



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC CAUSE NO. 370 OF 2017**

**FORMERLY KISII ELC NO. 601 OF 2016**

**ANGATA BARGOI PARMERS.....PLAINTIFF**

**-VERSUS-**

**DAVID KIPTANUI KORIR & 87 OTHERS.....DEFENDANTS**

**AND**

**JONATHAN KIPLANGAT BOR AND 524 OTHERS.....DEFENDANTS**

**JUDGEMENT**

By a plaint dated 2<sup>nd</sup> September, 2011 and amended on the 6<sup>th</sup> August, 2013 the Plaintiff sought for the following orders: -

1. A declaration that the titles in respect of land parcels No. Angata/Baragoi/3, 157,185,189,978-988,991,992,993-999,1000-1049,1050-1057,1061,1068,1076,1077 respectively are encroached upon and overlapped land parcel Trans Mara/Moyoi/2.
2. A declaration that titles in respect of Angata Baragoi/3,157,185,189,978-988,990-1057,1061,1068,1076,1077 were issued in error as the same have overlapped on Trans Mara/Moyoi/2.
3. An order of cancellation, nullification and rectification of the title aforementioned.
4. An order of eviction directed against the defendants, their agents from Trans Mara/Moyoi/2.
5. A permanent injunction restraining the defendants, their agents, or anyone claiming the land parcels from entering, trespassing into building structures.
6. General damages for trespass and mesne profits.
7. Costs of the suit
8. Any further relief as the honourable court may deem fit and just to grant.

It is the plaintiff's contention that on or about August, 1976, the Moyoi area was declared an adjudication section where upon the completion of the adjudication process land parcel No. Trans Mara/Moyoi/2 measuring approximately 2561.44 Ha was registered in the name of the Plaintiff and further that on or about October,1986 Angata Baragoi area was also declared an adjudication area and upon completion of the process of adjudication and demarcation various parcels of land were registered in names of the members thereof and more particularly parcels No. LR No. Angata/Baragoi/3,157,185,189,978-1000,1000-1049,1050-1057,1061,1068,1076 and 1077 were registered in the names of the Defendants. However, the Plaintiff contends the same have encroached upon an overlapped into portions otherwise forming part of land parcel LR No. Trans Mara/Moyoi/2.

The Plaintiff further contend that upon the realization of the encroachment and the overlapping hereinafter referred to they lodged a complaint with the District Land Adjudication Officer and the Land Registrar who found out indeed there was an overlap and encroachment and they requested the defendants to surrender their titles for cancellation. However, the defendants had filed a suit challenging the decision by the Land Registrar and the land Adjudication officer vide Nairobi HCCC Misc Application No.992 of 2003(JR) which was later withdrawn on 12/10/2009 and notwithstanding the above, the plaintiff avers that the defendants have failed refused and neglected to surrender the titles and they have consequently denied the plaintiffs the use, occupation of the portions of the suit land that have been

encroached upon and they have thus suffered loss and damage and hence the instant suit wherein they sought the orders hereinabove referred to.

The 1<sup>st</sup> to 88<sup>th</sup> Defendants had filed a written statement of defence in which they admit that the Moyoi area was declared an adjudication section or about 1976 and that land parcel Trans Mara/Moyoi/2 was registered in the name of the plaintiff, However, they had in 1981 raised objections to the adjudication of the Moyoi adjudication section through letters addressed to the District Commissioner Narok and the Director of Surveys on the grounds that the Moyoi Adjudication section had overlapped over the Angata Baragoi Adjudication sections. They further denied that their parcels of land had encroached upon the plaintiff parcels of land and their titles are neither offensive or unlawful as claimed by the plaintiff and that the plaintiff had obtained orders from court in Nairobi Misc Application No. 1680 of 1999 which had compelled the Registrar of land to register land parcel Trans Mara/Moyoi/2 which suit they are not parties to.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants also aver that the District Land Registrar and the Adjudication Officer has exceeded those powers in ordering the surrender of those titles and their actions amounted to an illegality and further that the withdrawal of Nairobi HCCC Misc. Application No.992 of 2003 (JR) did not amount to have the land registered in the name of the plaintiff they also deny that the Plaintiff has suffered any loss and/or damages and they prayed that the plaintiff's suit be dismissed with costs.

The 89<sup>th</sup> to 524<sup>th</sup> Defendants in their defence contended that they have resided and cultivated on the suit property which is situated within the Angata Baragoi Adjudication Sections. However, they aver that the 1<sup>st</sup> to 88<sup>th</sup> Defendants have fraudulently obtained their titles through fraud in disregard of the 89<sup>th</sup> Defendant. The 89<sup>th</sup> Defendant had also counter-claimed and sought for orders: -

1. A declaration that LR No. Trans Mara/Moyoi/2 has exceeded the boundaries set out in August 1976 and a fresh demarcation and proper delineation of the boundaries be taken
2. A declaration that Moyoi adjudication area should be confined to its 1976 boundaries
3. A declaration that the process of the allocation of parcels of land to 1<sup>st</sup>-88<sup>th</sup> Defendants was fraudulent and hence an order of fresh adjudication be issued.

During the hearing of the suit the plaintiff called 2 witnesses PW 1 John Ntukosoi who stated that he was the vice chairman of the plaintiff society. He stated that the Moyoi adjudication section was commenced in 1976 and the same was concluded when the Angata Baragoi section had commenced in 1986 and that they were issued and had in their possession a title deed and that despite being the lawful owners of the suit land whose boundaries were delineated, the defendants had encroached upon and entered into the same claiming ownership.

PW 2 Stephen Waithaka Karanja who is the District Land Registrar Trans Mara testified that the Angata Baragoi section was declared in 1986 and there was that other section namely the Moyoi Adjudication Section and Kerikani Adjudication section and when titles were issued complaints arose that they were overlapping on Land Parcel Trans Mara/Moyoi/2 which belonged to the plaintiff and after investigations it was found out that indeed there was overlapping and hence requested the owners of parcels that overlapped on Trans Mara/Moyoi/2 to surrender their titles for cancellation vide a written notice that was issued on 5/8/2003 and he confirmed that there was no record of the said titles having been returned.

Following the close of the plaintiff case, the 1<sup>st</sup> to 88<sup>th</sup> witness testified DW1 David Kiptanui Korir stated that he is a resident in Trans Mara and the vice chairman of the Angata Baragoi committee. He stated that he is aware the suit land is registered in the name of Angata Baragoi co-operative society. He stated his parents went to live in 1954 and he was born in 1948 and the land was identified for settlement to them after a meeting between the Kalenjin community and the maasai clans of Motanik, Uasin Gishu and Siria. The adjudication section concluded the plaintiff had acquired the land from them through fraudulent means and they sought that the plaintiff suit be dismissed.

DW2 Alexander Kibet Kosgey stated that he is the secretary of Angata Baragoi Farmers Society and that when the adjudication of the land was concluded, the Director of Survey had indicated that Moyoi Adjudication Section had overlapped on the Angata Baragoi Section.

The 89<sup>th</sup> Defendant had in his evidence contended that the entire adjudication process was riddled with irregularities and fraud and prayed the court to cancel the entire process.

At the closure of both the plaintiff's and the defendants case all parties had filed their relevant submissions and the issue for determination though not agreed by the parties can be clusted as hereunder.

1. Whether the plaintiff cooperative society legitimately exists as an entity.
2. Whether the process of adjudication was lawful and done in accordance with the law
3. Whether the defendants have proved fraud

On the 1<sup>st</sup> issue of whether the plaintiff exists as a legal entity capable of suing and being sued. The 89<sup>th</sup> Defendant had claimed that the plaintiff was deregistered and subsequently liquidated and hence it was devoid of any legal capacity to commence the instant suit. The 89<sup>th</sup> Defendant had called two witnesses from the office of the commissioner of co-operations who testified that even though the plaintiff co-operative society was deregistered the same was not gazetted and further that the order of deregistration was not communicated to the plaintiff. They further stated that assets of the plaintiff were not liquidated.

The witness on cross examination had confirmed that the plaintiff cooperative society exists as the issue of its deregistration was later reviewed and consequently a gazette notice vacating the deregistration issued.

From the evidence of the witness from the office of the commissioner of cooperative society I have no doubt in mind that the status of the plaintiff as a legal entity has been established and authenticated.

Furthermore, the Gazette Notice issued by the Commissioner of cooperatives to vacate the orders of deregistration is testament to the above fact and hence it is my finding that the plaintiff is a legal entity capable of suing.

On the second issue for determination it is not disputed that Moyoi Adjudication section was concluded in 1976 and title issued to the plaintiff. The defendant contends that the Angata Baragoi Section was concluded in 1986 and titles issued to the various land owners. It was that time that it was realized that the same had encroached and overlapped on the suit land.

The Registrar of lands having received complaint of the overlapped and encroachment had commenced investigations and conclusively determined that indeed there was encroachment and advised the defendants to refuse their titles for cancellation.

The Defendants claim that the exercise was riddled with fraud. From their testimony and evidence the defendants have not tendered any thread of evidence to ventilate their claim of fraud. Their position was just mere allegation that was not supported by any evidence here was no proof that they ever even filed objections as envisaged under the Land Adjudication Act. From the evidence before and the testimony of PW 2 who is the District Land Registrar the same remains unchallenged and uncontroverted, I wholly agree with the finding of the land registrar that there was an overlap on the Moyoi Adjudication Section over the plaintiff land and having so determined I find that the plaintiff has proved his case on a balance of probabilities and the 89<sup>th</sup> Defendant has not been able to discharge the burden of proof of his counter claim and the same fails.

In view of the above, I therefore enter judgement for the plaintiff in the following terms:-

1. A declaration do hereby issue that Land Parcel Title No.Angata/Baragoi /3,157,185,189,978-988,990,991,992,993,994,995,996,997,999,1000-1049,1050-1057,1061.1068.1076,1077 have encroached and overlapped upon LR NO. Trans Mara/Moyoi/2 and the same were erroneously issued.
2. An order of cancellation and nullification in respect of titles LR no. Angata Baragoi/3,157,185,189,978-988,990,991,992,993,994,995,996,997,999,1000-1049,1050-1057,1061.1068.1076,1077 be and is hereby issued.
3. That the defendants are hereby directed to vacate the suit land within 60 days of this judgement in default the plaintiff be at liberty to apply for eviction orders thereof.
4. The costs of the suit herein be borne by the defendants.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 23<sup>rd</sup> day of September, 2020**

**Mohammed N. Kullow**

**Judge**

**23/9/2020**

in the presence of:-

CA:Chuma

Ms Adala holding brief for Ogutu Mboya for the plaintiff

Mr Bosek for the 89<sup>th</sup>-523<sup>rd</sup> Defendants together with Sonai

Mr Mutai for the 1<sup>st</sup> to 88<sup>th</sup> Defendant

**Mohammed N. Kullow**

**Judge**

**23/9/2020**