



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT KILGORIS**

**CASE NUMBER 27 OF 2021**

**(FORMERLY NAROK ELC NO.20 OF 2017)**

**SAITOTI OLE LEKUMOK..... PLAINTIFF**

**VERSUS**

**REBET OMWEKA GEORGE.....DEFENDANT**

**-CONSOLIDATED WITH -**

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT AT NAROK**

**CASE NUMBER 14 OF 2019 (O.S)**

**IN THE MATTER OF: LIMITATION OF ACTIONS ACT, CAP 22 LAWS OF KENYA**

**AND**

**IN THE MATTER OF : A CLAIM FOR ADVERSE POSSESSION PURSUANT TO SECTION 37 & 38 OF THE LIMITATION OF ACTIONS ACT, CAP 22, LAWS OF KENYA**

**AND**

**IN THE MATTER OF : L.R.NO. TRANSMARA/OLOIRIEN/187**

**BETWEEN**

**REBET OMWEKA GEORGE.....PLAINTIFF**

**VERSUS**

**SAITOTI OLE LEKUMOK.....1<sup>ST</sup> DEFENDANT**

**OLOIRIEN GROUP RANCH.....2<sup>ND</sup> DEFENDANT**

**JUDGMENT**

This judgement relates to two matters that were consolidated on the 23/10/2019 because they relate to the same subject matter and similar parties thereof.

The property in issue is parcel Land Reference Number TRANSMARA/OLOIRIEN/187 measuring approximately 14.28 Hectares (hereinafter referred to as “the suit property”).

The parties claiming ownership of the suit property are SAITOTI OLE LEKUMOK AND REBET OMWEKA GEORGE who have filed different proceedings namely KILGORIS ELC CASE NO.27 OF 2021 (FORMERLY NAROK ELC CASE NO.20 OR 2017) and NAROK ELC CASE NO.14 OF 2019 (O.S) respectively.

The matter proceeded for hearing on the 28<sup>th</sup> September 2021 and the parties evidence was as follows:-

**PLAINTIFF'S CASE.**

During the Plaintiff's Case, a total of three witnesses gave evidence in support of the Plaintiff filed herein.

The Plaintiff testified first and stated that he is a registered number 889 of a Group Ranch known as OLOIRIEN GROUP RANCH which was formed pursuant to Section 23 of the Land Adjudication Act, Cap 284 thereof.

OLOIRIEN GROUP RANCH was formed and registered in conformity with the Land Representatives Act, Cap 287. ***(A Copy of the Constitution was produced as Plaintiff's Exhibit 4).***

Upon successful formation of OLOIRIEN GROUP RANCH the Government of Kenya declared an area of approximately 13,833.48 Hectares to be an Adjudication Section and registered it in the name of OLOIRIEN GROUP RANCH in trust for its members. ***(An official search dated 1<sup>st</sup> December 2016 and a Certified Copy of the Green Card from the Ministry of Lands were produced as Plaintiff Exhibit 2 & 5 Respectively.)***

As per the provisions of Section 4 and 6 of the Land Adjudication Act, Cap 287, the members of the Group Ranch were then required to register their interests within the Adjudication section for purposes of preparing the Adjudication Records. ***(A copy of the Adjudication Record was produced as Plaintiff's Exhibit 1)***

The Plaintiff confirms that in the Adjudication Records produced before Court, his name appears as Member No.889 thereof.

Each member in the Adjudication Record was then demarcated a portion of the property known as TRANSMARA/OLOIRIEN/1 and at the end of the exercise, an Area List was prepared and finalized indicating the names of the beneficiaries and the size of land that had been demarcated to them as members of the OLOIRIEN GROUP RANCH. ***(A Copy of the Area List in regards to Oloirien Group Ranch is hereby produced as Plaintiff's Exhibit 6).***

The Plaintiff states that in the OLOIRIEN GROUP RANCH Area List/Allocations, the Parcel Number 187 is entry No.73 and the name of the beneficial owner is SAITOTI OLE LEKUMOK.

According to the Plaintiff, no objection was ever filed to challenge the Area List or Adjudication Records and on the 13<sup>th</sup> of March 2018, the Government of Kenya issued a valid Title Deed in the name of the Plaintiff. ***(A Copy of an Official Search dated 27<sup>th</sup> November 2018 is produced as Plaintiff's Exhibit 3 to confirm the same.)***

However, when the Plaintiff went to settle on the suit property, the Defendant refused to yield possession claiming that the area belonged to his family from along time ago.

The Plaintiff testified that the Defendant was not a member of the OLOIRIEN GROUP RANCH but his father namely PARSOINKAN OLE REBET SILE was a valid member of OLOIRIEN GROUP RANCH.

According to the Plaintiff, the Defendant was a family member of PARSOINKAN OLE REBET SILE and were allowed to be in the Group Ranch.

Upon demarcation and finalization of the Area List and Allocation, the Defendant was to move to his father's portion which is Parcel No. 1007.

The portion that the Defendant occupies is not within Parcel No.1007 belong to his father PARSOINKAN OLE REBET SILE and therefore the Court should Order him to yield possession, demolish whatever temporary structures he has built and vacate the suit property.

The Plaintiff concluded that the Court should grant the prayers pleaded in the Plaintiff dated 13<sup>th</sup> March 2019.

As regards the Claim of Adverse Possession filed in the Suit Narok ELC Case No.14 of 2019 (O.S), the Plaintiff relied on Replying Affidavit to the Originating Summons dated 13<sup>th</sup> March 2019 and the annexures therein which are similar to the exhibits produced in this hearing.

The Replying Affidavit repeats the same grounds as those adduced at the hearing and conclude by stating that the Defendant's Originating Summons is a classic example of an abuse of the Court process.

Consequently therefore, the Originating Summons dated 27<sup>th</sup> February 2019 should be dismissed.

The Plaintiff's evidence was supported by the evidence of Moiko Oloiputa Miaron dated 13<sup>th</sup> March 2019.

The Plaintiff's witness collaborated the evidence adduced by the Plaintiff and further stated that it was a Resolution of the Group Ranch that if someone was not on his/her allocated parcel of land, they would move to the right parcel of land.

The Plaintiff witness stated that the suit property belonged to the Plaintiff who was their member and the occupation by the Defendant was not proper.

On cross-examination, the Plaintiff's witness confirmed that he was the Chairman of the Group Ranch and therefore well aware of the facts of the matter.

The Plaintiff's witness further said he knew the Defendant as a son of their member namely PARSOINKAN OLE REBET SILE who had been allocated another parcel of land somewhere else and not the one belonging to the Plaintiff.

In conclusion, the Plaintiff's witness supported the Plaintiff's case in toto.

The Last witness to be called by the Plaintiff was the Deputy Land Registrar, Transmara West called Job Mito Kobado.

The Land Registrar confirmed that one of their core mandate is to keep Government Records appertaining to Land within Trnasmara Sub-County.

The Land Registrar went through the Plaintiff's exhibits and confirmed that indeed, the property known as TRANSMARA/OLOIRIEN/1 was registered in the name of OLOIRIEN GROUP RANCH.

Thereafter, the property known as TRANSMARA/OLOIRIEN/1 was declared an Adjudication Section and demarcation was done in accordance of the Land Adjudication Act, Cap 284.

The final Area List & Allocation was presented in the year 2018 and the property known as TRANSMARA/OLOIRIEN/1 was sub-divided and individual titles issued to its lawful members thereof.

Consequently therefore, the suit property was created in the year 2018 and a valid title issued in favour of the Plaintiff.

In his evidence in chief, since the creation and issuance of a title deed to the suit property, a period of Twelve (12) years had not lapsed to enable a claim of adverse possession.

On cross examination, the Land Registrar admitted to being familiar with the provisions of Section 28 of the Land Registration Act.

The Land Registrar stated that Section 28 of the Land Registration Act deals with the issue of overriding interests.

The Land Registrar confirmed that a trust is an overriding interest.

However, adverse possession does not qualify as a Trust under the provisions of Section 28 of the Land Registration Act.

The Land Registrar clarified that indeed the OLOIRIEN GROUP RANCH held the property known as TRANSMARA/OLOIRIEN/1 in trust for the lawful members as beneficiaries of the same.

The Plaintiff thereafter closed its case.

#### **DEFENDANT'S CASE.**

During the Defence hearing, two witnesses gave evidence in support of the Narok Origination Summons Case No.14 of 2019 dated 27<sup>th</sup> February 2019 and Statement of Defence and Counter-Claim dated 24<sup>th</sup> of June 2019.

The Defendant began his testimony by indicating that is he fully aware of the facts relating to the suit property.

The Defendant averred that he has been staying in the area owned by Oloirien Group Ranch over the last 30 years.

However, the Defendant in his evidence in chief confirmed that he has never been a member of OLOIRIEN GROUP RANCH.

The Defendant further stated that in the year 2016 OLOIRIEN GROUP RANCH indeed registered members who were resident within the property known as TRANSMARA/OLOIRIEN/1.

According to the Defendant's evidence, he has occupied the suit property for over 18 years by grazing cattle on it and even built his home therein.

The Defendant stated that the Plaintiff's registration as the owner of the suit property was illegal. ***(The Defendant produced as Defence Exhibit 1 a copy of an official search dated 27/11/2018 to confirm the erroneous registration.)***

Thereafter, the Defendant produced Photographs of the developments he has erected on the suit property to confirm his occupation. ***(Photographs are produced and marked as Defence Exhibit 2.)***

The Defendant further testified that upon realizing that the suit property had been registered in the name of the Plaintiff herein, he instituted legal proceedings in NAROK ELC CASE NO.14 OF 2019 (O.S) seeking for Adverse Possession by virtue of Section 37 and 38 of the Limitation of Actions Act, Cap 22.

According to the Defendant, he had used the area known as TRANSMARA/OLOIRIEN/1 for grazing and residence for a period of over 30 years and the suit property in particular for over 14 years.

On cross-examination, the Defendant admitted that he was within the property known as TRANSMARA/OLOIRIEN/1 during the registration of the members to the Group Ranch.

The Defendant further confirmed that he was present and aware when the Adjudication Register was being published.

According to the Adjudication Register, the Defendant's father namely PARSOINKAN OLE REBET SILE was indeed a member and beneficiary as indicated on entry No.210 of the Adjudication Register produced by the Plaintiff.

By virtue of being a member and appearing in the Adjudication Register, the Defendant's father was allocated a parcel of land known as TRANSMARA/OLOIRIEN/1007.

The Defendant stated that all his brothers and sisters live within his father's parcel of land.

The Defendant read out Clause 3.2 and 3.40 which stated that "The Children of registered members were allowed to stay and use the land by virtue of their parents' rights"

Upon completion of reading these Clauses, the Defendant stated that he was not in agreement with those particular Clauses of the OLOIRIEN GROUP RANCH CONSTITUTION.

However, he admitted that he has never challenged the same in any forum.

The Second Defence witness was one Francis Oloitoyaye Sinoni.

The witness had prepared and signed a witness statement dated 10<sup>th</sup> March 2020.

The Defence witness stated that he resides within Oloirien Location.

Similarly, the Defence witness informed the Court that he had been the area Chief for the last 24 years.

The Defence witness confirmed that he knew both the Plaintiff and the Defendant.

The Defence witness averred that the Defendant is the one who is in occupation of the suit property registered in the name of the Plaintiff.

According to the Defence Witness, the Defendant had been in occupation for about 13 years.

The Defendant's father resides on another parcel of land known as TRANSMARA/OLOIRIEN/1007. ***(A search of parcel Number TRANSMARA/OLOIRIEN/1007 dated 27/02/2020 is produced as Defence Exhibit 3)***

The Defence witness in concluding his evidence in chief indicated that there were a lot of complains regarding the adjudication and many cases are currently in court.

On cross-examination, the Defence witness confirmed that OLOIRIEN GROUP RANCH had a committee whose members were elected by the members of the Group Ranch.

OLORIEN GROUP RANCH also had a constitution that was legally registered and govern how the membership would be managed.

According to the Constitution, before the demarcation, members would graze and stay anywhere they liked but after the demarcation, every member was to relocate to the parcel which had been allocated to him/her.

The Defence witness confirmed that a lot of people were forced to relocate from where they were staying to their new parcels of land.

The Defence witness confirmed that as a member, his name was on the Adjudication Register.

Similarly, the Defence witness stated that the Constitution allowed registered members to reside with their children within the Group Ranch.

Children from those who were members were also allowed to register in their own capacity and get allocated land.

In concluding his evidence, the Defence witness stated that the suit property is currently being occupied by the Defendant.

However, the period between when the Adjudication Section was declared and the time of issuance of the titles took too long.

In re-examination, the Defence witness stated that he is aware the Defendant has placed a caution of the Plaintiff's title.

The Defence closed its case thereafter.

#### EVALUATION OF EVIDENCE & DETERMINATION OF ISSUES.

On closure of the hearing of this matter, the parties filed their submissions with the Plaintiff doing so on the 3<sup>rd</sup> of December 2021 and the Defendant filing his on the 6<sup>th</sup> of December 2021.

Although there was no agreed list of issues filed herein, the parties framed various issues in their submissions for determination by this Court.

The Court has perused through the issues contained in both submissions and have come up with the following broad issues in determining the dispute herein.

A) WAS THE ALLOCATION OF THE SUIT PROPERTY LAWFUL AND IN COMPLIANCE WITH THE LAND ADJUDICATION ACT, CAP 284?

B) HAS THE DEFENDANT PROVED A CLAIM OF ADVERSE POSSESSION AGAINST THE PLAINTIFF ON THE SUIT PROPERTY?

C) IS THERE ANY NATURE OF TRUST ESTABLISHED BY THE DEFENDANT AGAINST THE PLAINTIFF HEREIN?

D) WHAT REMEDIES ARE EITHER AVAILABLE TO THE PLAINTIFF AND/OR DEFENDANT?

#### **A) WAS THE ALLOCATION OF THE SUIT PROPERTY LAWFUL AND IN COMPLIANCE WITH THE LAND ADJUDICATION ACT, CAP 284?**

According to the evidence of all the witnesses who testified in this matter, there is no dispute that the property known as TRANSMARA/OLOIRIEN/1 was declared an Adjudication Section.

At the time of being declared an Adjudication Section, the property known as TRANSMARA/OLOIRIEN/1 was registered in the name of OLOIRIEN GROUP RANCH.

As per the provisions of Section 24 Of the Land Adjudication Act, Cap 284, an Adjudication Record of all the beneficiaries of the OLOIRIEN GROUP RANCH were accordingly identified through the Plaintiff's Exhibit No.1.

The contents of the Adjudication Record was not challenged by the Defendant and/or his witness.

It is therefore safe to conclude that the Adjudication Record was legal and valid in accordance to the provisions of the Land Adjudication Act, Cap 284.

In addition to the Adjudication Register produced as Exhibit 1 by the Plaintiff, an Area List and Allocation was finalized and published to the public as evidenced in the Plaintiff' Exhibit 6.

Again, the Defendant has not disputed the correctness and/or contents of the Area List & Allocation produced by the Plaintiff.

In fact, according to the Defence List of documents filed on the 10<sup>th</sup> of March 2020, the Defendant included it as part of his documentary evidence.

A perusal of both the Adjudication List and the Area List and Allocation produced in Court confirms that the Plaintiff was a valid member of OLOIRIEN GROUP RANCH as well as a beneficiary of the property known as TRANSMARA/OLOIRIEN/1.

The Area List and Allocation identified the Plaintiff to be the beneficial owner of the suit property before Court.

Sections 26 of the Land Adjudication Act, Cap 284 provide for a number of internal legal mechanisms which are available to any person aggrieved by the manner in which the adjudication process has been undertaken.

However, it is clear from the evidence adduced in court by all the parties that the Defendant was not a member of OLOIRIEN GROUP RANCH who were the registered owners of the original property known as TRANSMARA/OLOIRIEN/1.

Similarly, it is clear from the evidence of the 2<sup>nd</sup> Plaintiff's Witness who was the Chairman of OLOIRIEN GROUP RANCH that no objection was ever filed by the Defendant as regards the suit property being allocated to the Plaintiff.

The Defendant has denied filing any objection regarding the adjudication of the suit property to the Plaintiff.

Instead, the Defendant filed an Originating Summons seeking for Adverse possession under Section 37 and 38 of the Limitation of Actions Act, Cap 22.

Looking at the evidence placed this Court by both the Plaintiff and Defendant, it is clear in the Court's mind that there is no sufficient evidence produced by the Defendant to challenge the legality and/or registration of the suit property in the name of the Plaintiff herein.

The Defendant failed to follow the laid down procedures under the Land Adjudication Act, Cap 284 in instances where a party is not satisfied with the manner in which an adjudication process is conducted.

In conclusion therefore, the Court finds that the suit property was lawfully and legally alienated to the Plaintiff and the title Deed issued thereof is in compliance with the law.

**B) HAS THE DEFENDANT PROVED A CLAIM OF ADVERSE POSSESSION AGAINST THE PLAINTIFF ON THE SUIT PROPERTY?**

The Defendant through the consolidated suit namely NAROK ELC CASE NO 14 OF 2019 (O.S) sought for a declaration of Adverse possession against the Plaintiff herein in regard to the suit property.

The main ground of this claim is that the Defendant has been in occupation and use of the entire property known as TRANSMARA/OLOIRIEN/1 for the past 30 years and in particular the suit property for the last 14 years.

The Defendant in his evidence has produced photos of various developments currently on the suit property which prove occupation and use.

This Court does not need to reinvent the wheel.

In **KWEYU VERSUS O MUTUT [1990] KLR 709**, the Court of Appeal, Gicheru JA, as he then was, stated as follows:

*“By adverse possession is meant a possession which is hostile, under a claim or colour of title, actual, open, uninterrupted, notorious, exclusive and continuous. When such possession is continued for the requisite period (12 years), it confers an indefeasible title upon the possessor. (Colour of title is that which is a title in appearance, but in reality). Adverse possession is made out by the co-existence of two distinct ingredients; the first, such a title as will afford Colour, and, second such possession under it as will be adverse to the right of a true owner. The adverse character of the possession must be proved as a fact; it cannot be assumed as a matter of law from mere exclusive possession, however long continued. And the proof must be clear that the party held under a claim of right and with intent to hold adversely. These terms (“claim or colour of title”) mean nothing more than the intention of the dispossessor to appropriate and use the land as his own to the exclusion of all others irrespective of any semblance or shadow of actual title or right. A mere adverse claim to the land or the period required to form the bar is not sufficient. In other words, adverse possession must rest on de facto use and occupation. To make a possession adverse, there must be an entry under a colour of right claiming title hostile to the true owner and the world, and the entry must be followed by the possession and appropriation of the premises to the occupant's use done publicly and notoriously.”*

According to the above cited Case, one key component of adverse possession is the period of 12 years which occupation must be continuous.

Has the Defendant proved that his occupation of the Plaintiff's suit property has lasted 12 years prior to filing the Originating Summons dated 27<sup>th</sup> February 2019?

The Defendant has averred in his evidence in chief as well as that of the Defence witness that his occupation dates back to 30 years ago.

The Defendant further stated in his evidence that everyone within the Adjudication Section prior to the declaration of the Oloirien Adjudication Section was at liberty to graze and/or occupy any possession of the land therein.

This fact is indeed confirmed by the Plaintiff and his witness in their evidence before this Court.

Clearly, looking at the above scenario, the land comprising of the property known as TRANSMARA/OLOIRIEN/1 was no doubt being used by the entire community within Oloirien Location.

Article 61 (2) Constitution of Kenya enacted in the year 2010 describes Community Land as follows:-

- “1. Land lawfully registered in the name of a group representatives under the provisions of the law.
2. Land lawfully transferred to a specific community by a process of law.

3. Any other land declared to be community land by any process of law.

4. Land that is i) lawfully held, managed or used by specific communities as community forests, grazing areas or shrines (ii) ancestral lands or land traditionally occupied by hunters and gatherers.

Section 2 of the Community Land Act of 2016 defines a community as follows:-

- a) Common ancestry
- b) Similar culture and unique mode of livelihood
- c) Socioeconomic or other similar common interests.
- d) Geographical space
- e) Ecological space
- f) Ethnicity.

According to the evidence of the Plaintiff's 2<sup>nd</sup> witness, the Land Registrar, Transmara West, the first registration on the property known as TRANSMARA/OLOIRIEN/1 was done in the 13<sup>th</sup> of November 2015 in favour of OLOIRIEN GROUP RANCH.

Who then owned this property prior to the date of first registration on the 13<sup>th</sup> of November 2015?

The answer to this Question is found in the Repealed Trust Land Act of 1939.

This law gave County Councils the power to manage and hold in trust all land in Kenya that was not privatized or gazetted as public land.

The Trust Land Act set out that the County Councils (Later County Governments) held the land "in trust" for the people who had been the rightful owners and managers of the land.

In other words therefore, if the Defendant is to say his occupation is over 30 years, yet OLOIRIEN GROUP RANCH was registered as the owners of TRANSMARA/OLOIRIEN/1 on the 13<sup>th</sup> of November 2015, who then owned this land before 13<sup>th</sup> November 2015?

The clear answer is that prior to 13<sup>th</sup> November 2015, the entire area around Oloirien Location was community land owned by the Government of Kenya.

Can a litigant claim adverse possession against the Government of Kenya?

A similar matter in the case *Samuel Kipngeno Koech Vs Agnes Wambui Gitonga in Kerich ELC No.05 of 2015 (OS)* the Learned Judge held as follows:-

"Section 38 above refers to certain Acts Parliament, cited in Section 37. The said statutes are the Government Land Act (Cap. 280), the Registration of Titles Act (Cap. 281), the Land Titles Act (Cap. 282) or the Registered Land Act (Cap. 300) (all now repealed by the Land Registration Act, 2012 but titles still subsist as issued under those statutes). It follows that for a claim of adverse possession to be entertained in this country, the applicant must specifically identify the exact title of land that is the subject to the claim.

The extract of the title also has another significant importance. It does show the history of the proprietorship of the land in issue. This history is important in computing time, for there are some entities against whom one cannot claim the adverse possession. So long as these entities remain the registered owners of the title being claimed, time cannot start running in favour of the occupant of the land in question. These entities are set out in Section 41 of the Limitation of Actions Act..."

**Section 41 (a) (i)** of the Limitation of Actions Act states inter alia that:-

"This Act does not:-

(a) Enable a person to acquire any title to, any easement over -

(i) Government Land or Land otherwise enjoyed by the Government"

Looking at the above cited case and the provisions of Section 41 of the Limitation of Actions Act, Cap 22, the period prior to 13<sup>th</sup> November 2015 when the land belonged to the Government of Kenya cannot be used to compute time.

The Defendant at the very best can only start computing time from 13<sup>th</sup> November 2015 when OLOIRIEN GROUP RANCH was registered as the owners of the property known as TRANSMARA/OLOIRIEN/1, out of which the mandatory Twelve (12) Years have not lapsed.

In conclusion therefore, this Court finds that the Defendant has failed to prove Adverse Possession against either the Plaintiff or the 2<sup>nd</sup> Defendant in NAROK ELC NO.14 OF 2019(O.S).

C) IS THERE ANY NATURE OF TRUST ESTABLISHED BY THE DEFENDANT AGAINST THE PLAINTIFF HEREIN?

The other issue that has been raised by the Defendant in that of customary trust.

The Defendant submits that the provisions of Section 28 of the Land Registration Act, No.3 of 2012 provide for Overriding interests which include under Section 28 (b) customary trusts.

The Defendant submits that by virtue of the 30 years of which he has been in occupation and use of the land identified as TRANSMARA/OLOIRIEN/1 in the name of PLOIRIEN GROUP RANCH, a Customary Trust has been established allowing the Defendant to own land whether or not he was a member of OLOIRIEN GROUP RANCH.

The Defendant cited the **Supreme Court Petition No.10 of 2015 ISACK M'INANGA KIEBA VERSUS ISAAYA THEURI M'LINTARI & ANOTHER (2018) eKLR.**

The Learned Justices of the Supreme Court opined as follows:-

“That what is essential is the nature of the holding of the land and the intention of the parties. If the said holding is for the benefit of the other members of the family, then a customary trust would be presumed to have been created in favour of such other members, whether or not they are in possession or actual occupation of the land. Some of the elements that would qualify a claimant as a trustee are;-

1. The land in question was before registration, family, clan or group land.
2. The Claimant belongs to such a family, clan or group.
3. The relationship of the Claimant to such a family, clan or group is not so remote or tenuous as to make his/her claim idle or adventurous.
4. The Claimant could have been entitled to be registered as an owner or other beneficiary of the land but for some intervening reason.

Paragraph 16 of the Defendant's submissions dated 6<sup>th</sup> December 2021 purport to make reliance of Element No. 4 in urging on the issue of customary law.

From the reading of the Learned Justices opinion, the intervening reasons have to be placed before the Court for evaluation of their validity.

A party cannot simply plead this element and expect to be granted Orders without providing sufficient evidence that the Claimant attempted to make a claim but for some intervening reason he/she was not registered.

To the Court's recollect, the evidence produced before the Court clearly indicated that the Defendant never bothered to engage himself in the affairs of Oloirien Group Ranch either at the registration stage or preparation of the Area List/Allocation.

Although the Court appreciates the Basic Right to own property as enshrined in Article 40 of the Constitution, it is also critical that all citizens accept to follow the various legal procedures and statutes that are created by the same Constitution in the management, use and distribution of the resource called Land.

The creation and use of the Land Adjudication Act, 284 in adjudication and allocation of communal land cannot be water down despite challenges here and there.

The titles documents that emanate from land adjudication are protected by the provisions of Section 24, 25 and 26 of the Land Registration Act, No. 3 of 2012.

In conclusion therefore, the Court is not satisfied that the Defendant has established any customary Trust against the Plaintiff herein or the 2<sup>nd</sup> Defendant in the NAROK ELC CASE NO.14 OF 2019 (O.S).

D) WHAT REMEDIES ARE EITHER AVAILABLE TO THE PLAINTIFF AND/OR DEFENDANT?

The Court upon considering the pleadings herein, the evidence adduced in Court (both oral and documentary) and the submissions of both parties, the following Orders do and are hereby issued;-

1. A declaration that the Plaintiff is the sole registered and exclusive owner and/or proprietor of the suit property known as

TRANSMARA/OLOIRIEN/187 be and is hereby issued.

2. The Defendant be and is hereby ordered to vacate and yield vacate possession of the suit property known as TRANSMARA/OLOIRIEN/187 to the Plaintiff within 45 days from the date of delivering this judgment.

3. In default of Order Number 2 hereinabove, an Order of eviction do issue against the Defendant to be enforced by a licenced Court Bailiff and where need be, the Officer in Charge of Lolgorian Police Station provide the necessary security.

4. Costs of the suit are hereby awarded to the Plaintiff herein.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 27TH DAY OF JANUARY 2022.**

**EMMANUEL.M.WASHE**

**JUDGE**

**IN THE PRESENCE OF:**

Court assistant: Matiko

Counsel for the Plaintiff: O.M. Otieno

Counsel for the Defendant: No appearance