



REPUBLIC OF KENYA



KENYA LAW
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**Idilai v Supeet & another (Civil Suit 709 of 2017)
[2024] KEELC 4279 (KLR) (27 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4279 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
CIVIL SUIT 709 OF 2017
MN GICHERU, J
MAY 27, 2024**

BETWEEN

LENAIYA NEMATANG OLE IDILAI PLAINTIFF

AND

BENJAMIN SENTEMAN SUPEET 1ST DEFENDANT

MOSOITO OLE GOLGOL 2ND DEFENDANT

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendants.
 - a. Removal of any fence, structures and to vacate from LR Kajiado/Kipeto/1819, 1820 and 2143, suit parcels.
 - b. A permanent injunction restraining the defendants, their agents, servants and relatives from occupying, cultivating, farming, digging, grazing or in any way dealing with the suit parcels.
 - c. The title deeds for the suit parcels be cancelled by the District Land Registrar Ngong and new titles be issued in the name of the plaintiff.
 - d. General damages for trespass.
 - e. Costs of the suit.
 - f. Interest on (a) and (b) above.
 - g. Any other or further remedy which the court may deem fit to grant.
2. The plaintiff's case is as follows. He owned LR Kajiado/Kipeto/800 which he has occupied since 1993. In the year 1995 he sold 55 acres of that land to Supeet Ole Moshoro which became LR 1647 measuring 55 acres. There remained a Parcel No. 1646 which measured 43 acres which was not part of



the land sold and which the plaintiff occupies while the defendants occupy LR 1647. The defendants never claimed LR No. 1646 during the lifetime of Supeet Ole Mushoro and they only claimed it after his death. LR No. 1646 was later subdivided into LR 1819, 1820 and 2143, the suit parcels. The defendants have invaded the suit parcels where they have cut down trees, and fenced it denying the plaintiff access to grazing. This is why he filed this suit.

3. In support of his case, the plaintiff filed the following evidence.
 - i. His witness statement dated 10/5/2017.
 - ii. Witness statement by Clyford Panai Lenaya dated 28/2/2023.
 - iii. 4 undated photographs.
 - iv. Copy of certificate of official search dated 22/7/2013 showing that LR 1820 is in the name of Supeet Ole Mushoro and it measures 6.02 hectares.
 - v. Copy of mutation form for LR 1646 which was registered on 7/1/1997.
 - vi. Copy of caution dated 20/8/2014.
 - vii. Copies of receipts dated 20/8/2014.

4. In their written statement of defence dated 6/2/2023, the defendants aver as follows.

Firstly, the plaintiff sold off portion of LR Kajiado/Kipeto/800 to Supeet Ole Mushoro progressively in a series of transactions beginning in October 1995. The first parcel to be sold was LR 1647 which was a subdivision of LR 800. It was registered in the name of deceased on 25/10/1995.

Secondly in January 1997, the plaintiff sold two more portions to the deceased by dividing LR 1646 into 3 parcels namely 1819, 1820 and 1821. He sold LR 1819 which was registered in the name of the second defendant to hold in trust for his father Supeet Ole Mushoro (deceased).

Thirdly, on 7/1/1997 LR 1820 was registered in the name of the deceased.

Fourthly, in October 1999, the plaintiff sold another portion of LR 1821 to the deceased by subdividing it into two (2) parcels namely LR 2142 and 2143. The plaintiff sold LR 2143 while he retained LR 2142.

Fifthly, the defendants and their late father have occupied the suit land since purchase.

Sixthly, no confirmed grant has been issued in the estate of the deceased Supeet Ole Mushoro.

Finally, this court has no jurisdiction to entertain this suit because it has been brought more than 12 years since the sale of the land.

5. In support of their case, the defendants filed the following evidence.
 - i. Witness statement by Mosoito Ole Golgol, Mboyomo Kinaiyia, Mamia Ole Karu Parnyempe and Ngaramat Ole Monirei Ntikwesa.
 - ii. Copy of certificate of death for Supeet Ole Moshoro dated 22/3/2017.
 - iii. Copies of title deed for LR Numbers 1647, 1820 and 2143, and 1819.
 - iv. Copies of mutation forms for LR 1646 and 1821 and their official receipts.



- v. Copy of title deed for Ngaramat Ole Monirei Ntikuresa.
6. At the trial on 1/3/2023, the plaintiff, his wife Ntaloi Ene Ndilai and his son Clyford testified by reiterating the case in their witness statements and documents. They were cross-examined by the defence counsel. On the other hand, the second defendant and two witnesses namely Ngaramat Ole Monirei and Mamia Karu Ole Parnyempe testified. They too reiterated the defence case as per the pleadings.

In summary, they insist that the plaintiff sold the suit parcels to the deceased and that he is merely trying to change his mind.

7. Counsel for the parties were to file written submissions by 31/3/2024 but as I am writing this judgment on 22/5/2024, I have not received any such submissions. I am writing this judgment without the benefit of such submissions.
8. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and the testimony at the trial. I have also borne in mind the burden on the plaintiff to preponderate his case against the defendants on a balance of probabilities. I find that the following issues arise in this case.
- i. Who is the registered owner of the suit premises?
 - ii. How was registration obtained?
 - iii. Whether fraud or irregularity has been proved on the part of the defendants?
 - iv. Who pays the costs?

9. On the first issue, I find that the two defendants are the registered owners of the suit parcels. This is as per the copies of title deeds exhibited in court by the defendants. Under Section 26(1) of the [Land Registration Act](#) the certificate of title is evidence of ownership. Section 26(1) of the [Land Registration Act](#) provides as follows.

“The certificate of title issued by the registrar upon registration, or to a purchaser of land upon transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owners, subject to the encumbrances, easements restrictions and conditions endorsed in the certificate...”

10. On the second issue, I find that the registration of the defendants as the proprietors of the suit parcels was obtained lawfully because the burden was on the plaintiff under Sections 107 and 108 of the [Evidence Act](#) to prove otherwise. I find that he has failed to do so because he has not enumerated even one instance of fraud or illegality in his plaint dated 10/5/2017 let alone prove the allegations. The standard of proof is higher than in ordinary civil cases. The law on proof of fraud is per the case of [Ndolo v Ndolo](#) Civil Appeal No. 128 of 1995, where it was held that it is higher than a balance of probabilities but not as high as beyond reasonable doubt as in criminal cases.
11. On the third issue, I find that fraud has not been proved on the part of the defendants or anyone else. This burden does not shift and the plaintiff did not discharge it. Apart from merely alleging, no effort was made in terms of producing the records available at the Land Registry to demonstrate how the alleged fraud was perpetrated. Even the District Land Registrar was neither called as a witness nor joined as a party. The onus was on the plaintiff to do this. It is also very curious that the plaintiff did not file his claim during the lifetime of Supeet Ole Mushoro. The deceased died on 12/3/2017 and this suit



was filed on 12/5/2017. If the plaintiff had a good case, he should not have waited for the registered owner of some of the parcels to die and then file the suit. The plaintiff should have dared to face the deceased in court but he shied away from this. I am convinced by the two defence witnesses that the plaintiff sold the land himself and he is merely trying to change his mind. It is too late for him to do so.

12. For the above stated reasons, I find no merit at all in the plaintiff's suit and I dismiss it with costs to the defendants.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 27TH DAY OF MAY 2024.

M.N. GICHERU

JUDGE

