



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 284 OF 2017

FRANCIS OLOITUYA SINONI.....PLAINTIFF

-VERSUS-

MOIKO OLOIPUTA MAROI & 4 OTHERS.....DEFENDANTS

JUDGEMENT

The Plaintiff herein had by a Plaint dated 15th December, 2016 sought for the following orders: -

- a. A declaration that he is entitled to a portion due to him measuring 400 acres out of land parcel Trans Mara/Oloirien/1
- b. A permanent injunction restraining the Defendant from denying or depriving him of his lawful entitlement of the aforesaid 400 acres.
- c. A permanent injunction restraining the defendant from proceeding with the sub dividing, alienation or allocation of LR Trans Mara/Oloirien/1 until the 400 acres he is entitled to is carved out and allocated to him.
- d. The costs of the suit

The plaintiff contends that during the Adjudication and demarcation of the Oloirien Adjudication Section he was declared to be entitled to a portion of land measuring 400 acres which he had occupied, however, following the process of adjudication the residents and occupants of Oloirien location resolved to have the entire parcel of land consolidated and registered as Oloirien Group Ranch and consequently registered in the name of the Group despite the fact that the portion which the plaintiff occupied had already been ascertained and hence the defendant have failed to acknowledge and refused to allocate him the 400 acres.

The Defendants filed a joint statement of defense and a counter claim. The Defendants took issue with the manner in which the Plaintiff had commenced the suit as against the Defendants and termed the same as bad in law since the 1st to the 3rd defendants cannot be sued in their personal capacity as they were officials of the 4th defendant which is a corporate body that is capable to sue and be sued in its own name. The Defendants further stated that they had no knowledge of a purported judgement emanating from objection proceedings delivered in 1990 by the Land Adjudication Officer in which the plaintiff was awarded 400 acres.

The Defendant further contended that the aforesaid award by the Land Adjudication Officer is statutorily time barred and hence the same cannot confer any rights to the plaintiff.

In their counterclaim the defendant had also counter claimed on the award of the 400 acres by the Land Adjudication Officer and alleged fraud on the part of the plaintiff and the Land Adjudication Officer. Particularized on the conduct of the Plaintiff and the Land Adjudication Officer and they denied the fact that the Plaintiff's land was consolidated with other parcels of land.

During the hearing of the suit the Plaintiff in his evidence in chief stated that he has been occupying and owns a parcel of land measuring 400 acres with the Oloirien Adjudication Section which parcel was known and confirmed and that the Defendants have denied him his entitlement by failing to allocate him the land portion and that despite the fact that he had filed objections with the Land Adjudication Officer and had consequently been ascertained as the lawful owner of the suit land and in support of the above the plaintiff had produced a copy of the objection proceeding. He stated that though entitled to the 400 acres as ascertained by the Land Adjudication Officer he was allocated about 35 acres of land necessitating the instant suit.

The 2nd Defendant had testified for and on behalf of the others as the secretary of the Oloirien Group Ranch. He confirmed that the Plaintiff is a resident of Oloirien and a member of Oloirien Group Ranch and his name was contained in the Group Register as member No. 245.

The Defendant stated that after the adjudication process Land Parcel Trans Mara/Oloirien/1 was allocated to the group and a title issued for the suit land which was parcel one, however the plaintiff had sued the adjudication officer which was different from the adjudication committee and he never informed him of allocation of 400 acres but as a member he was entitled to about 14.28 ha. He denied that the group ranch took his land.

At the close of the hearing of both the plaintiff and that of the defendant the parties had filed submissions. Having considered the evidence of the plaintiff and that of the defendant together with their submissions filed the issue for determination before me are as follows: -

1. Whether the plaintiff was awarded the suit land prior to the adjudication process and if the same was confirmed by the Land Adjudication Officer pursuant to objection proceedings filed by the plaintiff herein.
2. Whether the plaintiff can rely in the finding of the Land Adjudication officer subsequent to the award made as a result of objection proceedings
2. Whether the finding and/or award by the Land Adjudication is time bad and has become state pursuant to the provision of Limitations of Action Act Chapter 22 of the Laws of Kenya and
4. Whether the defendants counterclaim is barred by the same situation
5. Whether the defendant's counter claim is sustainable on a claim or award made by a Land Adjudication Officer subsequent to the hearing and determination of objection proceedings.

On the first issue for determination, both the testimony and the submissions filed, it is not disputed that the Plaintiff and the defendants are all residents of Oloirien Adjudication Section and members of Oloirien Group Ranch. The Plaintiff contends that prior to the adjudication process he had occupied a parcel of land measuring 400 acres and having been dissatisfied with the demarcation committee decision to consolidate his land with the other parcels of land, he filed the relevant objection proceedings with the Land Adjudication Officer and a decision made by the aforesaid Adjudication Officer on 28th November, 199 in which he was awarded the 400 acres of land. I have read the decision of the land Adjudication Officer though neither the Plaintiff nor the defendant called the said officer and hence the above finding and/or award was not challenged by the Defendants or the adjudication committee.

Under the provisions of section 25,26 and 27 the Land Adjudication Act, the plaintiff had exercised his rights being a party dissatisfied by the decision of the Adjudication Committee the defendant ought to have challenged the aforesaid decision by way of an Appeal to the Minister which right the Defendant had not exercised.

In the case of the **Speaker of the National Assembly –Versus- James Njenga Karume, C.A. Civil Application No. 92 of (1992)eKLR the court held:-**

“In our view there is a considerable merit in the submission that where there is a clear procedure for the redress of any particular grievance prescribed by the constitution and an Act of Parliament, that procedure be strictly followed’.

The decision of the Land Adjudication Officer being that the Plaintiff is the owner of the 400 acres, the defendant had an obligation to comply with the same and allocate the plaintiff the same parcel in the absence of any appeal setting the same aside as stipulated under the Land Adjudication Act and in the absence of the same I find that the plaintiff was entitled to the 400 acres of land which was determined by the Land Adjudication Officer.

On the issue of whether the Plaintiff can rely on the finding of the Land Adjudication Officer, the Plaintiff contends that the same was neither appealed against and furthermore any challenge to the same could only be done by way of Judicial Review Application since that decision was an administrative and hence can't be challenged by counter claim.

Defendants on their part contended that they got knowledge of the decision of the Land Adjudication Officer only after the suit herein was filed and have stated that the same was procured through fraud and misrepresentation. It is trite law under the provision of section 29 of the Land Adjudication that the decision of the Adjudication Officer can be challenged through an appeal as provided. The Defendant had not exercised that right and the decision being final the decision to vitiate that decision by way of a counter claim is unprocedural and untenable. The appeal process to the minister under the Land Adjudication Act is final and I thus find that the defendants having known the decision of the Land Adjudication Officer ought to have acted on that finding on appeal against the same which they did and hence it is my finding that the claim of the plaintiff to whom the land has been buttressed by that decision and was properly in order to rely on the Land Adjudicating Officer on whether the Plaintiff has satisfied the grant of an order of the discretionary order of injunction the plaintiff having established a prima facie case on the basis of the finding of the Land Adjudication officer has met the threshold as established in the case of Geilla - Versus- Cassman Brown (1975).

From the finding and taking into account the plaintiff's testimony and the evidence I find that the plaintiff has proved his case on a probability of success and I thus enter judgement for the plaintiff against the Defendant jointly and severally in the following terms: -

1. That a declaration do hereby issue that the Plaintiff is entitled to a parcel of land measuring 400 acres within Oloirein Group Rach pursuant to the decision of the Land Adjudication Officer made on 28th November, 1990.
2. That a permanent injunction do issue against the defendant by themselves or servants against interfering with and/or depriving the plaintiff of the 400 acres within land parcel Trans Mara/Oloirien/1.

3. The costs of the suit.

DATED, SIGNED and DELIVERED IN OPEN COURT on this 11th day of June, 2020.

Mohammed Kullow

Judge

11/6/2020

In the presence of:

CA:Chuma

Mr. Ochwangi for the plaintiff

N/A for the defendant

Mohammed Kullow

Judge

11/6/2020