



REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS

**Civil
Case
317
of
2004**

**1. MELTON
LENKAKURRO**

**2. PETER MERIN
SESEI**

**3. TUNGUNGUA
OLE NTEETE**

**4. JACKSON
MELIYIO RISIE**

**5. SAMUEL
KAYIOR LOKINYIEI**

**6. LELUAI
LOOWKARARA**

**7. TEKETI OLE
LEKISUMA**

(all suing as representatives of ENTARARA GROUP RANCH) PLAINTIFFS

VERSUS

**1. TAIKO
MORIATI**

2. SEELA OLE

MORIATE

3. PARSANGA
LENKINYI

4. RIAMET OLE LENKERE DEFENDANTS

JUDGMENT

1: **CLAIM**

1. M/s Entarara Group Ranch, a Group Ranch duly incorporated under the Land (Group Representative) Act Cap.287 Laws of Kenya filed this suit seeking this courts orders against.

- i) Taiko Moriati
- ii) Seela Ole Moriati
- iii) Parsanga Lenkinyi
- iv) Riamet ole Lenkere

the defendants herein and the current registered owners of LR LTK/Entarara/145. They are also members of the Entarara Group Ranch.

1. The orders sought inter, alia

a) ...

b) “For” a declaration that the registration of the parcel of land Title number LTK/Entarara/145 in the name of the defendants be declared null and void.

c) ...

d) An order that the registration of the defendants as proprietor of the suit property be rectified in such terms as one farm.

e) In the alternative that the property known as Land title LTK/Entarara/145 be registered under Entarara Group Ranch

f) ...

f i) Eviction orders of the individual person in Hccc335/94 be set aside.

g) ...

h) ...”

II: **Background facts.**

3. During the land consolidation exercise, the group of individuals owing land LTK/ Entarara/145 (herein referred to as the suit land) choose the elderly men in the group, to represent them and be registered as proprietor to the suit land that measured 901 acres.

4. On 30 November 1968 the seven men were registered. They were:-

Taiko Moriat (defendant No.1)

Seela Moriat (defendant No.2)

Parsanga Lenkinyi (defendant No.3)

Seremet Ntooki (now deceased in 1987)

Mupeshi Moriat

Lenkisoma Lenkinyi (now deceased in 1973)

And Yiament Lewkare (Defendant No.4)

5. They remained silent until the year 1992, a time of the first multiparty politics and elections, when they obtained a letter from the chief that they were the rightful owners of the land. On 6 August 1992 a title deed was issued in the name of:-

Taiko Moriat

Seela Moriat

Parsanga Lenkenyi

Mupeshi Moriat

And Lenkisoma Lenkinyi

as Trustees of other two.

Compromising of 901 acres

registry map sheet 67, 8 and 9.

Kajiado District Land Registry.

6. The other members were not asleep. They at once registered a caution to the land on 2 September 1992 through Peter Sese and Others claiming beneficiary interest.

7. The defendants filed suit for eviction of the individuals, now comprising the members of the plaintiffs group.

8. This case Hccc335/94 came up for hearing before Rawal J who delivered her judgment in 2003. In her said judgment she noted that the individual sued for trespass required to have locus under the Lands (Group representative) Act. She allowed the suit for the defendants herein that they may evict the individuals from their land But stayed her judgment for 9 months to allow them file a suit under the Land (Groups Representative) Act.

9. The said individuals duly complied. They incorporated themselves under the Land (Group representation) Act on 28 July 2004 and were duly issued with a certificate and are now known as Entarara Group Ranch.

10. They filed suit and sought for injunction to restrain the defendants from evicting them from the land. This injunction was granted by Ojwang J on 5 November 2004 bearing in mind Rawal J's orders. The injunction was to subsist till the determination of this suit.

11. In this suit, the defendants filed defence. None came to court but in civil matters, a defendant represented by an advocate need not attend court. It is compulsory for the plaintiff to attend.

12. The defendant called a son of one of the defendants as a witness but he had no first hand information of this case.

13. The defence is, that the defendants are the first registered proprietors of the suit land. They therefore cannot be challenged as to their title because it is an indivisible title.

14. The case law of **Chacha v Manini (2002) 2 KLR 83** Birech CA was referred to, that dealt with the first registration.

15. Rawal J's decision in the earlier case of **Taiko Moriat & 6 Others v Melton Lenkaruro & 7 Others Hccc335/94** was relied on by the defendant.

16. This matter is not resjudicata as the parties are different.

III: **Legal Background**

17. The parties have put in correspondence between themselves and the Registrar of Land on the legal position of this matter. I wish to outline the same.

i) **The Land Consolidation Act Cap. 283.**

18. The Land Consolidation Act Cap. 283 came into operation on 28 July 1959.

“An act of Parliament to provide for the ascertainment of rights and interest in and for the consolidations of land in the special areas; for the registration of, land title to and of transactions and devolutions effecting, such land and other land in the special area, and for purposes connected there with and incidental thereto.”

19. The area in which the suit land is situated was declared an adjudication section on 21 December 1964 under the Lands Consolidation Act Cap.283 Law of Kenya. The records were published on 1 June 1967 and became final on

6 August 1967. The adjudication register was published complete for inspection on 1 December 1967. A certificate of finality was signed on the 18 June 1968.

20. At this time during this whole process and the exercise undertaken

The Land (Group Representative) Act Cap.287 Laws of Kenya

And

The Land Adjudication act Cap.284 Laws of Kenya

had not been enacted.

21. The two acts were finally enacted and on

28 June 1968 became operational.

22. According to the records, the defendants registered seven names under the Registered Land Act, on 30 November 1968. This registration is a clear indication that the intention of the parties was not to be absolute registered owners of the land but they held the land in trust for others.

23. This ascertain comes from the registered Lands Act Section 101 (1) (3) where the maximum number of five names can appear against one land parcel.

24. The director of land and adjudication and settlement officers gave information in his correspondence that the adjudication record in respect of parcel No.145 contained seven names .

25. That this was a clear indication that the land was not owned by an individual and but by a Group. The Land (Group representative) Act Cap.287 had not, at the time of the land adjudication come into operation (Ext. 51).

26. The Director of Land Adjudication and Settlement further indicated that:-

“The title deed issued to individuals names was done erroneously because Land Adjudication Act Cap.284 under Section 23 (5) (C) was not observed.”

27. Section 23 (5) (c) reads:-

“Wherein the adjunction register has been completed, the adjudication officer shall so certify on the adjudication record and demarcation map and shall then

a) _____

b) _____

c) Give notice that the adjudication registered has been completed and may be inspected at that place during a period of 60 days from the date of the notice.”

28. The procedure in law is that once the notice was issued of the completion of the adjudication the plaintiffs should have, through the five defendants, applied to register the group representative and have their group ranch incorporated and subsequently be issued with a title deed.

29. The Registrar of Land, on the other hand once the registration and incorporation of the Lands (Group Representative) Act being made, is permitted under section 8 of the registered Lands Act to make enquiry as to the title.

30. From the foregoing the department of Lands the Land Adjudication and Settlement Department were of the view that the land was erroneously registered in the names of the individual owners.

31. The land had always been a group land holding.

IV) The Land (Group Representative) Act Cap 287 Laws of Kenya.

32. I wish to briefly describe this act and its function.

33. This is an act of Parliament to provide for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act and for purposes connected therewith and purposes incidental thereto.

34. After the Land Adjudication Officer completes the adjudication for the area under section 23 (5) (C) of the Land Adjudication Act he/she must issue a notice to the group and advice them that they must apply for a group representatives to be incorporated under the said Land (Group Representative) Act.

35. the Land Adjudication and Settlement Officer admits that his department failed to notify the group, under the said act and as a result, no incorporation of the group occurred. Instead the land was registered in seven names in trust.

36. If the group had been notified, which they now had by court Rawal J 3 July 2003 (judgment), the group would convene a meeting, adopt a constitution and elected three to ten office bearers to represent them.

37. It is the registrar who would presided over such meeting and or a public officer (section 5 and 6).

38. The group is then incorporated after the group so elected makes representation to the Registrar.

39. A certificate is then issued to them (Section No.7).

40. The act then provides for the administration of the group as to the meeting legal (regulation section 15) Registered Office (regulation section 16) registered members (regulation section 17), books of account (regulation section 19 and 20).

41. The main purpose of this act is to outline the constitution held by the group. In that constitution it must provide the name of the group, the description of the area and or land covered.

42. Thus all persons who are recorded in the said adjudication register, as having an interest in the group land shall be entitled to become a member of the group.

43. It provides that every member “shall” be deemed to share in the ownership of the group land in undivided shares.

Every member shall be entitled to reside free of charge on the group land together with his family and dependants.

Every member shall be entitled to permit any other person to reside with him on the ground land unless a majority of the group representatives decide otherwise in any particular case.

Every member shall be entitled to the use of land, water, rights, credit facilities, veterinary services, marketing arrangements, transport and other assets in the group ownership

(Emphasis supplied)

Subject to such conditions as may from time to time be imposed in accordance with [the] constitution which may indicate the levy of cess fees or other charges.

44. The above requirements are contained in regulations made by the minutes under Section 31(2) of the Act (Cap. 287) Lands (Group Representative Act.).

45. It therefore means that the act ensures that the rights of any person under recognized customary law are safe guarded in so far as that is compatible with the operation of the group.

46. This act further envisages that the land remains intact, and in one piece and be accordingly managed by the said group.

V) Agreed Issues

47. I wish to therefore determine the agreed issues between the parties as follows:-

48. The members of the Entarara Group Ranch are those who are listed under the list produced to court numbering 97 and who are duly represented under the certificate of incorporation No.0338 Ext. 4 as:-

48.1 Melton Kirasi Lenkakuro

- 48.2 Sirnketi Risie
- 48.3. Peter Merin Sesei
- 48.4. Tingangua Nfeete -Committee members.
- 48.5. Leluai Loonikarara
- 48.6. Samuel Kayior Loonkarara
- 48.7. Seela Moriati
- 48.8. Riamet Ole Ntarasi
- 48.9. Parsanka Lekinyi
- 48.10. Toketi Ole Lekisuma

49. They are the one and same group that registered land parcel P/145 with the Land Adjudication Department before the two acts were incorporated namely, the Land (Group Representative Act) and the Land Adjudication Act.

50. The green card under the Registered Lands Act shows that the defendants were registered as trustees for others. This is more so as the Registered Lands Act Cap.300 does not allow more than five (5) persons to be registered on a title.

51. Thus in 1968 the said property should have been declared in accordance to customary law rites of the masai community to be land owner of all persons resident thereon.

52. The adjudication for the area was declared on

21 December 1964 before the Land Adjudication Act came into operation (28.6.68). This adjudication was being done under the Land Consolidation Act. The records were published on

1 June 1967 and became final on 6 August 1967. The Register was completed and was ready for inspection on

1 December 1967.

53. The Land Adjudication Act came into operation on 28.6.68. It is the Adjudication Officer who should have then given the group a notice under section 23 (5) (C) of the Land Adjudication Act. This was an error on their part and as such the defendants were registered under the wrong act.

54. All along, according to their records, the said parties were registered during the adjudication as a group not individuals.

55. The plaintiff herein do have a legal right of ownership in common with the defendants and are entitled to its ownership as a group.

56. The said Entarara Group Ranch was incorporated after the title to land parcel NO. LTK Entarara/145 had been issued to the defendants. The arguments put forward by the defendants is that only the five of them (the others have passed away) hold indefeasible title as first registered owners under the Registered Lands Act. The registration is therefore final because it can now not be questioned.

57. I do not think this is the correct position in law. The Land Consolidation completed its adjudication work in 1967. This had been on going from 1959 to 1967. During this period the parties

had chosen the defendants to represent them on the land. There was NO LAW to make them hold land as a legal entity.

58. When the law was incorporated and or enacted on 26 June 1968 [both the Land Adjudication Act and the Land (Group Representative) Act] the parties were to be registered under the Land (Group Representative) Act in 1968. Instead they were erroneously registered under the Registered Lands Act which deals with individual ownership of land.

59. This has been admitted by the Kenya Government through their servant. That their original record showed a group registration to maintain the customary law of the people who wish to remain on the land as one.

60. The title therefore that was issued to the defendants are NOT valid. It was held in trust of the whole group under the Land (Group Representative) Act.

61. The issue of first registration of title falls under the Registered Lands Act Cap.300. Equity cannot permit this court to recognize the five to seven defendants as absolute proprietors of land.

62. There was no fraud committed here by the defendants. They were registered under the wrong system of law without their knowledge. This procedure was irregular and the courts herein are set up, to correct such mistake and or illegality that has been found within the registration system.

63. This court recognizes the Law of the first registered proprietor under the Registered lands Act Cap 300

(Obiero v Opiyo case refers).

VI Relief

64. The plaintiff therefore are entitled to some of the relief prayed for in the plaint.

65. I would not grant relief on the plaint seeking to declare “both the plaintiff and defendants as tenant in common in equal share”. This is because under the Land (Group Representative) Act, the land is held as one with members living upon it free of charge.

66. I also reject relief in the alternative seeking to sub-divide the land in equal portion to the members. Under the Land (Group Representative) Act this is not provided for.

67. I enter judgment for the plaintiffs as hereby prayed on the following prayers:-

67.1. That the title LTK/ENTATARA/145 in name of the four to seven defendants herein be and is hereby cancelled.

67.2. That the name of land LTK/ Entaraa/145 be substituted with **Entarara Group Ranch** as incorporated under the land (Group representative) Act – certificate of incorporation.

67.3. That the Entarara Group Ranch being accordingly declared the rightful owner of the property, which property ownership included all the defendants as part of the said group, the eviction orders if any issued in Hccc335/94 expires.

67.4. I award the costs of this suit to the plaintiffs.

68. May I thank advocates for their deliberation in this matter.

DATED THIS 31ST DAY OF JULY 2008 AT NAIROBI.

M.A. ANG'AWA

JUDGE

A.J. Ambani instructed by Wachira & Co. Advocates for the plaintiff

T. Orege instructed by Malonza & Co. Advocates for the defendants.