



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**  
**AT NAIROBI**  
**MILIMANI LAW COURTS**  
**ELC. CASE NO. 2293 OF 1998**

TIKOISHI OLE NAMPASO.....1<sup>ST</sup> PLAINTIFF  
DAVID OLE NAMPASO.....2<sup>ND</sup> PLAINTIFF  
NICHOLAS OLE NAMPASO.....3<sup>RD</sup> PLAINTIFF

VERSUS

KIPKURUI ARAP LANGAT.....1<sup>ST</sup> DEFENDANT  
PETER TESOT.....2<sup>ND</sup> DEFENDANT  
PHILIMON KOECH.....3<sup>RD</sup> DEFENDANT  
SAMWEL KIPKEMOI MARINDANY.....4<sup>TH</sup> DEFENDANT  
PHILIP SIGEL.....5<sup>TH</sup> DEFENDANT  
BENARD LANGAT.....6<sup>TH</sup> DEFENDANT  
KIMUTAI KOSKE.....7<sup>TH</sup> DEFENDANT  
JEREMIAH BIOMDO.....8<sup>TH</sup> DEFENDANT  
JACKSON KIPLANGATA MUTAI.....9<sup>TH</sup> DEFENDANT  
GRACE CHEBI KOSKE.....10<sup>TH</sup> DEFENDANT  
ARAP KEROTWET KIPKOECH.....11<sup>TH</sup> DEFENDANT  
DISTRICT LAND REGISTRAR  
NAROK DISTRICT.....12<sup>TH</sup> DEFENDANT

## JUDGMENT

### The Pleadings

This suit was filed by way of a Plaint dated and filed on 15<sup>th</sup> October 1998 in which the Plaintiffs seek for the following reliefs:

- a) an eviction order evicting the 1<sup>st</sup> to the 11<sup>th</sup> defendants together with their agents, servants and representatives or any other person from the parcels of land known as Narok/cismara/ilmotiok/2995 and Narok/cismara/ilmotiok/2996 (hereinafter referred to as the “suit properties”).
- b) An injunction restraining the defendants, their agent, servants and representatives from interfering with the plaintiffs’ quiet enjoyment in possession of or in any other way dealing with the suit properties.
- c) A declaration that the title documents issued by the 12<sup>th</sup> defendant to the 1<sup>st</sup> to 11<sup>th</sup> defendants in respect of the suit properties were wrong and illegal.
- d) An order compelling the 12<sup>th</sup> defendant to cancel all title deeds issued to the 1<sup>st</sup> to 11<sup>th</sup> defendants in respect of the suit properties wrongfully occupied by them.
- e) Damages for trespassing and mesne profits.
- f) Cost of this suit and interest thereof.
- g) Any other relief that this Honourable Court will deem fit to grant.

In accordance with the plaint, at all material times to the suit the first and second plaintiffs were the administrators of the estate of the late Meshack Partasio Ole Nampaso (hereinafter referred to as the “deceased”). Among other assets of the estate of the deceased was the land previously known as Narok/Cismara/Ilmotiok/379 measuring 90.28 ha. In the plaint they further stated that while distributing the assets of the deceased among the beneficiaries the land Narok/Cismara/Ilmotiok/379 was subdivided into two parcels being the suit properties. Narok/Cismara/Ilmotiok/2995 was registered in the joint names of the second and third plaintiffs while Narok/Cismara/Ilmotiok/2996 was registered in the name of the first plaintiff. They stated that sometimes in 1994, the plaintiffs discovered that the 1<sup>st</sup> to 11<sup>th</sup> defendants had trespassed into and illegally occupied the suit properties. The first plaintiff being one of the administrators of the estate of the deceased and the registered proprietor of one of the suit properties, lodged a formal complaint on his own behalf and on behalf of the second and third plaintiffs before the 12<sup>th</sup> defendant about the illegal occupation. Upon receiving the complaint, the 12<sup>th</sup> defendant summoned the plaintiffs and the defendants together with their respective witnesses and the district surveyor Narok district to the site on 27<sup>th</sup> May 1994 and 17<sup>th</sup> June 1994 when evidence was taken and survey done to confirm the extent of Narok/Cismara/Ilmotiok/379 which was subdivided into the suit properties. According to the plaintiffs, the 12<sup>th</sup> defendant found out that the first defendant had allegedly purchased land parcels number Narok/Cismara/Ilmotiok/881 and Narok/Cismara/Ilmotiok/882 from one Virginia Milanoi Pertet which he proceeded to subdivide into 10 portions. According to the plaintiffs, the 12<sup>th</sup> defendant found out that the first defendant sold the 10 portions to the 2<sup>nd</sup> to 11<sup>th</sup> defendants but the 2<sup>nd</sup> to 11<sup>th</sup> defendants erroneously occupied the suit properties instead. It is the plaintiff’s case that the 1<sup>st</sup> to 11<sup>th</sup> defendants are wrongfully and illegally occupying the suit properties and the 12<sup>th</sup> defendant had wrongfully issued titles to them. On those grounds the plaintiff sought for the eviction of the defendants from the suit properties.

The 1<sup>st</sup> to 11<sup>th</sup> defendants filed their defence dated 12<sup>th</sup> November 1998 and filed on 17<sup>th</sup> November 1998 in which they stated that they are purchasers for consideration of the following parcels of land all of which are subdivisions of Narok/Cismara/Ilmotiok/377:

1. Kipkurui Arap Langat	Narok/Cismara/Ilmotiok/882 and 1250
2. Peter Tesot	Narok/Cismara/Ilmotiok/1251
3. Philimon Koech	Narok/Cismara/Ilmotiok/1252
4. Samwel Kipkemoi Marindany	Narok/Cismara/Ilmotiok/1253
5. Philip Sigei	Narok/Cismara/Ilmotiok/1254
6. Bernard Langat	Narok/Cismara/Ilmotiok/1255
7. Kimutai Koske	Narok/Cismara/Ilmotiok/1256
8. Jeremiah Biomdo	Narok/Cismara/Ilmotiok/1257
9. Jackson Kiplangat Mutai	Narok/Cismara/Ilmotiok/1258
10. Grace Chebi Koske	Narok/Cismara/Ilmotiok/1259
11. Arap Kerotwet Kipkoech	Narok/Cismara/Ilmotiok/1260

They denied that the said parcels of land are subdivisions of Narok/Cismara/Ilmotiok/379 belonging to the deceased. They further added that they are holders of title deeds in respect of their subdivisions which were duly issued to them by the 12<sup>th</sup> Defendant and are therefore entitled to quiet possession thereof without any interference by the plaintiffs.

The defendants also filed a counterclaim in which they stated that if the plaintiffs are entitled to the suit properties as stated in the plaint, which is denied, then the plaintiff's right to recover the suit properties from the defendants is barred under section 7 of the Limitation of Actions Act and their title extinguished under section 17 of the said Act on the grounds that the defendants have been in open peaceful continuous exclusive and uninterrupted occupation and adverse possession of the suit properties for a period of 12 years. It is on those grounds that the defendants believed that the plaintiff suit be dismissed with costs and the court declares the defendants as owners of the parcels of land indicated above.

The plaintiffs filed their defence to counterclaim dated and filed on 4<sup>th</sup> December 1998 in which they stated that they deny the defendants occupation of the suit properties has been uninterrupted for over for 12 years and put the defendants to strict proof thereof. It was their statement that the plaintiffs' title to the suit properties has not been extinguished and therefore section 7 and 17 of the Limitation of actions Act does not apply against the plaintiffs.

The 12<sup>th</sup> defendant filed his defence dated 12<sup>th</sup> September 2013 and filed on 13<sup>th</sup> September 2013 in which he admitted paragraph 6 of the plaint to the effect that he received a complaint from the plaintiffs regarding the illegal occupation of the suit properties by the defendants. The 12<sup>th</sup> defendant also admitted the contents of paragraph 7, 8 and 9 of the plaint which is to the effect that upon receiving the complaint, the 12<sup>th</sup> defendant summoned both the plaintiffs and the defendants together with their respective witnesses and the district surveyor Narok district on the site on 27<sup>th</sup> May 1994 and 17<sup>th</sup> June 1994 where evidence was taken and survey done to confirm the extent of land parcel Narok/Cismara/Ilmotiok/379 which, as noted in paragraph 5 of the plaint, was subdivided into the suit properties. Paragraph 8 of the plaint which is admitted by the 12<sup>th</sup> defendant is to the effect that after taking all the evidence available the 12<sup>th</sup> defendant found out that the first defendant had allegedly purchased land parcels number Narok/Cismara/Ilmotiok/881 and Narok/Cismara/Ilmotiok/882 from one Virginia Milanoi Pertet. These were subdivisions of Narok/Cismara/Ilmotiok/377. The 12<sup>th</sup> defendant also found out that the first defendant had purported to subdivide parcel number Narok/Cismara/Ilmotiok/881 into 10 portions and

obtained separate titles for each portion which he sold to the 2<sup>nd</sup> to 11<sup>th</sup> defendants yet the evidence on the ground indicated that the purported subdivisions had in fact been done on the plaintiffs parcels of land being the suit properties. In his defence, 12<sup>th</sup> defendant also admitted the contents of paragraph 10 of the plaint which is to the effect that following his finding, it was apparent that the 1<sup>st</sup> to 11<sup>th</sup> defendants are wrongfully and illegally occupying the plaintiffs' land being the suit properties and the 12<sup>th</sup> defendant had wrongly issued titles to them. The 12<sup>th</sup> defendant also admitted paragraph 12 of the plaint which is to the effect that several efforts have been made through the provincial Administration to remove the 1<sup>st</sup> to 11<sup>th</sup> defendants from the suit properties and despite the fact that notices of intention to sue had been given, the 1<sup>st</sup> to 11<sup>th</sup> defendants have ignored, refused and or neglected to vacate the suit properties.

### **The Evidence**

The hearing of the suit commenced on 11<sup>th</sup> June 2013. The first witness was the first plaintiff called Tikoishi Ole Nampaso (PW1). It was his evidence that the second and third plaintiffs are his brothers. He confirmed the statement in the plaint to the effect that the parcel of land known as Narok/Cismara/Ilmotiok/379 belonged to the deceased who was their late father. It was his evidence that in succession case number 1299 of 1992 this parcel of land being part of the estate was allocated to himself and his two brothers being the second and third plaintiffs. His further evidence was that they decided to subdivide this parcel of land into the suit properties of which he was issued with a title deed for Narok/Cismara/Ilmotiok/2996 measuring 20.34 ha. He testified that the other subdivision being Narok/Cismara/Ilmotiok/2995 measuring 67.94 ha was allocated to the second and third plaintiffs jointly and a title deed was issued to them. It was his further evidence that he knew that the 1<sup>st</sup> to 11<sup>th</sup> defendants had trespassed the suit properties in the year 1994. He went to report this matter to the land registrar Narok, a man called Mr Muhanji. As stated in the plaint, the said Mr Muhanji summoned the plaintiffs and the defendants to the site on 27<sup>th</sup> May 1994 and again on 17<sup>th</sup> June 1994. It was his evidence that the findings were that the defendants were on the suit properties erroneously. He further testified that the said land registrar narok advised the plaintiffs to go to the provincial administration for the eviction of the defendants from the suit properties. It was his further evidence that they sought legal advice from their advocates who wrote to the Chief land registrar Nairobi by a letter dated third of October 1996. It was his evidence that despite this letter being written, the defendants refused to vacate the suit properties, thereby prompting them to file this suit. PW1 produced in evidence his bundle of documents which included, inter alia, the title deeds for the suit properties and a report from the Narok Land Registrar dated 15<sup>th</sup> May 2008.

The second person to testify on the plaintiffs side was Mr John Koipitat Sena who stated that he knew the plaintiffs as the children of the deceased. His evidence was that the deceased was a former member of Parliament in Ololulunga, Narok. He said that he knew the deceased's parcel of land being Narok/Cismara/Ilmotiok/379. He testified that since the deceased passed away, the plaintiffs inherited this parcel of land as his heirs. His evidence was that this parcel of land was given to the deceased when adjudication was being done in 1978. He testified that he was one of the committee members who did the adjudication. It was his evidence that they put beacons on the said parcel of land which they showed to the deceased before he passed on and after he passed on they should the beacons to his sons being the plaintiffs. He confirmed that there is a dispute on the said land with trespassers being the defendants occupying it illegally. It was his evidence that the trespassers are people from Bomet. It was his evidence that he told the defendants that they were occupying somebody else someone else's land but they refused to vacate it. He confirmed that he was supporting the plaintiffs claim to the suit properties.

The third person to testify on the plaintiffs side was Anna Naramat Enole Sena (PW3) who stated that she knows the deceased as he was a former member of Parliament and she also knew his sons will include the plaintiffs. She stated that she is neighbor and owner of the neighbouring parcel being Narok/Cismara/Ilmotiok/380. It was her testimony that the deceased was given the parcel of land known as Narok/Cismara/Ilmotiok/379. She stated that she was aware that the defendants had invaded the deceased's parcel of land which is now subdivided into the suit properties. She said that the invaders are of kalenjiin heritage. She stated that she was summoned by the land registrar where she assured the

boundary and because of her parcel of land. It was her testimony that the suit properties belong to the plaintiffs as the true heirs of the deceased. On those grounds she supported the plaintiffs claim.

The fourth witness on the plaintiffs' side was Sukuma Arap Komuilo (PW4). It was his testimony that the deceased owned the parcel of land known as Narok/Cismara/Ilmotiok/379 which is located in Sogoo area. It was his further testimony that in 1978, the deceased allowed him to live on that land. He stated that the beacons were there but they were removed by the defendants. It was his evidence that the defendants moved in to that parcel of land by force and chased him out. It was his testimony that the defendants should vacate the suit properties and get onto the land they bought from Virginia Pertet which was the parcel known as Narok/Cismara/Ilmotiok/377.

The defence only brought one witness being Peter Kipkoech Tesot. His testimony was that he purchased a portion of the parcel of land known as Narok/Cismara/Ilmotiok/377 from one Virginia Melanoi Pertet. It was his evidence that the seat Virginia Pertet subdivided Narok/Cismara/Ilmotiok/377 into 881 which she further subdivided into Narok/Cismara/Ilmotiok/1250 – 1260. His testimony was that he purchased Narok/Cismara/Ilmotiok/1251 but was speaking both on his own behalf and on behalf of all the other defendants. His evidence was that he moved into his parcel in the year 1984 after engaging the district land registrar who showed him the position of his subdivision on the ground. He further said that he is a complaint against him was launched in the year 1998 by the first plaintiff. He testified that a report was prepared by the land registrar in the year 2008 detailing the findings. His evidence was that according to the report they were found to be on parcel Narok/Cismara/Ilmotiok/377 and not on the suit properties as claimed by the plaintiffs. He did not produce any documents of title or otherwise in support of his case though he claimed that all the defendants were issued with title documents by the 12<sup>th</sup> defendant. No documents were produced for the defence side.

### **The Issues for Determination**

The first issue to determine is whether or not the claim by the plaintiffs that the defendants have trespassed on the suit properties is true and if so whether to make a declaration that the title documents issued by the 12<sup>th</sup> defendant to the 1<sup>st</sup> to 11<sup>th</sup> defendants in respect of the suit properties were wrong and illegal. If that be the case, then this court is called upon to issue an order compelling the 12<sup>th</sup> defendant to cancel all title deeds issued to the 1<sup>st</sup> to 11<sup>th</sup> defendants in respect of the suit properties wrongfully issued to them.

Stemming from the court's finding on the occupation of the defendants on the suit property, this court is called upon to issue an eviction order evicting the 1<sup>st</sup> to the 11<sup>th</sup> defendants together with their agents, servants and representatives or any other person from the suit properties. In addition, this court is also called upon to issue an order of injunction restraining the defendants, their agents, servants and representatives from interfering with the plaintiffs' quiet enjoyment and possession of or in any other way dealing with the suit properties.

Thirdly, this court is to determine on whether or not to award the plaintiffs damages for the defendants' trespassing on the suit properties and mesne profits.

Finally, this court is called upon to determine who pays the costs of this suit and interest thereof.

### **The Determination**

On the first and main issue for determination in this case, it is quite clear that the plaintiffs have gone all out to prove that they are the owners of the suit properties and that the defendants are in wrongful occupation thereof. In support of their claim of ownership of the suit properties, the plaintiffs produced documents including copies of the title deeds and reports from the land registrar narok all of which point to their ownership of the suit properties. The defendants on their part produced absolutely no document in support of the claim of ownership of the suit properties. The only witness on the defence side claimed to represent all the other defendants, some of whom are deceased. He did not produce any document

authorising him to represent the deceased defendants. The position of the holder of a title deed over a parcel of land is well stated in **Section 26(1)** of the **Land Registration Act** provides as follows:

***“The certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer ... shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner , ... and the title of that proprietor shall not be subject to challenge, except-***

***(a) On the ground of fraud or misrepresentation to which the person is proved to be a party; or***

***(b) Where the certificate of title has been acquired illegally, unprocedurally or through a corrupt scheme.”***

The defence filed by the 12<sup>th</sup> Defendant is to the effect that the 12<sup>th</sup> Defendant erroneously issued the 1<sup>st</sup> to 11<sup>th</sup> defendants with title deeds as the land they occupy is the suit properties owned by the plaintiffs. Based on this and the documents produced by the plaintiffs which were not challenged by the defence, this court finds no difficulty in finding that the plaintiffs are entitled to exclusive use of the suit properties. This court issues a declaration that the title documents issued by the 12<sup>th</sup> defendant to the 1<sup>st</sup> to 11<sup>th</sup> defendants in respect of the suit properties were wrong and illegal. This court also issues an order compelling the 12<sup>th</sup> defendant to cancel all title deeds issued to the 1<sup>st</sup> to 11<sup>th</sup> defendants in respect of the suit properties wrongfully issued to them.

The plaintiffs having proved that they are the absolute and indefeasible owners of the suit properties and that the defendants are in wrongful occupation thereof, this court issues an eviction order evicting the 1<sup>st</sup> to the 11<sup>th</sup> defendants together with their agents, servants and representatives or any other person from the suit properties. In addition, this court also issues an order of permanent injunction restraining the defendants, their agents, servants and representatives from interfering with the plaintiffs’ quiet enjoyment and possession of or in any other way dealing with the suit properties.

The prayer for mesne profits is declined as no specific amount has been claimed and supported. The court is guided by the Court of Appeal case **Peter Mwangi Mbuthia vs. Samow Edin Osman & Naftali Ruth Kinyua Civil Application No.NAI No.38 of 2004** which stated the law on mesne profit as follows,

***“As regards the payment of mesne profit, we think the applicant has an arguable appeal. No specific sum was claimed in the plaint as mesne profit and it appears to us prima facie, that there was no evidence to support the actual figure awarded..... That being so, it must be very hard on the applicant to be forced to pay an amount which had not even been pleaded in the first place, and on which the first respondent offered no evidence at all.”***

Judgment is accordingly entered as prayed in the plaint with costs to the plaintiffs.

Orders accordingly.

**SIGNED AND DATED BY HON. LADY JUSTICE MARY M.GITUMBI AT NAIROBI THIS 12<sup>TH</sup> DAY OF APRIL 2018.**

**MARY M. GITUMBI**

**JUDGE**

**DELIVERED BY HON. MR. JUSTICE SAMSON OKONGO THIS 19<sup>TH</sup> DAY OF APRIL 2018**

**SAMSON OKONGO**

**PRESIDING JUDGE**

**In the presence of:-**

.....Advocate for the Plaintiff

.....Advocate for the Defendant

.....Court clerk