



**Sunkuiya v Osoi & another (Environment & Land Case 5 of 2018)
[2024] KEELC 3427 (KLR) (24 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3427 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 5 OF 2018
MN GICHERU, J
APRIL 24, 2024**

BETWEEN

KALOLE SUNKUIYIA PETITIONER

AND

DANIEL TARAIYIA OLE OSOI 1ST RESPONDENT

THE PRINCIPAL MAGISTRATE, KAJIADO LAW COURT .. 2ND RESPONDENT

JUDGMENT

1. This judgment is on the petition dated 25/11/2013. The petition which is by the petitioner and is against the two respondents seeks the following orders.
2. A declaration that the award by the Kajiado Land Disputes Tribunal dated 20/12/2007 and the subsequent decree dated 15/4/2010 is legal and therefore properly in force.
3. A declaration that the subsequent award by the Kajiado Land Disputes Tribunal dated 11/8/2011 is illegal and/or improper and is thereby set aside.
4. An order of permanent injunction to restrain the Principal Magistrate Kajiado from adopting the award of 11/8/2011 made by the Kajiado Central Land Disputes Tribunal.
5. An order of permanent injunction against the 1st respondent jointly and severally by themselves, agents, servants, personal representatives restraining him from encroaching trespassing and/or interfering with the petitioners' quiet possession and enjoyment of L.R. Kajiado/Dalalekutuk/1387.
6. An order for the officer commanding Kajiado Police Station to ensure compliance of the above order.
7. Costs of this petition be awarded to the petitioners.
2. The petition is supported by an affidavit dated 25/11/2013 sworn by the petitioner and which has ten (10) annexures. In summary the petitioner deposes as follows.



Firstly, she is the registered owner of the suit land.

Secondly, in the year 2006, she reported a dispute to the Kajiado District Land Disputes Tribunal in Case No. TC 364/09/06.

Thirdly, the tribunal directed that the District Surveyor visits the suit land and L.R. 670 with a view to fixing the beacons and marking the boundaries. Both parties were to pay the costs of the exercise jointly.

Fourthly, the Land Disputes Tribunal made a second ruling on 11/8/2011 to the effect that the surveyor visits the disputed parcels and draws a new mutation for the two parcels taking away 1 ½ acres from the petitioner's land No. 1387 and adding it to the 1st defendant's L.R. 670 and that both titles deeds be returned to the Land Registrar for amendment.

Fifthly, it is the second ruling that precipitated the filing of this petition because there was no good reason for the tribunal to issue two (2) contradicting rulings. The petitioner was never summoned by the tribunal to be heard before the ruling. She appealed to the Appeal Committee at the Provincial Land Level but the Land Disputes Tribunal Act was repealed before the appeal could be heard.

3. The petition is unopposed because the respondents did not file any reply. However, at the hearing of the petition on 24/5/2023 the 1st respondent's counsel was present and even cross –examined the petitioner.
4. Counsel for the petitioner filed written submissions dated 16/2/2023 in which they identified four issues for determination as follows.
 - i. Whether the tribunal award issued on 11/8/2011 has any legal force.
 - ii. Whether this court should grant the petitioner's prayers.
 - iii. Whether suit against the 1st respondent has abated.
 - iv. Who should bear the costs.
5. I have carefully considered the petition in its entirety including the grounds, supporting affidavits and annexures. I have also considered the submissions by Learned Counsel for the petitioners, the issues identified and the law relied upon. I am convinced that the issues as identified by the counsel for the petitioner will determine the dispute. I make the following findings on the four (4) issues.
6. On the first issue, I find that tribunal award of 11/8/2011 is null and void because there was an earlier decision made by the same tribunal on 20/12/2007 which had been adopted as a judgment of the court and a decree dated 15/4/2010 issued. This decree was never set aside by an appellate or higher tribunal. It is that particular decree that has the force of law.
7. As to whether the suit was abated as against the 1st respondent, I find that it has not. On 24/5/2023, we were told by counsel from the bar that the first respondent is deceased. We were not told when he died and no application has ever been made to appoint a legal representative to take his place in the suit. It is almost a year since the allegation was made. An application ought to have been made as appropriate. In any case, this is a suit in rem not in personam. It survives the deceased as it involves land. The activity which was ordered by the tribunal involves fixing of boundaries and it has not yet taken place. Representatives of the 1st respondent, if he is indeed deceased, will be summoned to attend.
8. Finally and for the reasons already given, I find merit in the petition and I allow it in terms of prayers 2, 3, 4, 5, 6 and 7.

It is so ordered.



DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF APRIL 2024.

M.N. GICHERU

JUDGE

