



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CIVIL CASE NO. 653 OF 2013**

DAVID COSMAS MWANGI.....1<sup>ST</sup> PLAINTIFF

MUTUNKEI OLE MURAY.....2<sup>ND</sup> PLAINTIFF

NKISALI MARANJI OLE LOBISSI.....3<sup>RD</sup> PLAINTIFF

=VERSUS=

NENTANAI GROUP RANCH.....DEFENDANT

**JUDGEMENT**

1. The plaintiffs have filed this suit against the defendant for:-

*(a) The honourable court be pleased to order the Registrar of Lands to revoke and cancel all titles granted as a result of the subdivision of parcel number Kajiado/Lorngusua/69, order a re-survey of the entire parcel of land and re-allocation of the parcel of land to the plaintiffs and other members.*

*(b) Alternatively; a declaration that the plaintiffs are entitled to their rightful parcels of land in their exact measurements being 1<sup>st</sup> plaintiff- Parcel Kajiado/Lorngusua/1486 area 23.73 Hectares, 2<sup>nd</sup> plaintiff – Parcel Kajiado/Lorngusua/1447 area 16.14 hectares and 3<sup>rd</sup> plaintiff- Parcel Kajiado/Lorngusua/1484 area 31.52 hectares.*

*(c) The defendant do bear the costs of the resurvey and any other costs that may be incurred to ensure the plaintiffs recover their legal parcels as per their respective titles and share as members of Nentanai Group Ranch.*

*(d) Costs of the suit and interest at the court rates till payment in full.*

*(e) General and punitive damages for the loss suffered.*

*(f) Any other relief which the court shall deem appropriate in the circumstances.*

2. Upon being served with summons to enter appearance and copies of plaint the defendant entered appearance but neglected and/or refused to file defence within the prescribed period. The matter then proceeded ex parte.

3. PW1 David Cosmas Mwangi told the court that he is the owner of Land Parcel Number Kajiado/Lorngusua/1486 measuring approximately 23.73 hectares. He told the court, he is a member of Nentanai Group Ranch. He told the court that the committee has failed to show him the land on the ground. He together with his co-plaintiffs have tried to get assistance from the provincial administration with no success. They engaged a surveyor who prepared a report. This is when they discovered the parcel of land does not exist in the ground. He prays that the defendant be compelled to give him his share of the land.

4. PW2 Mutunkei Ole Muray confirmed what PW1 told the court. That he has a title deed but the land does not exist on the ground. His Land Parcel Number is Kajiado/Lorngusua/1447. He said he paid Kshs.20,000 as membership fee. He also prays that the defendant be compelled to give him his share of the land.

5. PW3, Nkisali Maranji Ole Lobissi confirmed what the other plaintiffs told the court. He has a title deed for Land Parcel Number Kajiado/Lorngusua/1485 measuring approximately 31.52 hectares. He also confirmed that he paid Kshs.28,000 as membership fee but he does not have land on the ground.

6. I have considered the pleadings, the evidence on record and the written submissions of counsel. The issue for determination is whether the plaintiffs have made out a good case against the defendant.

7. The defendant did not file any defence. The plaintiffs' case is therefore uncontroverted. In support of their case the plaintiffs produced the documents shown in their list of documents dated 31<sup>st</sup> May 2013 and filed in court on the same day. The said documents were produced as exhibits P1 to P24 respectively.

8. I am satisfied that the plaintiffs were paid up members of Nentanai Group Ranch. They have title deed in their names but their respective parcel of lands do not exist on the grounds. These documents have not been challenged.

9. In conclusion, I find that the plaintiffs have proved their case on a balance of probability as against the defendant. They deserve the orders sought. The defendant has breached the obligation it owed the plaintiffs. Accordingly judgment is entered for the plaintiffs as against the defendant as follows:-

*(a) That declaration be and is hereby issued that the plaintiffs are entitled to their rightful parcels of land in their exact measurements being 1<sup>st</sup> plaintiff- Parcel Kajiado/Lorngusua/1486 area 23.73 Hectares, 2<sup>nd</sup> plaintiff – Parcel Kajiado/Lorngusua/1447 area 16.14 hectares and 3<sup>rd</sup> plaintiff- Parcel Kajiado/Lorngusua/1484 area 31.52 hectares.*

*(b) The defendant do bear the costs of the resurvey and any other costs that may be incurred to ensure the plaintiffs recover their legal parcels as per their respective titles and share as members of Nentanai Group Ranch.*

*(c) Costs of the suit and interest at the court rates till payment in full as the court was not guided on the quantum of damages*

It is so ordered.

**Dated, signed and delivered in Nairobi on this 25<sup>TH</sup> day of JULY 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

Ms Nduta Kamau for Mr. Omondi for the Plaintiffs

No appearance for the Defendant

Kajuju-Court Assistant