



Kimanya & 2 others (Suing as the Administratrix of the Estate of the Late Kelo Kimanya Njokona (Deceased)) v Lekishirini & 5 others (Environment & Land Case 37 of 2020) [2025] KEELC 611 (KLR) (18 February 2025) (Judgment)

Neutral citation: [2025] KEELC 611 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 37 OF 2020
MN GICHERU, J
FEBRUARY 18, 2025**

BETWEEN

**SULAY ENE KIMANYA 1ST PLAINTIFF
MAREN ENKELOI SIMIRA 2ND PLAINTIFF
TOROSIAN ENE KELOI 3RD PLAINTIFF
SUING AS THE ADMINISTRATRIX OF THE ESTATE OF THE LATE KELOI
KIMANYA NJOKONA (DECEASED)**

AND

**SECHURA LEKISHIRINI 1ST DEFENDANT
OSILALEI GROUP RANCH 2ND DEFENDANT
THE LAND ADJUDICATION OFFICER KAJIADO 3RD DEFENDANT
THE LAND REGISTRAR KAJIADO 4TH DEFENDANT
THE HON ATTORNEY GENERAL 5TH DEFENDANT
THE NATIONAL LANDS COMMISSION 6TH DEFENDANT**

JUDGMENT

1. The Plaintiffs seek the following reliefs against the Defendants.
 - a. A declaration that the introduction of the 1st Defendant to the register of members of Osilalei Group Ranch and procedure following to the issuance of title deed to 1st Defendant is null and void and of no legal significance.



- b. A declaration that the certificate of title pertaining to L.R No Kajiado/Osilalei/248, and registered in the name of the 1st Defendant, be cancelled as the same is invalid, illegal and null and void as it was obtained fraudulently and the acreage for L.R. No. Kajiado/Osilalei/259 amended to reflect the actual acreage on the ground.
 - c. A permanent injunction restraining the Defendants, their servants, agents and/or any other person under their authority from grazing animals, harvesting trees, offering for sale, advertising, selling, auctioning, disposing off, transferring, alienating and/or in any way dealing with the property known as L.R Kajiado/Osilalei/259.
 - d. Costs of this suit.
 - e. Any other remedy this Honourable Court may deem fit and just to grant.”
2. The Plaintiffs’ case is as follows. All the three of them are the widows of the late KELOI KIMANYA NJOKONA who was the registered owner of L.R. No. Kajiado/Osilalei/259 which was allocated to him by the Group Ranch of which he was a member. Secondly, the deceased became a member of the Group Ranch on 19/5/1994. Thirdly, on 16/8/1996 demarcation of the Group Ranch became complete and the deceased was issued with a beacon certificate which showed that his land had Six (6) beacons which included the following. A92, C12, C13, B88, B5 and A91. Fourthly, on 13/9/2006 the committee members of the Group Ranch illegally and unprocedurally held a meeting at which they introduced the 1st Defendant into the ranch as a member. This was long after the closure of registration of members of the Group Ranch. Fifthly, upon receipt of the minutes of the officials of the Group Ranch, the Land Adjudication and Settlement Department asked the Kajiado District Land Adjudication Officer to update the register. The Adjudication Officer commented and said that the changes were brought late in the day. Sixthly, under mysterious circumstances, the 1st Defendant was still registered as a member of the Group Ranch. This was on 22-1-2007 as member No. 1088. He was issued with a title deed whose entries indicate that the Land register for the parcel was opened on the same date, 22-1-2007. Seventhly, the 2nd and 3rd Defendants prepared an area list of members at the same date, 22-1-2007. The 3rd Defendant backdated records to make it look like all had been done procedurally where this was not the case. Eighthly, the 1st Defendant was issued with a title deed but he has never been shown his land on the ground. He now claims the Plaintiffs’ land as his. He claims that his land is inside the Plaintiffs’ land. He is trying to do everything that he can to enter the Plaintiffs’ and curve out his alleged land. Ninthly, the size of the Plaintiffs’ land was reduced in the title deed as a result of the creation of the 1st Defendant’s land from the Plaintiffs’ land. Finally, the acquisition of the 1st Defendant’s land was illegal and unprocedural as it contravened Sections 15(6) and (7) and 17(1) and (2) of the Land (Group Representatives) Act, Cap 287 which provide for the procedure of carrying out the business of the Group Ranch.
3. In support of their case, the Plaintiffs filed the following evidence.
- i. Witness statements by Sulay Ene Kimanya, Maren Ene Kelo Simira and Torosian Ene Kelo all dated 9-10-2020.
 - ii. Copy of Grant in Case No. 27 of 2020 at Kajiado.
 - iii. Copy of demand letter to Senchura Lekishirini dated 7-5-2020.
 - iv. Copy of title deed for L.R. No. Kajiado/Osilalei/259.
 - v. Copy of title deed for L.R. No. Kajiado/Osilalei/248.
 - vi. Copy of certificate of ownership dated 16-8-1996.



- vii. Copy of minutes of meeting held on 13-9-2006.
 - viii. Copy of Form E which is the certificate of membership dated 13-9-2006.
 - ix. Copy of a Letter dated 22-1- 2007 from the Director of Land Adjudication Settlement to the District land Adjudication and Settlement Officer authorizing him to act on the minutes of AGM of the Group Ranch held on 13-9-2006.
 - x. Copy of Form C showing the introduction of 19 New Members.
 - xi. Copy of Form C showing the cessation of the new members as members of Group Ranch.
 - xii. List of beneficiaries (even list) of Osilalei Group Ranch dated 22-1-2007.
 - xiii. Copy of audit report of the 2nd Defendant dated 18-9-2020.
 - xiv. Copy of report by the District Land Registrar dated 11-12-2019.
4. The 1st Defendant filed a written statement of defence dated 13-8-2020 in which he pleads as follows. Firstly, he denies the Plaintiffs' claim generally. Secondly, he avers that he is the registered owner of L.R. No. Kajiado/Osilalei/248 while the Plaintiffs own L.R. No. 259. He acquired his land by dint of being a member of the Group Ranch. Thirdly, he holds a bonafide title to his land.
5. In addition to the defence, the 1st Defendant filed a Counterclaim in which he seeks the following orders.
- a. A declaration that he is the lawful owner of L.R. No. 248.
 - b. A declaration that he acquired the land lawfully from the Group Ranch.
 - c. A Permanent Injunction restraining the Plaintiffs, their agents, servants and/or any person whatsoever from trespassing, entering, selling, transferring, charging and/or dealing in any manner with his land.
 - d. An inhibition order be issued prohibiting the Plaintiffs, their agents, servants and/or any person whomsoever from claiming any interest in charging, selling, leasing, transferring, subdividing, trespassing into and/or dealing in any manner whatsoever with L.R. No. 248.
 - e. Any other or further relief as the court shall deem it just and fit to grant in the circumstances.
6. In support of his case, the 1st Defendant filed the following evidence.
- i. Witness Statements by the 1st Defendant and Kelo Ole Kikua Ngointela.
 - ii. Copies of National Identity cards for 1st Defendant, Kelo Ole Kikua Ngointela and Moses Rana Ole Kelempy.
 - iii. Copies of application for Official Search, certificate of Official search and copy of title deed dated 4th January 2007.
 - iv. Copy of certificate of ownership dated 16-5-1996.
 - v. Copy of letter dated 22-1-2007.
 - vi. Copy of minutes of meeting of Group Ranch held on 13-9-2006.
 - vii. A copy of the membership register(Form C).



- viii. Copies of area list and area map.
 - ix. Copy of report by KFS Report dated 2-11-2015, order dated 9-4-2010 and receipt dated 17-11-2015.
 - x. Copy of DPP's letter dated 1-4-2016.
 - xi. Copy of court order dated 11-6-2019.
 - xii. Copy of Kajiado District Land Registrar's report dated 11-12-2019.
7. The 6th Defendant filed a written statement of defence dated 24-5-2021 in which it is averred as follows. Firstly, the Plaintiffs' claim is denied generally. Secondly, it is denied that the 6th Defendant was ever served with a demand letter. Thirdly, it is the sixth's Defendant's case that community land is not within the mandate of the 6th Defendant. Finally the 6th Defendant should not have been joined in this case because it has nothing to do with community land and as such there is no cause of action against it.
8. At the trial on 9-4-24 and 8-10-2024, the 1st Plaintiff testified on oath and was cross-examined. She did not deviate from her case as per the pleadings even after intense cross-examination. She simply reiterated the Plaintiffs' case as per their evidence on record. On the part of the 1st Defendant he testified and called the two witnesses whose evidence is on record. In summary, they too, stuck to their gums and did not deviate from what is recorded and filed. The rest of the Defendants did not file any defences or even enter appearance.
9. In his written submissions dated 2-12-2024, the 1st Defendant's Counsel identified the following issues for determination.
- a. Whether the Plaintiffs and the registered owners of L.R. No. Kajiado/Osilalei/259.
 - b. Whether the 1st Defendant is the registered owner of the parcel of land known as Kajiado/Osilalei/248.
 - c. Whether the 1st Defendant has trespassed onto the parcel of land known as Kajiado/Osilalei/259.
 - d. Whether the particulars of fraud by the 1st Defendant set out in the Plaint have been proved?
 - e. Whether the Plaintiffs are entitled to the prayers sought in the Plaint.
 - f. Whether the 1st Defendant is entitled to the prayers sought in the Counter-Claim?
 - g. What Orders should be made as regards costs.
- The Plaintiffs' Counsel filed written submissions dated 8-12-2024 but instead of replying to the issues raised by the 1st Defendant's Counsel, he raised his own issues which are as follows.
- i. Whether the title held by the 1st Defendant was acquired lawfully and procedurally.
 - ii. Who bears the costs of the suit.
- Order 18 rule 2 of the Civil Procedure Rules provides as follows.
2. " Unless the court otherwise directs –
- (1) On the date fixed for the hearing of the suit, or any other date to which the hearing is adjourned, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.



- (2) The other party shall then state his case and produce his evidence, and may then address the court generally on the case. The party beginning may then reply”.

It is not envisaged that the party replying will fail to reply to the issues raised and instead introduced his own issues.

Be that as it may, I will address all the issues raised by the two Counsel herein and make a determination on each of them.

10. I have carefully considered all the evidence adduced by all the parties in this case including the witness statements, documents and testimony at the trial. I have also considered the written submissions by the Learned Counsel for the parties and the law cited therein. I make the following findings on the issues.
11. On the first issues, I find that it is the Plaintiffs’ husband KELOI KIMANYA NJOKANA who is the registered owner of L.R. No. Kajiado/Osilalei/259. The copy of title deed dated 29-2-2012 is prima facie evidence of this registration within the meaning of Section 26(1) of the [Land Registration Act](#) which provides as follows;

“The certificate of title issued shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner...”.

Secondly, the 1st Defendant in his Defence and Counter claim does not claim any part of L.R. No. 259. What he claims is L.R. No. 248.

12. As for the second issues, I find that the 1st Defendant is, prima facie, the registered of L.R. No. Kajiado/Osilalei/248. Section 26(1) of the [Land Registration Act](#) similarly applies to L.R. No. 248.
13. Coming to the third issue, it is not clear to me whether the 1st Defendant has trespassed onto L.R. No. 259. In their testimony, the Plaintiffs implied that both L.R. No. Kajiado/Osilalei/248 and 259 are their land. To them there is no boundary between the two. It is just one parcel belonging to them by virtue of being married to the registered owner, the late Kelo Kimanya Njokona. The evidence adduced by the Plaintiffs does not therefore differentiate the two parcels. According to the 1st Defendant, the land he has attempted to occupy or occupied is L.R. No. 248. I did not see any evidence of occupation by the 1st Defendant. There was no evidence of infrastructure on the land or even farming. The court order dated 11-6-2019 restrained the 1st Defendant from trespassing onto L.R. No. 248. The supporting affidavit sworn by the 1st Plaintiff and dated 29-6-2020 deposes at Paragraphs 17 and 18 that in May 2020, the 1st Defendant trespassed onto L.R. No. 259 and unlawfully harvested indigenous trees without the authority of the Plaintiffs. It is also deposed that he has been grazing his animals on the same land without the Plaintiff’s consent it is therefore not clear to me whether the trespass was on L.R. No. 248 or 259 or both.
14. On the critical issue of proof of fraud as pleaded in paragraph 11 of the Plaint dated 29-6-2020, I find fraud proved on the part of the 1st, 2nd, 3rd and 4th Defendants for the following reasons.
- Firstly, when Moses Rana Ole Kelempy testified on 8-10-2024 he admitted while under cross-examination by the Plaintiffs’ Counsel that the meeting of 13-9-2006 was attended by the officials of the Osilalei Group Ranch only. It was not attended by all the members. It is at this meeting that the 1st Defendant, among others, was included in the Group Ranch. Yet, under Section 15(5) of the Land (Group Representatives) Act, all members of a group shall be entitled to attend a meeting of the group and to vote.

The group officials did not have the mandate of introducing new members without holding an AGM where 60% of the members were present and where 60% of those present supported the resolution.



Secondly, the certificate of ownership dated 16-8-1996, issued to the Plaintiffs' husband had clearly demarcated parcel No. 340 and clearly shown its beacons as A92, C12, C13, B88, B5 and A91. The land size could not be altered without the knowledge of the husband of the Plaintiffs and without his consent. Thirdly, there is the note by District Land Adjudication and Settlement Officer (DLASO) dated 24-7-2007 where he notes on the minutes of the Group Representatives meeting held on 13-9-2006 as follows.

“B/U for Nancy to take the necessary action although it is late”.

These three instances, will show that the Osilalei Group Ranch officials did not follow the correct procedure envisaged by Section 26(b) of the [Land Registration Act](#) which provides as follows.

“ ..., and the title of that proprietor shall not be subject to challenge, except-

- b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”

In this case, it has been proved beyond doubt that the title acquired by the 1st Defendant was not acquired procedurally. He was not a member of the Group Ranch and was brought in too late to be allocated land which already belonged to the husband of the Plaintiffs.

I find that the threshold set in the case of Ndolo vs Ndolo Civil Appeal No. 128 of 1995, has been met.

15. It is my finding that the Plaintiffs are entitled to the orders sought in the Plaint for the simple reason that the 1st Defendant did not acquire L.R. No. 248 procedurally and this is prohibited by Section 26(1) (b) of the [Land Registration Act](#). For the same reason, the 1st Defendant is not entitled to the orders sought in the Counter claim. Fraud cannot be rewarded. It can only be penalised and punished.
16. Finally on the Plaintiff's single issue, I have already found that the title held by the 1st Defendant was not acquired lawfully and procedurally. By deciding, on the 1st Defendant's issues, I have necessarily decided on the Plaintiffs' issue.

On costs, I find by dint of Section 27 of the [Civil Procedure Act](#), they must follow the event.

17. In conclusion, I enter Judgement for the Plaintiffs against the Defendants jointly and severally as per prayers (a), (b), (c) and (d) of the Plaint dated 29-6-2020.

I find no merit in the 1st Defendants defence and Counterclaim dated 11-8-2020 and I dismiss it with costs.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 18TH DAY OF FEBRUARY, 2025.

M.N. Gicheru

Judge.

18/02/2025

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiffs' Counsel – Mr. Nairi

1st Defendants' Counsel - Mr. Rashid Ngaira

