



Mpaira (Suing as legal representative of the Estate of Osoi Ole Mpaai) v Onchiri (The Liquidator Keekonyokie Farmers Co-operative Society Limited) & another (Environment & Land Case E031 of 2023) [2024] KEELC 5761 (KLR) (18 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5761 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E031 OF 2023
LC KOMINGOI, J
JULY 18, 2024**

BETWEEN

JAMES KINTALEL MPAIRA (SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF OSOI OLE MPAAI) PLAINTIFF

AND

METHUSELA ONCHIEKU ONCHIRI (THE LIQUIDATOR KEEKONYOKIE FARMERS CO-OPERATIVE SOCIETY LIMITED) 1ST DEFENDANT

KIBUBUKI OLE MURKUKU 2ND DEFENDANT

RULING

1. This is the Notice of Motion dated 14th November 2023 brought under; (Article 40, 159 of *the Constitution* of Kenya 2010, Sections 1A, B, 3 3A and 63 (c) and (e) of the *Civil Procedure Act*, Order 40(1) Rule 3, 4(1), Order 51 Rule 1, 3, and 13 (2) of the Civil Procedure Rules 2010, Section 25 and 26 of *Land Registration Act* and all enabling provisions of the law).
2. It seeks orders;
 1. Spent.
 2. Spent.
 3. Spent.
 4. That pending the hearing and determination of the instant suit, this Honourable Court be pleased to make an order directed at the District Land Registrar Ngong District to forbid all dealings or further registration of any entries in the register over the parcel of land known as Kajiado/Olchoro-Onyore/28751.



5. Spent.
6. That this Honourable court makes such other orders or further relief that it may deem just and expedient to grant for ends of justice to be met in the circumstances.
7. That the cost of this application be borne by the defendants/respondents.
3. The grounds are on the face of the application and are set out in paragraphs i to xiii
4. The Application is supported by the affidavit of James Kintalel Mpaira one of the Administrators of the Estate of Kimpaai Ole Mpaira sworn on the 14th November 2023.
5. It appears the 1st Defendant/Respondent did not file any response.
6. The 2nd Defendant/Respondent filed a Replying Affidavit sworn on the 18th January 2024.
7. On the 13th December 2023 the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.
8. By the time of writing this ruling, the Plaintiff's submissions are not on record.
9. The 2nd Defendant's/Respondent's submissions are dated 6th February 2024. Counsel submitted that the Deceased's share in Keekonyokie Cooperative Society was transferred to the 2nd Defendant/Respondent. It is further submitted that the Plaintiff, disputed the sale after the death of his father.
10. Counsel further submitted that the suit property was transferred to the 2nd Defendant/Respondent and a title deed is issued to him on 27th May 2020.
11. It is finally submitted that the Plaintiff/Applicant's application does not meet the threshold for grant of the orders sought.
12. I have considered the Notice of Motion, the affidavit in support, the response thereto, the written submissions and the authorities cited. The issues for determination are;
 - i. Whether the Plaintiffs/Applicant's application meets the threshold for grant of temporary injunction.
 - ii. Who should bear costs of this application?
13. The principles were laid down in the precedent setting case of Giella Vs. Cassman Brown & Co. Limited (1973) EA 358. In the case of Mrao Limited Vs. First American Bank Limited & 2 Others (2003) KLR 125 the Court of Appeal stated what amounts to a prima facie case.
14. It is the Plaintiff's/Applicant's case that the 1st Defendant/Respondent in collusion with the 2nd Defendant/Respondent unprocedurally, wrongfully and illegally transferred the suit property to the 2nd Defendant/Respondent in a view to defeat the ends of justice.
It is also his case that his late father was the rightful owner.
15. The 2nd Defendant/Respondent on his part averred that he purchased Kimpaai Ole Mpaira's share in 1984 by paying Kshs.170,000/= in cash and thirty (30) sheep.
16. It is his case that upon this payment, the deceased transferred his share certificate to him in June 1984. He further averred that the agreement was oral as they were both illiterate.
17. It is not in dispute that the 2nd Defendant/Respondent is the registered owner of the suit property. As to whether he acquired it procedurally is an issue to be determined at the hearing of this suit.



18. I find that the Plaintiff/Applicant has failed to establish a prima facie case with a probability of success at the trial.
19. It is also on record that the 2nd Defendant/Respondent was issued with a title deed in May 2020. I find that the Plaintiff/Applicant has failed to demonstrate that he will suffer an irreparable injury which cannot be compensated by an award of damages if these orders are not granted.
20. In conclusion I find that the Plaintiff/Applicant's application lacks merit and the same is dismissed. The costs do abide the outcome of the main suit.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18TH DAY OF JULY 2024.

L. KOMINGOI

JUDGE.

In The Presence Of:

N/A for the Plaintiffs.

N/A for the 1st Defendant.

Mr. Serpepi for the 2nd Defendant.

Court Assistant – Mutisya.

