



**Masiodo v Selei (Environment & Land Case 499 of 2017)  
[2024] KEELC 4963 (KLR) (20 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4963 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 499 OF 2017  
LC KOMINGOI, J  
JUNE 20, 2024**

**BETWEEN**

**NICKSON MUCHERU MASIODO ..... PLAINTIFF**

**AND**

**ROSE NASIEKU SELEI ..... DEFENDANT**

**JUDGMENT**

1. By a Plaint dated 20<sup>th</sup> June 2011 the Plaintiff seeks Judgement against the Defendant for;
  - a. An order of permanent injunction restraining the defendant from entering upon the parcel of land known as LR No. Kajiado/Ewaso - Kedong/3379 or from remaining in possession thereof or any portion of the said piece of land unless with the Plaintiff's consent and authority.
  - b. Costs of this suit.
2. Together with the Plaint the Plaintiff filed a notice of motion dated 20<sup>th</sup> June 2011 seeking orders of temporary injunction. In his ruling dated 16<sup>th</sup> January 2012 Asike Makhandia J (as he was then was) granted the orders of temporary injunction restraining the defendant from building erecting developing and constructing on the suit land pending the hearing and determination of this suit.
3. The defendant filed a statement of Defence undated but filed on 5<sup>th</sup> August 2011. She admitted that the suit land was registered in the Plaintiff's name but that the Plaintiff holds the land illegally and/or through fraud as the same resulted in the sub-division of Kajiado/Ewaso - Kedong/1423 which was allocated to her late husband George Ntagusa Kisau vide a letter of allocation dated 10<sup>th</sup> November 1990.



4. In paragraph 7 of the statement of defence she gave the particulars of Fraud against the Plaintiff as;

- i. The Plaintiff being a brother to my late husband cause the land offered to my late husband in the year 1990 from EWASO GROUP RANCH to be registered in his name in the year 2005 when he already knew that the land belonged to my late husband and that I lacked knowledge and could not understand the procedures.
- ii. The Plaintiff has caused the land parcel No. KAJIADO/EWASO – KEDONG/1423 to be subdivided into new portions yet he knows very well the land belonged to my late husband and is a subject to inheritance when there was no case of succession filed.”

**She prays that the Plaintiff’s suit be dismissed with costs.**

5. In response, the plaintiff filed a reply to defence dated 15<sup>th</sup> August 2011.

### **Evidence of the Plaintiff.**

6. PW1, DAVID KISERA TUUKUO Secretary for Ewaso Kedong Ranch Phase 1, testified on 27<sup>th</sup> February 2019. He adopted his witness statement dated 10<sup>th</sup> November 2011 as part of his evidence in chief. He told the court that the plaintiff was member of Ewaso Kedong Group Ranch Number 895. He produced a copy of the Register as exhibit. He further stated that the Plaintiff was issued with a letter of Allotment for parcel number 1423. He stated that the Defendant’s husband died in 1994 before conclusion of the land demarcation.
7. When he was cross-examined by the Defendant’s counsel, he told the court that the defendant was residing on the land when the Plaintiff was allocated the same. He also stated that the Defendant’s late husband, George Kisua Ntagusa’s name was on the area list for Ewaso Kedong Group Ranch. He denied that he threatened to take away the Defendant’s land after she refused to have an affair with him.
8. When he was re-examined by the Plaintiff’s counsel, he told the court that the Defendant’s husband was allocated land in phase 2 not Phase 1.
9. PW2 NICKSON MUCHERO MAISIODO, the Plaintiff herein testified on 27<sup>th</sup> February 2019. He adopted his witness statement dated 20<sup>th</sup> June 2011 as part of his evidence in chief. He told the court that he is the registered owner of Land Parcel No. Kajiado/Ewaso Kedong/3379. He produced the title deed as exhibit in this case. He told the court that he was allocated the land by virtue of being a member of the Ewaso Kedong Group Ranch. That he was allocated Title No.1423 which he later sub-divided hence giving rise to 3379. He further stated that his late brother George Kisau Ntagusa resided on the land and had put up a mud house as he waited for allotment.  
He also stated that the defendant, started putting up a permanent house hence this suit.
10. When he was cross-examined by the defendant’s counsel, he told the court that, he did not seek letters of administration in respect of his late brother’s estate. He stated that his later brother never got a letter of allotment over the suit land. He denied that the Defendant brought him to the land after his brother’s demise. He admitted that his late brother was Member No.465 and he (Plaintiff) was Number 895.
11. KALUNCHU OLE KISAU also testified on 27<sup>th</sup> February 2019. He also adopted his witness statement dated 20<sup>th</sup> June 2011 as part of his evidence in chief. He told the court that he knew both the Plaintiff and his late brother George Kisau Ntagusa. He confirmed the said George passed on in 1994. He told the court that the suit land was allocated to the plaintiff. He also stated that the Plaintiff. He also stated that the Plaintiff resided on the land with his late brother.



12. When he was cross-examined by the Defendant's counsel, he admitted that the Plaintiff and the deceased were residing on the suit land but the Plaintiff is the one who was issued with the title deed.
13. 4 RAHAB MUTHONI NJOROGI; the Land Registrar Kajiado West, produced the Green card for Kajiado/ Ewaso Kedong/3379. She told the court the registered owner is Nicholas Muchero. Maisodo (the Plaintiff). The title deed was issued on 24<sup>th</sup> February 2011. When cross-examined by the Defendant's counsel, she told the court that she did not have the area list. She also stated that she could not confirm the existence of Kajiado/Ewaso-Kedong/1423.

#### **Evidence of the Defendant.**

14. D.W.1 ROSE NASIEKU SELEI the defendant testified on 17<sup>th</sup> October 2019. She adopted her witness statement dated 5<sup>th</sup> August 2011 as part of her evidence in chief. She told the court that the Plaintiff is her brother in law.  
  
She told the court that her late husband George Kisau Ntagusa was member No. 465 Ewaso Kedong Group Ranch. She stated that the officials of the Group Ranch showed them land Parcel No. Kajiado/ Ewaso Kedong/1423 and they moved to the land in 1989. She stated that the Plaintiff was then still young and in school. She also stated that her husband died in a road accident in 1994 and was buried on the suit land. She produced a photograph of the grave site as exhibit D1 and the death certificate as Exhibit D2.
15. She stated that she lived peacefully with the Plaintiff from 1991 until 2010 when he became hostile and asked her to vacate.  
  
She said she followed upon the land and realized the land had been registered in the Plaintiff's name to her exclusion.
16. She also stated that the documents relating to her late husband's allocation got burnt when her house was set on fire.  
  
She stated that she reported the arson to the police who took no action.  
  
She was stopped by the Plaintiff when she started putting up a permanent house.
17. It is her case that she has been in the suit land since 1989. She further stated that she has tried resolve the dispute with the Plaintiff who is unwilling and claims she has no capacity to inherit her late husband's land as she has no son . She stated that the Plaintiff's sentiments are echoed by the clansmen.  
  
She further stated that she trusted the Plaintiff who is her brother in law. She prays that the title do revert to her.
18. When she was cross-examined by the Plaintiff's counsel, she stated that most of the documents regarding the allotment to her late husband were burnt when the house caught fire. She told the court that she registered a caution against the title in 2010, when she discovered the land had been subdivided. She maintained that the suit land was fraudently registered in the plaintiff's name.
19. D.W.2 JOSIAH LESANE, a land adjudication Officer testified on 10<sup>th</sup> March 2020. He told the court that George Kisau was Member No.465 and the Plaintiff was member No.904. He further told the court that from the area list the Plaintiff and his late brother were commonly allocated Parcel No.1423. He produced a copy of the area list as exhibit D4.
20. When cross-examined by the Plaintiff's counsel, he told the court that both were to be registered as owners of 1423. He stated that he did not know the reason why no one reported the fraud to his office.



21. When re-examined by the Defendant's counsel he confirmed that from the area list, the owners of 1423 when the plaintiff and his late brother George Ntagusa Kisau. He further stated that all members of the Group Ranch had equal shares.
22. At the close of the oral testimonies, parties tendered final written submissions.
23. The Plaintiff's submissions are dated 3<sup>rd</sup> February 2024. Counsel in his submissions reiterated the Plaintiff's case and urged the court to find that the Plaintiff being the registered owner of the suit land should be left to enjoy it.
24. The Defendant's submissions are dated 24<sup>th</sup> November 2023. Counsel submitted that the Plaintiff's title was acquired through misrepresentation hence is of no consequence. He urged the court to find that the Defendant is entitled to be on the said land. The Plaintiff's suit ought to be dismissed with costs.

### **Analysis and Determination.**

25. I have considered the pleadings, the evidence on record, the written submissions and the authorities cited. The issues for determination are;
  - i. Whether the Defendant is a beneficial owner of the suit land.
  - ii. Is the Plaintiff entitled to the reliefs sought?
  - iii. Who should bear costs of the suit?
26. It is the Plaintiff's case that he is the registered owner of Kajiado/Ewaso Kedong/3379. He prays that the Defendant do vacate the same.
27. The Defendant on the other hand states that she has been on the land since 1989. That her late husband George Ntagusa Kisau was a member of the Ewaso Kedong Group Ranch being member No.465. That her late husband passed on in 1994 due to injuries sustained in a road accident and was buried on the land. She produced photographs of the grave site and a copy of the death certificate as exhibits D1, D2 respectively. She further stated that they settled on the land in 1989 when the Plaintiff was young and in Primary School.
28. It is her case that she lived peacefully with the Plaintiff on the land until 2010 when he became hostile. She became curious and did a search. This is when she realized that the Plaintiff had the land registered in his sole name to her exclusion. The Plaintiff admits that the defendant is on the land but with his permission. He also admitted that his late brother was buried on the land that before his death he had put in a mud house. The reason he gave is that, his late brother had not been allocated land by the Group Ranch.
29. In my view this is rather unusual as the deceased Membership number was 465 while the Plaintiff's was 895. How could the Plaintiff be allocated land before his late brother? It is on record that the deceased was older than the Plaintiff.
30. The Defendant's case is that her late husband was allocated land vide the letter of Allocation dated 11<sup>th</sup> November 1990. It is also her case that the suit property is a sub-division of 1423, which belonged to her late husband.



It is her case that the Plaintiff in collusion with the officials of the Group Ranch had the land registered in his name to her exclusion despite the fact that she is the widow of the late George Ntagusa Kisau who was member No.465.

31. She gave the particulars of Fraud against the Plaintiff as causing the land to be registered in his name yet it was allocated to George Ntagusa Kisau (Defendant's husband) and sub-dividing the said land hence giving rise to the suit land herein.

She stated that she reported the fraud to the Director of Criminal Investigation.

32. DW2 JOSIAH LESANE the Land Adjudication Officer confirmed that from the area list, both the Plaintiff and the deceased were commonly allocated land parcel No. Kajiado/Ewaso Kedong/1423. He produced the area list as exhibit D- 4. It is not in doubt that both the Plaintiff and the defendant were to be registered as the owners of 1423. Instead the Plaintiff went to behind the Defendant's back, and had it registered in his sole name. He has sold of portion of the said land hence giving rise to Kajiado/Ewaso Kedong/3379.

33. It is my view that the Defendant is a beneficial owner of the said land. She is entitled to her portion of what belonged to her late husband.

It is not in dispute that she resides on the suit land and is entitled to put up a permanent house on the said land.

34. I note that the Defendant first filed a statement of defence in person. Being a lay person she may not have had knowledge that she ought to have put in a counter-claim. The Advocates who came on record on her behalf ought to have sought to have the anomaly rectified by seeking amendment of the defence, to include a counter claim. I find that the Defendant is entitled to her late husband's portion of the land.

35. The fact that the Plaintiff went to register the entire land in his name to the exclusion of the Defendant means the title was acquired illegally and unprocedurally. The same can be impeached as he failed to disclose that the Defendant was entitled to be registered as well.

36. Having stated that the Defendant is entitled to the portion of land. I find that the Plaintiff is not entitled to the reliefs sought in the Plaintiff.

37. The upshot of the matter is that the Plaintiff has failed to prove his case as against the Defendant on a balance of probabilities.

The suit is hereby dismissed with costs to the Defendant.

Dated, Signed and Delivered virtually at Kajiado this 20<sup>th</sup> day of June 2024.

**L. KOMINGOI**

**JUDGE.**

**IN THE PRESENCE OF:**

Ms. Ng'ang'a for Mr. Kanyi for the Plaintiff.

Mr. Otieno for Mr. Ario for the Defendant.

Court Assistant – Mutisya.

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