



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

HCC NO. 87 OF 2007

PETER NDUNGUNYA OLE SONO & 2 OTHERS (Suing on their own behalf and on behalf of
OL JORAI COMMUNITY MEMBERS).....**PLAINTIFFS**

VERSUS

LANDS LIMITED.....**1ST DEFENDANT**

SOLAI RUYOBEI FARM LIMITED.....**2ND DEFENDANT**

CONSOLIDATED WITH

ELC NO 89 OF 2013 (OS)

Formerly HCC NO.379 OF 2012 (OS)

JOHN MERONI LESALUNGA.....**1ST APPLICANT**

TIMEYO OLE RATIA.....**2ND APPLICANT**

JANE SIMITA MUNKA.....**3RD APPLICANT**

SIMEL OLE PARTUNKAS.....**4TH APPLICANT**

JOHN LOKITILA ERGAE.....**5TH APPLICANT**

(Suing on their behalf and on behalf of Ol Jorai Community members)

VERSUS

SOLAI RUIYOBEI FARM LTD.....**DEFENDANT**

JUDGMENT

(Suit by two groups claiming ownership of the suit property; suit property having previously been owned by Agriculture Development Corporation (ADC); first group claiming that they purchased this land and that they proceeded to subdivide it into several sub-plots; first group claiming that the 2nd defendant thus holds a fraudulent title to the land and making an alternative claim of adverse possession; evidence clear that there was never any sale by ADC to the first group of claimants; evidence clear that ADC sold the suit land to the 2nd defendant; discernible from the evidence that the first group proceeded to purport to subdivide the suit land and procured fake titles to various sub-plots; first group also proceeding to procure the preparation of a fake Registry Index Map; the fake titles and fake RIMs nullified; claim for ownership of the land dismissed; alternative claim for adverse possession also dismissed as 12 years had not lapsed from the time ADC relinquished title to the time this suit was filed; case of second group of claimants being one of adverse possession on behalf of a group; not known who is covered in the definition of the group and no indication of who ought to benefit from a judgment of the court; no advertisement of the case and no authority to sue tendered; no evidence of when possession started or what the applicants have done on the land to prove the elements of adverse possession; case of the second group also dismissed; held that the suit land is owned by the 2nd defendant)

PART A : INTRODUCTION AND PLEADINGS

1. This judgment is in respect of two consolidated suits. The first of the suits was filed by Peter Ndugunya Ole Osono, Musuri Ole Ratia, and Lerionka Ole Rotiken, suing on their own behalf and on behalf of "Ol Jorai Community Members". The defendants are Lands Limited and Solai Ruyobei Farm Limited. This suit was filed on 9 May 2007 in the High Court of Kenya at Nakuru, and registered as Nakuru HCCC No. 87 of 2007. With the creation of the Environment and Land Court after the 2010 Constitution, it was transferred to this court. The second suit was also originated in the High Court at Nakuru and registered as Nakuru HCCC No. 379 of 2012 (OS). The applicants in that case are John Meroni Lesalunga and four other individuals suing on their own behalf and on behalf of "Ol Jorai Community Members" with the respondent being Solai Ruyobei Farm Limited. This is a claim for adverse possession over the land parcel LR No. 20229/1 which was said to be registered in the name of Solai Ruyobei Farm Limited from 8 December 1995. This suit was also transferred to the Environment and Land Court and re-registered as Nakuru ELC No. 89 of 2013. The two suits were ordered to be consolidated.

2. The plaintiffs in the suit Nakuru HCCC No. 87 of 2007 amended their plaint several times resting with the Further Amended Plaint filed on 28 May 2018. In this Further Amended Plaint, it is averred that the plaintiffs and the persons they represent, Ol Jorai Community members, have been residing in the land parcel LR No. 9581 for over 40 years. They pleaded that they are aware that the original grant to LR No. 9581 was surrendered to the Government by the registered owner. It is pleaded that in 1997, they applied to the Government for allotment of the land and that on 2 April 1998, on the instructions of the Government, the District Officer Naivasha, gave consent for the survey of the land with a view to permanently settling the plaintiffs on the land. It is pleaded that on 14 April 1998, the Government again through the District Officer Naivasha, authorized them to deposit survey fees of Kshs. 2,000/= each. It is pleaded that on 19 May 1998, a surveyor was appointed to survey the said land LR No. 9581 with a view to cause title deeds to issue to the plaintiffs. It is contended that on 25 October 1995, the 1st defendant (Lands Limited) fraudulently caused a subdivision of LR No. 9581 to give rise to LR No. 20229/1 and LR No. 20229/2 and thereafter fraudulently transferred the land parcel LR No. 20229/1 to the 2nd defendant (Solai Ruyobei Farm Limited). It is pleaded that the 2nd defendants have now threatened to take the land by force. The plaintiffs further pleaded that this land LR No. 20229/1 has been subdivided into 3,320 parcels of land being Kiambogo/Kiambogo Block 3/1-3320 (Ol Jorai Farm) and that the plaintiffs have now been issued with titles. In the suit, they have asked for orders of a declaration that LR No. 20229/1 which was excised from LR No. 9581 and now subdivided into Kiambogo/Kiambogo Block 3/1 -3320 belongs to the plaintiffs and the Ol Jorai Community, or in the alternative, an order that they have acquired title to LR No.20229/1 by way of adverse possession; an order cancelling the certificate of title to LR No. 20229/1 issued to the 2nd defendant and further that LR No. 20229/1 be registered in the plaintiffs' name; a permanent injunction to restrain the 2nd defendant from dealing with or interfering with the plaintiffs' possession of LR No. 20229/1; and any further order that this court may deem just to grant.

3. The 1st defendant through an amended defence and counterclaim averred inter alia that the subdivision of LR No. 20229/1 is a result of the plaintiffs' fraud. It pleaded that the plaintiffs are trespassers, squatters and/or aliens on the land. In the counterclaim, it is pleaded that the plaintiffs around the year 1992 unlawfully trespassed into the land and falsely pretended to be able to obtain titles to the land. They have sought damages for trespass; a declaration that the plaintiffs' occupation of the land is illegal; a declaration that the approval by the Clerk to the County Council of Nakuru for amalgamation and subdivision of LR No. 9581 and LR No. 10242 Ol Jorai into 3965 portions is null and void; an order of eviction and costs.

4. The 2nd defendant filed an amended defence on 19 September 2018 in light of the amended plaint. It pleaded inter alia that LR No. 9581 was subdivided into LR No. 20229/1 and 2, and the former sold and transferred to the 2nd defendant at a consideration of Kshs. 24,000,000/=. It pleaded that this land, LR No. 9581 therefore ceased to exist; that LR No. 20229/1 was transferred to her on 29 November 1995, and that this land now legally belongs to the 2nd defendant. It pleaded that LR No. 20229/1 could not have been subdivided into Kiambogo/Kiambogo Block 3/1 -3320 because at the time of the purported subdivision, the title to LR No. 20229/1 was in the custody of the court vide a ruling in the case Nakuru ELC No. 532 of 2013 and no order of its release was issued until 1 February 2018. It was also pleaded that the 2nd defendant has not sold its interest to any other person and that a search done on 31 July 2018 shows that the land belongs to the 2nd defendant. It asked that the plaintiffs' suit be dismissed.

5. The Originating Summons in the suit Nakuru ELC No. 89 of 2013 is supported by the affidavit of Timeya Ole Ratia. He deposed inter alia that he is the Vice –Chairman of Ol Jorai Community whose membership is 6,800. He deposed that he and the other applicants occupy the land parcel LR No. 20229/1 and that members of Ol Jorai Community have been living on this land since the year 1972 and have enjoyed continuous uninterrupted possession of the same to the time of filing suit. He deposed that the Government made efforts to improve the welfare of the Ol Jorai Community through building of schools, water tank projects, and a constituency generator which projects were made openly and with the knowledge of the respondent (Solai Ruyobei). He contended that having lived on the land for so long they are entitled to ownership of the land through adverse possession.

6. The Originating Summons was opposed through the Replying Affidavit of Charles Olare Chebet, a director of Solai Ruyobei Farm Limited. He deposed inter alia that the company purchased the land on 29 November 1995 from Lands Limited. He denied that the applicants have been living on the land since 1992 as he stated that in the year 1995 the land was vacant. He deposed that it was only in the year 2004 that some strangers started invading the land and resided on it. When they tried to evict them, they filed a suit Nakuru HCCC No. 22 of 2004, through one Peter L.N Ole Osono , which case was dismissed with costs. He deposed that the plaintiff therein purports to represent the same applicants here. He also deposed that there is also pending the suit Nakuru HCCC No. 87 of 2007 and another suit being Nakuru HCCC NO. 209 of 2007. He deposed that the Government allocated the applicants land in Ol Jorai Settlement Scheme. He deposed that adverse possession cannot arise since every time they seek their eviction, the applicants come to court to frustrate their efforts.

7. In the course of the proceedings, the parties in the suit Nakuru ELC No. 89 of 2013, wished to enter into a consent. I could not endorse the consent given that the plaintiffs in the first suit still claimed the same land and I directed the matter to proceed.

PART B : EVIDENCE OF THE PARTIES

8. PW-1 was Peter Ndugunya Ole Osono. He testified inter alia that the disputed land was formerly owned by Agriculture Development

Company (ADC) and that they (the plaintiffs) were given the said land by Retired President Moi. He identified the land as LR No. 20229/1. He stated that they paid ADC Kshs. 10 Million for the land. They later got consent to survey the land on 2 April 1998 and that they undertook survey pursuant to the said consent. He stated that in 1998, some people from other areas wanted to seize the land and President Moi formed a Task Force which recommended that they (plaintiffs) be issued with titles. He testified that in the year 2010, they registered a company, Ol Jorai Company Limited, and those on the land became members of this company. In the year 2011, they paid some money to the County Council of Nakuru, ostensibly for planning and subdivision, which was approved. They then proceeded to subdivide the land into the many sub-plots identified as Kiambogo/Kiambogo Block 3 and he had an area list showing the beneficiaries of the sub-plots together with some title deeds. He stated that on the land, there are several schools and Government projects. He testified that there are no members of Solai Ruyobei Farm Limited (Solai Ruyobei) on the disputed land and he was not aware that Solai Ruyobei have title to LR No. 20229/1. He asserted that this land LR No. 20229/1 is theirs (plaintiffs) and it is the same land that they subdivided to obtain the many sub-plots.

9. Cross-examined, he had no document to show that Retired President Moi gave them this land. He was also put to task on the claimed payment of Kshs. 10 Million to ADC as the copy of the receipt that he had did not indicate why Kshs. 10 Million was being paid to ADC. He said that President Moi gave them the land in the year 1998 though the payment receipt he had showed 3 March 1996, before the claimed allocation by the President. He testified that he surrendered the title LR No. 20229/1 for subdivision but he had no document of surrender. He explained that Ol Jorai has two phases of Settlement Schemes, identified as Ol Jorai Phase 1 and Phase 2. He stated that LR No. 20229/1 is private land given to Ol Jorai Company Limited. He conceded that this company was registered on 9 April 2010, and has three shareholders, himself, one Reuben Egeno and one Penina Tegat. It was put to him that the land LR No. 20229/1 has never been subdivided and it is still in the name of Solai Ruyobei but he asserted that they subdivided this land to produce the many Kiambogo/Kiambogo Block 3 sub-plots. Documents indicating transfer of the land LR No. 20229/1 to Solai Ruyobei were put to him but he stated that he is not aware of such transfer. He had nothing to show that the Kiambogo/Kiambogo Block 3 sub-plots emanated from a subdivision of LR No. 20229/1. He stated that he was not aware that the title to LR No. 20229/1 was ordered deposited in court through an order issued on 3 October 2013 in a case Nakuru ELC No. 532 of 2013 (a case pitting shareholders and directors of Solai Ruyobei on the control of the company). The various documents of transfer from Ol Jorai Company Limited to the title holders of the sub-plots, that he produced as exhibits, were put to him and he acknowledged that some transfer instruments bear no photographs as is required and were not signed. The letter dated 14 April 1998, which he had stated was the letter authorizing survey on their behalf and a letter dated 19 May 1998, authorizing a surveyor to enter Ol Jorai Farm, were put to him, and he acknowledged that they do not refer to LR No. 20229/1. The various receipts for Kshs. 2,000/= (which are receipts issued in May 1998) that he stated were for survey were also put to him and he acknowledged that they do not indicate that they are for survey of LR No. 20229/1. He was asked whether he has any search for the Kiambogo/Kiambogo Block 3 titles and he had none.

10. PW-2 was Priscilla Njeri Wango, a land surveyor working with the office of the Director of Surveys having worked in that office since the year 2006. Her initial evidence (for she was later recalled with the leave of the court) was that the land parcels Kiambogo/Kiambogo Block 3 originated from an amalgamation of LR No. 9581 and LR No. 10242 and that the subdivision produced 2558 parcels. She produced the area list and the Registry Index Maps (RIMs) which are in eleven sheets. She stated that she did not get any information regarding LR No. 20229. She stated that the amalgamation of LR No. 9581 and LR No. 10242 which are titles issued under the regime of the Registration of Titles Act, Cap 281 (repealed) (RTA) did not produce a new single parcel of land but that the land was straightaway subdivided into the many sub-plots and titles issued under the Registered Land Act, Cap 300 (repealed) (RLA) regime.

11. Cross-examined, she testified that she did not personally work in Ol Jorai. She also did not see a letter dated 10 August 2011 (from County Council of Nakuru addressed to Ol Jorai Company Limited giving approval to amalgamate LR No. 9581 and LR No. 10142 and subdivision into 3965 plots) in their records. She was not aware who applied for the amalgamation. She was not aware that LR No. 10242 had been subdivided before. It was put to her that LR Nos. 20229/1 and 20229/2 were subdivisions of LR No. 9581 but she stated that she does not know. She stated that the maps show that the sub-plots came from LR No. 9581 and she believed that LR No. 20229/1 does not exist. She was not aware of the position of LR No. 20229/2 and did not know whether it was subdivided to create a settlement scheme. She was not aware that Solai Ruyobei have title to LR No. 20229/1. Put to task by Mr. Opar, learned counsel for the 2nd defendant, she admitted that she had not conducted an investigation of the parcels of land. She had no document to show where the sub-plots came from. She stated that the owners of the two parcels of land LR No. 9581 and LR No. 10242 was Ol Jorai Company Limited but she had no proof that they owned these parcels of land. She did not know if there was a gazette of the amalgamation. She also did not know that these parcels of land were previously owned by ADC.

12. Mr. Konosi, learned counsel for the plaintiffs, applied to recall PW-2 to produce the correspondence land parcel file which I allowed. After she was recalled, Ms. Wango now testified that a parcel of land LR No. 10242/137 was amalgamated with LR No. 9581 to produce LR No. 20229 measuring 4322 Ha. The land was then subdivided to produce LR Nos. 20229/1 and 20229/2 owned by ADC. She now stated that it is LR No. 20229/1 which was subdivided to produce the many sub-plots. She mentioned that the survey sheets (RIMs) however provided that the sub-plots come from LR Nos. 9581 and 10242 which she attributed to human error.

13. Cross-examined after her recall, she testified that the survey of the sub-plots was done by a private surveyor, one Mr. Gachuhi but she had no particulars of this survey as she stated that the operative file volume is missing. It was put to her that the survey volume does not exist and that the purported survey is a forgery but she asserted that the maps (RIMs) were a product of a survey. She now acknowledged that LR No. 9581 ceased to exist after an amalgamation with LR No. 10242/137 which produced LR No. 20229. She stated that her earlier evidence that the sub-plots came from LR No. 8581 and LR No. 10242 was wrong. She acknowledged that the letter of 10 August 2011 allowing Ol Jorai Company Limited to amalgamate LR Nos. 9581 and 10242 was misplaced as by this time LR No. 9581 and LR 10242 did not exist at that time. She had nothing to show that the sub-plots came from LR No. 20229/1.

14. PW-3 was Charles Kipkurui Ngetich, a Principal Land Registration Officer and at the time of giving evidence was the acting Deputy Chief Land Registrar. He had some records, including a letter dated 21 August 2014, and another dated 19 March 2019, directing the District Land Registrar to issue titles (to the sub-plots). He however found no record of surrender of a mother title, nor any record of conversion from the RTA regime to the RLA regime. He acknowledged that the record for LR No. 20229/1 (IR No. 67258) shows a reconstructed file and title issued to Solai Ruyobei. He thought that everything was jumbled up as far as registration of the titles was concerned and he had no records to link the titles of the sub-plots to any record from the office of Land Administration or Director of Surveys.

15. Cross-examined, he acknowledged that the records are clear up to ownership by ADC of LR No. 20229/1 but from thereon the records are not clear and he could not tell who owns the land currently. He however faulted the process that led to the reconstruction of the file

containing LR No. 20229/1 which apparently got lost. He thought that the sub-plot titles are not illegal though he acknowledged that he did not authenticate the titles and he had never seen them. He was not aware that the title to LR No. 20229/1 was deposited in court when the titles to the sub-plots were prepared. He could not tell if titles to the sub-plots came from the land LR No. 20229/1 and he acknowledged that the title to LR No. 20229/1 has never been surrendered.

16. With the above evidence, the plaintiffs closed their case.

17. DW-1 was John Charles Odhiambo. He used to work for ADC which he joined in 1970 and retired in the year 2006. He was at the time of giving evidence a director of Lands Limited, the 1st defendant. He explained that Lands Limited is a wholly owned subsidiary of ADC and all land of ADC is held by Lands Limited. He testified that Lands Limited transferred the land parcel LR No. 20229/1 to Solai Ruyobei after Solai Ruyobei had paid for it and consent of the Land Control Board issued. A title was then issued to Solai Ruyobei. He mentioned that at some point, Mr. Ole Osono (PW-1) came dangling a letter from the Rift Valley Provincial Commissioner allowing him to take over the ADC Manager's house and their manager was eventually evicted. There was a complaint by ADC and later a court case regarding this eviction. An order was issued evicting Mr. Ole Osono but the eviction was never done. It was then that Mr. Ole Osono started allocating the surrounding land to people that he knew and to his clansmen. Another group of the Masai community were aggrieved and to resolve the matter it was agreed that 2,400 acres be allocated to Mr. Ole Osono and his squatters and that Solai Ruyobei be left with their land LR No.20229/1. Despite this agreement, Mr. Ole Osono and the people he had allocated land did not vacate the land and ADC wrote various letters asking them to leave. He was shown the receipt of Kshs. 10 Million which the plaintiffs alleged that they used to buy the land and he dismissed it as a forgery. He pointed out that this was a cash sale receipt which is one issued for buying or selling goods and not land. There was also no description of what was being bought. He also testified that the operation of cash transactions stopped in October 1994 and such receipt could not have been prepared in 1996 as claimed by the plaintiffs.

19. Cross-examined, he stated that the 2,400 acres given to Mr. Ole Osono and his group are not from LR No. 20229/1. He however did not know if the 2,400 acres was ever given out.

20. DW-2 was Wilson Kibet Cherop a land surveyor working with ADC since the year 2013. He testified that ADC amalgamated the land LR No. 10242/137 and LR No. 9581 to produce LR No. 20229. This land was then subdivided into LR Nos. 20229/1 and LR No. 20229/2 in the year 1994. The parcel No. 20229/1 measuring 8,018 acres was then sold to Solai Ruyobei. He testified that it was not possible to amalgamate LR No. 9581 and LR No. 20242 in the year 1998 as they did not exist then, and that if any was done in the year 2011, this is fraudulent. He testified that ADC offered some land to the Settlement Fund Trustees (SFT) to settle squatters but this is outside LR No. 20229/1. He testified that only Solai Ruyobei could apply for conversion of LR No 20229/1 from the RTA to the RLA regime. He testified that Mr. Ole Osono (PW-1) himself got land which is a parcel No. 1557 from the SFT.

21. DW-3 was Simon Kipchumba Kandie, the secretary of Solai Ruyobei. He testified that Solai Ruyobei purchased LR No. 20229/1 on 29 November 1995 from Lands Limited for the sum of Kshs. 24,000,000/= and they became registered as proprietor on 8 December 1995. He identified the transfer instrument and a copy of the Certificate of Title. He stated that they have not sold this land to anyone. At the time of purchase, there was nobody on the land. At some point, they wished to exchange this land with some land in Solai owned by Lari Nyakinyua group and a deed of exchange was drawn and executed. However, when members of Lari Nyakinyua Group went to settle on the land, they faced resistance from persons of Masai origin who had squatted on the land. He recalled the case Nakuru ELC No. 532 of 2013 where the document of title was deposited in court through an order of 3 October 2013. He testified that through a ruling of 1 February 2018, the court directed release of the title and other company instruments deposited but when they went to collect the title deed, they found it missing. The Court Administrator then wrote to the Chief Land Registrar requesting that a provisional title be issued which was done. He had the original of it in court. He stated that it cannot be true that the plaintiffs subdivided this land. He stated that at the moment there are Masai squatters on the land and they are the plaintiffs in the case ELC No. 89 of 2013. He testified that Mr. Osono had filed a previous case, Nakuru HCCC No. 22 of 2004 claiming the same land which case was dismissed. He asked that this case also be dismissed.

22. Jane Sinita Munka testified on behalf of the applicants in ELC No. 89 of 2013. She testified that they are on the suit land as their parents used to work for the white settler who first owned it. She testified that when the white settler left, ADC took over the land but their parents remained as workers. She stated that when ADC left in 1994, the workers still remained on the land and started farming on it. They also occupied the old ADC houses whereas some built new houses. She testified that when their children grew up, they also established themselves on this land near where their parents cultivated. She stated that they came to know that ADC had sold the land to Solai Ruyobei in 1995 and they inquired from SFT why they were not being allocated this land. They approached the District Officer and District Commissioner and Provincial Commissioner and even went to State House. She stated that the President called the Provincial Commissioner and they were promised that they would not be evicted. They filed this suit because they realised that some members of Solai Ruyobei were selling the land and also members of Lari Nyakinyua emerged to settle in it. She led a delegation to the Governor of Nakuru and involved the National Land Commission and in a meeting, the members of Solai Ruyobei stated that they would wish to live in Solai and have Lari Nyakinyua Group compensated. She stated that the Deputy President has also been on the ground and that the NLC promised to issue them with titles. She stated that of the Group by Mr. Ole Osono, only 36 of them live on the disputed land (though changed to 33 under cross-examination and she had a list of 31 people that she said are of Ole Osono's group).

23. Cross-examined, she stated inter alia that Lari Nyakinyua and Solai Ruyobei members have never lived on the land. She was cross-examined on the plaintiffs in her case who she agreed are five but she stated that they are suing on behalf of over 6,000 people. She acknowledged that these people have not been identified and she has not presented any list of names. She also had no authority to show that she had been authorized by these other persons to file suit on their behalf.

24. With the above evidence, the applicants in the Originating Summons closed their case.

25. I invited counsel to file written submissions which they did and I have taken these into account before arriving at my decision.

PART C : ANALYSIS AND DECISION

26. There are two parties before me who claim ownership of the land parcel LR No. 20229/1 which land is registered in the name of Solai Ruyobei. The first group, led by Mr. Peter Ole Osono, (whom I will refer to as the Ole Osono Group) claim that they were allocated this land by Retired President Moi and that they then proceeded to subdivide it into several plots (the sub-plots) now owned by members of the Group. They have alternatively claimed the land by way of adverse possession. On the other hand, the second group led by Ms. Munka (whom I will simply refer to as the Ms. Munka Group) claim the same land by way of adverse possession.

27. Starting with the first claim by the Ole Osono Group, I have discerned from the evidence that the land parcel LR No. 20229/1 was until the year 1995 owned by ADC through its subsidiary Lands Limited. This land was then sold to Solai Ruyobei for Kshs. 24,000,000/= and on 8 December 1995 Solai Ruyobei became registered as proprietor of the said land. Despite the Ole Osono Group claiming that this land was given to them by the former President, no evidence of such allocation was ever tendered. Mr. Ole Osono also claimed to have paid Kshs. 10 Million to ADC for this land and relied on a photocopy of a cash sale showing this amount. I have serious doubts on the authenticity of this receipt given the evidence of DW-1 and I am in fact convinced that the said receipt is a forgery. I am so persuaded because as pointed out by DW-1, this cash sale receipt does not indicate what payment it is being made for. It is also unusual for one to pay an institution such as ADC, this amount of cash, for purchase of land without a receipt being issued, clearly showing that this money has been paid in respect of purchase of land. You wouldn't also expect ADC to receive such a huge amount of money in cash and not through a bank transfer or banker's cheque. I also have no evidence of where this amount of Ksh. 10 Million came from or who may have contributed towards the same and what each contributor paid. You would also expect that there be some correspondences exchanged between the vendor and purchaser and a sale agreement if at all this land was being sold to the Ole Osono Group but there is no such document produced. I am thus clear in my mind that there was no sale to the Ole Osono Group as claimed and the purported receipt of Kshs. 10 Million is certainly a forgery. No wonder, the original was never made available and I am sure that none exists.

28. The Ole Osono Group never got title to LR No. 20229/1. It follows that they could not proceed to convert it from the RTA regime to the RLA regime and neither could they legally proceed to subdivide it into the many sub-plots. In fact, the Ole Osono Group were not even clear from where the sub-plots emanated from. On one hand, they claimed that this was a result of a subdivision of an amalgamated LR No. 9581 and 20242. But this clearly cannot be the case for these parcels of land ceased to exist in the 1990s. The Registry Index Maps (RIMs) under which the Ole Osono Group purport to base their titles shows that the same were issued pursuant to a subdivision of LR No. 9581 and 10242 land parcels that were not available for subdivision for they did not exist at the time of the purported subdivision. Importantly again, even assuming that these parcels of land actually existed at the time of subdivision, the Ole Osono Group could not undertake the subdivision for these parcels of land were not registered in their names but in the names of ADC.

29. Neither the surveyor nor the Land Registrar could point out from exactly what land these sub-plots are claimed to have been subdivided from. I was in fact quite disturbed by the evidence of these two officers which revealed the laxity and *laissez faire* attitude that land officials take on serious issues of land documentation and land ownership. Ms. Wango, the surveyor, could not answer basic questions on the issues that have arisen in this dispute. Much of her answers were laced with the statement, "I do not know". Now, if the Director of Surveys does not know what is happening in the survey department, and what land is owned by which person, or where titles and RIMs, and Deed Plans have come from, then who will have this information? It is the Director of Surveys who authorises subdivisions, keeps maps and plans, and who should have this information, and God help us, when the same Director through his/her associates, states that he/she does not know. It is more or less the same situation with the Land Registry, for PW-3, a person no less than the Assistant Chief Land Registrar, could not be able to state whether the titles of the plaintiffs are authentic or not, and blamed the lack of records. Is he not the custodian of these same records that he claims not to have? I wonder why such officers are engaged by the state and draw salaries every end of month when they are unable to respond to pretty basic issues within their dockets. But I digress, and I better get back to the matter at hand.

30. The only conclusion one can arrive at is that all the sub-plots that were identified by Mr. Ole Osono as emanating from LR No. 20229/1 or LR No. 9581 and LR No.20242 are all fake. All these titles bearing the numbers Kiambogo/Kiambogo/Block 3/ 1 -3320 or any other such title claiming to have been derived from a subdivision of LR No. 20229/1, or LR No. 9581 and LR NO. 20242, are all fraudulent titles and are all fake. They hold zero proprietary interest. The claimed Registry Index Map of Kiambogo/Kiambogo Block 3 (Ol Jorai Farm) is a fraudulent RIM that is not backed up by any valid titles and is fake. So that no dealings take place using these fake titles, and for the avoidance of any doubt, I hereby declare these titles Kiambogo/Kiambogo Block 3 (Ol Jorai Farm)/ 1 to 3320 (inclusive) as null *ab initio*. I order the Chief Land Registrar and the District Land Registrar, Naivasha, to expunge these titles from their records. No dealings should ever be registered in the register of these titles and as I have mentioned these titles must be expunged. I also declare the RIMs to Kiambogo/Kiambogo Block 3 (Ol Jorai) farm as null *ab initio* and I order the Director of Surveys to expunge these RIMs from the land survey records.

31. It is actually a shame, nay, a scandal, that these titles were ever prepared in the first place, and maps purporting to authenticate them drawn. If such could happen under the watch of the Chief Land Registrar and the Director of Surveys, then we have reason to worry whether the custodians of our land records can be entrusted by the public to keep good straight records. It is a shame that through a letter dated 25 May 2016, one Consolata Namai, on behalf of the Director of Surveys, purported to forward these fake RIMs and an area list to the District Land Registrar for issuance of titles to the plaintiffs without first authenticating where exactly these sub-plots have come from. A simple investigation would have revealed that they purport to emanate from a land parcel that is owned by somebody else, and worse, that the title is still intact and has never been surrendered for subdivision. It is a shame and a scandal, that through a letter dated 21 August 2014, one S. N. Mwenda, for the Chief Land Registrar, wrote to the District Land Registrar, Naivasha, stating that the mother title has been surrendered and that he can proceed to issue individual titles. The mother title had never been surrendered and could not have been surrendered for it was under the custody of the court. This country should be worried that people can actually proceed to purport to subdivide other people's land, issue titles and purport to transfer them to other people, with the backing of the Chief Land Registrar and the Director of Surveys. I am personally very afraid and very worried at the scandal that has been revealed to me in this case.

32. It is tempting to vent some more, but let me turn to the claim of adverse possession by the Ole Osono Group. It is trite law that for one to support a claim for adverse possession, the person must demonstrate that they have been in open, peaceful, quiet, continuous, uninterrupted possession of the claimed land for a period of 12 years and that the person had the *animus possidendi* or intention to acquire and keep the land. This is captured in the latin maxim of *nec clam, nec vi, nec precario*. When land is under the Government and/or a Government agency, one cannot claim it under adverse possession and time only starts running in favour of an occupant after title has moved from the Government. This was affirmed by the Court of Appeal in the case of *Gitu vs Ndungu & 2 Others (2001) eKLR* which is a case that touched on whether time in favour of a possessor of land could run in his favour when the land was still registered under the SFT, and it was held that

it could not. In the case of *Kimoi Ruto & Another vs Samwel Kipkosgei Keitany & Another (2014) eKLR* it was held that when land is held by a state Corporation, the time when title is so held by the Corporation cannot be counted in sustaining a case of adverse possession. ADC is a state corporation established under the Agricultural Development Corporation Act, Cap 444, Laws of Kenya, and it follows that time could only start running in favour of any occupant in respect of the suit land from 8 December 1995, which is when ADC's title was passed on to Solai Ruyobei. This suit was filed on 9 May 2007 and clearly, 12 years had not lapsed from 8 December 1995, so as to sustain the claim for adverse possession. It may be argued that the claim for adverse possession was filed in the year 2018, but again the time when the case was under litigation, and any occupation thereafter was contested and cannot be said to be quiet possession. It is apparent therefore that the claim for adverse possession must fail.

33. From the foregoing, it will be seen that the Ole Osono Group cannot succeed in their quest for the ownership of the land parcel LR No. 20229/1 and their case is hereby dismissed with costs. I am in fact shocked that the Ole Osono Group had the audacity to allege that the title held by Solai Ruyobei is a fraudulent title, when in fact, it is they (the Ole Osono Group) who hold fraudulent titles.

34. I will now turn to the case by the Ms. Munka Group. Their case is squarely one of adverse possession and I need not repeat the principles which I have set out above. The applicants contend that they have been on the suit land since the year 1972. I have already pointed out that any claim for adverse possession in the circumstances of this case will start running from 8 December 1995. The claimed occupation from the year 1972 therefore does not help the applicants.

35. A look at the Originating Summons reveals some very fundamental problems. First, the suit is filed by five persons who state that they are suing on their own behalf and on behalf of "Ol Jorai Community Members". In the supporting affidavit, it is claimed that Ol Jorai Community has a membership of 6,800. Now, nowhere is there any proof of any registration of an association or any sort of group registration for Ol Jorai Community. I therefore have nothing before me to inform me what Ol Jorai Community is, and who these 6,800 members are. I have no idea who is comprised in this Ol Jorai Community. It will in fact be observed that even the Ole Osono Group claim to be suing on behalf of members of Ol Jorai Community. Without it being clear who exactly is sought to benefit from this suit, it cannot be said that the applicants have properly presented a representative suit before this court as the persons sought to benefit have not been identified. Even if I am to enter judgment for the applicants, who are these persons who are supposed to get this land? What are the portions that they occupy? What size of land is each person supposed to be given title to? .

36. I have seen that with the suit was filed a list of individuals, but these individuals are said to be members of Tasaru Ol Jorai Company Limited, and I have no idea what relationship Tasaru Ol Jorai Company Limited and Ol Jorai Community may have, and nothing to connect the five named plaintiffs with either Ol Jorai Community or Tasaru Ol Jorai Company Limited. Certainly, if Tasaru Ol Jorai Company Limited is a limited liability company, as one would conclude given the description, such entity would have power to sue in its own name, and would not need an individual to file suit on its behalf. Even assuming that this was just a list of individuals, but not a list of members of a company, it is nowhere stated that this suit has been filed on behalf of these persons in the said list, who are 288 in number, a far cry from the 6,800 persons that this suit is claimed to be filed in favour of. Moreover, in as much as the suit is claimed to be representative suit, no application was filed before the case was filed, and no application was made pursuant to the provisions of Order 1 Rule 8 which provides as follows :-

One person may sue or defend on behalf of all in same interest [Order 1, rule 8.]

(1) Where numerous persons have the same interest in any proceedings, the proceedings may be commenced, and unless the Court otherwise orders, continued, by or against any one or more of them as representing all or as representing all except one or more of them.

(2) The parties shall in such case give notice of the suit to all such persons either by personal service or, where from the number of persons or any other cause such service is not reasonably practicable, by public advertisement, as the court in each case may direct.

(3) Any person on whose behalf or for whose benefit a suit is instituted or defended under subrule (1) may apply to the court to be made a party to such suit.

37. It will be seen from the above provision that one person or a small number of individuals may sue on behalf of a larger group. But to be allowed to do so, such person or persons need to inform all those on whose behalf they wish to sue that they intend to do so, either personally or through an advertisement. Nothing of that sort was done before this case was filed.

38. One may of course sue on behalf of others without the need to advertise, if these others are specified and they have given the one person authority to sue on their behalf. This is covered in Order 4 Rule 1 (3), but to do so, the person filing suit needs to demonstrate authority from the other persons. The said rule is drawn as follows:-

(3) Where there are several plaintiffs, one of them, with written authority filed with the verifying affidavit, may swear the verifying affidavit on behalf of the others.

39. I am aware that Order 4 relates to plaintiffs, but this must apply in other proceedings as well, even those commenced by way of Originating Summons, for one cannot claim to be suing on behalf of other persons without him having their authority to do so and this authority can only be demonstrated by filing one.

40. The long and short of it, is that I have no idea who these persons said to be Ol Jorai Community are, and no idea on whose behalf this suit is filed. In fact, as I have mentioned, and it is worth repeating, the plaintiffs in the first suit, also claim to be members of Ol Jorai Community and without any clear list showing who is who in what group or organisation, this court cannot tell who ought to benefit from this suit. I cannot therefore consider this as any representative suit.

41. The best I can do is to take it that this suit has been filed by the five persons who are specifically named as applicants, meaning that I need to have proof that these five people have been in continuous and uninterrupted possession of the claimed land for a period of 12 years. I have critically analysed the evidence of Ms. Munka. She stated that their parents were workers of ADC and that they were left here when ADC vacated the land. Ms. Munka did not offer who the names of her parents are or who the names of the parents of the other four named applicants were. Nobody can tell whether it is true that their parents actually worked for ADC. You would expect that ADC would document its workers so that a document of employment is produced to prove that indeed the parents of the five named applicants were employed by ADC. None of this was tendered. Apart from this, Ms. Munka did not offer any evidence of when exactly they now thought that they can possess this land for themselves and thus no proof of when any *animus possidendi* developed. I have no idea how old these five applicants are and when exactly they built on the suit land, if at all they have made any developments. Ms. Munka herself did not state when she built her house, what acreage of land she occupies, nor what she has done in what she claims to occupy so as to demonstrate quiet continuous possession. I have no idea for how long she has been residing on the suit land, no idea about what sort of acreage she occupies, and no idea of what she is doing on the land. I have no such information regarding her other four applicants as well, who did not testify and nothing concerning their occupation was offered by Ms. Munka. In fact, much of Ms. Munka's evidence was about how they have been visiting political offices so as to be given the land, and there was pretty little, if any, that one can point at to say that this is evidence that is key to proving a suit by way of adverse possession.

42. From the above, it cannot be said that the applicants have proved that they have been in continuous, uninterrupted possession of the land parcel LR No 20229/1 for a period of at least 12 years to be entitled to this land by way of adverse possession. I am aware that in his submissions, Mr. Njogu, learned counsel for the applicants, did submit that the respondent's witness did admit to the suit. That is not true. What the respondent's witness said is that possession has been with Ms. Munka's group of people (whomever that may encompass) but possession by itself is not proof that one deserves title by way of the doctrine of adverse possession. The elements of adverse possession still have to be proved, and they go beyond mere possession, which in this case I find that they were not proved. I have no option but to dismiss the suit of the applicants with costs and it is so dismissed.

43. It will be seen that I have dismissed both the case of the plaintiffs in Nakuru HCCC No. 87 of 2007 and the case of the applicants in the suit Nakuru ELC No. 89 of 2013. Having failed in their quest for the land parcel LR No. 20229/1 I do declare that this land is properly owned by Solai Ruyobei Farm Limited. It is this company and its members who deserve to keep the title of this land and to also have possession of it. Any person occupying this land without the permission of Solai Ruyobei is a trespasser and has no right to be on the land. In the event that the plaintiffs in Nakuru HCCC No. 87 of 2007 and the applicants in Nakuru ELC No. 89 of 2013 or any person purporting to claim under them is in occupation, and they do not vacate, Solai Ruyobei Farm Limited are at liberty to apply for an order of eviction. Solai Ruyobei are also at liberty to deal with the land in the manner they deem fit, including giving it away, if they so wish. The prerogative is theirs as proprietors of the suit land.

44. The costs of this suit will be shouldered by the plaintiffs in Nakuru HCCC No. 87 of 2007 and the applicants in the suit Nakuru ELC No. 89 of 2013.

45. I now make the following final orders :-

(a) That the land parcel LR No. 20229/1 has never been lawfully subdivided and remains intact and the title thereof still remains registered in the name of Solai Ruyobei Farm Limited.

(b) That it is hereby declared that the titles Kiambogo/Kiambogo Block 3/1 – 3320 (Ol Jorai Company Limited) or (Ol Jorai Farm) are all fraudulent titles and null and void ab initio.

(c) That any other title claimed to have been derived from the same ground occupied by the land parcel LR No. 20229/1 is hereby declared a fraudulent title and null and void ab initio.

(d) That the Chief Land Registrar and the District Land Registrar Naivasha are hereby ordered to expunge from their records the titles Kiambogo/Kiambogo Block 3/1-3320 or any other title purporting to have been derived from a subdivision of the land parcel LR No. 20229/1.

(e) That the purported Registry Index Maps bearing the titles Kiambogo/Kiambogo Block 3 Ol Jorai Farm or Ol Jorai Company Limited, or any other such title claimed to have been derived from a subdivision of LR No. 20229/1 or from an amalgamation and later subdivision of LR No. 10242 and LR No. 9581 are hereby declared to be fraudulent and null and void ab initio.

(f) That the Director of Surveys is hereby ordered to forthwith expunge the Registry Index Maps bearing the titles Kiambogo/Kiambogo Block 3 (Ol Jorai Company Limited) or (Ol Jorai Farm) or any other map or deed plan claiming to be a subdivision of the land parcel LR No. 20229/1 or claiming to be derived from an amalgamation and later subdivision of the land parcels LR No. 10242 and LR No. 9581.

(g) That case of the plaintiffs in the suit Nakuru HCCC No. 87 of 2007 is hereby dismissed with costs.

(h) That the case of the applicants in the suit Nakuru ELC No. 89 of 2013 is hereby dismissed with costs.

(i) That it is hereby declared that the rightful proprietor of the land parcel LR No. 20229/1 is Solai Ruyobei Farm Limited and the said company is at liberty to apply for an order of eviction and/or deal with the said land as it may wish.

46. Judgment accordingly.

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MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

DATED AND DELIVERED THIS 27TH DAY OF NOVEMBER 2019.

BY

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HONOURABLE JUSTICE JOHN MUTUNGI

JUDGE, ENVIRONMENT AND LAND COURT

AT NAKURU