107 and 108 of the *Evidence Act*.

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- (1) Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist.



(2) When a person is bound to prove the existence of any fact it is said that the burden of proof lies on that person.

108. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.
20. To prove his claim for 75 hectares of land, the Plaintiff produced a Title deed dated 5<sup>th</sup> February 2001 in his favour for Kajiado/Lorngosua/ 368 measuring 75.5 hectares.
21. He also produced an Area list showing names of the Group Ranch members and the acreage they were entitled to. The area list is typed, but has some handwritten changes on it. An example, the 1<sup>st</sup> Defendants' parcel 369 and 877 (in Saningo Ole Mareru and Mareru Ole Puuti's names) have cancellations on them. However, parcel 368 measuring 46.5 hectares is in favour of the Plaintiff and no alterations have been made against it. The survey map produced as evidence also shows that the acreage of parcel 368 is about 46.9 hectares.
22. A perusal of the documents produced do not confirm that he was allocated 75 Hectares. All documents produced confirm that parcel 368 measures approximately 46 hectares.
23. The 1<sup>st</sup> Defendant contested the allegation that her parcel 369 was fraudulently hived off from the Plaintiff's parcel. She stated that her late husband, Mereru Ole Puuti was a member of the group ranch. Upon his demise, she succeeded him and was allocated the land which she currently occupies. She called the former Chairman who testified as DW2. He confirmed her claim. He produced the area list showing names of the Members of the group as well as the parcels allocated to them. This area list was the same as the one produced by the Plaintiff and its authenticity was never questioned. Page 6 of the area list shows that parcel 368 measuring 46.5 hectares was allocated to the Plaintiff and parcel 369 measuring 28 hectares to the 1<sup>st</sup> Defendant. And Title deed was issued on 25<sup>th</sup> August 2010 in favour of the 1<sup>st</sup> Defendant for parcel; Kajiado/Lorngosua/369. A Certificate of official search dated 25<sup>th</sup> June 2012 also shows that parcel 369 was in her name.
24. D.W. 2 stated that they had tried to resolve the issue between the Plaintiff and the 1<sup>st</sup> Defendant by asking the Land Registrar to visit the site and confirm the acreage on the ground. A letter dated 26<sup>th</sup> August 2021 from the 2<sup>nd</sup> Defendant's officials addressed to the Land Registrar Kajiado was produced to support this. The letter asks for rectification of some title deeds which had more acreage indicated on them than the actual acreage on the ground. The letter bears four names among them the Plaintiff's.
25. From the forgoing, the court finds that all the evidence tendered is consistent with approximately 46.5 hectares was allocated to the Plaintiff, save for the title deed which shows 75.5 hectares. Courts have held that the title deed is as a result of the process of land acquisition. If the process leading to issuance of the title indicates a different acreage than what is on the end result, which is the title, then it means that the title is questionable. The area indicated on the title deed could have been due to an inadvertent mistake.
26. I therefore find that the Plaintiff failed to discharge his burden of proof to the required threshold. I decline to grant the reliefs sought. The suit is dismissed.
27. The upshot of the matter is that the Plaintiff is hereby restrained from interfering with the 1<sup>st</sup> defendant's peaceful use and occupation of parcel Kajiado/Lorngosua/369.
28. As the parties herein are neighbours each party shall bear own costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17<sup>TH</sup> DAY OF JULY 2025.**



**L.KOMINGOI**

**JUDGE.**

In the presence of:

Mr. Agina for the Plaintiff.

Ms. Mtawe for Mr. Mukeli for the 1<sup>st</sup>, 2<sup>nd</sup> Defendants.

N/A for the 3<sup>rd</sup>, 4<sup>th</sup> Defendants.

Court Assistant – Mateli.

