



REPUBLIC OF KENYA



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**Karisimo & another v Tait & 3 others (Environment & Land Case  
E044 of 2021) [2024] KEELC 6198 (KLR) (19 September 2024) (Judgment)**

Neutral citation: [2024] KEELC 6198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE E044 OF 2021  
MN GICHERU, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**EMILY KATITO KARISIMO ..... 1<sup>ST</sup> PLAINTIFF**

**DAVID KIMITI KASIRIMO ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**KUEL OLE TAIT ..... 1<sup>ST</sup> DEFENDANT**

**DANCAN KAPAIWUA KULEI ..... 2<sup>ND</sup> DEFENDANT**

**DANIEL YIAILE KULEI ..... 3<sup>RD</sup> DEFENDANT**

**FRANCIS SAIRIAMU KULEI ..... 4<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiffs seek the following reliefs against the defendants in the amended plaint dated 27/10/2021.
  - a. A declaration that the 1<sup>st</sup> and 2<sup>nd</sup> plaintiffs' titles to LR Kajiado/Kaputiei-Central/7620 and 7621 are indefeasible and the plaintiffs are thus entitled to quiet and peaceable possession of the same without any interference whatsoever from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants and/or in any person whatsoever acting on their behalf.
  - b. A declaration that the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants are not entitled to any part or portion of the suit land and they have no right whatsoever to enter into and/or interfere with the boundaries demarcating and/or delineating the suit properties.
  - c. A mandatory injunction order to issue to command, direct and/or compel the 1<sup>st</sup> to 4<sup>th</sup> defendants by themselves, their agents, servants and or employees to forthwith vacate from the



suit land and to remove at their own cost the perimeter fence they have erected thereon and to unconditionally deliver vacant possession thereof to the plaintiffs.

- d. A permanent injunction order to issue to restrain the 1<sup>st</sup> to 4<sup>th</sup> defendants themselves, their agents, servants and/or employees or any person or group of persons whatsoever purporting to act on their behalf from entering into and/or interfering in any manner whatsoever with the boundaries of the suit land and or interfering with the plaintiffs' quiet and peaceable possession thereof.
  - e. General and aggravated damages, the quantum thereof to be determined by this honourable court.
  - f. Costs of this suit.
  - g. Such other and/or further relief as this court may deem fit and just to grant.
2. The plaintiffs' case is as follows. The plaintiffs are wife and son respectively, to the late Daniel Kasirimo Ole Muyaa. Between 1993 and 1997, the late Ole Muyaa purchased a total of 100 acres of land from the 1<sup>st</sup> defendant, Kulei Ole Taiti. This land was part of an unsurveyed parcel of land measuring 170 acres that was to be allocated to the 1<sup>st</sup> defendant by Ilmaroro/Mashuru Group Ranch.
- In addition to the 100 acres bought from the 1<sup>st</sup> defendant, Ole Muyaa bought another 30 acres from the 1<sup>st</sup> defendant's father Taiti Kasenji, now deceased. Ole Muyaa took possession of the 130 acres, he built a Manyatta on the 30 acres and a dam on the 100 acres. He grazed his livestock on the land. The sale transaction between Ole Muyaa and the 1<sup>st</sup> defendant was discussed by the members of the 1<sup>st</sup> defendant's family who included his wife Emily Nakini Kulei. Part of the purchase price for the suit land was livestock belonging to Ole Muyaa which were grazing on the 100 acres. The exchange of the land and livestock was witnessed by the 1<sup>st</sup> defendant's brother Simon Kaseke Kipirr Kasenji and Ole Muyaa's farm assistant Longoto Ole Parsai. After the death of the 1<sup>st</sup> defendant's father Taiti Kasenji, the 1<sup>st</sup> defendant sold another 28 acres of land which was his share of his father's unsurveyed land thereby making the land he had sold to Ole Muyaa to be 128 acres which came to 158 acres when added up to the 30 acres bought from Taiti Kasenji. Ole Muyaa did not stop there because he bought 28 acres from Simon Kaseke Kipirr Kasenji and another 20 acres from Mpaayo Ole Kipirr Kasenji who are brothers of the 1<sup>st</sup> defendant. The total acreage bought from the 1<sup>st</sup> defendant, his father and brothers rose to 206 acres.
3. When Ole Muyaa had purchased the 206 acres, he requested the 1<sup>st</sup> defendant and his 2 brothers, Simon Kaseke Kipirr Kasenji and Mpaayo Ole Kipirr Kasenji to allow him to consolidate all the 206 acres so that he could be issued with only one title deed. This request was consented to but with a request that Ole Muyaa returns 40 acres to the 1<sup>st</sup> defendant from the total 206 acres because the 1<sup>st</sup> defendant had been left with a small parcel of land. The request to Ole Muyaa was made by members of the 1<sup>st</sup> defendant's clan. Ole Muyaa accepted the request by the clan and surrendered 40 acres to the 1<sup>st</sup> defendant and in order to avoid any future claim by the 1<sup>st</sup> defendant, a sale agreement was recorded in respect to the 88 acres that remained after the return of the 40 acres. This agreement is dated 19/6/2005.
4. In the year 2005, Ole Muyaa underwent a surgical operation which made him move his livestock from the suit land as the road thereto was bad and not good for his back. After the surrender of the 40 acres to the 1<sup>st</sup> defendant, Ole Muyaa was left with 166 acres for which he was to be issued with a title deed. The group ranch wound up its activities and an area list was prepared in which Ole Muyaa appeared as a land owner. He was allocated parcel No 1690 measuring 61.92 Ha (approximately 153 acres) although he was entitled to 166 acres before the survey exercise. The 1<sup>st</sup> defendant was allocated parcel No 1550



measuring 36.06 Ha (approximately 91.57 acres). Ole Muyaa's land No 1690 and the 1<sup>st</sup> defendant's No 1550 are adjacent to one another.

5. After the death of Ole Muyaa, his family members held a meeting in which it was agreed that the suit land be registered in the names of the two plaintiffs. With the assistance of the chief, the County Commissioner, Mashuru Land Control Board and the Group Ranch Officials, the two plaintiffs were issued with title to the suit property on 5/3/2021. Later on, it was subdivided into 2 portions which are LR No 7620 and 7621. The 1<sup>st</sup> defendant also subdivided his land No 1550 into three parcels namely 117331 to 117333.
6. In April 2021, the 1<sup>st</sup> plaintiff visited the suit land with some of her workers to plan some work she wished to carry out on the land. The second defendant Duncan Kipaiwua Kulei chased her and her workers away claiming that the land belonged to his family. It is then that the 1<sup>st</sup> plaintiff reported the matter at Mashuru Police Station. She thought that that was end of the defendants' claim to her land. However, on 17/6/2021 the 1<sup>st</sup> defendant and his sons Duncan Kipaiwua, Daniel Yiaile and Francis Sariam, the 2<sup>nd</sup> to 4<sup>th</sup> defendants accompanied by some hired goons trespassed onto the suit land claiming that it was owned by the 1<sup>st</sup> defendant. The 1<sup>st</sup> plaintiff reported the matter at Mashuru Police Station a second time but to date, no action was taken by the police. Instead the defendants have put up a perimeter fence all round the suit property thereby denying the plaintiffs' any entry. When the plaintiffs realized that the police would not assist, they decided to file this suit to claim back their lawfully acquired suit land as per the prayers above.
7. In support of their case, the plaintiffs filed the following evidence.
  - i. Witness statements by Emily K. Kasirimo, David K. Kasirimo, Solomon Meibuko, Nkapili Leiyen Suyanka, Sampa Mashookia Tulutian, Mpaayo Ole Kipirr Kasenji, Lonyoto Ole Parsaluo and Leperin Ole Nkarabali.
  - ii. Copies of title deed for the suit parcels and certificate of official search.
  - iii. Copy of sale agreement dated 19/6/2005.
  - iv. Copy of area list of Ilmaroro/Mashuru Group Ranch.
  - v. Copy of survey map showing the suit parcels.
  - vi. Copy of letter from the chief of Ilmaroro Location dated 9/11/2020.
  - vii. Copy of application for consent of the Land Control Board for LR 1690.
  - viii. Copy of letter of consent issued by Mashuru Land Control Board.
  - ix. Copy of transfer of land form LR 1690 duly executed.
  - x. Copy of title deed for LR No 1690 dated 5/3/2021.
  - xi. Copy of green card for LR No 1550 belonging to the 1<sup>st</sup> defendant.
  - xii. Copy of OB No 25/22/6/2021.
  - xiii. Copy of green card for 1<sup>st</sup> defendant is LR No 1548.
  - xiv. Copy of green card for LR 1690.
  - xv. Witness statement by Simon Kaseke Kipirr Kasenji.
  - xvi. Forensic examination report dated 29/9/2023.



8. The defendants, through counsel on record, filed an amended statement of defence and counter-claim dated 4/3/2022 in which they generally deny the plaintiffs' claim against them and state as follows. Firstly, the land was originally owned by Mashuru Group Ranch and had not been assigned a parcel number and could not be alienated and identified for purposes of sale. Secondly, it is denied that Ole Muyaa ever bought 128 acres or any portion of land belonging to the 1<sup>st</sup> defendant or his father. Thirdly, the defendants deny that there was ever a meeting or an agreement in which he agreed to transfer his land to Ole Muyaa. Fourthly, when the 1<sup>st</sup> defendant discovered that his land size was reduced he reported the matter to the police and also instructed his advocate to recover the 78.43 acres irregularly registered in the names of the plaintiffs. Fifthly, the subdivision of LR 1690 into LR 7620 and 7621 took place on 28/6/2021 yet this suit had been filed on 21/6/2021 and this was meant to defeat the ownership claim of the 1<sup>st</sup> defendant. Sixthly, it is denied that the plaintiffs ever occupied the suit land and the dam thereon was constructed at the request of the defendants to the company that was building the Kajiado-Mashuru Road and in exchange of Murram needed for road construction. Seventhly, the plaintiffs used a forged sale agreement because the 1<sup>st</sup> defendant always thumb prints rather than signing documents and the national ID Card number of 11713624 is not his and the correct one is 13611724. The defendants plead six particulars of fraud which include forging the sale agreement, illegally transferring the suit land without a succession cause for the late Ole Muyaa, colluding with the group ranch to defraud the defendants and subdividing the suit land in contempt of court.
9. In the counterclaim, the defendants claim against the plaintiffs, Mashuru- Imaroro Group Ranch through the chairman and secretary, Leperin Ole Nkarrabali and Ntoipo Shellel, the Land Registrar Kajiado and the Attorney General. The defendants seek the following reliefs against the above named both jointly and severally.
  - i. A declaration that the 1<sup>st</sup> plaintiff is the valid owner of Kajiado/Kaputiei-Central 1690 now subdivided into Kajiado/Kaputiei-Central 7620 and 7621, suit land.
  - ii. An order of permanent injunction restraining the defendants, either in person or through their agents and representatives from interfering with the plaintiffs' ownership and quiet possession of the suit land.
  - iii. An order revoking the subdivision of the suit land into LR 7620 and 7621.
  - iv. An order revoking the title issued to the defendants for the suit land.
  - v. A mandatory injunction to the 4<sup>th</sup> defendant to enter the name of the 1<sup>st</sup> plaintiff as the owner of the suit land and to issue the plaintiff with a title deed.
  - vi. Costs of the counterclaim and interest at court rates from the date of filing of the suit until payment in full.
10. In support of their case, the defendants filed the following evidence.
  - i. Witness statements by Kulei Ole Tait, Dancan Kipaiwua Kulei, Daniel Yiale Kulei, Francis Sariam Kulei and Emily Nakini Kulei.
  - ii. Copy of title deed for LR No 1550.
  - iii. A copy of the registry index map for the area.
  - iv. A copy of the Mashuru- Maroro Group Ranch members list.
  - v. A copy of alleged forged sale agreement.



- vi. A copy of the 2<sup>nd</sup> plaintiff's ID Card.
  - vii. Copies of various statements recorded by the police.
  - viii. A copy of consent of the Land Control Board and transfer forms used by the defendants.
  - ix. A copy of letter by DCI to the 4<sup>th</sup> defendants dated 26/4/2021.
  - x. A copy of mutation form dated 28/6/2021.
  - xi. A copy of the green card showing the subdivision of the suit land.
  - xii. Report by documents examiner.
  - xiii. Notice of withdrawal dated 27/9/2021.
11. The Mashuru – Imaruru Group Ranch filed a defence to the counterclaim dated 28/6/2022 in which it is averred as follows. The claim by the counterclaimants is denied generally. Secondly, even though the group ranch had resolved that each member be allocated 170 acres, at the time of the subdivision some members of the group had sold part of their land and therefore not every member got 170 acres. Thirdly, at the time of the subdivision, some members had already settled in the land with some living close to each other and they mutually agreed who amongst them was to move out of the occupied area. Fourthly, the 1<sup>st</sup> defendant, Kulei Ole Tait told the group ranch officials that he had sold 88 acres to Ole Muyaa at a meeting attended by Ole Muyaa, Simon Kaseke Kipirr Kasenji, Nkapili Leiyan Suyanka, Mpaayo Ole Kiprir Kasenji and James Meibuko Kipirr. The 1<sup>st</sup> defendant and his siblings discussed with the surveyor, Mr. Opanga, on the consolidation of Ole Muyaa's land into one title deed. All the allegations of fraud are therefore false.
  12. In support of the case, the group ranch filed a witness statement by Leperin Ole Nkarrabali, the current chairman of Imaroro/Mashuru group ranch. In the witness statement, Leperin says that the 1<sup>st</sup> defendant Kulei Ole Tait informed the group ranch officials in the presence of his own brothers that he had sold the 88 acres of land to Ole Muyaa.
  13. The Honourable the Attorney General filed a defence to the counterclaim dated 14/1/2022. The defence generally denies the counterclaim and calls for its dismissal. No witness statements or documents were filed together with the statement of defence.
  14. The plaintiffs filed a reply to defence and a defence to counterclaim dated 25/3/2022 in which it is averred as follows. Firstly, the subdivision of LR 1690 into 2 parcels started before the filing of the suit and signing of mutation forms by the plaintiffs on 21/6/2021 was the end of the exercise and by then the defendants had no claim at all against the plaintiffs. Secondly, the notice of withdrawal of the suit dated 27/9/2021 was on the legal advice of the plaintiff's counsel and it cannot be interpreted to be an admission of the 1<sup>st</sup> defendant's claim. Fourthly, the defendants compromised the police who gave them copies of the plaintiffs' statement, yet the police refused to give the plaintiffs copies of the statements made by the defendants to the police. Fifthly, the error in the 2<sup>nd</sup> defendant's ID Card No in the sale agreement was caused by the 2<sup>nd</sup> defendant himself so he cannot blame the plaintiffs for it.
  15. At the trial on 24/1/2023, 26/1/2023, 21/9/2023, 25/9/2023, 27/11/2023 and 13/5/2024, the witnesses from both sides adopted their evidence after which they were cross-examined by counsel for adverse party. Each side stuck to its guns with the plaintiffs and their witness stating materially that the late Ole Muya bought 128 acres from the 1<sup>st</sup> defendant and returned 40 acres so that in the end, he was left with 88 acres. On the other hand the defendants' case was that there was no sale of any land



to the late Ole Muyaa and that the transfer of the 88 acres to the plaintiffs by the group ranch officials was fraudulent.

One remarkable aspect of the trial was the fact that the plaintiffs' document examiner and the defendants' Emmanuel Kenga and Miriam Kemunto gave differing opinions on whether the signatures on the sale agreement dated 19/6/2005 compared with the known signatures of the signatories. While the plaintiffs' witness said that the signatures were made by the same authors, the defendants' witness said that they were made by different authors.

16. Counsel for the defendants were to file and serve written submissions by 15/6/2024. The only submissions that have been filed are those by the plaintiffs' counsel. The plaintiffs' counsel in the submissions dated 19/7/2024 has identified four (4) issues for determination as follows.

- i. Whether there was a valid sale agreement between the defendants and Daniel Kasirimo Ole Muyaa.
- ii. Whether the plaintiffs are the bona fide proprietors of the suit land.
- iii. Whether the defendants are entitled to the suit land as claimed in the counter claim.
- iv. Whether the plaintiffs are entitled to the reliefs sought.

17. I have carefully considered all the evidence adduced in this case by all the parties including the witness statements, documents and testimony at the trial. I have also considered the written submissions by the plaintiffs' counsel.

The crux of the matter in this dispute is which side between the plaintiffs and the defendants has adduced credible evidence. The outcome will depend on which if the two sides the court believes. Is it credible that the late Daniel Karisimo Ole Muyaa, a respected and honourable man who was at one time chairman of Kajiado County Council would have colluded with the officials of Mashuru- Ilmaroro Group Ranch and the 1<sup>st</sup> defendant's own brothers to defraud the 1<sup>st</sup> defendant of 88 acres of his land? My finding is that it is not credible. I make the following findings on the four issues identified by the plaintiff's counsel.

18. On the 1<sup>st</sup> issue, I find that there was a valid sale agreement between the late Ole Muyaa and the 1<sup>st</sup> defendant for the sale of 88 acres of unsurveyed land within Mashuru-Ilmaroro Group Ranch. I find that the sale agreement is valid and complies with Section 3(3) of the *Law of Contract Act* as it has been signed by the seller and the buyer and it is witnessed by two witnesses for each of the parties. The witnesses are all sons of the buyer and the seller and parties in this case. I am satisfied the sale agreement was the culmination of a long consultative meeting between the family of Ole Muyaa and that of Tait Kasenji, the father of the 1<sup>st</sup> defendant, Simon Kaseke, James Meibuko among others.

I am satisfied that the dispute had gained great notoriety and it was well known by the two families who are closely related because Ole Muyaa and Taitit Kasenji were cousins. I am satisfied because I believed the evidence adduced by the two plaintiffs which is corroborated sufficiently in material particulars by the evidence of respectable old men like Nkapilil Leyian, Moshookia Tulutian and Leperian Ole Nkarabai. All these witnesses were independent and not members of the feuding families. The evidence by the plaintiffs was further corroborated by that of the 1<sup>st</sup> defendant's own brothers who included Mpayo Ole Kipirr Kasenji and Simon Kaseke. I do not believe that all these members of a close knit family and the community ganged up against the 1<sup>st</sup> defendant to take away his land.

The only eye witnesses that the 1<sup>st</sup> defendant could gather were his wife and two sons. He could not muster even a single independent witness from the community in which he lives and where the land is situated to come and tell the court that he was defrauded of his land by the famous Ole Muyaa. I do



not believe the 1<sup>st</sup> defendant and his witnesses more so because they are themselves beneficiaries of this land and also under the influence of the 1<sup>st</sup> defendant.

19. It is trite law that the evidence of an expert can only be challenged by that of another expert, that it does not trump all other evidence, that where there is conflicting expert opinion, the court should test it against the background of all the other evidence among other findings. See Stephen K. Wang'ongu – versus- The Ark Limited (2016) eKLR. In this case owing to the conflicting evidence by the plaintiffs' and the defendants' expert witnesses, I find that the other evidence by the witnesses that I have already mentioned corroborates the evidence by the plaintiffs' expert witness that the 1<sup>st</sup> defendant signed the sale agreement dated 19/6/2005.
20. On the second issue, I find that plaintiffs are the bonafide proprietors of the suit land. We have evidence from the group ranch officials that they would transfer land of a deceased land owner to his family and the case of Ole Muyaa was not isolated. I find that procedure by the group ranch is proper and sanctioned by Section 32 of the Law of Succession Act.
21. As for the third issue, I find that the defendants are not entitled to the suit land as prayed for in the counterclaim because as I have already said, I do not believe them. Secondly, they have pleaded fraud. As per the case of Ndolo –versus- Ndolo, Civil Appeal No 128 of 1995 where fraud is pleaded, like it was pleaded by the defendants in this case, it must be proved to a standard higher even than in ordinary civil cases though it is not as high as proof beyond reasonable doubt like in criminal cases.  
  
I am also satisfied that it is the plaintiffs who have been in occupation of the suit land until the recent invasion by the defendants. In this regard, I believed the plaintiffs.
22. On the final issue and for the reasons already outlined above, I find that the plaintiffs are entitled to prayers (a), (b), (c), (d) and (f) in the amended plaint dated 27/10/2021. Consequently, I enter judgment for the plaintiffs against the defendants as per those five prayers.

Conversely, and for the same reasons given earlier, I dismiss the defendants, counterclaim with costs. It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 19TH DAY OF SEPTEMBER 2024.**

**M.N. GICHERU**

**JUDGE**

