



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC. NO. 101 of 2015

JACKSON NANGIRO LIMARENG.....PLAINTIFF

VERSUS

PETER LODIOLEM1ST DEFENDANT

DAVID JUMA ALUKULEM.....2ND DEFENDANT

WILLIAM ATODO.....3RD DEFENDANT

JUDGMENT

1. The Plaintiff instituted this suit by way of a plaint dated 7th August 2015. The Plaintiff is seeking for judgment against the Defendants jointly and severally as follows:

- a. A declaration that the actions of the Defendants are unlawfully and without any legal basis.
- b. An order that the Plaintiff is entitled to remain on the parcel of land measuring approximately seventy five (75) acres on Kongelai Group Ranch, West Pokot County.
- c. A permanent injunction restraining the Defendants, their servants and/or agents from interfering with the Plaintiff's peaceful use and possession of his parcel of land on Kongelai Group Ranch.
- d. Costs of the suit
- e. Any other relief the court deems fit and just to grant.

2. The Plaintiff's case as pleaded is that he is the son to Joseph Limareng Lokomom (deceased) and who was a shareholder and/or member of Kongelai Group Ranch within West Pokot County. The Plaintiff states that he has resided on the said parcel of land since he was born to-date. That on diverse dates in the year 2015 the Defendants lodged a complaint with the committee of Kongelai Group Ranch laying a claim to the parcels of land occupied by the Plaintiff and other family members of the late Joseph Limareng Lokomom. The Plaintiff states that the 2nd and 3rd Defendants convened a meeting of committee on 30th January 2014 at which meeting the Defendants resolved that the Plaintiff should vacate the land. The Plaintiff further states that the 1st Defendant issued him with a notice on 15th May, 2015. It is the Plaintiff's contention that the Defendants actions are unlawful, high handed and uncalled for. The Plaintiff states that he has resided on the land with the full knowledge and consent of the Defendants and their actions are meant to unfairly allocate the land to the 1st Defendant. The Plaintiff states that the 1st Defendant has his separate parcel of land and cannot claim what is not his and that the Defendants actions are null and void.

3. In his evidence, the Plaintiff stated that he lives in Poole village in Kongelai Division of West Pokot County. He stated that he lives in a parcel of land within Kongelai Group Ranch that was left to them by his late father, Joseph Limareng (deceased) who died on 27/12/2006. That the land is over 70 acres. The Plaintiff testified that Kongelai Group Ranch has a single title deed and therefore individual members have no titles for their respective parcels of land.

4. The Plaintiff stated that he was born in the suit land in 1974. That the Group Ranch has many members but those registered are only 412 members. The Plaintiff stated that his father was not registered because he was blind. The Plaintiff further stated that on 15th May 2015, he received a letter from Kongelai Group Ranch asking him to vacate from the suit land in sixty (60) days. He produced the letter dated 15th May 2015 as p.exhibit 1. He stated that he also received a notice of eviction dated 5th June 2015 from the 1st Defendant's advocates

(P.exhibit 2) asking him to abide by the notice to vacate issued by the Group Ranch on 15th May 2015 or legal action would be undertaken to have him evicted from the suit land. That according to the said letter of 5th June, 2015, the suit land belonged to the family of David Lodiolum Lokala Lounon (deceased) who is father to the 1st Defendant. The Plaintiff then filed this suit.

5. It was also the Plaintiff's evidence that in January 2015, the 1st Defendant and his brothers attacked the Plaintiff and his family on the suit land as they wanted them to vacate. That he invaded the land and put up structures thereon. That a report was made at Kapenguria Police Station who summoned the parties to a meeting on 30/1/2015. The Plaintiff stated that meeting purported to resolve the case. The Plaintiff produced the minutes of land dispute dated 30/1/2015 as p.exhibit 3 which he stated his family refused to sign and that their names were not included therein. According to the Plaintiff, the names listed in those minutes were those of the Defendants and those close to them. It is the Plaintiff's evidence that those minutes were doctored. The Plaintiff stated that the 1st Defendant's father was buried on the suit land and that he lives there with his mother and siblings. He stated that his father was a member of the Group Ranch, adding that the Defendants father was not initially a member as he came from Baringo County.

6. When cross-examined by Ms. Chebet, learned counsel for the Defendants, the Plaintiff stated that the Kongelai Group Ranch has 412 members who are registered. The Plaintiff admitted that he was not among those registered and so to his late father. That his father was blind but he did not know if other people with disabilities were among the registered members. The Plaintiff denied owning land in Kacheliba. Referring to p.exhibit 3, the Plaintiff admitted that he was present together with his witnesses in the meeting on 30/1/2015 because he was the complainant, adding that some executive committee members of Kongelai Group Ranch and elders were present together with the area chief and assistant chiefs. He named some of his neighbours as Katoni, Lorilima, Brian and Nangole but none was his witness. The Plaintiff stated that the suit land which is about 70 acres is unsurveyed and insisted he cannot vacate therefrom. When re-examined by Ms. Arunga, learned counsel for the Plaintiff, the Plaintiff stated that there were over 200 unregistered members in the Ranch.

7. PW2, Samuel Murion Lotiwo stated that Kongelai Group Ranch was started in the year 1974 and stated that he was the Chairman of the Ranch from 1982 up to 2014 when he used to hold meetings with members. He stated that there were 412 registered members, but other members numbering over 200 were not registered and that included the Plaintiff's father. He stated that the reason the Plaintiff's late father was not registered was because he was blind and had no one to take him to the registration place and that he was also a nomad. PW2 stated that members knew their boundaries and added that he knew the Plaintiff's father and grandfather lived on the suit land. He added that there was no dispute between the Plaintiff's late father and the 1st Defendant's late father. He attributed the current dispute to the current committee. He gave examples of members who were not registered as Ngorialima Pochol, Thomas Nguriapong, Cheburuso among others.

8. When cross-examined by Ms Chebet, PW2 stated that as at 26.3.2002 he was not an official of the Ranch. That as chairman, his duty was to not to register members as that was the role of the lands officials and the locals, though he could be present.

9. PW3, Samuel Nakapel Lochwa stated that he was the secretary of the Group Ranch from 1974 and his role was to record minutes. That he knew the Plaintiff's late father was a member of the Ranch and that he came in 1974 and lived on the suit land measuring about 100 acres with his family. That he also knew the 1st Defendant's late father who had his land bordering that of the Plaintiff's late father. That he was also the area chief. His evidence was that the Plaintiff's late father was not registered as member because he was blind but admitted some people with disabilities were taken by their relatives to be registered.

10. Lotuw Lomwai testified as PW4 and adopted his witness statement filed on 29th March 2018 wherein he stated that he is member No.79 and that he knew the Plaintiff's deceased father. That when registration took place, the deceased could not take a number as was with others and that both parties parcels border each other.

11. In their defence and counterclaim dated 24th July 2017 and filed on 25th July, 2017 the x[s denied the Plaintiff's claim and in particular denied that the Plaintiff nor his late father was a member of Kongelai Group Ranch. They stated that the 1st Defendant's late father was member No. 11 as per the register since 1974. The Defendants aver that the Plaintiff's late father moved into the suit parcel of land when clashes occurred between the Pokot and Karamojong communities and that he was only allowed to occupy the land on a temporary basis. That when the clashes ended, the Plaintiff's family members returned to their land but the Plaintiff remained on the suit land and blatantly declined to vacate despite several pleas from the 1st Defendant's family. That when the Plaintiff reported the matter to the police, the police referred the dispute to the execute committee who include the 2nd and 3rd Defendants and who deliberated on the matter and directed the Plaintiff to vacate from the suit land as neither he nor his late father were members of the Group Ranch. It is the Defendants' contention that the Plaintiff's continued occupation of the suit land is illegal as the parcel of land rightly belongs to the 1st Defendant's late father who is a Member Number112 of the Group Ranch. In his counter-claim, the 1st Defendant is seeking an order of eviction and a permanent injunction against the Plaintiff, his family, servants, agents or employees from occupying the suit land. It is also the Defendants' case that the Plaintiff's suit is lifeless, limping, frivolous, scandalous and an abuse of the court process. The Defendants urged the court to dismiss the Plaintiff's suit with costs and for judgment to be entered in favour of the 1st Defendant in terms of the counter-claim.

12. The Defendants called Nroriareng Katodi who testified as DW1 and who stated that he showed the suit land to Lounon Lodiolum, the 1st Defendant's late father. That neither the Plaintiff nor his late father were present then as they came in later. That at the time the ranch was subdivided, the same was given out to all members including those with disabilities. That all members including those with disabilities were registered. He stated that at the time of registration, the Plaintiff's late father had not come, adding that he only came much later from Uganda and found people had been registered. DW1 stated that the suit land belongs to the 1st Defendant's late father and therefore the Plaintiff should be evicted therefrom.

13. On being cross-examined by Ms. Arunga, learned counsel for the Plaintiff, DW1 confirmed that he was present and signed P.exhibit 3. His name appears as the first on the list. He said he knew PW2 and PW3 but did not know how they came to allocate land in their area.

14. Peter Lodiolum the 1st Defendant testified as DW2 and stated that his late father was member No.112 in the register of Kongelai Group Ranch. He produced the register as D.exhibit No. 1 and stated that the Plaintiff and his late father were not members and their names do not

appear amongst the 412 registered members. DW2 stated that the 1st Defendant came to the land in the year 2015 but was prevented from settling on it. That the Plaintiff reported the matter to the police who referred the dispute to the sub locational committee and the provincial administration. That a meeting was called by the executive committee and sub-locational committee on 30/1/15 who resolved that the land belonged to the Defendants. He produced the minutes of 30/1/15 as D.exhibit 2. He stated that the Plaintiff did not vacate from the land prompting the 1st defednat to instruct his advocates to issue a demand notice dated/5/6/15 (D.exhibit 3) and the executive committee also issued another notice dated 15/5/15 (d.exhibit 4). The Plaintiff instead filed this suit. He reiterated that all members were registered, including those with disabilities, such as one Limareng Mkiyong who is member No. 181 and Lokoriosi Lokotum who is No.108. The 1st Defendant urged the court to dismiss the Plaintiff's suit and order for his eviction.

15. On being cross-examined by Ms. Arunga, DW2 admitted that the committee officials were changed on 26/3/12. He denied that Alekulem David, the chairman, was his in-law. That Joel Lodiolem was his brother while William Adodo was the vice-chairman but not related to him. He denied that the officials favoured his family and further denied having grabbed the Plaintiff's land.

16. The 3rd Defendant testified as DW3 and stated that he became vice-chairman of the Group Ranch in 2012. He produced the Certificate of Incorporation dated 26/3/2012 as D.exhibit 5. He stated that when they took over office, the officials handed them the register which has 412 recognized members. That the 1st Defendant's father was one of the 412 members, being No.112. That neither the Plaintiff nor his late father were members, and are not in the register. He repeated what the 1st Defendant stated.

17. Both parties filed written submissions in support of their respective cases. The Plaintiff filed his submissions on 30th July 2019 while the Defendants filed theirs on 3rd October, 2019.

18. I have considered the pleadings, the evidence adduced and the rival submissions. The court is called upon to determine whether the actions of the Defendants on the suit land are unlawful and without legal basis and whether the Plaintiff is entitled to remain in the suit land or should be evicted. In paragraph 4, 5, 6 and 7 of the plaint, the Plaintiff states as follows:

“4. The Plaintiff is a son to Joseph Limareng Lokomom (deceased) and who was a shareholder and/or member of KONGELAI GROUP RANCH within West Pokot County.

5. The Plaintiff states that his deceased father owned approximately seventy (70) acres (unsurveyed) within the group ranch and which parcels of land were allocated to him in the 1970's.

6. The Plaintiff states that he has resided on the said parcel of land since he was born to-date.

7. On diverse dates in this year 2015, the Defendant lodged a complaint with the committee of Kongelai Gropu Ranch laying a claim to the parcels of land occupied by the Plaintiff and other family members of the late Joseph Limareng Lokomon.”

19. In the defence and counter-claim, and in particular paragraphs 5 and 19, the Defendants state as follows:

“5. The 2nd and 3rd Defendant (sic) further avers that the 1st Defendant father Lounon Lodiolem who is since deceased was a member of Kongelai Group Ranch being member No.112 as per the register of members of Kongelai Group Ranch and he was awarded the land parcel in the year 1974.

19. The 1st Defendant further avers that the land parcel situated what (sic) Kongelai Group Ranch belongs to his father Lounon Lodiolem (deceased) who is a member of the Group Ranch member No. 112.

20. It is clear that from the pleadings herein, according to the Plaintiff, the suit land belongs to his deceased father while the 1st Defendant maintains that the same belongs to his deceased father. It is therefore apparent that both parties are agitating the rights of their deceased fathers. I note, however that none of the parties(i.e. the Plaintiff and the 1st Defendant) claimed to have obtained grant of letters of administration in respect of the estate of their deceased fathers.

21. It is apparent that the Plaintiff instituted the suit without having obtained the necessary grant of letter of administration. It is also the same position in respect to the 1st Defendant's with regard to the counter-claim. The suit by the 1st Defendant by way of counter-claim has also been instituted without the 1st Defendant having obtained the necessary grant beforehand. No doubt, this renders the suits by both parties a nullity.

22. In the case of **Macfoy –v- United Africa Ltd (1961) 3 ALL ER 1169** Lord Denning said at page 1172:

“.....if an act is void then it is in law a nullity and not a mere irregularity. It is not only bad but incurably bad. There is no need for an order of the court to set aside. It is automatically null and void without more ado, though it is sometimes convenient to have the court declare it to be so. And every proceeding which is founded on it is also bad and incurably bad. You cannot put something on nothing and expect it to stay there. It will collapse.”

23. That in my view is the position precisely obtaining in this case. The Plaintiff, who is claiming land that he alleges belonged to his deceased father, had no capacity to sue. It is settled law that a person cannot sue on behalf of the estate of a deceased person unless he has first obtained a grant of letters of administration either limited or in full. The same applies to the 1st Defendant's counter-claim.

24. In the case of **Virginia Edith Wambui Otieno –v- Joash Ochieng Ougo (1982-88) I KR 1049**, the Court of Appeal observed:

“But an administrator is not entitled to bring an action as an administrator before he has taken out letters of administration. If he does, the action is incompetent...”

25. What emerges from these authorities is that if a person brings action before a grant is issued to him, the action is incompetent as at the date of its inception. So that the actions as commenced by the plaint dated 7th August 2015 and the Defence and counter-claim dated 24th July 2017 were incompetent at their inception.

26. I will accordingly strike out both the Plaintiff’s suit and the 1st Defendant’s counter-claim for being incompetent and nullities.

Each party to bear their own costs.

DATED and SIGNED at MOMBASA this 2nd day of March, 2020.

C. YANO

JUDGE

Delivered at KITALE this 7th day of May 2020

Mwangi Njoroge

JUDGE