



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAKURU**

**CASE NO. 238 OF 2013**

**PETER NJUGUNA NJONGE .....PLAINTIFF**

**VERSUS**

**JULIUS NARANKAIK OLOGOLIMOT.....DEFENDANT**

**RULING**

1. This ruling is in respect of plaintiff's Notice of Motion dated 27<sup>th</sup> November 2020. The application seeks the following orders:

1. [Spent].

2. THAT this Honourable Court do exercise its Constitutional and supervisory powers by calling for the entire court file and records of NAROK C.M.E.L.C NO.43 OF 2020 JULIUS NARANKAIK OLOGOLIMOT VS DISTRICT LAND REGISTRAR and DISTRICT LAND SURVEYOR then examine the entire record, proceedings, consents and orders therein for purposes of satisfying itself as to the correctness, legality, justification, procedural propriety of the same and to make such order as shall deem fit in order to uphold the dignity of this court, and to quash all the proceedings, orders, consents and the entire matter as an abuse of the court process.

3. THAT once the court grants prayer 2 above, it also be pleased to issue an order that the following original Title Deeds which were issued to various persons by the Respondent who subdivided land parcel No. NAROK/CIS-MARA/ENABELBEL/ENENGETIA/279 during the pendency of this suit be surrendered and deposited in this court pending further orders or directions:

a. CIS MARA/ENAIBELBEL ENENGETIA/970 issued in the names of JULIUS NARANKAIK OLOGOLIMOT on 1<sup>st</sup> September 2011.

b. CIS MARA/ENAIBELBEL ENENGETIA/971 issued in the name of TONKE NARANKAIK ON 19<sup>TH</sup> APRIL 2010.

c. CIS MARA/ENAIBELBEL ENENGETIA/972 issued in the names of REBECCA WANGARI MURIUKI on 19<sup>TH</sup> APRIL 2010.

4. THAT this Honourable Court do make a finding that sub division of the original parcel of land Title No. NAROK/CIS-MARA/ENABELBEL/ENENGETIA/279 into the above parcels of land and subsequent transfers of the said sub division titles in the above names does not and cannot defeat the rights and entitlements of an adverse possessor and as such the sub division and transfer of the sub-division Titles are nullities and that the sub-division titles be declared null and void and they be cancelled and the land restored back to the original Title Deed (NAROK/CIS-MARA/ENABELBEL/ENENGETIA/279) so that execution of the decree can be realized where 30 acres of land shall be excised therefrom and transferred and registered in the Applicant's names and the residue thereof be transferred and registered in the names of the 1<sup>st</sup> Respondent(JULIUS NARANKAIK OLOGOLIMOT) to deal with as he wishes.

5. THAT the costs of this motion be borne by the 1<sup>st</sup> Respondent.

2. The application is supported by an affidavit sworn by the plaintiff. He deposed that on 4<sup>th</sup> December, 2009 he filed originating summons dated 4<sup>th</sup> December, 2009 against the defendant herein seeking that he be declared as an adverse possessor of 30 acres comprised in land No. NAROK/CIS-MARA/ENABELBEL/ENENGETIA/279 and that he be issued with a title for the said land. That by then his rights as the adverse possessor had crystallized and that the respondent was the registered owner of the said land. He deposed further, that on 31<sup>st</sup> October

2018, the parties herein appeared before this court and recorded a consent settling this suit and that a decree was extracted and issued in terms of the consent order. The consent was in the following terms:

**1. Judgment be and is hereby entered in favour of the plaintiff against the defendant to the extent that the plaintiff be and is hereby entitled to and shall forthwith take possession, use and occupation of thirty acres of land comprised in and to be excised from all that parcel of land known as Narok/Cis Mara/Enabelbel/Enengetia/279.**

**2. That in order to realize the aforesaid thirty acres of land which should be excised from Narok/Cis Mara/Enabelbel/Enengetia/279, the plaintiff and the defendant shall equally share the fees, costs, disbursements and charges for the appropriate survey, sub-division and duties for procurement of a title deed in the plaintiff's names, the said thirty acres with the remainder of the area being in the defendant's names.**

**3. That costs of this suit shall be to the plaintiff.**

3. He further deposed that he later obtained a certified extract of the Title for this land and learnt that while this suit was still pending for hearing and determination, the defendant subdivided the suit land into various portions and had some other persons registered as the owners of the subdivisions. That his advocate Mr Karanja Mbugua wrote a letter to the District Land Registrar Narok on 28<sup>th</sup> June, 2019 calling upon him to implement the decree herein. That on 16<sup>th</sup> July 2020 he obtained a certified copy of the extract of the title in respect of the suit property only to learn that on 1<sup>st</sup> April 2010, during the pendency of this suit, the defendant subdivided and transferred portions of the suit property.

4. The plaintiff also deposed that the defendant transferred approximately 7.90 hectares being CIS MARA/ENAIBELBEL ENENGETIA/970 to JULIUS NARANKAIK OLOGOLIMOT to whom title deed was issued on 1<sup>st</sup> September 2011; approximately 20.23 hectares being CIS MARA/ENAIBELBEL ENENGETIA/971 to Tonke Narankaik to whom title deed was issued on 10<sup>th</sup> June 2010 and lastly 11.00 hectares being CIS MARA/ENAIBELBEL ENENGETIA/972 to his wife Rebecca Wangari Muriuki to whom title deed was issued on 10<sup>th</sup> June 2010. That on 1<sup>st</sup> July 2020, the defendant filed Narok C.M.E.L.C No. 43 of 2020 Julius Narankaik Ologolimot vs District Land Registrar - Narok & District Land Surveyor.

5. That the defendant herein and the defendants in the aforesaid Narok case entered into a consent on 12<sup>th</sup> July 2020 in the following terms:

**1. THAT a permanent order of injunction is hereby issued restraining the Defendants/Respondents, their servants, agents, employees or those under their instructions from entering, visiting, surveying, re-surveying, excising, re-parcelling, amalgamating, interfering with the Plaintiffs Title and peaceful use and occupation of all that parcels known as CISMARA/ENAIBELBELENENGETIA/970, MARA/ENAIBELBEL ENENGETIA/971 and MARA/ENAIBELBEL ENENGETIA/972.**

**2. THAT a declaration that the actions of the Defendants herein in seeking excise the Plaintiffs land parcels CIS MARA/ENAIBELBEL ENENGETIA/970, MARA/ENAIBELBEL ENENGETIA/971 and MARA/ENAIBELBEL ENENGETIA/972 is illegal and against the Plaintiff right to land as enshrined under article 40 of the constitution of Kenya 2010.**

**3. THAT this is full and final of settlement of this suit. Each party to bear its own costs.**

6. The plaintiff added that the aforesaid consent brought his efforts to have this court's decree implemented to a halt and that the Narok case was filed behind his back to frustrate the implementation of this court's decree.

7. The defendants responded to the application through a replying affidavit in which he confirmed that he subdivided the suit property into three as claimed by the plaintiff, that he filed the Narok case and that a decree was issued in the said case pursuant to the consent. He added that the decree in the Narok case has not been appealed against and that this court lacks territorial since the suit property is in Narok County. He further stated that this court is *functus officio*.

8. The Application was canvassed through written submissions. The plaintiff submitted that this court has supervisory jurisdiction over subordinate courts pursuant to **Article 165 (6) and (7) of the Constitution of Kenya 2010** and **Sections 3 (1) and (2), 13 (1) and (7) of the Environmental and Land Court Act**. He relied on the cases of **Nairobi High Court Constitutional Petition No. 438 of 2015 Kenya Hotel Properties Ltd vs Attorney General, Mombasa High Court Constitutional Petition No. 196 of 2018 Juma Nyamani & 4 others vs Attorney General** and **Anthony Ole Ntutu vs Saiyalel Ololoso Nakuru High Court ELC No. 319 of 2015**. The plaintiff further argued that having instituted this suit on 4<sup>th</sup> December 2009, his rights as an adverse possessor of the suit property had crystallized and the same cannot be defeated by subsequent subdivisions, transfer or sale. He relied on **Nyeri Court of Appeal Civil Appeal No. 65 of 2016 Peter Gichuki Wanjohi vs Julia Mumbi Muturi** and urged the court to allow the application with costs.

9. The respondent argued *inter alia* that granting the orders sought would amount to condemning the registered owners of CIS MARA/ENENGETIA 970, 971 and 972 unheard. That the supervisory powers of this court do not extend to proceedings in Narok and that quashing of the proceedings in the Narok case will cause chaos since the plaintiff herein was not party to the said suit and the defendants in the said case are not parties to this case. They placed reliance on the cases of **Commissioner of Lands vs. Hotel Kunste Civil Appeal No. 234 of 1995** and **Sanghani Investment Limited vs. Officer in Charge Nairobi Remand and Allocation Prison [2007] 1 EA 354** and urged the court to dismiss the application with costs.

10. I have considered the application, the affidavits and the submissions. The application is bound to fail for several reasons as I now proceed to discuss.

11. It is not in dispute that vide the consent entered herein on 31<sup>st</sup> October 2018, final judgment was entered in this matter and a decree was extracted. Judgment having been entered, this court became *functus officio* save as regards such applications as stay of execution pending appeal, review or setting aside. Among the orders that the applicant now urges the court to make is to find and declare that the subdivision of the suit property and transfers of the resulting parcels to the new owners does not and cannot defeat the rights and entitlements of an adverse possessor. Having rendered a judgment in the matter by way of the consent order, I have no jurisdiction to make such orders as are sought. An enquiry of the nature proposed by the applicant would amount to reopening the case.

12. Secondly, the applicant has urged the court to call for the entire court file and record in Narok C.M.E.L.C No. 43 of 2020 Julius Narankaik Ologolomot vs District Land Registrar & District Land Surveyor, to examine the said record with a view to satisfying itself as to the correctness, legality, justification and procedural propriety thereof and then to quash the said proceedings and orders. The present application is not an appeal against the orders in the said case. The applicant has sought to invoke what he termed “supervisory powers” of the court. He cited **Article 165 (6) and (7)** of the **Constitution of Kenya 2010** and **Sections 3 (1) and (2), 13 (1) and (7)** of the **Environmental and Land Court Act**. I have considered the said provisions and I find nothing therein that empowers this court to intervene in the manner sought. If anything, **Section 13 (1)** of the **Environmental and Land Court Act** makes specific reference to the appellate jurisdiction of this court. Where the subordinate court has rendered a judgment that conclusively determines proceedings before it, the manner of supervision that is contemplated is appellate proceedings.

13. Thirdly, the proceedings that this court has been invited to review were conducted before Narok Chief Magistrate’s Court. Whereas this court has jurisdiction throughout the country, good order dictates that any proceedings seeking this court’s intervention as regards proceedings before Narok Chief Magistrate’s Court be filed before the Environment and Land Court at Narok. While I appreciate that this suit was filed in Nakuru High Court on 4<sup>th</sup> December 2009 since perhaps Narok High Court had not been established by then, the present application targets proceedings before the subordinate court in Narok. Since there is now an Environment and Land Court at Narok, the applicant must move the said court and not this court.

14. Lastly, the defendants in Narok C.M.E.L.C No. 43 of 2020 are not parties in this suit. If I were to accede to the applicant’s request and grant the orders sought, I would be condemning them and driving them from the seat of judgment unheard. That would be a breach of their right to a fair hearing.

15. For all the foregoing reasons, Notice of Motion dated 27<sup>th</sup> November 2020 is devoid of merit. I dismiss it. Since the plaintiff was awarded costs of the suit in the consent recorded on 31<sup>st</sup> October 2018, I make no order as to costs.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 10<sup>TH</sup> DAY OF JUNE 2021**

**D. O. OHUNGO**

**JUDGE**

In the presence of:

Mr Karanja Mbugua for the plaintiff/applicant

Mr Koome for the defendant/respondent

Court Assistants: B. Jelimo & J. Lotkomo