



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 246 OF 2017

FORMERLY NAKURU HCC NO. 219 OF 2011

MERIN OLE TUYOTO & 124 OTHERS.....PLAINTIFFS

-VERSUS-

THE CHAIRMAN LIMANET GROUP RANCH COMMITTEE.....1ST DEFENDANT

DISTRICT LAND REGISTRAR.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

DANSON RIKANA SANOE.....4TH DEFENDANT

JUDGEMENT

At the conclusion of their testimony the parties herein filed their respective submissions. The Plaintiffs in their submissions framed 3 issues for determination that are: -

- (i) Whether the Plaintiffs have locus standi;
- (ii) Whether there was a valid register of the members,
- (iii) Whether the land parcel Cis Mara/Ilmashariani/Morijo/48 was sub divided and the same properly and legally allocated.

In the first issue the Plaintiffs contend that they had the locus standi to institute the instant suit as they were members and residents of within Limanet Group Ranch. During the hearing it emerged that there were certain members who stated that they were included in the suit as Plaintiff without their consent. From the pleadings and the witnesses' testimonies, I find that the Plaintiffs being residents of the area and having interest in the suit land had the locus standi to institute proceedings in any event, the names of those who were included without their authority could elect to have their names expunged from the proceedings and I have not seen reasons or cause to worry the Defendants.

The Plaintiffs also framed for 2 elements that is, whether there existed a proper members register the Plaintiffs to prove the existence of the same, produced 2 set of registers dated 30/6/2011 which were both certified by the Land Register the 2nd defendant.

The Plaintiffs further framed for determination whether the suit land was properly sub divided and allocated to the members properly. It is the Plaintiffs contention that there was lack of frame work to guide the committee and consequently leading to acts of fraud in which some members were allocated more land than others and the children of the committee issued with parcels of land while others were left out. The Plaintiffs further stated that no survey work was done on the land some of them testified that their parcels of land do not have beacons.

The Plaintiffs also proposed for determination whether the titles that were issued to the members and subsequent buyers could be cancelled and on this the Plaintiffs invited the court to be guided by the provisions of sections 26 of the Land Registration Act as there exists no protection to titles that have or must have been obtained improperly through fraud and lastly if the plaintiffs are entitled for the orders sought.

The first defendant also filed his written submissions and just like the Plaintiffs has invited the court to determine whether the Plaintiffs are entitled to reliefs sought, whether fraud was satisfactorily proved, whether the suit herein discloses a reasonable cause of action and who bears the costs of the suit.

On the 1st issue, the 1st Defendant stated that at the conclusion of the adjudication process title deeds were issued to the members of Limanet Group Ranch and there were subsequent sub divisions of the parcels to later day buyers. It is the 1st defendant's contention that the court ought to be guided by the provisions of section 26(a) of Land Registration Act. On the sanctity of first registration and how the same cannot be defeated and further to this the Plaintiffs had deliberately decided to leave out persons who purchased land and are residents in the area enjoined in the suit.

The 1st defendant submitted that upon conclusion of the Adjudication process and completion of the mutation the register of members was displayed for 60 days for anyone to challenge any entry or omission or abnormality. He stated that section 26(1) and (2) of the Land Adjudication Act gives a party the right to be heard but that chance or window was not pursued by the Plaintiffs. It is the 1st Defendant's contention that the Plaintiffs ought to have pursued the internal dispute resolution that is embedded within the land Adjudication Act.

On whether fraud that was alleged to have been committed by the 1st Defendant has been proved, he stated that there were no specific particulars of fraud against the 1st Defendant was outlined and the 2nd, 3rd and 4th Defendants did not participate in the hearing save for the Land Registrar who was summoned by the court to submit a report on the suit land and their submissions were thus confined to the said report dated 10th December, 2018 and 17th December, 2018 and the proposed for the Defendants whether the 2nd defendant had transferred any registered parcels of land without their authority. It is their contention that there were not under any obligation as their role was purely based on the submissions of documents provided to them under the relevant Act. On whether the 2nd, 3rd and 4th defendant had perpetuated fraud or failed to present the same they contended that the same were untrue and they stated that the sub division of land parcel Cis Mara/Ilmashariani/48 was done properly and in accordance with law.

I have considered the pleadings filed by the parties and the testimony of all the witnesses and the Submissions filed by the parties. It is evident from the Submissions that there were no agreed issues that were articulated by the parties for determination by the court as each party framed and presented their separate issues for determination, that being the case I have from the testimony of the witnesses and Submissions by counsel found that the issues for determination can be summarized as whether the Plaintiffs have locus, whether there was fraud in the Adjudication demarcation and registration of Land Parcel Cis Mara/Ilmashariani/Morijo/48 and whether the existence of the said fraud if proved could lead to the grant of the prayers sought by the Plaintiffs to warrant the cancellation of all titles issued in respect of or emanating from the sub division of land parcel Cis Mara/Ilmashariani/Morijo/48.

It is not disputed that the Plaintiffs and the Defendants were members and /residents within the Limanet Group Ranch that owned the suit land. The Plaintiff brought this case on his own behalf and on behalf of 124 other persons she stated that she gave him the Authority to commence the suit herein. The 1st Defendant assailed the Plaintiff's capacity to bring the suit herein on behalf of 124 other Plaintiffs who in his opinion some had recanted their Authority or out rightly stated that they were not aware of the suit herein and on the above basis the 1st Defendant contends that the Plaintiff lacked the capacity to institute the instant suit. As I stated earlier this is a suit in which several members of Limanet Group Ranch had sought the intention of the court. Furthermore, I have not seen anything to the contrary to find that indeed there is nothing to warrant to find that the Plaintiffs have no locus standi and I accordingly find that the Plaintiffs having shown that they had interest in the suit are properly before the court and furthermore none of those who said that they were not aware of the suit herein had approached the court to have them expunged from the record.

Having found that the Plaintiffs have the capacity to mount the suit herein, the 2nd issue for determination before this court is whether the Plaintiffs have proved the element of fraud against the defendants to warrant the cancellation of titles that were issued subsequent to the adjudication and registration of land parcel Cis Mara/Ilmashariani/Morijo/48. The Plaintiff had in their evidence in chief stated that the entire process of adjudication and determination process was marred with irregularities that were fraudulent. They stated that several parcels were registered in the names of the officials of the Group Ranch and their children. However, from the pleadings and the testimony of the witness there were generalities and there were no specific/or definite or particularized acts of fraud that were demonstrated.

The allegations of fraud are serious and a party that alleges fraud must and should be prepared to prove the said allegation higher than on a balance of probabilities that in the threshold is ordinarily civil matters.

In the case of **Central Bank of Kenya Ltd –Versus-Trust Bank Ltd and another Nairobi Civil Appeal No. 215 of 1996** the court of appeal in considering the standard of proof required where fraud is alleged, stated that: -

“The Appellant had made vague and general allegations of fraud against the Respondent, fraud and conspiracy to defraud are serious allegations. The onus of prima facie proof was much higher and heavier as the appellant in this case has ordinary case”.

The Plaintiff had stated in testimony that the said acts of fraud were perpetuated and convened between the 1st Defendant and 2nd Defendant and 2nd Defendant had failed to prevent the said fraud save for the mere allegations. I find no other proof whether extrinsic or otherwise to convince me that the Plaintiffs had discharged that burden and consequently I find that the Plaintiff had not been able to properly discharge and prove the allegation by fraud.

Having found that the Plaintiffs have not discharged the aforesaid burden which would have otherwise projected the direction I ought to take on cancellation of the titles I am not convinced and I consequently will not cancel the titles that the Plaintiff had prayed the court to cancel this is also pegged on the provision of Section 26 of the Land Adjudication Act.

The Plaintiffs were members of the Limanet Group Ranch and if the allegation of misadministration of the Group Ranch leading to serious commission of errors on the adjudication process is true they ought to have taken advantage of the dispute resolution mechanism of the Land Adjudication Act as provided. The Plaintiff had the opportunity to file objection proceedings before the Land Adjudication Officer which if diversified they had another avenue by way of an appeal. I have not seen any evidence to prove that the Plaintiff had exhausted that proceedings. The Plaintiff can't come before the court post the Adjudication and Registration process to purport to allege fraud and pray for

the cancellation of titles what will happen to those innocent purchasers for value who bought land? will they suffer because of the indolence of members of a group ranch who want to come to court several years after the Adjudication process had been concluded and titles issued to have the same cancelled that is not proper and so I find the upshot of the above is that the Plaintiff has not been able to discharge the burden of proof in the suit and I accordingly dismiss the suit with costs to the Defendants.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 17TH DAY OF MARCH, 2021.

MOHAMED N. KULLOW

JUDGE

17/3/2021

In the presence of:-

CA:Chuma

Ms Cheruto for the plaintiffs

Mr Kamwaro for the defendants