



**Taon (Suing as the Representative of the Estate of Taon Ole Lerindo) v Partoti & 5 others
(Environment & Land Case 564 of 2017) [2024] KEELC 5363 (KLR) (17 July 2024) (Judgment)**

Neutral citation: [2024] KEELC 5363 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 564 OF 2017**

**MN GICHERU, J
JULY 17, 2024**

BETWEEN

**JOSHUA OLE TAON (SUING AS THE REPRESENTATIVE OF THE ESTATE OF
TAON OLE LERINDO) PLAINTIFF**

AND

**AGNES TORON ENE PARTOTI 1ST DEFENDANT
LUKUNYI BARTUTI LERINDO (BEING SUED AS REPRESENTATIVE OF THE
ESTATE OF PARTOTI LERINDO) 2ND DEFENDANT
TIMANOI ENE MALIT OLE LERINDO (BEING SUED AS A REPRESENTATIVE
OF THE ESTATE OF MALIT LERINDO) 3RD DEFENDANT
THE ATTORNEY GENERAL 4TH DEFENDANT
LAND REGISTRAR, KAJIADO 5TH DEFENDANT
LAND ADJUDICATION OFFICER, KAJIADO 6TH DEFENDANT**

JUDGMENT

1. The plaintiff seeks the following reliefs against the defendants both jointly and severally.
 - a. That the land known as Kajiado/Osilalei 3 measuring 444 to be amalgamated and divided equally among the Lerindo family i.e. the Lerindo’s households; Noduala Lerindo family and the Kokoo Lerindo family.
 - b. That the land known as Kajiado/Lorngusua/68 and measuring an approximate area of 327 Hectares should be given to the Ole Taon Lerindo family.
 - c. The defendants be restrained from alienating, selling and/or dealing with the suit premises and also stop cutting trees, exploiting the land in any form to the exclusion of the plaintiff and his



siblings and/or selling or alienating the suit premises and the plaintiff be allowed to graze in the suit premises without hindrance.

- d. That the titles of L.R. Kajiado/Lorngusua/68 and L.R. No. Kajiado/Osilalei/3 be revoked and registered under the names of the rightful owners.
 - e. Mesne profits.
 - f. The costs of this suit be provided for by the defendants.
 - g. Any other relief the court may grant.
2. The plaintiff's case is as follows. The late Lerindo had two wives. The first wife was Noduala Lerindo who begat Taon Lerindo who begat Parmenes Ole Taon, Kareini Ole Taon, Koibabi Ole Taon, David Ole Taon, Joshua Ole Taon, Linkalo Ole Taon and Shapashina Ole Taon. The second wife Kokoo Lerindo begat Marit Lerindo and Partoti Lerindo. Marit Lerindo begat Olodidio, Ngonye, Ngepapa and Lesio. Partoti Lerindo begat Philip Lempurisbar, Ndiono, Shompere, Karantei and Inetimpau. The late Lerindo owned Kajiado/Lorngusua/68 and Kajiado/Osilalei/3 measuring 327 hectares and 440 hectares respectively. The three sons of Lerindo lived on the suit parcels.
 3. In the year 1965, Taon Ole Lerindo, the plaintiff's father appeared before the Matapato Section Council allocating land to the area residents. The three sons of Lerindo were allocated the suit parcels which measure 767 hectares. This land was to be shared equally between the house of Noduala Lerindo and Kokoo Lerindo. At the time of registration, instead of the land being distributed as expected, it was registered in the names of Malit and Partoti Lerindo leaving out Taon Ole Lerindo. Malit was registered as the owner of L.R. Osilalei/3 while Partoti Lerindo got registered for L.R. Lorngusua/68. This registration of the two siblings as the owners of the suit parcels was fraudulent according to the plaintiffs and the 1st, 2nd, 3rd and 4th defendants inherited fraudulently acquired land. The 6th and 7th defendants aided the 1st – 4th defendants in perpetrating the fraud. The plaintiff and his brothers were kept in the dark during the registration process. The particulars of fraud on the part of the defendants include the following. Unlawful registration of Malit, Partoti and their wives as the owners of the suit parcels, giving false information to the Land Registrar that the suit land belonged to them alone, and failure to correct the register to reflect the plaintiff as one of the owners of the suit land.
 4. As a result of the above, the plaintiff and his brothers have been rendered destitute and forced to live in shopping centres and small plots. The lawful way to share the suit land is that the household of Noduala should get half of the 767 hectares which is 383.5 hectares while that of Kokoo should also get 383.5 hectares.
 5. In support of his case, the plaintiff filed the following evidence.
 - i. Witness statements by the plaintiff, John Ole Kores, Samuel Ole Paitah, Moses Lenchasho and Kareini Ole Taon.
 - ii. Limited grant ad litem in HCCC 2534/2013, Nairobi.
 - iii. Certificates of official search for the suit parcels dated 14/10/2010 and 3/10/2014.
 - iv. Copy of ruling in Kajiado Land Disputes Tribunal Case No. TC 353/07/06.
 - v. The Lerindo family tree.
 - vi. Photographs showing destruction on the land.
 - vii. Sketch maps of the land.



- viii. List of families entitled to land at Matapato in 1965.
 - ix. The 1st Matapato Adjudication Committee Member List in 1964.
 - x. Copy of minutes of the Matapato Section Council in 1965.
 - xi. Further statement by the plaintiff dated 4/12/2023.
6. The 1st to 4th defendants through counsel on record filed a written statement of defence dated 2/11/2015 in which they generally deny the plaintiffs' claim and then aver as follows. Firstly, the two suit parcels were allocated to their husbands before they themselves got registered as the owners thereof. Secondly, the plaintiff was not yet born when the land was shared out and he has relied on falsehoods from other relatives who have selfish interests. Thirdly, the plaintiff and his siblings were allocated land and the averment that they have been rendered destitute is not true. Fourthly, in the tribunal case No. TC 352/07/06, the verdict was in favour of the defendants and the chief also ruled in favour of the defendants.

For the above and other reasons, the defendants call for the dismissal of the plaintiffs' suit with costs.

7. In support of their case, the 1st to 4th defendants filed the following evidence.
- i. Witness statements by the 1st, 2nd and 3rd defendants.
 - ii. Copy of title deed for L.R. No. 68 in the name of the 1st defendant dated 19/2/2007.
 - iii. Copy of title deed for L.R. Osilalei/3 in the name of Malit Ole Lerindo dated 4/9/1973.
 - iv. Copy of certificate of official search for L.R. Lorngusua/68 in the names of the 1st, 2nd and 3rd defendants and dated 1/10/2015.
 - v. Copy of certificate of official search for L.R. Osilalei/3 in the name of Malit Ole Lerindo and dated 1/10/2015.
 - vi. Copy of certificate of death of Partoti Lerindo who died on 15/6/1983.
8. The 5th, 6th and 7th defendants filed a written statement of defence dated 16/3/2016 in which the plaintiff's claim is denied. They aver as follows. Firstly, the plaintiff's father Taon Lerindo was never allocated the suit parcels. Secondly, the 5th, 6th and 7th defendants did not commit any fraud and the suit land was adjudicated to the husbands of the 1st to 4th defendants and the plaintiff has not demonstrated any proprietary rights to the same. Thirdly, the adjudication process in the two sections was carried out in accordance with the law. Fourthly, the land adjudication process in Matapato Section commenced in 1969 when the adjudication committee was appointed. Fifthly, there were several ranches under Matapato which included Osilalei and Lorngusua which were completed in 1973 and 1976 respectively. Sixthly, no demand was made and no intention to sue the government was served upon the Attorney General as required by the [Government Proceedings Act](#).

For the above and other reasons, the Attorney General calls for the dismissal of the plaintiff's case.

9. At the trial, the plaintiff, Samuel Paita and Kareini Ole Taon testified by adopting their witness statements before being cross-examined by the defendants' counsel. On the part of the defendants, the 1st and 3rd defendants testified by similarly adopting their witness statements and documents before they were cross examined by the plaintiff's counsel.
10. Counsel for the parties were directed to file and serve their written submissions by 30/4/2024. They did not comply with these directions and as I write this judgment, I have not seen the submissions by



learned counsel for the parties. On 10/11/2017 the plaintiff filed six (6) issues for determination. They are as follows.

- i. Was Taon Lerindo, the father of the plaintiff and his siblings entitled to a share of the land given to their father the late Lerindo.
- ii. As an inheritance, is the plaintiff and his siblings entitled to a share of the suit parcels.
- iii. Were the title deeds for the suit land fraudulently obtained and thus ought to be cancelled.
- iv. Are the plaintiffs entitled to mesne profits owing to use of their land by the 1st, 2nd and 3rd defendants.
- v. Should the suit land be amalgamated and divided into 3 parts so that each family gets a third.
- vi. Has the plaintiff and his siblings suffered loss owing to the action of the 1st, 2nd and 3rd defendants.

There being no other issues identified by the parties, I will make a determination of the above issues. I find that they are good enough to determine the dispute.

11. I have carefully considered all the evidence adduced in this case by both sides including the witness statements, documents and witnesses testimony at the trial. I have also borne in mind the burden of proof on the plaintiff to prove fraud to a standard higher than a balance of probabilities as per the decision in the case of Ndolo –versus- Ndolo Civil Appeal No. 128 of 1995. I make the following findings on the six (6) issues.
12. On the first issue, I am not satisfied that the suit land was ever the property of the late Lerindo, the grandfather of the plaintiff. The plaintiff's evidence is mostly hearsay. He relied on unproved history. On the part of the 1st defendant, we have a title deed issued to her on 19/2/2007. The title deed was issued after a process which included adjudication. At that stage, any party who wished to dispute the ownership of the suit land by Partoti Ole Lorindo had a chance to do so. The same applies to the title deed issued to Malit Ole Lerindo. It was at that stage that the plaintiff and his siblings would have raised their objection. Since the suit parcels were not proved to be the late Lerindo's land, then the plaintiff's father was not entitled to a share thereof.
13. Regarding the second issue, I find that the plaintiff and his siblings are not entitled to a share of the suit parcels for the reasons already given on the preceding paragraph.
14. The plaintiff has not proved that the suit land was fraudulently obtained because he has not proved fraud to the required standard in cases where one alleges fraud as per the case of Ndolo –versus- Ndolo (supra).
15. As for the fourth issue, I find that mesne profits have not been proved because ownership of the land has not been proved. It is only after proof of ownership that mesne profits would be considered.
16. The suit land should not be amalgamated and divided into 3 equal parts. It has been stated by all the defence witnesses that the plaintiff's father was allocated land in Osilalei Group Ranch. This evidence has not been controverted by the plaintiff either by way of reply to defence or a witness statement. It is noted that the plaintiff was the last to file a witness statement on 5/12/2023 and he did not controvert this evidence. While he was cross-examined by the defendants' counsel on 12/10/2020 he implied that his father's land is to be distinguished from his grandfather's land. If the plaintiff's father was allocated land by the group ranch, then his claim of he and his siblings being destitute and being forced to live in shopping centres cannot be true. He has not disclosed how big his father's land is and whether it should also be part of the amalgamation. By asking for a third of the suit land, the plaintiff lacks constituency



because in his witness statement dated 15/9/2015, in the third last paragraph, he is asking for a half of the suit land for his grandmother's household. He should be certain of what he wants if his claim is based on the truth. Again, amalgamation or more precisely, reparation under Section 23 of the *Land Registration Act (Act No. 3 of 2012)* must be of contiguous parcels. There is no evidence that the two suit parcels are contiguous. Without clear proof to that effect, no order of reparation can be made. The burden was on the plaintiff to prove that the parcels were contiguous.

17. On the final issue, I find that no loss has been proved by the plaintiff because ownership of the suit land by the plaintiff has not been proved. It is only after proving entitlement that loss can be proved.
18. For the above stated reasons, I find no merit in the plaintiff's suit and I dismiss it with costs to the defendants.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 17TH DAY OF JULY 2024.

M.N. GICHERU

JUDGE

