



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 83 OF 2017**

**FORMERLY NAIROBI ELC CAUSE NO.1034 OF 2001**

LIRIAN OLE SEKENYO.....1<sup>ST</sup> PLAINTIFF

WILLIAM OLE NAISAUWA.....2<sup>ND</sup> PLAINTIFF

**-VERSUS-**

NAIKISI OLE MUNTET.....1<sup>ST</sup> DEFENDANT

KIRIMONI OLE MUNTET NAMPUSHI.....2<sup>ND</sup> DEFENDANT

TOIPAN OLE MUNTET.....3<sup>RD</sup> DEFENDANT

TIMOTHY ELI OLE MUNTET.....4<sup>TH</sup> DEFENDANT

RERIN OLE MUNTET.....5<sup>TH</sup> DEFENDANT

JAMES KIMIREN OLE NAMPOSHI.....6<sup>TH</sup> DEFENDANT

LETOWUON OLE MUNTET.....7<sup>TH</sup> DEFENDANT

TILAL OLE NAMPOSHI MUNTET.....8<sup>TH</sup> DEFENDANT

SAMAIRE OLE MUNTET.....9<sup>TH</sup> DEFENDANT

TOBIKO OLE MUNTET.....10<sup>TH</sup> DEFENDANT

THE ATTORNEY GENERAL.....11<sup>TH</sup> DEFENDANT

NAROK COUNTY COUNCIL.....12<sup>TH</sup> DEFENDANT

**JUDGEMENT**

The Plaintiff had commenced the suit herein by way of a plaint dated 25/6/2001 in which the plaintiff sought for the following orders: -

- (a) A declaration that the title deed issued to the 1<sup>st</sup> defendant Cis Mara/Enare Boolkesi/1 and the sub-division that resulted therefrom are invalid, ineffectual, null and void ibnition.
- (b) A declaration that the 1<sup>st</sup> to the 10<sup>th</sup> Defendant hold the 80 acres of land wrongfully taken from parcels numbers 1192 to 1193 in trust for the plaintiffs.
- (c) An order of cancellation cancelling the sub-division and transfer that have been effected in respect of parcel LR No. Cis Mara/Enare Boolkesi/1 to wit Cis Mara/Enare Bookesi/2 to 14.

(d) An order that the 1<sup>st</sup> to the 10<sup>th</sup> defendants do vacate parcels No. 1192 and 1193 of Kipise measuring approximately 47.5 and 37.5 acres respectively

(e) Costs of the suit

The plaintiff contends that on or about 1977 the Narok Land Adjudication officer declared Kipise area as an adjudication section for the purpose of ascertainment and recording of rights and interests in the said land. The plaintiff avers that Naisera Ole Sekuda was originally ascertained and recorded as the owner of parcel No. 1192 and 1193 measuring approximately 47.5 acres and 37.5 acres but were subsequently upon his demise recorded in the name of the 1<sup>st</sup> Plaintiff. On behalf of the family of the deceased who was a neighbor with the 1<sup>st</sup> Defendant who in 1984 wrongfully shifted the common boundary and thus encroached on the plaintiffs' property.

The plaintiffs further averred that on or about 12/9/1995 the aforesaid boundary dispute between the plaintiff and the 1<sup>st</sup> defendant was forwarded to the adjudication committee in case no. KPS/1313/88 and KPS/133/88/911 consolidated and the committee found in favour of the 1<sup>st</sup> defendant. Subsequent to the finding of the said committee and being dissatisfied with the finding of the committee the plaintiffs appealed to the arbitration committee in arbitration board cause No. 22 and 26/88 and the board held that the 1<sup>st</sup> defendant had encroached into 80 acres belonging to Naisera Ole Sekuda (deceased) and ordered the 1<sup>st</sup> defendant to return the 80 acres to the plaintiffs and despite the above findings the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants in collusion with Narok County Council and the 12<sup>th</sup> defendant herein the commissioner of lands and the District land Registrar Narok fraudulently and illegally caused a purported title to be issued to the 1<sup>st</sup> defendant being Cis Mara/Enare Boolkesi/1 on or about 28/2/1998. The Plaintiff avers that the issuance of the said title was illegal, fraudulent, unlawful and in flagrant breach of the provisions of the Land Adjudication Act. The Plaintiffs in support further averred that the defendants in furtherance of the aforesaid illegal act subsequently sub-divided the parcel of land into 14 sub-divisions namely Cis Mara/Enare Boolkesi, 2 to 14 and transferred the same to the 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup>, 9<sup>th</sup> and 10<sup>th</sup> defendants respectively. They contend that the said sub-division and transfer to the defendants were illegal, null and void.

The 1<sup>st</sup> to 10<sup>th</sup> defendants filed a joint statement of defence and they admitted that the suit land was previously vested in Narok county council but averred that in 1977 when land in Kipise area was declared an Adjudication Section the District Land Adjudication Officer wrongly included a Ranch at Boolkesi which had been allocated to the 1<sup>st</sup> defendant by the 12<sup>th</sup> defendant in 1966 to be part of the adjudication section and consequently during the preparation of the adjudication record comprising of the adjudication register and demarcation map included the aforesaid ranch. They further denied that the deceased Naisera Ole Sekuda was originally ascertained as and recorded as the owner of land parcels No. 1192 and 1193. They denied that following the demise of the deceased they shifted the boundary. The defendant admits that on 4/10/1988 the Kipise Adjudication Committee head the dispute after Lorian Ole Sekunde 1<sup>st</sup> defendant filed Arbitration Case No. 131 and 132 of 1988 with respect to Land parcel plot No. 133 and 1193 but the same was dismissed but on Appeal to the Arbitration Board the matter was determined in his favour.

The 1<sup>st</sup> to 10<sup>th</sup> defendants denied that they colluded with the Narok County Council Commissioner of Lands and the Narok District Land Registrar to fraudulently cause to be transferred and averred that land parcel Cis Mara/Enare Boolkesi/1 was done pursuant to a meeting held by the 12<sup>th</sup> defendant on 14/3/1966 at 10.00am in which the land was allocated to the 10<sup>th</sup> Defendant and they denied that the land that was allocated to them comprised of the 80 acres that was allegedly taken from parcel No. 1192 and 1193 and thus consequently deny the particulars of fraud alleged by the plaintiffs and further that they hold 80 acres of land belonging to the plaintiffs unlawfully.

The 12<sup>th</sup> defendant filed a statement of defence and states that it is a total stranger to the averments contained in paragraph 8,9,10,12,11 and 13 of the plaint.

During the hearing of the suit the plaintiff testified as PW1 and he called 2 other witnesses namely Julius Alfred Mugendi Njeru PW2 a Land Adjudication officer based in Narok and Tande Ole Meshuku PW3.

PW1 stated that he was a peasant farmer and a resident of Kipise Adjudication Section and that he brought the suit herein with his brother who is deceased and he filed the suit herein as the administrator of the estate of his father who is deceased. He said his deceased father was allocated about 90 acres of land within Kipise Adjudication Section which comprised of Land Parcel No. 1192 and 1193 but the defendants who are his neighbours took 85 acres to buttress his case, the plaintiff produced the Adjudication record, the adjudication declaration area list. He further stated that they had filed objection with the demarcation committee but were unsuccessful and they consequently appealed against the finding of the demarcation committee and appealed to arbitration board when he was successful and the defendant ordered to surrender the 80 acres of land and in support he produced the proceedings of the Arbitration board.

On cross examination PW1 stated that he was born in 1962 and had lived on the suit land and that his father is buried on parcel 1192 and that they cultivate parcel 1194. He later found that indeed a title had already been issued to the 1<sup>st</sup> to 10<sup>th</sup> defendant and that they do not have title to their parcel of land but that the defendants have title to their land.

During cross examination by counsel for the 11<sup>th</sup> defendant PW1 stated that he has no evidence to show that the 1<sup>st</sup> to the 10<sup>th</sup> defendants had perpetuated any fraud.

PW2 Alfred Mugendi Njeru stated that he is a land adjudication officer based in Narok County and relied on his witness statement which he adopted as his testimony. He produced a declaration notice with respect to the Kipise Adjudication Section and further stated that all persons who were in occupation of individual parcels of land were to declare their interest during the adjudication process. He stated that land parcel 1192 and 1193 was owned by the 1<sup>st</sup> plaintiff he stated that both the proceedings before the demarcation committee and the arbitration board were official records but stated that the decision of the adjudication board was altered by unknown persons. He said that Kipise adjudication is not registered as all adjudication records were forwarded to the Director of Land Adjudication for checking and issuance of a certificate of finality. He said the title to the 1<sup>st</sup> to 40<sup>th</sup> defendant was issued illegally as no other title to entire area was issued.

On cross examination he stated that he was not in office when the title deed was issued and that they are ordinarily issued by the land registrar and that the land adjudication officer has no role during the issuance of title deed by the registrar.

He further stated that he was the minutes by the Narok County Council dated as Minute 8 and an application for ranches issued to the Narok County Council and prior to 1964 when Land Adjudication started in Narok the land was trust land which was administered by Narok County Council and that the council had powers to allocate land. He acknowledged that there was a letter dated 22/10/1998 from the Director of Land Adjudication and addressed to the Commissioner of Land and was in regards to Enare/Boolkesi/Group Ranch and it contradicts the portion that he has taken and that he will leave to the court to determine the issue.

On cross examination by counsel for the 12<sup>th</sup> defendant he stated that he was relying on the documents that were provided by the plaintiffs and that he did not have documents from his own office but all were certified by his office. He stated that once an adjudication section is declared all persons living in the area declared their interest but he has no such declaration of interest by the plaintiff. He further conferred that he had seen the application by Ole Muntet for the allocation of the Land Ranch to the Narok County Council and the said application approved by the latter.

On cross-examination by counsel for the 11<sup>th</sup> defendant PW2 confirmed that indeed title to lands are issued based on the records given by the Land Adjudication Office and further he did not receive any complaint from the Narok County Council that the land belonged to the council and was allocated to the defendants.

PW3 Tande Ole Meshuku stated that he is a resident of Kipise and would wish to adopt his statement that was filed in court on 29/2/2012 and is known both to the Plaintiffs and defendants as they are neighbours. He said he and the plaintiff do not have title to the land and was surprised to learn that the Defendants have title to their land. He said both families live on their own parcels of land and that he does not know who is encroaching on whose parcel of land.

On cross-examination PW3 stated that he does not know much about maps but he knows the boundary between the plaintiff and the defendant. He stated that his land is Suswa Kitet and he did not participate or give evidence before the demarcation committee or the Arbitration Board but affirmed that the defendants had encroached on the plaintiffs' land.

DW1 Tobiko Muntet in his defence stated that he inherited the suit land from his father and the same is their ancestral land after his father was allocated the said land by the defunct Narok County Council and that his family has not taken the 80 acres as claimed by the Plaintiffs. He stated that the defendants have encroached on the said land and continue to live thereon where they cultivate the same. DW1 further stated that the suit land was never part of the Kipise Adjudication Section.

On cross examination he stated that the land was not community land and that his family had lived on the said land since its allocation to his late father.

DW2 Mr Aubbey Kibeba stated that he is a government surveyor who retired after working for 36 years and that he is familiar with the suit land. He stated that he visited the suit land on the request of the Land Registrar Narok and he filed two reports that he relied on. On cross examination he stated that he is not a registered surveyor and does not hold a degree which is a request for one to be registered. He stated the suit land is situated between Kipise Adjudication Section and Suswa-Kitet Group Ranch and on 9/6/1999 the owner further sub divided the said parcel into parcels 1 to 14. From his records he stated that an application was made to the then County Council by Naikisi Ole Muntet and the same was approved vide minute No. 8/66. On cross-examination he stated that there was an overlap between parcel 13 and 14.

DW 3 Nicco Nziko Mutiso who is a Land Registrar stated that he has seen the allegations of fraud that were made by the Plaintiff ad to the contrary the land was registered in the name of Naikisi Ole Muntet and he was issued with a title on 9/6/1999 and the owner further sub-divided the said parcel into parcels 1 to 14. From his records he stated that an application was made to the then county council by Naikisi Ole Muntet and the same was approved vide minute No. 8/66. On cross examination he stated that this was a second registration after that of the county council of Narok which transferred the suit land to Naikisi Ole Muntet. The Defendants further called 2 other witnesses whose testimonies aligned to those of PW1

I have considered the pleadings filed herein and the testimony of the witness together with the submissions field by the parties. This is a suit in which the plaintiff states that the 1<sup>st</sup> to 10<sup>th</sup> defendants have obtained title to 80 acres of his land fraudulently. He alleged that the fraud was perpetuated by the defendant with the officials of the 11<sup>th</sup> and 12<sup>th</sup> defendants the plaintiffs allege that they had acquired the land as a result of the land adjudication process that took place within the Kipise Adjudication Section. The Defendant on their part controverts the said position stating that the suit land was allocated to them by the defunct Narok County Council in 1966 and thus the same could not be subject to the adjudication process.

The Plaintiff's in support called PW3 who is a Land Adjudication Officer and he confirmed that indeed the defendants possessed title to the land and he suspects that the same was issued fraudulently. However, no evidence had been tendered before court to support the said allegation. The plaintiff could not explain how the suit land could be available for alienation to a third party when title had been issued to the defendant under the Land Registration Act. The court's have held that title to land is indefeasible unless one proves that the same was obtained by way of fraud and/or misrepresentation. However, in the instant case I find that the plaintiffs have not been able to discharge the aforesaid burden of proof. The basis of the allocation of the suit to the defendant was made by the Narok County Council 1966 and the plaintiffs could not prove that the said allocation was either obtained fraudulently and/or by misrepresentation.

Having found that the allegations of fraud as regards the allocation and subsequent registration of the suit land against the Defendants have not been substantiated I find that the plaintiffs have not been able to prove their case on a balance of probabilities and I therefore dismiss the said suit with costs to the defendant.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON 23<sup>RD</sup> DAY OF JULY, 2021**

**MOHAMED N. KULLOW**

**JUDGE**

**23/7/2021**

In the presence of:

CA:Chuma

N/A for the parties

**Mohamed N. Kullow**

**Judge**

**23/7/2021**