



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
Civil Case 277 of 2000

SIAMETO OLE SURURU.....1ST PLAINTIFF
SATIN OLE YENKO.....2ND PLAINTIFF
LESALON OLE NCHOE.....3RD PLAINTIFF
MUSANA OLE LIARASH.....4TH PLAINTIFF
LERASINA OLE KAREMA.....5TH PLAINTIFF
KOITAE OLE OLOLDAPASH.....6TH PLAINTIFF
MURAGURI OLE TAKI.....7TH PLAINTIFF

VERSUS

KELENA OLE NCHOE.....1ST DEFENDANT
TIKOISHO OLE NAMPASO.....2ND DEFENDANT
SHADRACK OLE ROTIKEN.....3RD DEFENDANT
TURERE OLE TIKANI.....4TH DEFENDANT
SIMON MARIMA OLE KOOL.....5TH DEFENDANT
JOSEPH OLE MARANGA.....6TH DEFENDANT
TUMBES OLE KILESI.....7TH DEFENDANT
MUSERE OLE TURERE.....8TH DEFENDANT
DANIEL OLE NAKOLA.....9TH DEFENDANT
SOLOMON OLE MARIASO.....10TH DEFENDANT
STEPHEN OLE LETOLUO.....11TH DEFENDANT
DANIEL OLE MPOE.....12TH DEFENDANT

NJENGA OLOLOIGERO.....13TH DEFENDANT

RIMOINE OLE TOPISA.....14TH DEFENDANT

HON. WILLIAM OLE NTIMAMA.....15TH DEFENDANT

THE COMMISSIONER FOR LANDS.....17TH DEFENDANT

THE NAROK LAND REGISTRAR.....18TH DEFENDANT

THE CHIEF LAND REGISTRAR.....19TH DEFENDANT

JUDGMENT

The plaintiffs filed suit against the defendants seeking declaratory orders of this court that they be declared to be the owner of all that parcel of land formerly known as Purko sheep ranch measuring 3600 acres or thereabout. They further sought the orders of this court to prohibit the Commissioner of Lands, the Narok Land Registrar and the Chief Land Registrar from issuing the title in respect of the suit land to the 1st to 16th defendants. They also sought for an order of this court to restrain the defendants by means of a permanent injunction from interfering with the plaintiffs' ownership of the said 3600 acres of land (*hereinafter referred to as the suit land*). According to the said plaint filed by the plaintiffs, the plaintiffs' parents (*who are now deceased*) surrendered the suit land to the colonial government in 1956 so that a sheep ranch could be set up. The sheep ranch was to be set up so that the Maasai community and especially the Purko clan, would benefit from modern farming techniques. As collateral to the said establishment of the sheep ranch, the community would benefit from the proceeds of the said sheep ranch. The plaintiffs further averred that after independence, the management of the Purko sheep ranch was taken over by the Narok County Council. The said county council managed the said ranch upto 1998, when the 1st to 16th defendants, without consulting the plaintiffs, decided to register the parcel of land which was comprised of the said Purko sheep ranch in the name of a trust known as Purko Development Trust. The said defendants, according to the plaintiff, unlawfully and without consultations, registered themselves as the trustees of the said Purko Development Trust.

The plaintiffs further averred that the objects for which the said Purko sheep ranch was created had long been achieved since the Maasai community, and particularly the Purko clan, had learnt modern farming techniques. According to the plaintiffs, when Purko Sheep ranch was created in 1956, it was on the understanding that upon the objectives of the said Purko sheep ranch being achieved, the land comprising the said sheep ranch would revert back to the families who donated the land on which the said sheep ranch was established. The plaintiffs' complaint therefore was that the Purko Development Trust was established contrary to the original agreement between the initial founders of the sheep ranch and the previous owners of the suit land to the effect that the suit land would revert back to its initial owners once the Purko sheep ranch was dissolved. As the children of the persons who donated the land on which the said sheep ranch was established, it was the plaintiff's assertion that this court should order the suit land to revert back to them. They averred that the registration of the 1st to 16th defendants as the trustees of the said Purko Development Trust was contrary and in contravention of their right as owners of the suit land. The plaintiffs prayed to be awarded the costs of the suit.

The 1st to 16th defendants (*hereinafter referred to as the said defendants*) filed a defence. They denied the allegations pleaded by the plaintiffs in their plaint. The defendants put the plaintiffs to strict proof on the averments made in their plaint. The said defendants further pleaded that the suit filed by the plaintiffs was bad in law and was embarrassing to the said defendants because the plaintiffs had not made out a case on how the said defendants had obtained the title in respect of the suit land. The said defendants took issue with the fact the plaintiffs had filed the suit without first formally notifying them of their intention to sue. The said defendants averred that the plaintiffs' suit lacked merit and should be dismissed with costs.

The Commissioner of Lands (*the 17th defendant*), the Narok District Land Registrar (*the 18th defendant*) and the Chief Land Registrar (*the 19th defendant*), although served, did not enter appearance. Neither did they file any defence. At the hearing of this suit therefore, the plaintiffs and the 1st and 16th defendants are ones who presented their case before this court.

The plaintiffs called four witnesses who testified on their behalf. The said witnesses were John Keringai ole Koonyo (*PW1*), Sekaria ole Kool (*PW2*), Satin ole Yieko (*PW3*) and Siameto ole Sururu (*PW4*). The summary of their evidence is that in 1956, the colonial government made a decision to introduce modern animal husbandry techniques among the Maasai. To achieve its objective, the colonial government requested various clans of the Maasai community to donate land. The Purko clan donated land at Entiani area of the Narok district. At the time, the land within Entiani area had not been adjudicated upon neither had titles issued in respect of the parcels of land within the area. According to the witnesses of the plaintiffs, although the Purko were required to surrender land for the purposes of setting up of the sheep ranch, it is only members of a few families who donated land for the setting up of the said Purko sheep ranch. They testified that among the families who donated land for the setting up of the said Purko sheep ranch were the families of ole Yienko, ole Nchoe, ole Sururu, ole Oldapash, ole Learash, ole Kool and ole Kirima. Other families also donated land while most families donated sheep which were to be used for cross-breeding purposes. At the time, the chief of the area was known as Senchura ole Nchoe. He was the one who organized the said families to donate the land to set up the said Purko sheep ranch. All the four witnesses of the plaintiffs testified that they did not have any written document to support their oral evidence that the said families had donated land for the setting up of the said Purko sheep land. Neither were they certain of the specific acreage that each of the said family contributed for the purposes setting up the said Purko sheep ranch.

They further testified that when the said families were called upon to donate the said parcel of land for the purposes of setting up the sheep ranch, it was on the understanding that once the objectives of setting up the said sheep ranch was realized i.e. once the Maasai had learned modern farming techniques, the land would revert back to the families who donated the land. It was their testimony that once the land was donated, the total acreage amounted to 3,600 acres. The ranch was named Purko sheep ranch and was then managed by the African District Council, the predecessor of the Narok County Council on behalf of the Purko. *PW1* recalled that upon the said project being set up, the management of the ranch also introduced wheat and barley farming. They also introduced pyrethrum and potato farming. Dairy cows were kept at the farm whereby the Maasai were encouraged to visit so that they could learn modern farming methods.

According to the plaintiffs' witnesses' at the dawn of independence, the African District Council was dissolved and the Narok County Council set up. The Narok County Council took over the management of the Purko sheep ranch on behalf of the Purko clan, on the understanding that only elected members of the council who were Purko would constitute the management committee of the Purko sheep ranch. They testified that the Narok County Council managed the said sheep ranch on behalf of the members of the Purko clan on consideration that they would be paid management fees. They further testified that during the time the said sheep ranch was under the management of Narok County Council, the management of the said sheep ranch was under the elected councillors who were from the Purko community. The plaintiffs insisted that it was agreed that after the sheep ranch had met its objective of teaching the Maasai new farming techniques, the ranch would be dissolved and the land returned to the families who had donated the said parcel of land. They testified that the objectives of the sheep ranch had been met and therefore the said sheep ranch ought to be dissolved and the land subdivided among the members of the families who donated the land in 1956. The plaintiffs gave an example of two parcels of land which had been set aside in a place called Ngairamiram near Narok town and a place Ol joro Oirogwa where a scheme similar to the sheep ranch was started for the purposes of breeding cattle. After the said projects were successfully concluded the land was returned to the families of Ole Ntutu, Ole Nampaso and Ole Koriata. It was their testimony that it is only the Purko sheep ranch land which had not been returned to its original owners.

They further testified that the Purko did not agree that a trust be formed to own the suit land. They testified that when Narok County Council ceased its management of the said sheep ranch, the land was

supposed to revert back to the original owners. The said witnesses were not however specific on what acreage each family of the plaintiffs contributed when the said sheep ranch was set. They testified that the said families variously contributed between 100 and 400 acres. They conceded that the Maasai had learnt new farming techniques from the said sheep ranch. They had also benefited from education due to the bursaries that were disbursed from the profits realized from the said sheep ranch. The members of the community around the said sheep ranch had also benefited because a school had been erected on the suit land where their children attended school. Some of the plaintiffs' witnesses were not certain if the objectives of the sheep ranch had been met. It was their testimony that the defendants had unilaterally made a decision to 'grab' the said parcel of land from the members of the Purko community. They testified that they had not benefited at all from the proceeds of the suit land since the suit land was converted into a trust. They further testified that some of the trustees had not contributed any land when the said sheep ranch was being set up. Neither did their parents contribute any sheep when the said sheep ranch was being established. They testified that the defendants appointed themselves as trustees of the suit land without consulting the members of the Purko community. They therefore urged the court to grant them the orders prayed in their plaint and declare that the suit land reverts back to the families who donated the land in 1956.

The defendants called three witnesses in support of its case. The three witnesses were DW1 Matiya Ole Nkuyayu, DW2 Noah Kibelekenya and DW3 Shadrack Koitamet Rotiken. The summary of their testimonies is as follows: They testified that the Purko Development Trust was created after consultations between the members of the Purko clan. The trust was created after the members of the Purko community demanded to be handed over the management of the said sheep ranch from the Narok County council. They testified that a meeting was held whereby the members of the Purko community agreed to incorporate the trust and further elected the trustees. They testified that all the Purko communities within Narok District were represented when the said elections were held. Each area of Narok District where the Purko reside is represented by a trustee.

They gave a history of how the original sheep ranch was created. They testified that the land upon which the sheep ranch was created was not owned by any Maasai but was communal grazing land of the entire Maasai community. The land was originally a buffer zone between the Maasai reserve and the white highlands. They recalled that the sheep ranch was created so that the Maasai would benefit by having their animals upgraded by being cross-bred with exotic animals. They further testified that the Maasai would be able to learn new farming techniques including the growing of cash crops such as wheat, pyrethrum and barley. They were emphatic that no family of the Maasai specifically contributed land for the creation of the sheep ranch. They however testified that from the time the project was started it was understood that the project would be owned by the members of the Purko community. In deed, DW3 produced documents which established that the Purko sheep ranch was to be owned and managed by the members of the Purko community. The defendants' witnesses testified that when the said project was established in 1956, there was no time that it was agreed that it was going to be dissolved. DW3 produced documents which established that in various meetings of the Narok County Council, it was agreed that the said sheep ranch would be maintained in its present status in perpetuity so that the members of the Purko community would perpetually benefit.

They testified that over the years the members of the Purko community had benefited because they had learnt new farming techniques from the said sheep ranch. They had further benefited because the profits from the said sheep ranch had been disbursed as bursaries for the children of the Purko. A school had been erected on the suit land which had benefited the members of the Maasai community who resided within the area. They reiterated that the sheep ranch was created for the purposes of assisting the Maasai to improve their standard of living. They testified that the objective of development was on going and there was no time when it could be claimed that a certain community had developed. That is the reason why the Purko community decided to create a trust whereby the said sheep ranch would be owned by the members of the Purko community and benefit from it for generations to come.

They further testified that the suit land was adjudicated upon and a title deed issued in respect of the same in 1980. The title in respect of the suit land was presently registered in the name of Purko Development trust. They testified that the Purko Development Trust was owned by the members of the Purko

community. The trustees who were the management committee were elected by the members of the Purko community. The defendants were emphatic that the plaintiffs had no claim over the suit land because they did not own it in the first place. They therefore urged this court to dismiss the plaintiffs' suit with costs.

After the close of both the plaintiffs' and the defendants' case, the parties agreed by consent to file closing written submissions. By the time this court reserved the case for its judgment, the defendants are the only ones who had filed their written submissions. I have carefully considered the pleadings filed by the parties to this suit. I have also considered the evidence that was adduced by the witnesses on behalf of the plaintiffs and the defendants and the documentary evidence that was produced by the defendants. The issues for determination by this court are as follows:

- (i) Under what circumstances was the suit land set aside when the Purko sheep ranch was established in 1956? What were the objectives of the people who established the said sheep ranch?**
- (ii) Did the plaintiffs or their families contribute land when the said sheep ranch was established?**
- (iii) If so, what acreage did each plaintiff or each family contribute to the establishment of the said sheep ranch?**
- (iv) Who managed the said Purko sheep ranch?**
- (v) Who formed the Purko Development Trust?**
- (vi) Is the said Purko Development Trust representative of the aspirations of the members of the Purko community?**
- (vii) Are the plaintiffs entitled to the orders prayed in their plaint?**

In answer to the above questions, this court will determine the matters in dispute between the parties to this suit.

In answer to issue **(i)**, both the plaintiffs and the defendants agree that the suit land was set aside by the colonial government so that the members of the Maasai community and particularly the Purko community would be taught new farming techniques involving modern animal husbandry and the cultivation of cash crops. When the land was set aside in 1956, the families of the plaintiffs resided on the neighbouring parcels of land. But it is clear that at the time, the land was not demarcated nor had titles been issued to the occupiers of the land. Both the plaintiffs and defendants agree that when the sheep ranch was set up members of the Purko community were required to donate sheep which were to be bred with doper sheep so as to improve the breeds of their animals. The Maasai were taught new farming techniques including the cultivation of wheat, barley, potatoes and pyrethrum.

According to the plaintiffs, it is their families who donated the land upon which the sheep ranch was set up. The defendants on their part testified that the land on which the sheep ranch was set up was a buffer zone between the white highlands and the Maasai reserve. Having evaluated the evidence adduced, it is clear that the land on which the sheep ranch was set up was Maasai grazing land. No titles had been issued at the time the sheep ranch was set aside. Although the plaintiffs and the members of their families grazed their cattle on the suit land at the time, they did not own it. The land was first adjudicated and demarcated in the 1970's. The title in respect of the suit land was first issued in 1980 after the adjudication process had been concluded.

In answer to issue **(ii)**, I do hold that the families of the plaintiffs did not contribute any land when the said sheep ranch was established. It is therefore not surprising that the plaintiffs' witnesses were unable to tell the court the specific acreage that each family contributed when the said sheep ranch was set up. It would be inconceivable for a person to contribute land for a project and forget the acreage of the land that he had contributed. I did not believe the testimony by the plaintiffs' witnesses that there was an

agreement that upon the objectives of the Purko sheep ranch being realized, the sheep ranch would be dissolved and the land be reverted back to the families who contributed the land. If there was such an agreement, nothing would have been more difficult than for the plaintiffs and their families to have put the same in writing. I had occasion to read the minutes of the Narok County Council which were produced in evidence by DW3. At no time was there a claim made by the plaintiffs or the members of their families that they would require the said parcel of land to revert back to them. In fact, the evidence on record suggests that the members of the Purko community understood that the sheep ranch would be owned in perpetuity by the members of the said community for the benefit of the present generation and for the benefit of the future generations. In answer to issue **(iii)**, this court holds that none of the plaintiffs' families contributed land upon which the said Purko sheep ranch was established.

In answer to issue **(iv)**, when Purko sheep ranch was established in 1956, it was managed on behalf of the Purko community by the African District Council, the predecessor of Narok County council. The Purko sheep ranch was established by the colonial government after it had issued a loan to the management of the sheep ranch which loan was to be repaid within a period of twenty (20) years. There was no evidence which was adduced before this court to suggest that the said loan was not repaid. When Kenya gained independence in 1963, the Narok County Council was established. It took over the management of the sheep ranch from the African District Council. It is clear from the evidence adduced by both the plaintiffs' and the defendants' witnesses, that the Narok County Council understood that it was managing the said sheep ranch on behalf of the members of the Purko community. A resolution was passed by the said Narok County Council whereby it was agreed that the board that managed the sheep ranch would be chaired by a councillor who was elected by members of the Purko community.

It was further understood that should the time come when the members of the Purko community would wish to manage the sheep ranch by themselves, then the Narok County Council would hand over the management to the Purko community. It was pursuant to this understanding that the members of the Purko community decided in 1998 to form the Purko Development Trust to manage the said sheep ranch. It was further decided that the sheep ranch would be registered in the name of the Purko Development Trust. It is apparent from the evidence adduced, that some members of the Purko community were unhappy with this decision. Those who were aggrieved included the plaintiffs.

It is evident to this court that the concept of the development trust was not properly explained to the plaintiffs by the defendants. There is also a possibility that the plaintiffs chose not to be persuaded of the need to create such a trust. All in all, I was persuaded that the defendants incorporated the said trust in good faith and for the purposes of preserving the suit land for the benefit of the current generation of the Purko and also for the benefit of the future generations of the Purko community. In answer to issue **(v)**, I hold that the formation of the said Purko Development Trust was undertaken by the members of the Purko community. The trust was not a creation of the defendants. To avoid the perception that the trustees are the only ones who are benefiting from the income of the suit land, I would suggest that the defendants hold periodic elections whereby the trustees of the sheep ranch would be elected and further publish the audited accounts of the sheep ranch to its membership. This would give the members of the Purko community a sense of participation in the affairs of the said trust. In answer to issue **(vi)** I hold that the Purko Development Trust is representative of the aspirations of the Purko community.

I have considered the totality of the evidence adduced and it is clear to me that the issue in dispute in this case is that of misinformation and lack of civic education by the trustees of Purko Development Trust to the members of the Purko community. It is apparent that some members of the Purko community, including the plaintiffs were not made aware of the concept of a trust and why it was formed in the first place. Confusion seems to have been created that the plaintiffs were convinced that the defendants had taken over the control of the sheep ranch for their own personal benefit. May be it is time that the defendants embark on civic education to the members of their clan so that they would understand that the said trust was incorporated for the purposes of the preservation of the suit land for the present generation and for the future generations.

It is my view that the plaintiffs' suit was a reaction to what they perceived as members of the Purko community from other areas of Narok district '*grabbing*' the sheep ranch. It is then that they thought that

if it was game for the defendants to get the suit land then they would come to court and seek the orders of the court to have part of the suit land transferred to them on basis of the fact that they were resident near the suit land. That is the reason why PW4 conceded that he had no problem if the suit land was being managed by the Purko Development Trust on behalf of the members of the Purko community.

Having evaluated the evidence on record, it is clear that the plaintiffs' suit cannot stand. It is hereby dismissed. The plaintiffs have failed to establish that they are entitled to have the Purko Development Trust dissolved so that the suit land could be subdivided among the members of the families who resided near the suit land at the time the sheep ranch was created in 1956. I have considered the fact that the plaintiffs and the defendants are members of the same clan. I have also considered the fact that this suit was filed by the plaintiffs after they had misapprehended the purpose of the trust when it was incorporated after the management of the suit land was passed over from the Narok County Council to the members of the Purko community. The misunderstanding was partly created by the fact that the defendants did not undertake exhaustive civic education among the members of its community before the said trust was incorporated. For the purposes of promoting reconciliation among the members of the Purko clan who are the plaintiffs and the defendants in this case, I will exercise my judicial discretion and make no orders as to costs.

It is so ordered.

DATED at NAKURU this 2nd day of February 2007.

L. KIMARU

JUDGE