



**Parashuru v Maseine & 9 others (Environment & Land Case
750 of 2017) [2024] KEELC 7189 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 750 OF 2017
MN GICHERU, J
OCTOBER 29, 2024**

BETWEEN

SAMUEL SOPON PARASHURU PLAINTIFF

AND

TAPORU MASEINE 1ST DEFENDANT

JOSHUA NKOIRISHISHE 2ND DEFENDANT

SALAASH NKOIRISHISHE 3RD DEFENDANT

KOID OLE TEENU 4TH DEFENDANT

SETEI OLE SHOMPA 5TH DEFENDANT

NOAH NKUNKAT 6TH DEFENDANT

KAJIADO DISTRICT LAND OFFICE 7TH DEFENDANT

REGISTRAR OF TITLES 8TH DEFENDANT

NATIONAL LAND COMMISSION 9TH DEFENDANT

COUNTY GOVERNMENT OF KAJIADO 10TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 1/11/2023. The motion which is brought under Sections 1A, 1B and 3A of the *Civil procedure Act*, orders 45 rules 1(a), 3(2) and 5 and 51 rule 1 of the Civil Procedure Rules seeks the following residual orders.

SUBPARA 1.

Review of the judgment dated 31/1/2023 on account of mistake and/or error on the face of the record and/or for sufficient reason and on order that the plaintiff's ownership of L.R. No. 1173 extends to



its subdivisions, that is L.R. Kajiado/Lorngusua 2119 and 2118 and thereby enter judgment for the plaintiff in the above terms.

SUBPARA 2

An order that the caution on L.R. No. 2119 be removed and/or vacated to give effect to this judgment.

SUBPARA 3.

That costs be granted to the plaintiff.

2. The motion is based on nine (9) grounds and is supported by the plaintiff's affidavit dated 1/11/2023 which has four (4) annexures.
3. In summary, the applicant's case is as follows. He is the owner of the L.R. No. Kajiado/Lorngusua/1173 measuring 75.96 hectares. Two, on 16/11/2011, he applied for the suit land to be subdivided into two portions. Three, in the judgment dated 31/1/2023 at paragraph 13, the court found that the allocation of L.R. 1173 to the plaintiff was lawful. However, there was uncertainty as to whether L.R. No. 2119 was a subdivision of L.R.No. 1173 owing to lack of an official map and certificate of official search. Four, the applicant had provided the material said to be missing from the record. Five, there is an error and/or mistake on the face of the record sufficient to make the court review its judgment of 31/1/2023. Six, the wrongful caution on L.R. No. 2119 ought to be removed and/or vacated forthwith. Seven, since 5/8/2016, the Land Registrar Kajiado has not removed the caution in respect to L.R. No. 2119 despite the plaintiff writing to him. Eight, the cautioner went to slumber after cautioning the suit land.

For the above and other reasons, the applicant prays for the orders.

4. The plaintiff has sworn a supplementary affidavit dated 30/5/2024 referring to a replying affidavit by Noah R. Nkunkat. I cannot see the said replying affidavit on record. I have also seen the plaintiff's written submissions dated 28/5/2024 but none by the defendants.
5. I will proceed to determine the motion even in the absence of the above material from the respondents. I have carefully considered the motion in its entirety and I make the following findings. Firstly, in the plaint dated 8/2/2016, all the prayers related to L.R. No. 2119. There is no mention of L.R. No. 1173. Review must relate to the subject matter but not a new parcel of land which should be the subject to a separate suit. Secondly, in the plaint dated, there was no mention of a caution. It cannot now be brought through review. That too must be a new cause of action. It would be unfair to the defendants for this court to deal with a matter that was not part of the dispute in the suit.
6. Thirdly, the plaintiff was not successful party. Since he was not the successful party, he cannot be awarded the costs because under the proviso to Section 27 of the *Civil Procedure Act*, costs follow the event. It is only for good reason that the court may order otherwise. In this case, the court has not been persuaded as to why the costs should be awarded to the plaintiff.
7. Finally, the judgment dated 31/1/2023 was clear as to why the plaintiff did not succeed in the case. The reason is that the dispute was essentially one relating to boundaries and it had to be resolved by the Land Registrar before it could be filed in court.
8. In summary, I find no merit in the motion dated 1/11/2023 and I dismiss it with costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 29TH DAY OF OCTOBER 2024.



M.N. GICHERU
JUDGE

