



**Lodereki v Loorumai & another (Environment & Land Case  
44 of 2019) [2024] KEELC 4758 (KLR) (12 June 2024) (Judgment)**

Neutral citation: [2024] KEELC 4758 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 44 OF 2019  
MN GICHERU, J  
JUNE 12, 2024**

**BETWEEN**

**NAIKUNI LOORUMAI LODEREKI ..... PLAINTIFF**

**AND**

**SEYIEYIO ENE LOORUMAI ..... 1<sup>ST</sup> DEFENDANT**

**LORNGUSUA GROUP RANCH ..... 2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff seeks the following reliefs against the defendants.
  - a. Cancellation of L.R. Kajiado/Lorngusua/333, suit land, issued to the 1<sup>st</sup> defendant and the late Ololomai Ole Shekeni.
  - b. The 2<sup>nd</sup> defendant do issue a new title to the administrators of the estate of Oloorumai Oloderriki.
  - c. That all family members of the estate of Oloorumai Oloderriki including the plaintiff be included in the grant of letters of administration.
  - d. Costs of the suit and interest thereon.
  - e. Any other relief that the court may deem just and adequate to grant to the plaintiff. This is as per the plaint dated 29/4/2019.
2. The plaintiffs' case is as follows. He is the eldest son of the late Oloorumai Oloderriki (the deceased) who died on 20/2/1994. The 1<sup>st</sup> defendant is the 2<sup>nd</sup> wife of the deceased. At the time of his death, the deceased had not been registered as the owner of the suit land even though the land belonged to him. Soon after the death of the deceased, the 1<sup>st</sup> defendant and one Lesoi Ololomai Ole Shekeni were issued with the title deed to the suit land without obtaining letters of administration of the estate of the



deceased. It is the second defendant that issued the said title deed without demanding for the grant. The deceased had three wives who were Ketuna, Lesoi and the 1<sup>st</sup> defendant. Since the plaintiff's mother was deceased at the time the 1<sup>st</sup> defendant and Lesoi were issued with the title deeds, they ought to have involved him so that he could represent his mother's household as he was the eldest son. The plaintiff has tried to settle the matter out of court with the step mother but she has refused to co-operate saying that he is not a member of the family of the deceased. It is for the above reasons that he filed this suit.

3. In support of his case, the plaintiff filed the following evidence.
  - i. His witness statement dated 29/4/2019.
  - ii. Copy of title deed for the suit land in the names of Lesoi Ololomai and the plaintiff. It is dated 21/2/2004.
  - iii. Witness statement by Ketamus Ole Oloorumai filed in court on 17/12/2021.
4. The 1<sup>st</sup> defendant filed a written statement of defence dated 4/6/2019 through counsel on record in which she generally denies the plaintiff's claim.

Secondly, she avers that the plaintiff and his mother were allocated land by the group ranch.

Thirdly, the 1<sup>st</sup> defendant urges that the plaintiff does not have capacity to file suit and finally that the suit is time barred.
5. In support of her case, the first defendant filed a witness statement dated 4/6/2019 in which she says that she was given the suit land by the same group ranch and the plaintiff did not raise any objection because he too was given land by the group ranch.

Finally she wonders why the estate of the deceased has not been sued if the land belonged to the deceased.
6. The second defendant through counsel on record filed a written statement of defence dated 17/6/2019 in which it is averred as follows.

Firstly, the plaintiff's claim is generally denied.

Secondly, the two registered owners of the suit land presented themselves to the 2<sup>nd</sup> defendant as the wives of the deceased and it was lawful in the circumstances to have the two registered as the owners of the suit land.
7. In support of its case, the 2<sup>nd</sup> defendant filed two (2) witness statements by Daniel Lemomo Matunge which were filed in court on 17/6/2019 and 1/7/2019 respectively and a joint statement by Parorit Ole Kuraru, Kanchori Kile and Suakei Ole Kukuo dated 17/6/2019. In the three witness statements, the witnesses defend the registration of the 1<sup>st</sup> defendant and Lesoi as the owners of the suit land.
8. At the trial on 30/1/2023 and on 2/10/2023, the plaintiff and his witness reiterated their case as per the pleadings and the witness statements and sought for the orders in the plaint.
9. On her part, the 1<sup>st</sup> defendant adopted her witness statement as her evidence. She said that the plaintiff is not entitled to a share of the suit land since he got his own land. As for the witness for the 2<sup>nd</sup> defendant, he went against the defense filed by defence, the second defendant as well as his own witness statement and said that the land should be shared by the three households of the deceased and it was a mistake to leave out the plaintiff and he should be included as co-owner of the suit land.



10. Counsel for the parties filed written submissions dated 29/11/2022 and 30/11/2023 respectively. In the said submissions, no issues for determination were identified by either of the two learned counsel. Going through the said submissions, I identify the following issues.
- i. Whether the plaintiff has locus standi to file this suit.
  - ii. Whether the plaintiff is in occupation of the suit land.
  - iii. Whether the plaintiff was allocated land by the 2<sup>nd</sup> defendant.
  - iv. Whether the estate of Lesoi should have been joined in the suit as she is deceased and registered as a co-owner of the suit land.
  - v. Whether the registered owners obtained letters of administration to enable them get registered as such procedurally.
11. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, the documents and the testimonies of the witnesses at the trial. I find that the plaintiff has locus standi to bring this action as he claims that the suit land belongs to his father and that he is entitled to a share of it. As a son of his father, he is by law, if he proves it, entitled to a share of his fathers land. He therefore has capacity to bring the action.
12. On the 2<sup>nd</sup> issue, I find that the plaintiffs has not adduced any evidence to prove that he occupies the suit land or any part of it. This is important because under Section 116 of the *Evidence Act*, possession is considered to be ownership and the burden of proof is always on the person who affirms that the occupier is not the owner. In this case, all evidence suggests that the 1<sup>st</sup> defendant is the occupier.
13. On the third issue, I find that the plaintiff was allocated land by the group ranch. At page 21 of the handwritten notes he states as follows.
- “I am a member of the group ranch. I got land from the group ranch. This is different from my mother’s inheritance”.
- The plaintiff did not disclose how many brothers and sisters he has as well as half brothers and half sisters and also how much land his father owned. Without this critical evidence, the court does not have sufficient material upon which it can make a fair determination of how much land each son, daughter or wife of the deceased was entitled to.
14. Regarding the fourth issue, I find that the estate of Lesoi should have been joined in this suit since she is a registered co-owner of the suit land. Failure to sue her estate means that orders may be issued against her estate in the absence of her heirs and this is not fair.
15. The finding on the final issue is that there is no proof that the two registered owners obtained letters of administration to the estate of the deceased. It is not clear if this was necessary since we are certain that the deceased was never registered as the owner of the suit land. No evidence was adduced by either party on the procedure adopted by group ranch regarding the registration of land belonging to a deceased member. Such land, being unregistered may not have been subject to the strict procedures in the *Law of Succession Act*. In any case, Section 32 of the *Law of Succession Act* excludes Kajiado County from the part of the Act dealing with intestacy. It provides as follows –
32. . Excluded property.

***“The provisions of this part shall not apply to -***



- a. Agricultural land and crops thereon or
- b. Livestock in various Districts set out in the schedule.

**SCHEDULE.**

**\* *West Pokot - Wajir***

**\* *Turkana - Garissa***

**\* *Marsabit - Tana River***

**\* *Samburu - Lamu***

**\* *Isiolo - Kajiado***

**\* *Mandera - Narok***

33. It should not be forgotten that it was upon the plaintiff to prove his case against the defendants on a balance of probabilities. With all the above uncertainties, I find that this burden has not been discharged to the required standard. Consequently, I find no merit on 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 12<sup>th</sup> Day of June 2024.**

**M.N. GICHERU**

**JUDGE**

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