



REPUBLIC OF KENYA



KENYA LAW
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**Nanteya v Sayagie & another (Environment & Land Case 36 of 2020)
[2022] KEELC 14991 (KLR) (25 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14991 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 36 OF 2020
CG MBOGO, J
NOVEMBER 25, 2022**

BETWEEN

ELIJAH OLE NANTEYA PLAINTIFF

AND

KIPAINOI SAYAGIE 1ST DEFENDANT

DISTRICT LAND REGISTRAR, NAROK 2ND DEFENDANT

JUDGMENT

1. The plaintiff filed a plaint dated October 18, 2020 seeking the following prayers: -
 1. A declaration that the plaintiff is the rightful owner and entitled to exclusive, quiet and peaceful enjoyment of all that parcel of land known as Cis-Mara/Maji Moto/1582.
 2. The District Land Registrar, Narok North/South/East be obliged to rectify his records in respect of title no Cis-Mara/Maji Moto/1582 and registered it in the name of the plaintiff and issue title in the name of the plaintiff.
 3. An eviction order be issued to remove the 1st defendant by himself, his agents and servants from the plaintiff's parcel of land known as parcel no Cis Mara/Maji Moto/1582 to be executed through a court bailiff with the help of the OCPD Narok South and OCS Melelo Police Station.
 4. A permanent order of injunction restraining the 1st defendant, his servants, licensees, agents or any other person acting on his behalf from howsoever trespassing, occupying, or harassing or interfering with the ownership, quiet possession and occupation by the plaintiff of all that parcel of land known as Cis-Mara/Maji Moto/1582.
 5. Special damages for trespass and destruction of vegetation.



6. Costs of the suit inclusive of costs of the eviction exercise and further or any other relief deemed just by this court.
2. In the plaint, the plaintiff stated that at all material times he was a bona fide member of Maji Moto Group Ranch and upon demarcation he was allotted parcel number 1582 and when he visited the 2nd defendant's office to collect his title, he was shocked to find that the same had been issued to the 1st defendant. The plaintiff further stated that there are no supportive adjudication records that informed the 2nd defendant to issue the title deed to the 1st defendant who is not a member of the group ranch and therefore disinherit him of his rightful share of the group ranch.
3. The plaintiff further stated that he has been in quiet and peaceful possession of the suit land since declaration of Maji Moto Adjudication Section and it was until the year 2014 when the 1st defendant un-procedurally processed the title document.
4. The plaintiff pleaded particulars of interference as follows: -
 - a. Intimidating and bullying the plaintiff and members of his family without lawful cause or justification from peacefully enjoying the suit land.
 - b. Denying the plaintiff peaceful enjoyment of his rightful land.
 - c. The 1st defendant has unlawfully laid false claim of ownership to the suit parcel.
5. The plaintiff further pleaded particulars of misrepresentation, irregularities and damage suffered as follows: -
 1. The defendants jointly and severally caused the registration of Cis-Mara/Maji Moto/1582 in the name of the 1st defendant contrary to the adjudication records.
 2. The defendants un-procedurally and through corrupt means for which the 1st defendant is a party to fraudulently deprived the plaintiff of his lawful entitlement of the suit property;
 3. Instigating intrigue scheme and conspiracy to displace the plaintiff from his ancestral land that he has traditionally and historically occupied;
 4. Issuing a title certificate to the 1st defendant who was not a member of the Maji Moto Group Ranch.
 5. The 1st defendant by misrepresentation dispossessed the plaintiff of his land.
 6. The 1st plaintiff has been deprived peaceful and quiet enjoyment of his land by the 1st defendant.
 7. The plaintiff has been living in fear of terror attack and imminent eviction from the suit property as a result of unjustifiable scheme of the defendants to dispossess him of his property.
 8. The plaintiff has lost the use of the entire property claimed by the 1st defendant.
6. The 1st defendant filed a statement of defence and counter claim dated November 25, 2020. In the statement of defence, the 1st defendant denied that the plaintiff was allocated parcel number Cis Mara/



Majimoto/1582 and stated that he was issued with a title deed of the suit land upon the demise of his brother who was a member of the group ranch and that upon demarcation he was allocated the same after swapping with parcel number CisMara/Maji Moto/1818 as the committee considered the duration and developments the 1st defendant's family had made on the suit land. The 1st defendant further stated that his deceased brother passed on after demarcation and the area list taken to the 2nd defendant and therefore, his name could not appear on the register as having replaced his brother. In addition, the 1st defendant stated that his family has lived on the suit land since 1998 long before he was born and his brother and grandmother were interred on the same. Further, that the plaintiff has been living on an adjacent parcel of land belonging to his brother.

7. The 1st defendant further stated that together with his family they have been in possession and occupation of the suit land since the year 1998 and it was in the year 2014 when the plaintiff in the company of goons violently evicted the 1st defendant from the suit land and which the 1st defendant's father reported at the Narok Police Station. The 1st defendant denied the particulars of interference and stated that the plaintiff has been intimidating, bullying harassing and provoking them with violence. The 1st defendant maintains that he followed due process in obtaining the certificate of title and that the plaintiff was always aware of the swapping as it was an open and transparent process.
8. In the counter claim, the 1st defendant stated that he became a member of Maji Moto Group Ranch when he replaced his brother who was until his demise a member and they have been living on the suit land peacefully until the year 2014 when the plaintiff together with a group of people forcefully evicted them from the suit land. The 1st defendant further testified that it was a rule in the group ranch that if a member dies then he is replaced by a family member and in this case, he replaced his deceased brother and as such, he was considered a member by virtue of replacement and this could not reflect in the register as the same had been completed and forwarded to the 2nd defendant's offices. Further, that on April 14, 2014, he was issued with a title deed following the payment of the requisite amount. The 1st defendant claims against the plaintiff damages and loss of right to use his land.
9. The 1st defendant prays for the following: -
 - a. Declaration that the 1st defendant is the rightful owner of all that parcel of land known as CisMara/Maji Moto/1582.
 - b. An order of eviction to be issued against the plaintiff and his family members from all that parcel of land known as CisMara/Maji Moto/1582.
 - c. A permanent order of eviction be issued restraining the plaintiff, his assigns, legal representatives, servants, agents, licensees or any person acting under his instruction from interfering, trespassing, occupying, selling, leasing, transferring or in any manner dealing with all that parcel of land known as Cis Mara/Maji Moto/1582.
 - d. Costs of the counter claim and interest thereon at such rate and for such period of time as this honourable court may deem fit to grant.
 - e. Such other or further reliefs as this honourable court may deem appropriate in the circumstances.
10. The 2nd defendant filed a statement of defence dated September 14, 2022. The 2nd defendant stated that after the adjudication, the ranch was registered as Narok/ CisMara/ MajiMoto/ 8 and the responsibility of subdividing the ranch was vested in the group ranch officials and the registration of the properties of the group ranch was effected based on the documents presented to the Land Registrar by the elected officials of the group ranch. The 2nd defendant further stated that the responsibility of subdivision of



the land rested with the registered officials who determined what portion of the land each member was to get and not the Land Adjudication Committee. As such, the plaintiff's claim lies against the elected officials of the group ranch and who the plaintiff has avoided not to sue. That no fault can be found against the 2nd defendant based on occupation and possession.

11. The plaintiff filed a reply to statement of defence and counter claim dated July 8, 2021. The plaintiff stated that the late Tatiya Ole Sayagie was allocated parcel number 1818 and not parcel number 1582. He averred that he never consented to any agreement of swapping with the 1st defendant and that after completion of the adjudication process and compilation of the register, the 1st defendant did not feature as a beneficiary of the group ranch. The plaintiff further stated that upon subdivision of the group ranch, there was no objection raised against the suit land as provided under the [Land Adjudication Act](#). The plaintiff maintained that he is the lawful allottee of the suit land.
12. The hearing of the matter proceeded on September 28, 2022 when the plaintiff while adopting his witness statement dated October 18, 2020 testified that the suit land which he is in occupation was transferred to the 1st defendant who was not a member of the group ranch. He testified that he was member number 1504 in the list and it was upon conducting a search that he realized that the suit land had been registered in the name of the 1st defendant. He produced the register, area list and a search. On cross examination, the plaintiff testified that he has lived on the suit land after he chased away the 1st defendant and his family and that he did so because he had a document showing ownership which has now been registered in the name of the 1st defendant. He further testified that the suit land was allocated to him ten years ago and that together with the 1st defendant's family, they lived on the suit land before the group ranch was dissolved 5 years ago and that he had put up some structures and cattle a boma. The plaintiff further testified that he has been living on the suit land for years having been born on the same land and the 8 years was after the same had been subdivided. He further testified that he does not know Tatiya Ole Sayagie but knows the 1st defendant and his family. Further that the group ranch exchanged his land with parcel number 1818 which he declined to accept as he had not built on the same.
13. On further cross examination, the plaintiff testified that he became a member of the group ranch 20 years ago and the group ranch had officials whose role was to subdivide the land and that he is aware that the land registrar registered the parcels of land as per the documents presented by the group representatives. The plaintiff further testified that he did not sue the officials of the group ranch because together with the 2nd defendant, they oppressed him. Further, that the 1st defendant lives in an area known as Orgus.
14. On re-examination, the plaintiff testified that he used to reside on the suit land before it was subdivided and the parcel number 1582 was created after subdivision. That during the subdivision, he was residing on the suit land with the 1st defendant's and his family who later moved to Orgus where their parcels of land are situate. Further, he has never lived nor constructed on parcel number 1818 and the group ranch officials have never asked him to move out of the suit land as the 1st defendant has never built a boma on the same. That the 2nd defendant issued the 1st defendant with a title following the instructions of Ole Mayone who was chairman of the group ranch.
15. The 1st defendant while adopting his witness statement dated November 20, 2020 testified that the suit land belongs to him having obtained a certificate of title to prove ownership. He further testified that he is not a member of the group ranch but acquired ownership through inheritance after his brother passed on. He does not recall when his brother passed on as he was already dead at the time of his birth. Further, that his elder brothers were born on the suit land and continued to reside on the same until the year 2014 when the plaintiff together with other people while armed chased them away. In addition,



- they had built structures and a goat pen which is still on the ground. After being chased away, together with his family, they moved to Orgus to a parcel of land owned by his family and has never moved back to the suit land and neither did he report the matter to the police. He further testified that he was issued with a title deed in the year 2010.
16. On cross examination, the 1st defendant testified that he has never been a member of the group ranch but that he was issued with a title deed in the year 2010 which parcel of land was initially issued to his late brother before he inherited it. The 1st defendant further testified that he approached the group ranch officials to substitute his late brother's name with his name but did not file for succession for the estate of his late brother. The 1st defendant further testified that he did not have his late brother's certificate of death and neither did he have a letter from the chief to show that he was his late brother's successor. In addition, he has a letter from the group ranch officials requesting the land registrar to issue a certificate of title in his name. The 1st defendant further testified that in the year 2014 when he was evicted, he was still a minor and did not own a house then, and on October 5, 2015, he did not lodge any complaint with the police but he recalls the letter written to the Director of Criminal Investigations dated October 5, 2015 which he did not remember to include the name of the plaintiff as among those he had a complaint against.
 17. The 1st defendant further testified that according to the area list, parcel number 1818 belongs to Tatiya Ole Saiyagei and the suit land belongs to the plaintiff. Further, that it is not true that he ought to have inherited parcel number 1818 but he only took money to the 2nd defendant so that he could be issued with a certificate of title. The 1st defendant produced a certificate of title and photographs.
 18. On re-examination, the 1st defendant testified that he does not know how to read and write and that it not his responsibility to take documents to the 2nd defendant. In addition he testified that he paid some money to be issued with a certificate of title.
 19. Letasuna Ole Sayagie (DW1) while adopting his witness statement dated March 16, 2022 testified that the suit land was allocated to the 1st defendant who inherited it from his late son who died at the age of 4 or 5 years. He further testified that in the group ranch, a new born child would be included in the register and that the 1st defendant name could not be included in the register as he was not born when the adjudication exercise took place. Further, that the group ranch began winding up in the year 1999 during which time he was residing on the same and that after subdivision, he gave the land to the 1st defendant. DW1 further testified that he resided on the suit land since the year 1996 and left in the year 2015 when they were evicted. Following these, he reported the matter to the Narosora Police Station, the District Commissioner and the Chief where they held a meeting at the village level but no solution was reached at and were forced to move out.
 20. DW1 further testified that a deceased member of the group ranch could be inherited and the area list shows names of deceased members whose names were substituted with others and that he wishes not to have the area list in the 1st defendant's list of documents produced as his name is not in the list. DW1 further testified that a person could be allocated land at the site where he resided and the suit land was already issued when Tatiya was already deceased. Further, that the houses in the photos produced belong to him which he constructed in the 1996 and was not demolished during eviction. That as per the area list, the suit land is in the name of the plaintiff even though he resided on a neighbouring farm.
 21. On cross examination, DW1 testified that he does not know how to read and write and the signature in the witness statement is not his. Further that he had a son named Tatiya Ole Sayiagei and he had his name included in the register of members and he allowed the 1st defendant to inherit his late son's parcel of land. He requested the land's office to issue a title deed in the name of the 1st defendant and



- there was no agreement to exchange parcels of land between him and the plaintiff. It was his testimony that whenever a member died, he would be succeeded by a relative and that was the practice. He further testified that he did not take any letter from the group ranch officials directing that title deed for parcel number 1582 be issued in the name of the 1st defendant. Instead, he gave the money to the chairman of the group ranch who brought him the title deed. DW1 further testified that at one time, he was an official of the group ranch and indeed the 1st defendant has never been a member of the group ranch and the procedure of acquiring title however much he does not know was not followed.
22. DW1 further testified that he does not remember when his son passed on and as a member of the old committee of the group ranch, the suit land was never registered in the name of his deceased son and neither did they show members the boundaries of their parcels of land.
 23. On re-examination, DW1 testified that the officials of the group ranch used to take documents to the lands office and that the letter dated October 4, 2015 was not authored by him.
 24. The plaintiff filed written submissions dated October 12, 2022. The plaintiff raised 3 issues for determination as follows: -
 1. Whether the transfer and registration of the suit property CisMara/Maji Moto/1582 to the 1st defendant was irregularly null and void
 2. Whether the court can order for the rectification of the register?
 3. Who bears the cost of this suit.
 25. On the first issue, the plaintiff submitted that the *Land Registration Act* embodies the principle and doctrine of indefeasibility of title as established under the Torrens System of registration such that the title of a registered proprietor remains indefeasible unless it is shown the title was obtained through fraud or misrepresentation to which the title holder is proved to have been a party to. The plaintiff relied on the cases of *Munyu Maina versus Gathiba Maina* [2013] eKLR, *Republic versus Minister for Transport & Communication & 5 Others Ex-parte Waa Ship Garbage Collector & 15 Others* [2006] 1 KLR (E & L) 563 and *Alberta Mae Gacci versus Attorney General & 4 Others* [2006] eKLR.
 26. The plaintiff further submitted that the 1st defendant did not discharge his burden under Section 112 of the *Evidence Act* and that Section 26 of the *Land Registration Act* has breathed a sigh of relief to innocent proprietors whose properties have been fraudulently transferred to unscrupulous individuals. The plaintiff relied on the cases of *Elijah Makeri Nyang'wara versus Stephen Mungai Njuguna & Another* [2013] eKLR and *Chemei Investments Limited versus The Attorney General & Others* Nairobi Petition no 94 of 2005. As such, the 1st defendant's right to the suit property cannot be upheld pursuant to Article 40 (6) of the Constitution.
 27. On the second issue, the plaintiff submitted that under Section 80 of the *Land Registration Act*, this court has power to revoke and cancel title that is proved to have been illegally acquired. The plaintiff relied on the case of *Alice Chemutai Too versus Nickson Kipkurui Korir & 2 Others* [2015] eKLR.
 28. On the third issue, the plaintiff submitted that the 1st defendant hatched an elaborate scheme to defraud the plaintiff of his land and that this court being guided by the principle that costs follow event, the effect therefore is that the party who loses a suit will bear the costs.
 29. The 2nd defendant filed its written submissions dated November 15, 2022. The 2nd defendant raised two issues for determination as outlined below: -
 - i. Whether the plaintiff has proved fraud on the part of the Land Registrar.



- ii. Whether the plaintiff has proved his case on a balance of probability and whether the plaintiff is entitled to the reliefs sought.
30. On the first issue, the 2nd defendant submitted from the testimony of the various witnesses, there was no proof of collusion between the 2nd defendant and the 1st defendant and the plaintiff could not prove fraud or any corrupt practices against the defendants. The 2nd defendant submitted that by registering the suit land in the names of the 1st defendant, he was carrying out his normal duties as required by the law and there was nothing out of the ordinary that would have made the registrar to stop the said registration. That based on the definition of fraud as per Section 2 of the Registration of Titles Act (now repealed) and the Black's Law Dictionary, the duty was on the plaintiff to show that there was indeed concealment of material facts by the 1st defendant that were induced to his detriment and that it is well settled principle of law that for one to be able to impeach a title, fraud must be proved. Further, that there must exist elements of fraud in how the title was acquired and that the same have to be proved to a standard almost at the threshold of beyond reasonable doubt. The 2nd defendant relied on the cases of *R. G Patel versus Lalji Makanji* (1957) EA 314 at 317, *Phillip Brainfield Otieno versus Jacob Ochieng Otieno & Another* [2020] eKLR and *Alfred Sagero Omweri versus Kennedy Omweri Ondieki* [2015] eKLR.
 31. On the second issue, the 2nd defendant submitted that the plaintiff has not proved his case on a balance of probability and that he is not entitled to the reliefs sought. Further, that it is an elementary principle of law that he who alleges must prove as per Section 107 of the Evidence Act. The 2nd defendant further submitted that it would have been better for the plaintiff's case if he had sued the committee of representatives of the group ranch so that they shed light on the lists that were presented before the 2nd defendant for issuance of titles and the fact that the plaintiff did not sue the group ranch leaves a lot to be desired. The 2nd defendant relied on the case of *Wareham t/a AF Wareham & 2 Others versus Kenya Post Office Savings Bank* [2004] 2 KLR 91.
 32. The 1st defendant did not file written submissions. Be that as it may, I have carefully analysed and considered the pleadings, the evidence and the written submissions filed by the plaintiff and the 2nd defendant and the issues for determination is outlined as follows: -
 - i. Whether the registration of the 1st defendant was irregular null and void.
 - ii. Whether the plaintiff is entitled to the orders sought.
 33. The plaintiff testified that he acquired the suit land through an adjudication exercise within Maji Moto Group Ranch. He testified that he was member number 1504 in the area list within the Maji Moto Group Ranch. Article 40 (3) of the Constitution provides for the right to property as stated herein: -

“The state shall not deprive a person of property of any description, or of any interest in, or right over property of any description, unless the deprivation-

 - (a) with Chapter five; or
 - (b) Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that-
 - (i) Requires prompt payment in full, of first compensation to the person; and
 - (ii) Allows any person who has an interest in, or right over, that property a right of access to a court of law.
 - (4) ...



- (5) ...
- (6) The rights under this Article do not extend to any property that has been found to have been unlawfully acquired.
34. The evidence before this court as presented by the plaintiff is that acquisition of land was through the land adjudication process as required under the [Land Adjudication Act](#). The plaintiff was allotted the suit land and had legitimate expectation that after completion of the adjudication process, he would be issued with a certificate of title as proof of ownership.
35. The [Land Registration Act](#) is very clear on issues of ownership of land and Section 24 of the [Land Registration Act](#) provides as follows:
- “Subject to this Act, the registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto.”
36. Also, Section 26 (1) of the [Land Registration Act](#) states as follows:
- “The Certificate of Title issued by the Registrar upon registration ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner... and the title of that proprietor shall not be subject to challenge except –
- a. On the ground of fraud or misrepresentation to which the person is proved to be a party; or
 - b. Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”
37. On the other hand, the 1st defendant was not a registered member of the group ranch and therefore could not benefit from acquiring land through the adjudication process. He did not file any objection proceedings against the suit land through the available mechanisms provided under the [Land Adjudication Act](#). In my view, his acquisition of the title to the suit land can only be said to have been acquired through corrupt means for the reasons that at the time he was issued with a title deed he was still a minor, he also refused the production of the area list because it does not bear his name. The 1st defendant could not explain the procedure he undertook that resulted with the issuance of the title. Most notable was the evidence of DW1 who admitted that the signature on his witness statement dated 16th March, 2022 is not his and the process of acquiring the title to the suit land was not proper. The law is clear that, the Certificate of Title issued by the Registrar upon registration shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner and the title of that proprietor shall not be subject to challenge except – On the ground of fraud or misrepresentation to which the person is proved to be a party; or where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.(emphasis mine).
38. The law protects title to land, but there are two instances wherein such title can be challenged. The first is where the title is obtained by fraud or misrepresentation, to which the person must be proved to be a party. The second is where the certificate of title has been acquired illegally, un-procedurally



or through a corrupt scheme. The Court of Appeal in the case of Munyu Maina v Hiram Gathiba Maina [2013] eKLR, held as follows:

“We state that when a registered proprietor’s root of title is under challenge, it is not sufficient to dangle the instrument of title as proof of ownership. It is this instrument of title that is in challenge and the registered proprietor must go beyond the instrument and prove the legality of how he acquired the title and show that the acquisition was legal, formal and free from any encumbrances including any and all interests which need not be noted on the register.”

39. In the case of Alice Chemutai Too v Nickson Kipkurui Korir & 2 Others [2015] eKLR Justice Sila Munyao held that:

“It will be seen from the above that title is protected, but the protection is removed and title can be impeached, if it is procured through fraud or misrepresentation, to which the person is proved to be a party; or where it is procured illegally, unprocedurally, or through a corrupt scheme. Where one intends to impeach title on the basis that the title has been procured by fraud or misrepresentation, then he needs to prove that the title holder was party to the fraud or misrepresentation.”

40. Having evaluated the evidence, I am satisfied that the 1st defendant did not properly acquire the title to the suit land, and the 1st defendant having failed to satisfactorily explain the root of his title, this court finds that the title held by the 1st defendant ought to be impugned as it was acquired through corrupt means having failed to show the root of his title. The upshot of the foregoing is that the defence and the counterclaim dated November 25, 2020 is dismissed with costs to the plaintiff.

41. Under Section 80 of the Land Registration Act which provides that: -“(1) Subject to subsection (2), the court may order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake”, this court has powers to order rectification where it finds fit to do so.

42. I am satisfied that the plaintiff has on a balance of probabilities a cause of action against the defendants. In the circumstances, I hereby proceed to enter judgement for the plaintiff and against the defendants jointly and severally as hereunder:-

- i. A declaration is hereby made that the plaintiff is the rightful owner of all that parcel of land known as Cis-Mara/Maji Moto/1582.
- ii. The District Land Registrar, Narok North/South/East is hereby ordered to rectify the records in respect of title no Cis-Mara/Maji Moto/1582, register and issue a certificate of title in the name of the plaintiff.
- iii. A permanent order of injunction is hereby issued restraining the 1st defendant, his servants, licensees, agents or any other person acting on his behalf from harassing, trespassing or interfering with the ownership and occupation by the Plaintiff of all that parcel of land known as Cis-Mara/Maji Moto/1582.
- iv. The plaintiff is awarded costs of this suit. Same to be borne by the 1st defendant. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 25TH DAY OF NOVEMBER, 2022.

HON. MBOGO C.G.

JUDGE



25/11/2022.

In the presence of:

CA:T.Chuma

