

Sitonik Cherose Arap Lasoi v David Sareto Mopir

REPUBLIC OF KENYA

High Court, at Kericho

February 23, 2004

Musinga Ag J

Civil Case No 40 of 2002

February 23, 2004, Musinga Ag J delivered the following Judgment.

The plaintiff filed this suit on 16th May, 2002 and stated that in or about 1978, he purchased shares from three shareholders of **SOGOO GROUP RANCH** thereby entitling him to 13.5 acres of land comprised in **L.R. NO. NAROK/CISMARA/ OLOLULUNGA/139**. Subsequently thereto, he was given vacant possession of the 13.5 acres from 1978 and has been in occupation since then.

He averred that during the process of subdivision, the defendant fraudulently took possession of his aforesaid land and accused it to be registered in his name. He gave the particulars of fraud in his plaint.

The defendant was served with court process but he chose not to defend the suit and the plaintiff requested for interlocutory judgment on 17th March, 2003.

Later, a date was fixed for formal proof and the Defendant was served with a hearing notice but he did not attend court. When the matter came up for formal proof on 27th November, 2003 the plaintiff stated that on 30/4/1978 he entered into a written agreement with one Mr. Opot Cherotich whereby he purchased from him an unregistered piece of land measuring about 13.5 acres for Kshs. 3000/= . He produced the sale agreement as P. Exh.1.

He took possession of the land and developed it. He said that he built some houses on it, planted some trees thereon and was also cultivating it. About two years ago, the plaintiff was informed by an officer from the lands office in Narok that the Defendant had unlawfully taken the title to his land and he decided to carry out a search at the Lands Registry. He produced copies of the Green Cards which showed that land parcel **NO. CISMARA/OLOLULUNGA/139** measuring 826 hectares was registered in the name of **SOGOO GROUP RANCH** and the defendant was now the registered owner of a subdivision thereof registered as **CISMARA/OLOLULUNGA/4688**.

The plaintiff further told the court that he registered a dispute before the District Officer and an Arbitration meeting was held and it was ruled that the land belonged to him. He produced the ruling given by the District Officer Mulot Division.

From the foregoing, I am satisfied that the plaintiff has proved his case on a balance of probabilities and I declare that the Defendant obtained registration of **L.R. NO.**

NAROK/CISMARA/OLOLULUNGA/4688 by fraud and that the same lawfully belongs to the plaintiff. I therefore order the Defendant to execute a transfer form and effect a valid transfer of the said parcel of land at his own cost to the plaintiff failing which the Deputy Registrar of this court shall execute the transfer so that the plaintiff can proceed to register it and obtain a title deed in his name. The defendant shall bear the cost of this suit.