



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT KITALE

LAND CASE NO. 109 OF 2014

ALEMLUK KORPIRA.....PLAINTIFF

VERSUS

BENSON LONOKI & 2 OTHERS.....DEFENDANT

R U L I N G

1. Before the hearing of this suit, a preliminary objection was taken on behalf of the defendants on the following grounds:-

- a) That the plaintiff's claim is barred by the Limitation of Actions Act.
- b) That the court has no original jurisdiction to hear and determine the dispute in view of Section 28 of the Land (Group Representatives) Act Cap 287.
- c) That the first and second defendants have no locus to be sued since the land belonged to the late Chebumbur Karayo who died on 18.8.1987 and they are not the administrators of the estate.
- d) That since Serewo Group Ranch is a body corporate under section 7(3) and section 8 of Cap 287, no action can be sustained against the group Chairman.

2. On the issue of Limitation, Mr. Kiarie for the defendants argued that the plaintiff's suit is statute barred. He argued that the plaintiff had admitted in his pleadings that he moved out of the suit land in 1964 and only came back to reclaim it in 2013. He argued that no action can be brought to recover land after 12 years from the date the action accrued to the plaintiff. He contended that the plaintiff was seeking the land he had left in 1964.

3. On the issue of jurisdiction, Mr Kaiarie argued that this court has only appellate jurisdiction on matters relating to land held under the Land (Group Representatives) Act. He argued that the Act provides for a mechanism of determining who is a member and that any member who is aggrieved should apply to the District Magistrates Court. He argued that section 13 of the Environment and Land Court Act gives this court power to determine matters which come from the subordinate courts.

4. On the issue of capacity of the first and second defendant to be sued, Mr. Kiarie argued that the land in issue belonged to the late father of the first and second defendant and that since the two are not legal representatives of the estate of their father, they cannot be sued and therefore the suit against them is incompetent.

5. On the issue of competency of the suit against the Chairman of Serewo Group Ranch, Mr. Kiarie argued that upon issuance of a certificate of incorporation being given to a group ranch, the group becomes a body corporate capable of suing and being sued in its corporate name. He therefore argued that the suit against the Chairman of the Serewo Group Ranch cannot be sustained.

6. Mr. Kaosa for plaintiff opposed the preliminary objection by the defendants arguing that there was no provision for amending a preliminary objection; that it was not clear whether Mr. Kiarie was appearing for the plaintiff or the defendants and that a preliminary objection cannot be raised if there are certain facts to be ascertained. On the issue of jurisdiction, Mr. Kaosa contended that the Environment and Land Court Act is clear that it is only this court which has jurisdiction over land matters. He argued that this court has both original and appellate jurisdiction.

7. In response to Mr. Kaosa's argument that it is not clear whether Mr. Kiarie was appearing for the plaintiff or defendant, Mr. Kiarie clarified that the reference to 1st and 2nd plaintiffs in ground three of the preliminary objection was a typing error.

8. I have carefully considered the points raised by the counsel for the defendants and the opposition thereto by the plaintiff's counsel. In the case of Mukisa Biscuit Manufacturing Co. Ltd vs West End distributors (1969) E.A. 696, it was stated as follows:-

“ A preliminary objection is in the nature of what used to a demurrer. It raises a pure point of law which is argued on assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”

9. In the instant case, the plaintiff is laying claim to some 10 acres within Serewo Group Ranch. The defendants contend that the land which the plaintiff has occupied forcefully is part of plot No.141 at Serewo Group Ranch which is owned by the late Chebumbur Karayo who died on 18.8.1987. There is therefore need to ascertain if indeed the 10 acres the plaintiff is claiming is part of plot No.141 and if the same belonged to Chebumbur Karayo who died on 18.8.1987 and finally whether the first two defendants are sons of the said deceased. On this score, the defendant's preliminary objection that they lack capacity cannot be sustained.

10. There is need to ascertain whether Serewo Group Ranch is duly registered as a group ranch as provided for under the Land (Group Representatives) Act. There is also need to ascertain who the members of the group are. The Land (Group Representatives) Act came into force on 28.6.1968. The object of the Act was to provide for the incorporation of representatives of groups who had been recorded as owners of land under the Land Adjudication and for purposes connected therewith and incidental thereto. The defendants in their defence contend that the plaintiff's membership of Serewo Group Ranch was determined and a certificate dated 1.2.2014 issued. These are facts which have to be ascertained. The issue of jurisdiction of the court and the competency of the suit against the Chairman of Serewo Group Ranch cannot therefore be sustained as a preliminary point.

11. The last ground to be addressed is on Limitation of Action Act. Section 7 of the Limitation of Actions Act provides as follows:-

” An action may not be brought by any person to recover land after the end of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.”

The most important words in that section are “ ***twelve years from the date on which the action accrued to him***” Black's Law Dictionary 8th edition defines the term “***accrue***” as “***to come into existence as an enforceable claim or right.***”

The plaintiff contends that he moved out of the area in 1964. As at this time the Land (Group Representatives) Act had not come into force. The Act came into force on 28.6.1968. Any person's interest which was recorded in accordance with provisions of the Act can only be ascertained in

accordance with the said Act. The defendants have in their defence stated that the issue of the plaintiff's membership of Serewo Group Ranch was determined when a certificate dated 1.2.2014 was issued. The plaintiff's claim or right to the 10 acres of land would have accrued to him upon being duly registered as a member of Serewo Group Ranch. The plaintiff sought to have his interest recorded in or around 2013 when he went back to Serewo Group Ranch to claim membership in accordance with the Act. His claim is therefore not statute barred.

12. For the reasons stated above, I find that the preliminary objection by the defendants has no merit. The same is hereby dismissed with costs to the plaintiff.

It is so ordered.

Dated, signed and delivered at Kitale on this 20th day of May, 2015.

E. OBAGA

JUDGE

In the presence of Mr. Chebii for Mr. Kaosa for Plaintiff and Mr. Kiarie for defendant. Court Clerk - Isabellah.

E. OBAGA

JUDGE

20.5.2015