



**Langat v Langat (Chairman) & 2 others (Sued as Officials of Kosia Set Kobor Self Help Group)
(Environment & Land Case 243 of 2017) [2024] KEELC 4216 (KLR) (14 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4216 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 243 OF 2017**

CG MBOGO, J

MAY 14, 2024

BETWEEN

SAMUEL KIPKURGAT LANGAT PLAINTIFF

AND

JOSEPH KENDUIWA (TREASURER) 1ST DEFENDANT

ZEPHANIAH LANGAT (CHAIRMAN) 2ND DEFENDANT

ZEPHANIAH YEGON 3RD DEFENDANT

SUED AS OFFICIALS OF KOSIA SET KOBOR SELF HELP GROUP

JUDGMENT

1. On 30th November, 2022, the plaintiff filed an amended plaint dated 28th November, 2022 seeking judgment against the defendants for: -
 - a. A declaration that then plaintiff a *bona fide* member of Kosia Set Kobor Group and entitled a total of 18 (eighteen) acres out of all that parcel known as Cis Mara/Olchoro-Oiroua/111 and the defendant therefore do effect subdivision and transfer of the same to the plaintiff.
 - b. The costs of this suit.
 - c. Any other and/or further relief deemed fit and just to grant by this honourable court.
2. The plaintiff, in his amended plaint stated that he is a member of Kosia Set Kobor Group that is the registered owner of parcel of land known as Cis-Mara/Olchoro-Oiroua/111 measuring 168,75 hectares, and that he has fully paid the membership fees and share contributions hence entitled to a total of 18 acres of the property.
3. The plaintiff further stated that it was agreed between himself and the defendants that the parcel of land which he paid, be a total of 18 acres and it was on this strength that he fully paid his membership



- and share fees which was to be excised from the parcel of land and which would be ready for occupation and use.
4. The plaintiff stated that the purpose for which he became a member of the group would only be served if he is given/ transferred 18 acres and put in occupation thereof. Further, he stated that he later discovered that the defendants had already subdivided the parcel of land amongst the other members and failed to give him his share, and he has suffered great loss and damage.
 5. The plaintiff stated that his claim against the defendants is for an order of permanent injunction to issue against the defendants, their servants and/or agents, restraining the defendants either by themselves from entering, occupying, developing and/or any other manner dealing with 18 acres out of that parcel of land known as Cis-Mara/Oiroua/111 to be transferred to him.(sic)
 6. The defendants filed their amended statement of defence dated 21st January, 2023. The defendants while denying the contents of the amended plaint, further denied that the plaintiff is a member of Kosia Set Kobor Group and that he voluntarily applied to withdraw his membership from the group, and that he was subsequently granted his request.
 7. The plaintiff's case proceeded for hearing on 6th February, 2023. The plaintiff adopted his witness statement dated 5th February, 2013 as his evidence in his chief. He also produced 17 documents as P. Exhibit Nos. 1 to 17 respectively.
 8. The plaintiff testified that he is still a member of Kosia Set Hobor Self Help Group and denies that he ceased being a member of the group on 20/1/2002, as alleged by the secretary of the Group. He maintained that he knows nothing to do with the letter which is in the defendants' list of documents, and that he did not request to be refunded his share contribution as alleged in the letter. According to him, he does not know the author of the letter even though it bears his phone number. Also, he stated that the phone number indicated at the bottom of the letter is not his. He denied that he received a refund of his money on 13/4/2002, and neither did he acknowledge receipt of the money as alleged in the defendants' letter date 20/4/2002.
 9. It was the plaintiff's testimony that at no time did he sit down with Zephania, to show that he received a refund of his share contribution. He further testified that he became a member of the Group in February, 1992 and he does not know if there were members who resigned from the Group. According to him, a member wishing to resign from the Group would be asked to return the receipts issued to him and then enter into an agreement with the Group to show that he had left the group. That by retaining the receipts, it shows that he is still a member.
 10. The plaintiff maintained that he did not write any letter to resign from the Group, and disagrees with the letter dated 3/10/2006 from the District Commissioner to show that he received a refund of his shares. Further, that he has never seen a copy of the letter and neither is it copied to him. That in the absence of an agreement showing that he received a refund of his shares, the defendants are lying, as the agreement ought to have been witnessed. He testified that he is not out to defraud the Group as alleged by the defendants, as he paid Kshs. 242,200/- which is yet to be refunded to him. Also, that he paid Kshs. 200, which was for membership of the Group and the same was not refunded.
 11. The plaintiff testified that he was entitled to 18 acres, and, each share was Kshs. 10,000/-, which was later increased to Kshs. 15,000/-, which he also paid to cover one acre. He testified that he was shown a place where to build a house, which he occupied from the year 1992, to 2007 and that he also cultivated 10 acres. It was further his testimony that he lived on his portion of land until the year 2007, when one Sadera claimed that they had not finished purchasing his land. That in the year 2008, he went to



- take care of his parents who were terminally ill, and in the year 2009, he learnt that the defendants had allocated his land to someone else.
12. On cross examination, the plaintiff testified that he joined the self-help group by purchasing shares, and that there was no need for an agreement for one to join the Group. It was his evidence that the receipts show that he is a member of the group, and he does not know if there was a dispute between the seller of the land and the Group. According to him, the officials of the Group used to tell them that there was a dispute and they would demand money from them. He testified that the signature in the letter relied on by the defendants, was not his. Further, that his advocate did not share with him the letter from the District Commissioner stating that he had received a refund of his shares. He maintained that the receipts show that he paid the money, and he still remains a member of the self-help group, and he has built a house on the land he had been allocated.
 13. On re-examination, the plaintiff testified that the receipts that he was issued, bears the signatures of the Chairman, Secretary and Treasurer of the Group.
 14. On 15th March, 2023, Kipkirui Arap Sanga alias Simon Ole Sanga, (PW1), adopted his witness statement dated 5th February, 2013 as his evidence in chief. It was his evidence that he is a member of Kosia Set Kobor Self Help Group and that he paid money equivalent to 8 acres in mid-eighties when demarcation was carried out, but he was allocated 6.7 acres in late 2000. According to him, the plaintiff was a leading member in terms of acreage, and he was entitled to 18 acres. Further, that when they went to verify if the register was okay, the then secretary, Chelule Tuimising (deceased) informed them that the plaintiff was not entitled to any land. He testified that he demanded to know why the plaintiff could not be allocated land and they told him that the plaintiff knew what he had done, and that since he was an ordinary member, he remained silent. It was his evidence that a member could withdraw from the Group but he had to surrender the receipt of the money paid to whomever he had sold the land to in the presence of the officials of the Self-Help Group.
 15. PW1 testified that the officials of the Group did not call for a meeting to inform other members that the plaintiff had withdrawn. He informed the court that he knew Zephania Langat, but he did not know what position he held in the Group. Further, that Josiah Kenduiywa was the one who had the register of the names of all the members, but he does not know one Joseph Kendiywa. He further testified that Zephania Yegon is the secretary of the Group, and he was the one who was supposed to notify all the members whenever he intended to call for a meeting. Further, that since Chelule Tuimising and Abraham Kalya passed on, he has never been invited to any meeting, but that he only saw in the letter said to have been authorized by the plaintiff to indicate his resignation, which he had not seen it before.
 16. On cross-examination, PW1 testified that his name is Simon Kipkuru, Arap Sang, and he does not use the name of Simon Ole Sang. According to him, his name was erroneously indicated as Simon Ole Sang in his witness statement. He agreed that he did not bring any statement to show that he purchased land from the Self-Help Group, and that he is also not familiar with the plaintiff's signature. It was his evidence that he only came to see the resignation letter that the plaintiff is said to have written in court, as he has not seen it before.
 17. PW1 further testified that if a member wishes to withdraw from the Group, he approaches the officials where he surrenders the receipt issued to him to whomever he wishes to sell his shares to. Further, that he was not called to any meeting when the deceased officials were replaced. He further testified that he knows Zephania Langat, but that he was not an official of the Group but that he is a resident of the area. Further, that he learnt that the plaintiff had withdrawn from the Group when the officials told him when he asked them if the plaintiff had written a letter to withdraw from the Group, and who responded, that the plaintiff knew what he had done.



18. On re-examination, PW1 informed the court that the written statement bears his signature.
19. The 3rd defendant Zephania Yegon adopted his witness statement dated 22nd September, 2021 as his evidence in chief. He testified that he has been the secretary of Kosa Set Kobor Self Help Group since 1989 when the Group was formed, and that the intention of forming the Group was to purchase a parcel of land from one James Enina Sadera. That on 20th January, 2002, he wrote a letter to agree with the verdict of the Land Disputes Tribunal where they had been sued by James Sadera. It was his testimony that the Tribunal ordered that they be refunded the purchase price. The said letter was marked DMFI 1.
20. The 3rd defendant further testified that there was also a letter dated 20th April, 2002, which the plaintiff wrote to acknowledge receipt of the money that he had paid, which is marked as DMFI 2. Further, that there was also a letter dated 3rd October, 2002, authored by the District Commissioner, Narok, marked as DMFI 3. He testified that after several court cases, they were issued with a title deed marked as DMFI 4, and proceedings of the Land Disputes Tribunal produced as D. Exhibit No. 4.
21. On cross-examination, the 3rd defendant testified that he was the one who used to issue notices for the meetings of the Group, and that there are minutes of the Group to show that the plaintiff resigned from the Group, which he did not have with him. That apart from the letter written by the plaintiff to indicate his withdrawal from the group, he has no other document to show he acknowledged receipt of the money that he paid for purchase of the land. He agreed that they would issue receipt for the money received from the members, which receipts would be signed by treasurer. Further, that a member wishing to withdraw was not obligated to surrender receipts issued to him, but that the members would only produce the receipts during the sub division of the land, and that this would apply to those who had bought land from members.
22. The 3rd defendant agreed that a receipt is proof that one had bought shares, and that he did not bring the minutes to show how the deceased Chairman and Treasurer were replaced. He further testified that the dispute that was in court was between the Group and the seller of the land, and the refund of the purchase price was between the self-help group and Mr. Sadera. He also agreed that PW1 is a member of the Self-Help Group, and that the land was sub divided to the members of the Group in 2002 while the plaintiff was present.
23. He refuted the claims that PW1 asked why they did not allocate land to the plaintiff. According to him, they did not allocate land to the plaintiff and that he was not entitled to 18 acres had he remained in the Group, notwithstanding the fact that there was land set aside for access road. It was his evidence that one share was initially worth Kshs. 10,000/-, which was raised to Kshs. 15,000/-, but that they had not determined the size of the land that was worth one share. He also testified that he does not remember the year when the share price was increased to Kshs. 15,000/-. Further, he denied that the plaintiff was the largest shareholder in the year 2002. He testified that Josiah Kenduiywa became a member in 1989, but that he does not know Joseph Kenduiywa. Also, that Zephania Langat is the Chairperson, and joined the Group during its inception.
24. On re-examination, the 3rd defendant testified that there was no requirement that a member who left the Group to surrender receipts issued to him, and that they have minutes to show how the deceased officials were replaced. Further, that the plaintiff wrote to them indicating that he had withdrawn from the Group, and they refunded the money to the plaintiff. Also, that he was not a member by the time they allocated the land.
25. Zephania Langat (DW1), while adopting his witness statement dated 22nd October, 2021 as his evidence in chief, testified that he is the current Chairman of the Group. Further, that Sadera called



- them as a Group to deliberate on whether he would refund the purchase price or they will continue paying for the land. Further, that the plaintiff indicated that he had opted for refund of the money that he had paid for the purchase of the land, and the plaintiff then wrote a letter to indicate his withdrawal from the Group, which letters, are in court.
26. On cross-examination, DW1, testified that he is a police officer and the one who prepares the records for refund of money paid. That apart from the letter acknowledging receipt of the money to the plaintiff, he does not have any record to show that money was refunded to the plaintiff, as the documents referred to are faint. According to him, the records that were with the deceased Chairman are in the office of the self-help group. DW1 further testified that in the year 2002, the Group started allocating land to members, but he does not have minutes to show the allocation. It was his testimony that members would farm whenever they wished within the farm, and that they did not move PW1 from where he was farming, since he had constructed. Further, that they gave out the land that the plaintiff was entitled to because he had already withdrawn from the Group.
 27. On re-examination, DW1 testified that a member who wished to withdraw from the Group was supposed to introduce a new member to the Group, and that he saw the plaintiff write the letter to show that he had withdrawn from the Group.
 28. Josea Kediwa (DW2) adopted his witness statement dated 22nd October, 2021 as his evidence in chief. He testified that he is the treasurer of the Group and that as a treasurer, his role is to receive money from the members which they would use to pay as part of the purchase price for the land. Further, that they did not have any incidents of refunding money to the members wishing to withdraw from the Group, and that the plaintiff was refunded his money by the person who replaced him. He testified that he was present when the plaintiff brought the letter to indicate that he had withdrawn from the Group and that he was not present when the District Commissioner wrote his resignation letter.
 29. On cross examination, DW2 testified that he was present when the refund was made to the plaintiff as is indicated in paragraph 8 of his statement, but he did not sign anywhere to show that the plaintiff had been refunded his money. He agreed that paragraph 6 of his statement shows that the letter dated 20/1/2002 was distributed to members, but it was his testimony that they did not hold a meeting when the plaintiff applied to withdraw from the Group. It was his evidence that the plaintiff was replaced by Sadera. Also, that he does not know the person who took over the land that was to be allocated to the plaintiff. He agreed that he was part of the Group that allocated land to others after the plaintiff withdrew and that one share was equivalent to one acre. He also agreed that the plaintiff had shares equal to 18 acres before he withdrew from the Group, and that it is not true that the plaintiff was cultivating land whose size was about 18 acres. He also did not remember whether the plaintiff had built on the land that he was cultivating, but that in the year 2000, his shares entitled him to 8 acres. Also, that he started utilizing the parcel allocated to him in the year 1989, which was the same time the plaintiff started utilizing his land in.
 30. On re-examination, DW2 testified that he was present when the plaintiff was refunded the money that he had deposited as per paragraph 8 of his statement, and that in the year 2002, he was just a member of the Group Ranch.
 31. The defendants filed their written submissions dated 3rd May, 2024 and raised three issues for determination as follows: -
 - i. Whether the plaintiff proved that he was a member of the group.
 - ii. Whether the plaintiff proved that he paid contributions for the said 18 acres as alleged.



iii. Whether the plaintiff is entitled to the remedies sought.

32. On the first issue, the defendants submitted that the plaintiff did not prove that he is a member of the group and there was no register for membership or a membership card or any evidence to prove so. They submitted that the copies of receipts produced are not admissible for they violate the rules of evidence which requires that unless one brings himself within the exceptions the said law gives, statements in documents must be produced in evidence by the maker.
33. The defendants invited the court to look through the said receipts, which were allegedly issued in the 1990's and the most recent one being the one for 1996. They submitted that the plaintiff herein ceased from being a member of the group and this was done vide a letter dated 20.04.2022 (sic). The defendants submitted that they all adopted their witness statements and as their evidence in chief which stated that the plaintiff, indeed withdrew his membership after which his money was refunded. They urged the court to note that they are officials of the group, and they all confirmed that the plaintiff withdrew from the membership of the group and after which his money was refunded. Also, that their evidence corroborated each other in that respect. Further, that on a balance of probabilities and weighing the two versions of the evidence on record, the plaintiff failed in proving that he was a member of the group and thus entitled to the orders sought in the plaint. They relied on the case of *Evans Nyakwana versus Cleophas Bwana Ongaro* [2015] eKLR and *William Kabogo Gitau versus George Thuo & 2 Others* [2010] 1KLR 526.
34. On the second and third issues, the defendants submitted that the plaintiff failed in his duty to prove that he paid contributions for the 18 acres as was pleaded, and reiterated that the copies of the receipts produced by the plaintiff are not admissible and should be struck out. Further, that even if the same were admissible, there was no evidence which was tendered to prove that the amounts indicated thereon was in respect of 18 acres of land.
35. The defendants submitted that there was no agreement between the plaintiff and the Group that was produced, showing that the amount he had paid for was for 18 acres. They reiterated that the plaintiff had his money refunded and that he is not entitled to the said land. That in the absence of such evidence, the plaint ought to be dismissed with costs.
36. At the time of writing this judgment, the plaintiff had not filed his submissions.
37. I have considered the pleadings filed, the oral testimony by both the plaintiff as well as PW1 and the defendants and further the defendants' submissions. The issue for determination is whether the plaintiff is a member of the group and hence entitled to a declaration as prayed in the plaint and who should bear the costs of the suit.
38. It is not in dispute that the plaintiff was once a member of the Kosia Set Kobor Self Help Group. The defendants despite having denied the same in their defence, however seems to agree on the issue in their oral evidence. The plaintiff's claim is for 18 acres out of that parcel of land known as Cis-Mara/Olchoro-Oiroua/111 while on the other hand, the defendants pleaded and further testified that the plaintiff herein withdrew from membership and thus he is not entitled to the said 18 acres.
39. As to whether the plaintiff is a member of the group and hence entitled to a declaration as prayed in the plaint, the plaintiff pleaded that he paid for membership and that he has never left the Group. His evidence was that for one to cease from being a member of the Group, such a person would surrender the receipts back to the officials. He called PW1 who testified in support of this averment. On the other part, the 3rd defendant, DW1 and DW2 all testified that the plaintiff herein was refunded his money. What I note from the evidence tendered, it appears like the group's affairs were run without any formal



rule as none of the parties produced the same. It appears therefore, that the evidence in respect of the issue as to refund is purely oral evidence.

40. However, and as a rule, he who alleges must prove. This is provided for under Sections 107, 109 and 112 of the *Evidence Act*, Cap 80 and the courts have reiterated the same. Sections 109 and 112 of the *Evidence Act* provide that:

“

“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.”

41. Justice Mativo in *Hellen Wangari Wangechi versus Carumera Muthini Gathua* [2015] eKLR, quoted with approval Lord Brandon in *Rheir Shpping Co. SA. v Edmunds* [1955] IWL 948 at 955 as follows:

“No Judge likes to decide case on the burden of proof if he can legitimately avoid having to do so. There are cases, however in which owing to the unsatisfactory state of the evidence or otherwise, deciding on the burden of proof is the only just cause to take.”

...

“Whether one likes it or not, the legal burden of proof is consciously, or unconsciously the.....test applied when coming to a decision in any particular case. The fact was succinctly put forth by Rajah JA in *Bristone PTE Ltd v Smith & Associates Far East Ltd* [2007] 4SLR (R) 855 at 59: ‘The court’s decision in every case will depend on whether the party concerned has satisfied the particular burden and standard of proof imposed on him.’”

42. Also, in *James Muniu Mucheru versus National Bank of Kenya Ltd* C.A Civil Appeal No 365 OF 2017 [2019] eKLR, the court stated as follows: -

“Indeed, it is settled law that in civil cases the standard of proof is on a balance of probability. This is in effect to say that the Courts will make a finding based on which party’s version of the story is more believable.”

43. Considering the evidence from both the plaintiff and the defendants, it is my finding that the plaintiff failed to prove that he is still a member of the group. The evidence by the defendants and which comprised of three witnesses was sufficient to prove that the plaintiff withdrew from the membership and had his money refunded and even wrote a letter acknowledging receipt of the money. All the witnesses testified in that respect. The production of the letter alleged written by the plaintiff was objected to and thus cannot be relied upon by this court. The plaintiff on the other hand testified that the procedure for one leaving membership was through tendering back the receipts of membership. He called one witness to corroborate the same. From the rival evidence tendered and, in my view, it is more probable than not, that the plaintiff herein had his money refunded back. It is unfortunate that neither of the parties tendered any documentary evidence to prove the process of cessation from membership and this court has to rely on rival oral evidence. He who alleges must prove. The plaintiff had a duty to tender evidence to controvert the oral evidence by the defendants that he ceased from



being a member. However, he called one witness in support of his case while on the other hand the defendants evidence comprised of three witnesses. It is clear that the defendants' evidence on this issue outweighs that of the plaintiff's and in my view the scale tilts in favour of the defendants. I thus find that the plaintiff did not tender sufficient evidence that he is still a member of the group. That being the case, it is my finding that the plaintiff herein is not a member of the group and thus the declaration that he a member cannot be made.

44. I also note that the plaintiff sought the orders that be made, that he is a member of the group and that he is entitled to 18 acres out of the suit land herein. This was vehemently denied by the defendants. In my view for such an order to be made, the plaintiff had a duty to prove as to how he came up with the computation. Despite there being no dispute as to the fact that the contribution was Kshs. 10,000/- per share and later reviewed to Kshs. 15,000/- per acre, the plaintiff did not tender prove as to how many acres were bought for Kshs. 10,000/- and how many was bought at Kshs. 15,000/-. The plaintiff only gave figures and left the court to make conclusions without leading evidence in support of the same. The question which comes to my mind is as to (even if I was to find that the plaintiff herein was a member of the group), how this court would have made a declaration that he was entitled to 18 acres yet the same was denied? In my view, more was needed. Stating the figures was not sufficient. There was no evidence that he was entitled to the said 18 acres.
45. Arising from the above, I find no merit in the amended plaint dated 28th November, 2022, and the same is dismissed, with costs to the defendants. Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL this 14TH day of MAY, 2024.

HON. MBOGO C.G.

JUDGE

14/05/2024.

