



Oike Keenyokie Suswa Trust Registered Trustees v County Government of Narok & 2 others (Environment & Land Case E003 of 2022) [2024] KEELC 109 (KLR) (24 January 2024) (Judgment)

Neutral citation: [2024] KEELC 109 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E003 OF 2022
CG MBOGO, J
JANUARY 24, 2024**

BETWEEN

OIKE KEENYOKIE SUSWA TRUST REGISTERED TRUSTEES PLAINTIFF

AND

COUNTY GOVERNMENT OF NAROK 1ST DEFENDANT

COUNTY LAND REGISTRAR NAROK 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

JUDGMENT

1. On 11th April, 2022, the plaintiff filed a plaint dated 8th April, 2022 seeking judgment against the defendants for: -
 - a. A declaratory order that the registration of Title No. Cis Mara/Suswa Kitet/2 in the name of the 1st defendant was fraudulent, illegally and unprocedurally obtained.
 - b. An order directing the Land Registrar Narok County to cancel the title in respect of Cis Mara/Suswa Kitet/2 registered in the name of the 1st defendant and instead register the same in the name of the plaintiff.
 - c. A permanent injunction restraining the defendants from entering, erecting structures, subdividing, alienating or using in any manner of Cis /Mara/Suswa Kitet/2 or any part thereof.
 - d. Costs of this suit.
2. The gist of the plaint is that on 25th July, 2000, a request was made to the then Narok County Council requesting the said Council to grant title number Cis Mara/Suswa Kitet/2 also known as Suswa Holding Ground (hereinafter referred to as “the suit property”) to Keekonyokie Community to enable



it start various Community-based projects. That the then full council, resolved that all the ground under the trusteeship of the council be granted to the plaintiff subject to the conditions, that a trust must be formed and the suit property should not be subdivided.

3. The plaintiff further stated that it incorporated a trust on 24th September, 2001 and that on 22nd March, 2022, through an official search, they discovered that the suit property had been illegally and unprocedurally registered in the name of the 1st defendant.
4. The plaintiff pleaded particulars of fraud, illegality and procedural impropriety as follows: -
 - a. Registering and issuing a certificate of title to the 1st defendant by the 2nd defendant while fully aware that the same was resolved to be transferred to the plaintiff.
 - b. Failure by the 2nd defendant to consult with the plaintiff before the subsequent registration of the property in the name of the 1st defendant.
 - c. Collusion by the defendants to dispossess beneficiaries of the plaintiff who number in the thousands.
 - d. Generally knowingly and intentionally registering property that was already granted and currently being occupied by the plaintiff.
5. The plaintiff further pleaded that as a result, it has suffered damage and fear of being evicted and dispossessed as well as anxiety. Further, that there was breach of legitimate expectation as a result of the actions of the defendants.
6. On 25th May, 2022, the 2nd and 3rd defendants filed their statement of defence dated 26th April, 2022. The 2nd and 3rd defendants denied the allegations contained in the plaint and invited strict proof. Further, they denied the particulars of fraud, illegality and procedural impropriety.
7. On 18th May, 2023, the 1st defendant filed its statement of defence dated 25th April, 2023. While disputing the contents of the plaint, the 1st defendant stated that the plaintiff has not produced any letter of allocation in its favour to prove the said allegations. Further, that the impugned minutes of the full Narok County Council meeting held on 25th July, 2000 do not appear in any of the records.
8. The 1st defendant further stated that the suit property is community land for the benefit of all communities living thereon and not just the plaintiff. The 1st defendant further stated that it holds the suit property lawfully and has reserved the same for community living as a holding ground.
9. The plaintiff's case proceeded for hearing on 31st May, 2023. Livingstone Musanka Kisotu (PW1), while adopting his witness statement dated 8th April, 2022 as his evidence in chief, produced the documents contained at pages 1 to 53 of the plaintiff's list of documents of even date as P. Ex Nos. 1,2,3,4,5 and 6. He further identified the photographs and Part Development Plan as PMFI 7 and 8 respectively. PW1 further produced a letter dated 6th February, 2014 as P. Ex No. 9 contained in the plaintiff's supplementary list of documents.
10. On cross-examination, PW1 testified that from the beginning, Suswa Holding Ground was held by the defunct County Council of Narok as a trustee and upon being given the right to develop the land by the said County Council, ownership of the suit property passed to the trustee. He testified that the trust was formed in the year 2001, and that they have been in occupation since then. Further, that between the year 2001 and 2022, they tried to have the suit property registered in their name. Further, that the certificate of incorporation of Trust gave them the right to develop. He disagreed that the ownership had not moved from the County Council to the Trust.



11. With regards to P. Ex. no. 1 which are the minutes of the meeting said to have been held on 25th July, 2000, PW1 testified that the extract of the minutes does not give the record of the people who were present in the meeting. He agreed that the minutes were signed by the Chairman of the meeting and that they were allocated the land by the then County Council.
12. On further cross-examination, PW1 testified that the letter dated 6th February, 2014 is from the Narok County Council and not from the Ministry of Lands and that the trust documents show that the suit property is managed by the Trust. He admitted that they were supposed to get approvals before developing but he does not have any of the approval documents. PW1 admitted, that he was not present in the meeting that led to the minutes produced but that the Chairman was present.
13. PW1 further testified, that they reported the matter to the police, but they did not make a follow up of whether the Land Registrar was charged.
14. On re-examination, PW1 testified that the extract of the minutes, is a summary of what transpired and it is signed by Kudate who was the Assistant Secretary of the Council. He also said that there was a letter from the Narok County Government showing that the meeting took place and that the suit property was transferred to the community.
15. Korema Ole Surum (PW2), while adopting his witness statement dated 8th April, 2022 as his evidence in chief, testified that he is a former Councillor of Keekonyokie in Narok East having served for 25 years. He went on to say that he is the Vice Chairman of Suswa Kitet Holding Ground.
16. On cross-examination, PW2 agreed that the suit property has been under the ownership of the County Council, which agreed to give it to the community for its use. He agreed that they formed a Trust and that since the year 2001, they have made a follow up to have the title to the suit property issued to the Trust and this has not been forthcoming. He further testified that P. Ex. no. 1 only refers to Suswa Holding Ground and that Ole Kaka and Ole Kiu were present in the meeting. Further, that the extract of the minutes does not show the members who were present. He agreed that the minutes are signed by the Chairman and the Secretary.
17. On further cross-examination, PW2 testified that he is aware that the suit property was reserved for the benefit of the community. Further, that his complaint is with the fact that the Land Registrar did not indicate that the suit property belongs to Suswa Kitet Trust. According to him, they approached the Land Registrar to register the title to the plaintiff, but, he refused to do so. Further, that the Certificate of Incorporation shows that they own the suit property.
18. On re-examination, PW2 testified that he attended the meeting held in the year 2001 where they were advised to register a Trust on behalf of Keekonyokie community.
19. Before close of the plaintiff's case, the documents initially marked for identification as PMFI 17 and 18 were produced as P. Ex. nos. 17 and 18 pursuant to the ruling delivered on 14th June, 2023.
20. The 1st defendant's case proceeded for hearing on 24th October, 2023. John Mayiani Ole Tuya (DW1), while adopting his witness statement dated 25th October, 2023 as his evidence in chief, testified that he is aware that the suit property, is registered in the name of the 1st defendant. He added that he is not aware if, previously, the County Government or the County Council allocated the land in question to any person. According to him, whenever, the County Government issues land to a person, it issues an allocation letter and, in this case, no allocation letter was ever issued.
21. With regards to the minutes in P. Ex. No. 1, DW1 testified that the minutes are not in their records, and that it is also not in their proper letter head. Further, that the seal of the County Government is



- not appended to it. According to him, the minutes are required to be signed by at least two people if, it is a committee i.e. the Chairman and the Secretary.
22. DW1 further testified that he is not aware if the plaintiff registered a Trust, but that the plaintiff has never paid rates to the 1st defendant. Further, he testified that the conditions in the minutes, do not amount to allocation of land and thus, the plaintiff's case is unfounded because no specific allocation was given to them.
 23. On cross-examination and while being referred to the letter dated 6th February, 2014, DW1 confirmed that Stella Langat was the interim Secretary in the year 2014. That from the said letter, it would appear that the County Council passed a resolution to transfer the suit property to the plaintiff in the year 2000 and that the suit property has never been subdivided.
 24. He agreed that he has seen the Trust Deed by the plaintiff and that the two requirements have been satisfied by the plaintiff. He admitted in his statement, that the law was never followed by the County Council in allocating the land to the plaintiff, but, he did not point out any provision of the law that was not followed. It was DW1's testimony that, whereas there was no County Government Act in the year 2000, reference was made to the Local Authorities Act which he could not exactly point to a specific section. DW1 further testified that he is familiar with Sections 115, 117 and 117 of the repealed Constitution as read together with the Trust Lands Act and he agreed that the County Council could allocate land to any person in any manner they deemed fit. Further, that there is no record to show that the plaintiff has ever paid rates to the County Government apart from the witness statements.
 25. DW1 admitted that he is aware of Purko Sheep Ranch, Ilkering Loita and Purko Naroosura Ranch which are registered in the names of the communities, but he denied any discrimination against the plaintiff.
 26. On further cross-examination, DW1 testified that the suit property has never been allocated to the plaintiff and that the minutes and the letter dated 6th December, 2014, cannot confer ownership of land. Further, that he has never recorded a statement with the police in respect of the same. He further testified that the suit property is registered in the name of the 1st defendant who holds it on behalf of all the communities in Narok.
 27. On re-examination, DW1 testified that the letter dated 6th December, 2014 refers to a record which is not in their possession and which letter was by his predecessor. He maintained that the suit property is held by the 1st defendant on behalf of all the communities. At the end of DW1 testimony, the defendants closed their case.
 28. The plaintiff filed its written submissions dated 27th October, 2023 where it raised the following issues for determination: -
 - a. Whether the plaintiff is duly entitled to be registered as the owner and proprietor of CisMara/Suswa Kitet/2 by virtue of whether the plaintiff adduced documentation and evidence that, the then Narok Council allocated the land to the plaintiff and, has the plaintiff adduced documentation and evidence that it complied with the conditions given by the then Narok County Council.
 - b. Whether the 1st defendant is discriminating against the plaintiff.
 - c. Whether the 1st defendant has breached the legitimate expectation of the plaintiff.



- d. Whether the plaintiff has discharged its burden of proof.
29. On the first issue, the plaintiff submitted that it has demonstrated a prima facie case based on the fact that it has adduced minutes of the full council meeting which were duly executed by the then Clerk of the Narok County Council. Further, that on 6th February, 2014, a letter from the County Secretary confirmed that it was aware that the suit property belonged to the plaintiff.
30. The plaintiff further submitted that before allocation of the suit property to the plaintiff, the same was trust land and it was legally and procedurally allocated to the plaintiff in accordance with the law in force back then. That after the suit property was allocated, it ceased to exist as any other land holding tenure and it became private land that was held by the plaintiff pending incorporation of a Trust. The plaintiff relied on the case of Bahola Mkalindi versus Michael Seth Kaseme & 2 Others [2013] eKLR Section 117 of the repealed Constitution.
31. The plaintiff further submitted that despite denial of the minutes of the meeting held on 25th July, 2000, the 1st defendant has not presented any evidence to rebut or disprove the same, and as such, it has not discharged the burden of proof pursuant to Sections 107, 108 and 109 of the *Evidence Act*. The plaintiff relied on the case of Waso Trading Company Limited & Another versus County Government of Meru & 4 Others, ELC Case no. E027 of 2021.
32. On the second issue, the plaintiff submitted that this is a case of similar circumstances, similar ethnic and community groupings to that of Purko Sheep Ranch, Ilkerin Loita and Purko Naroosura Ranch and that the defendants are intentionally discriminating against them contrary to Article 27 as read with Article 10 (2)(b) of *the Constitution*. To buttress on this submission, the plaintiff relied on the case of Centre for Minority Rights Development (CEMIRIDE) & 2 Others versus Attorney General & 2 Others; Independent Electoral and Boundaries Commission (Interested Party) (Petition E002 of 2022) [2022] KEHC 955 (KLR) (4 April 2022) (Judgment).
33. On the third issue, the plaintiff submitted that the evidence produced shows breach of legitimate expectation by the 1st defendant, to have reneged on their resolution and proceeded to fraudulently register the suit property in its own name. The plaintiff relied on the cases of Diana Kethi Kilonzo & Another versus Independent Electoral & Boundaries Commission & 10 Others [2013] eKLR and ELC Petition 12 of 2020 (2022) KE ELC 1(KR) 10th February 2022 Mombasa Law Society & 2 Others versus County Government of Mombasa.
34. It was further submitted that the plaintiff has made developments on the suit property including various projects, on the reliance of the then County Council of Narok with the legitimate expectation that the suit property would continue to be theirs, and that their lives will continue without any disruptions.
35. On the fourth issue and while relying on the case of Mbuthia Macharia versus Annah Mutua & Another [2017] eKLR, the plaintiff submitted that it has adduced numerous exhibits in support of its case which have been uncontroverted and that it goes without saying that the defendants have not mounted any serious defence.
36. On 7th November, 2023, the 2nd and 3rd defendants filed their written submissions dated 2nd November, 2023 where they raised four issues for determination as listed below: -
- i. Whether the plaintiff was ever allocated the suit land as alleged.
 - ii. What is the procedure for allocation of land.



- iii. Whether the plaintiff has any valid claim as against the 2nd defendant.
 - iv. Whether the plaintiff is entitled to the prayers sought.
37. On the first issue, the 2nd and 3rd defendants submitted that the plaintiff did not give an explanation as to why they did not provide full minutes of the meeting which typically describes the events of the meeting. Further, that the plaintiff never provided any letter of allotment to show that they were ever allocated the land. Further, that no evidence has been produced to show that the land suit property was trust land. Further, that the inordinate delay from the year 2000 to the year 2022 has not been explained to show why they never followed up to obtain ownership documents.
38. On the second issue, the 2nd and 3rd defendants submitted that the plaintiff has failed to demonstrate whether they followed the procedure for allotment of land, as was outlined in the case of Ali Mohamed Dagane (Granted Power of Attorney by Abdullahi Muhumed Dagane, suing on behalf of the Estate of Mohamed Haji Dagane) versus Hakar Abshir & 3 Others [2021] eKLR to justify its claim of ownership and further compliance of the terms of allotment letter, if any.
39. On the third and fourth issues, the 2nd and 3rd defendants submitted that the plaintiff never produced any documents to show that they were ever registered as owners of the suit property and that without any evidence to support the claim, the 2nd defendant cannot be accused of having registered and issued a title to the 1st defendant fraudulently. They relied on the case of Kinyanjui Kamau versus George Kamau Njoroge [2015] eKLR. It was their submission that the allegations of fraud have also not been proved as no party has either been charged or convicted of fraud. In conclusion, they submitted that the plaintiff has not been able to prove its case and it is not entitled to the prayers sought.
40. The 1st defendant filed its written submissions dated 23rd November, 2023 where it raised five issues for determination as listed below: -
- i. Whether the suit property no. LR. Cis Mara/Suswa Kitet/2 (Suswa Holding Ground) was rightfully allocated to the plaintiff.
 - ii. Whether there was any fraud on the part of the 1st defendant.
 - iii. Whether the 1st defendant has discriminated against the plaintiff.
 - iv. Whether the 1st defendant has breached the doctrine of legitimate expectation owed to the plaintiff.
 - v. Whether the plaintiff is entitled to the orders sought in the plaint.
41. On the first issue, the 1st defendant submitted that the suit property has always been community land held by the 1st defendant in trust for the benefit of all communities, and that the plaintiff did not produce any allocation letter to prove that it was allocated the suit property by the defunct 1st defendant. To buttress on this submission, the 1st defendant relied on the cases of Joash Onyango Okelo & 69 Others versus Kenya Wildlife Service & 5 Others [2019] eKLR and Wreck Motors Enterprises versus The Commissioner of Lands and 3 Others, Nairobi Civil Appeal No. 71 of 1997.
42. On the second issue, and while relying on the case of Eviline Karigu (Suing as Administratrix of Estate of Late Muriungi M'Chuka alias Miriungu M'Gichuga) versus M'Chabari Kinoro [2022] eKLR, the 1st defendant submitted the plaintiff has not presented any documentation to prove that it acquired the title through fraud or has been involved in any fraudulent activities.



43. On the third issue, the 1st defendant submitted that there is no discrimination against the plaintiff and being a serious allegation, the same has not been proved. On the fourth and fifth issues, the 1st defendant submitted that the plaintiff's claim is based on minutes and other documents whose authenticity cannot be verified by the 1st defendant which then disqualifies the issue of breach of legitimate expectation. As such, the plaintiff has not proved its case to warrant the orders sought.
44. I have considered the pleadings, the evidence tendered and the rival submissions filed by the parties herein as well as the authorities and, in my view, the issues for determination are as follows: -
- i. Whether there was breach of legitimate expectation.
 - ii. Whether the plaintiff is entitled to the prayers sought in the plaint.
 - iii. Who is to bear the costs.
45. The plaintiff's case is that it made a request to the defunct Narok County Council, now the 1st defendant on 25th July, 2000 to be granted the suit property to commence various projects for the benefit of the community. It was their case and further, the plaintiff's witness's testimony that they were advised to incorporate a trust for this purpose which it did through registration of a Trust dated 24th September, 2001 and a Trust Deed dated 20th March, 2001. It was the plaintiff's case that the incorporation of the Trust was informed by the conditions set out in the extract of the minutes of the meeting held on 25th July, 2000. It was also their evidence that they discovered, upon conducting an official search, that the suit property had been registered in the name of the 1st defendant.
46. The 2nd and 3rd defendants did not call any witness. The 1st defendant through its County Secretary DW1 informed the court that the suit property is community land and it holds the suit property in trust for the benefit of all the people of Narok. It was also DW1's testimony that the impugned minutes are not in their records and that the 1st defendant could also not verify the authenticity of the documents said to be relied upon by the plaintiff.
47. I have analyzed the evidence on record and I do note that the dispute herein is centered on legitimate expectation. P.Ex. no. 1 is a copy of the extract of the minutes of the meeting said to have been held on 25th July, 2000. Being an extract it means that what has been made available to the court, is what the plaintiff may have found to have been only relevant to their case. These minutes indicate that the full council was present when the meeting took place and, in their discussions and resolutions, Suswa Holding Ground was the subject. In this meeting, it was resolved that all the land referred to as Holding ground be granted to the Keekonyokie Community on the condition that a trust is formed and the area shall not be subdivided.
48. These minutes were signed by Saruni Ole Kudate who was the Acting Clerk for the Narok County Council. The 1st defendant questioned the authenticity of these minutes for the reason that it was mandatory that it be signed by at least two members of the committee and should bear the seal of the Narok County Council. According to the 1st defendant, and with regard to these minutes, the law was not followed in allocating the suit property.
49. While the authenticity of these extract minutes have been disputed, I have not heard the defendants deny or dispute whether a meeting was held on that day i.e. 25th July, 2000. PW2 in his testimony, informed the court that he was present during the meeting said to be held on 25th July, 2000. This fact was not controverted.



50. Secondly, the letter dated 6th February, 2014 solidified or rather confirmed the existence of the meeting and the resolutions passed with respect to the suit property. This letter was signed by Stella Langat, interim County Secretary. DW1, in his cross-examination and re-examination admits that the letter was written by his predecessor but denied that the contents in the said letter are not in the possession of the 1st defendant. From the evidence of DW1, it is not difficult to find that a decision had been passed to have the suit property registered in the name of the plaintiff.
51. It is trite law that he who alleges must prove. Section 107 of the Evidence Act provides as follows:
- “(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.”
52. The evidential burden of proof is captured in Sections 109 and 112 of the Evidence Act which provide as follows:-
- “109. The burden of proof as to any particular fact lies on the person who wishes the court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.
- “112. In civil proceedings, when any fact is especially within the knowledge of any party to those proceedings, the burden of proving or disproving that fact is upon him.
53. In *Keroche Industries Limited versus Kenya Revenue Authority & 5 Others* Nairobi HCMA No. 743 of 2006 [2007] 2 KLR 240, the Court stated as follows: -
- “...legitimate expectation is based not only on ensuring that legitimate expectations by the parties are not thwarted but on a higher public interest beneficial to all including the respondents, which is the value or the need of holding authorities to promises and practices that have made and acted on and by so doing upholding responsible public administration. This in turn enables people affected to plan their lives with a sense of certainty, trust, reasonableness and reasonable expectation...An abrupt change...targeted at a particular company or industry is certainly abuse of power. Stated simply legitimate expectation arises for example where a member of the public as a result of a promise or other conduct expects that he will be treated in one way and the public body wishes to treat him or her in a different way...Public authorities must be held to their practices and promises by the courts and the only exception is where a public authority has sufficient overriding interest to justify a departure from what has been previously promised.
54. Further, in *Royal Media Services Limited & 2 Others versus Attorney General & 8 Others* [2014] eKLR it was held that:
- “...legitimate expectation, however strong it may be, cannot prevail against express provisions of the constitution. If a person or a statutory body promises a certain relief or benefit to a claimant or undertakes to do something in favour of a claimant but in a way that offends the



constitution, the claimant cannot purport to rely on the doctrine of legitimate expectation to pursue the claim or the promise.”

55. In addition to the above, in Republic versus Kenya Revenue Authority ex parte Shake Distributors Limited Hcmisc. Civil Application No. 359 of 2012: the court stated thus:-

“...the cornerstone of legitimate expectation is a promise made to a party by a public body that it will act or not act in a particular manner. For the promise to hold, the same must be made within the confines of the law. A public body cannot make a promise which goes against the express letter of the law.”

56. The three basic questions were identified in R (Bibi) vs. Newham London Borough Council [2001] EWCA Civ 607 [2002] 1 WLR 237 at [19] as follows:

“In all legitimate expectation cases, whether substantive or procedural, three practical questions rise, the first question is to what has the public authority, whether by practice or by promise, committed itself; the second is whether the authority has acted or proposes to act unlawfully in relation to its commitment; the third is what the court should do.”

57. From the above cited authorities vis a vis the evidence tendered in this case, the 1st defendant failed in its promise to the members of Keekonyokie community. Instead, it went ahead and registered the suit property in its name and when called upon to defend itself, did not provide any documents to support its actions. The defendants excuse is that the suit property is community land and it therefore holds it in trust for the communities living therein is rather lame and inexcusable. A public body must be held accountable to its promise and actions to its people. The plaintiff has shown in its evidence that the 1st defendant’s promise made the plaintiff to carry out certain community based projects and the abrupt change targeted at the plaintiff is, in my view, an abuse of power.

58. Arising from the above, I am persuaded that on a balance of probabilities, the plaintiff has proved that it has a cause of action against the defendants. In the circumstances judgment is hereby entered for the plaintiff and against the defendants as follows: -

1. A declaratory order is hereby issued that the registration of Title No. Cis Mara/Suswa Kitet/2 in the name of the 1st defendant was unlawfully and unprocedurally obtained.
2. The Land Registrar, Narok County is hereby directed to cancel the certificate of title in respect to Cis Mara/Suswa Kitet/2 registered in the name of the 1st defendant.
3. The Land Registrar, Narok County is hereby directed to register the property known as Cis Mara/Suswa Kitet/2 in the name of the plaintiff.
4. The plaintiff is entitled to costs of this suit, which is to be incurred by the 1st defendant.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL this 24TH day of JANUARY, 2024.

HON. MBOGO C.G.

JUDGE

24/1/2024.

In the presence of:

CA:Meyoki

