



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 335 OF 2017

FORMERLY ELC (KISII) CAUSE NO. 359 OF 2010

MICHAEL KISHON OLE RISA & 8 OTHERS.....PLAINTIFFS

VERSUS

HON. GIDEON KONCHELLAH & 15 OTHERS.....DEFENDANTS

JUDGEMENT

1. Olalui Group Ranch (hereinafter referred to as the Plaintiff) had by an amended plaint dated 19th January, 2011 brought the suit herein against the Defendants seeking for the following orders:

- (a) A declaration that the sub division and transfer of parcels No. Narok/Trans-Mara/Olalui Nos.2-9 to the 12th Defendant were fraudulent, null and void and that the 12th Defendant do transfer the same to be registered in the name of the Plaintiff Group Ranch.
- (b) A declaration that the sub division and transfer of parcel Narok/Trans-Mara/Olalui/1 into parcels No. 10 and 11 were fraudulent, null and void and that parcel No. 11 be transferred by the 1st Defendant to the Plaintiff Group Ranch.
- (c) A declaration that the sub division and transfer of parcel No. 10 into parcels No. 12, 13 and 14, and transfer of parcels No. 12 and 14 to the 3rd defendant and 2nd defendants, respectively, were fraudulent, null and void and that parcels Nos. 12 and 14 be transferred by the 2nd and 3rd defendants to the Plaintiff Group Ranch.
- (d) Costs of the suit.
- (e) Any other or further relief that the court may deem fit and just to grant.

2. The Plaintiffs averred that sometime on the 16th April, 1988 the 12th Defendant was fraudulently and illegally registered as the owner of land parcel Narok/Trans Mara/Olalui/2,3,4,5,6,7,8 and 9 in collusion with the former group representatives who are the 4th, 5th, 6th, 7th, 8th, 9th, 10th and 11th defendants which led to and caused to be sub divided land parcel Narok/Trans Mara/1 into parcels 10 was registered in the name of the Plaintiff and parcel No. 11 measuring 607 in the name of the 1st defendant.

3. The Plaintiff further averred that on the 6th April, 1992 the 4th to 11th Defendants in breach of the trust bestowed on them as the officials of the group ranch caused the sub division of parcel No. 10 into parcels No. 12, 13 and 14 and had caused parcel No. 12 transferred and registered in the name of the 2nd defendant when the land was adjudicated upon.

4. It is the Plaintiffs case that for the above reasons, the registration of parcels No. 11 and 12 to the 1st and 2nd Defendants were fraudulent and thus the same ought to be restored to the plaintiffs' names.

5. By an amended statement of defence filed in court the defendants denied that they caused parcel No. 12, 13 and 14 to be excised and transferred into the name of the 1st and 2nd defendants.

6. When the suit came up for hearing the plaintiff called 4 witnesses and the defendant called 4 witnesses. The 1st Plaintiff Salim Lemuta Konyokie testified that his father was a member of the group ranch and he was born and grew up on the suit land, he stated that parcel No. 1 was sub divided into parcel No. 2 to 9 and the same were deemed as public utilities and that the Defendants in illegal and fraudulent manner caused the excision of the parcel of land and have it transferred and registered in their names.

7. PW 2 Michael Lekishon stated that he was the elected chairman of the Plaintiff Group Ranch and that sometime in 1989 he wrote a letter

complaining to the Land Adjudication Officer and the District Officer requesting for the suspension of the sub division of the suit but the same was entirely ignored.

8. On cross examination by the defendants' advocates PW 1 further stated that he did not know the roles that the 1st, 2nd and 3rd defendants had played in the allocations of parcels No. 2 to 8 as to the then Narok County Council. According to him the said parcels were solely earmarked as public utilities to be held in trust for the local community by the then Narok County Council. He further stated that he had not sued both the Land Adjudication Officer or the Registrar of land who had approved the Adjudication process and whom without them no records could be altered or to proof the truthfulness of the requisite adjudication records. On cross examination PW2 stated that he relied on the contents of his statements to support the allegations of fraud and that he did not have any evidence to link the 1st defendant to the allegations of fraud as relates to the sub division and transfer of the suit parcels of land.

9. That plaintiff also called PW 3 John Mwaniki Ole Ronko who adopted his witness statement and stated that the 1st to 3rd defendants had obtained their parcel of land illegally when no consent was obtained to sub divide the land. he further stated that he had been a committee member of the group ranch together with PW 2 in 1997 by which time the 1st to 3rd defendants had already obtained title to their parcels. On cross examination PW 3 stated that he did not know that the acts of fraud that were committed and by who as he was not a member of the group ranch committee by the time the 1st and 3rd defendants had obtained title to their respective parcels.

10. In his defence, the 1st defendant testified that he is the registered owner of the suit property and that he was allocated the suit land on 3/2/1988 having been member No. 78 of the Olalui Group Ranch. He referred to minutes dated 24th February, 1985 showing that he was a duly registered member that he was allocated the land when it was vacant and the aforesaid allocation was made following a request by the former president Daniel Arap Moi to the members of the group ranch to hasten the allocating of the 1st defendant his shares in the group ranch. He further stated that following the said request the group ranch committee convened a meeting on 24/2/1985 in which the request was approved vide the groups minutes No. 3/2/1985. He stated that in the said minutes the geographical boundary of his parcel was clearly distinct. He produced both the minutes of the meeting and map which were produced as defence exhibits Nos. 10 and 11 respectively.

11. The 1st defendant further stated that pursuant to the aforesaid he attended the relevant Land Control Board wherein he obtained the requisite consent of the transfer of the suit land resulting in the issuance of his title on 22/7/1986.

12. DW2 Benjamin Ole Tina that he is the registered owner of Land Parcel Narok/Trans Mara/Olalui/14 subsequent to the relinquishing of his father's shares to him. He stated that his father was member No. 70 of the Olalui Group Ranch. He stated his late father took him to the plaintiff committee. On cross examination he stated that he was shown the boundaries of his parcel by one Ole Risa.

13. DW 3 John Kaddy Ole Sosion stated that he was the secretary of the group ranch and confirmed that the 1st Defendant had requested for land and that there were minutes to the effect which were not produced in court. On cross examination he stated that he had been in office since 2005 and later handed over all the documents in respect of the adjudication process to the lands office.

14. At the close of the Defendants case the advocates for both parties agreed to make their closing submissions in writing. The Plaintiffs advocates filed their submissions on the 18th December, 2019 while the Defendants filed their submissions on 15/1/2020. I have considered the pleadings by both parties, the tendered evidence on record and the closing submissions by the advocates. I must point out that the advocates did not agree on the issues for determination, each party filed their own issues for determination. I have keenly looked at the two set of issues drawn by the parties, the pleadings and the evidence on record and find that the following are my issues that merit determination.

(i) Whether land parcel Narok/Trans Mara/Olalui was properly adjudicated and later legally sub divided and transferred

(ii) Whether the plaintiffs are entitled to the prayers sought against the defendants

(iii) Who bears the costs of the suit land

15. Issue No. 1 whether land parcel Narok/Trans Mara/Olalui was properly adjudicated and later legally transferred.

16. There is no dispute that the suit land was registered in the name of the 1st to 3rd defendants, as per the evidence that was tendered by both the parties. However, it is the plaintiff contention that despite the 1st to 3rd defendants being the owners of the suit there is no proper adjudication and demarcation of the said parcel of land and that the subsequent registration of the land in favour of the plaintiff was obtained fraudulently. In his evidence in chief, PW 1 contended that there was no notice of the adjudication process. The 1st defendant on his part stated that he was a member of the plaintiff group ranch, the 2nd defendant also stated that he was allocated the share of his father who was also a registered member of the group ranch. Even though the plaintiffs allege that there was no adjudication process to warrant the registration of the suit land they have not endeavoured to even call the land adjudication office to confirm that position. The process of Land Adjudication is a robust process that provides for the manner in which the rights of the respective land owners is determined and where irregularities are cited it provides for the manner in which the said irregularities could be addressed. The plaintiff despite asserting that he was favoured there was no evidence to point at the defendant that they either instigated or participated in the said irregularities. The only person who could fortify the said assertion were only the Land Adjudication officer and the Land Registrar whom unfortunately were never called to assist the court in determination of the extent of the alleged fraud. The issue of fraud is a serious one in which the person alleging must be prepared to provide full proof of the same and in the instant case I find that the plaintiff has not been able to discharge that particular burden the defendants have stated in their defence that they were members of the plaintiff group ranch and in support of the above they have shown that indeed they were members of the group ranch a fact which has not been controverted by the plaintiff.

17. Having considered the plaintiffs evidence in its totality on the alleged acquisition of the suit land fraudulently by the defendants, the

plaintiff despite the verbal assertion have not produced any record, minutes or maps in respect of the suit land to support the same. In the absence of such evidence, am satisfied that the suit property is a product of an adjudication and demarcation process. The defendant has produced minutes of their allocation of the land, and the requisite consent by the land control board and the title to the land. the Plaintiffs had admitted that indeed the 1st to 3rd defendants were members of the group ranch and the minutes of the plaintiff own demarcation committee produced by the Defendants have remained uncontroverted and in the circumstances, I find that the 1st to 3rd defendants had acquired the suit land lawfully and legally. The plaintiffs merely threw out allegations in respect of which they offered no evidence in support thereof and I am satisfied that the defendants have controverted each and every allegation made by the plaintiffs.

Having held hereinabove the suit land was legally and lawfully allocated to the Defendants, I find that the plaintiff failed to establish the elements of fraud as alleged and thus conclusively proof their case on a balance of probabilities and therefore I find that the plaintiffs are not entitled to any of the reliefs sought in the amended plaint dated 19th January, 2011 and I accordingly dismiss the Plaintiffs suit with costs to the defendants.

DATED, SIGNED and DELIVERED in open court at NAROK on this 30th day of July, 2020.

Mohammed Kullow

Judge

30/7/2020

in the presence of: -

CA:Chuma

Mr Kamwaro for the 1st, 2nd and 3rd Defendant

Ms Maina for Mr Kibet for the plaintiff

Mohammed Kullow

Judge

30/7/2020