



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 908 of 2003**

**BEN NKURRUNAH ..... PLAINTIFF**

**VERSUS**

**1. SILOMA OLE PARTOIP .....1<sup>ST</sup> DEFENDANT**

**2. ISAAC LETEILA PARTOIP ..... 2<sup>ND</sup> DEFENDANT**

**3. NAROK TOWN COUNCIL ..... 3<sup>RD</sup> DEFENDANT**

**J U D G M E N T**

The Plaintiff, Ben Nkurrurah, instituted this suit by way of a Plaint dated and filed on the 28<sup>th</sup> August 2003 seeking judgment against the First, Second and Third Defendants jointly and severally for:-

- a) a permanent injunction restraining the Defendants by themselves, their agents and or servants from encroaching, entering, trespassing onto, constructing or erecting any building or structure on the suit plot.
- b) the 3<sup>rd</sup> Defendant is ordered to revoke and annul the allotment of the suit plot to the 1<sup>st</sup> Defendant.
- c) Vacant possession of the suit plot and/eviction of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants and demolition of any illegal structures.
- d) Costs of this suit.
- e) Any other or further orders as the court deems fit, just and expedient to grant.

The Defendants having failed to file their joint or respective statements of defence within the time prescribed by law, the Plaintiff requested for judgment which was entered on the 7<sup>th</sup> January 2004. The suit then proceeded for hearing by way of formal proof leading of this judgment.

In his evidence, which was unchallenged, the Plaintiff testified the suit property, namely Plot Number 111 "A" situate in Narok Township, had initially been allocated by the Third Defendant to the Plaintiff's mother, one Mary Naanyu Nkurrurah, vide the Third Defendant's Minute 15/70 dated the 8<sup>th</sup> November 1988. Subsequently, and pursuant to an agreement between the said allottee and the Plaintiff dated the 13<sup>th</sup> October 1993, the property was transferred to the Plaintiff by way of gift in consideration of his

mother's natural love and affection for the Plaintiff and such transfer was duly accorded the approval of the Third Defendant vide Minute 7/97 of its meeting held on the 22<sup>nd</sup> January 1997. The Third Defendant formalized the said transfer by issuing to the Plaintiff a Letter of Allotment Reference No. NTC/TR/P/Vol. 1/1/1/39 dated the 13<sup>th</sup> September 2000.

The Plaintiff, on payment to the Third Defendant of the requisite transfer fees of K.Shs. 3,750/-, took possession of the suit property and proceeded to erect thereon permanent stone buildings comprising a residential house, currently occupied by the Plaintiff's brothers, and a shop which the Plaintiff has let.

It was the Plaintiff's further evidence that in the year 2002, the First Defendant, a brother of the Second Defendant who at the material time was the Town Clerk to the Third Defendant, colluded and connived with the Second and Third Defendants with intent to defraud the Plaintiff of the suit property whereby the Third Defendant unlawfully purported to allocate the Plaintiff's said Plot No. 111 "A" aforesaid to the First Defendant. Pursuant to such illegal purported allotment, the First Defendant unlawfully took possession of a portion of the suit property, fenced it off and erected thereon semi-permanent wooden buildings comprising low-income housing and a workshop which the First Defendant currently rents for commercial gain.

Despite the Plaintiff's efforts through the Police and the local Provincial Administration to recover possession of his property, the Second Defendant's considerable influence as Town Clerk to the Third Defendant thwarted the Plaintiff's endeavours and the First Defendant continues to be unlawfully in possession thereof. The Plaintiff therefore filed this suit seeking, *inter alia*, vacant possession of the suit property.

In the absence of any evidence to the contrary, I find and hold that the Plaintiff is the legal owner of Plot No. 111 "A", Narok, the same having been lawfully allocated to him by the Third Defendant pursuant to the transfer thereof to the Plaintiff by his mother, Mary Naanyu Nkurrinah, the original allottee.

Accordingly, and the Plaintiff having on a balance of probability proved his claim as in the Plaintiff more particularly set forth, and an interlocutory judgment having been entered against the First, Second and Third Defendants on the 7<sup>th</sup> January 2004, it is ordered that prayers a), b), c) and d) inclusive of the Plaintiff be and are hereby granted against the Defendants jointly and severally and orders accordingly in the terms thereof.

Dated and delivered at Nairobi this seventeenth day of December 2004

P Kihara Kariuki

Ag. Judge