



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC CASE NO. 109 OF 2014

KIMADIO ALEMULUK (*Suing as the legal representative of the late*

ALEMLUK KORPIRA).....PLAINTIFF

VERSUS

BENSON LONOKI.....1ST DEFENDANT

WILSON LONOKI.....2ND DEFENDANT

THE CHAIRMAN,

SEREWU GROUP RANCH COMMITTEE.....3RD DEFENDANT

JUDGMENT

Introduction

1. By amended plaint dated **10/11/2016** the plaintiff herein sought the following orders against the defendants jointly and severally:-

(a) A declaration that the deceased plaintiff be registered as a member of Serewo Group Ranch against approximately 10 acres of land currently occupied by his family within the said Group Ranch.

(b) A permanent injunction restraining the defendants, their agents/servants from entering and evicting the family of the deceased Alemuluk Korpira from approximately 10 acres of land occupied by them within Serewo Group Ranch and/or from interfering with the occupation of the deceased's family in any manner on the suit land.

(c) Costs of this suit.

(d) Any other relief that the court may deem fit to grant for the best interest of justice.

2. After the plaint was filed the 1st and 2nd defendants filed their joint defence dated **4/8/2014** on the same date. The plaintiff filed a reply to defence on **14/8/2014**. The 3rd defendant filed his defence dated **8/9/2014** on **9/9/2014**. The 1st and 2nd defendants further filed amended defence and counterclaim dated **2/3/2016** on **3/3/2016**. The plaintiff further filed a reply to amended defence and counterclaim on **18/3/2016**. Finally, the plaintiff filed his amended plaint dated **10/11/2016** on the same date.

3. The main suit was heard on the **13/3/2017**, **27/9/2017**, **25/1/2018**, **5/7/2018** and on **30/7/2018**. The plaintiff then filed his submissions on the **25/9/2018** and the defendant filed his on **26/9/2018**.

The Plaintiff's Case

4. According to the amended plaint, the plaintiff's case is that between the years 1956 and 1964 the plaintiff's late father (Alemuluk Korpira) used to own approximately 10 acres in the Serewo Group Ranch; that the late Alemuluk Korpira had moved into and occupied the said land measuring approximately 10 acres before 1956; that the 10 acres of land within Serewo Group Ranch was "*officially*" given to the deceased by the elders after performing goat killing ritual ceremony; that later he moved to Kanyarkwat for pastures; that the land then lay idle until 2013 when he returned in the company of his sons and resumed possession thereof; that thereafter the defendants claimed the land and threatened to evict the said Alemuluk Korpira and his sons therefrom; that the late Alemuluk Korpira should be registered as a member of the Serewo Group Ranch and the defendants be enjoined from interfering with the land or the plaintiff's occupation thereof.

The Defendant's Defence

5. The defendant denied the plaintiff's claim. In the 1st and 2nd defendant's amended defence and counterclaim dated 2/3/2016 and filed on 3/3/2016 they state as follows: that the court has no jurisdiction; that under **Section 28** of the **Land (Group Representatives) Act** the question of whether the plaintiff is a member has already been determined by the Serewo Group Ranch and a certificate dated 1/2/2014 presented to the Land Adjudication Officer West Pokot; that the latter confirmed the decision on 1/2/2014; that under **Section 28** of the Act the plaintiff's claim could only be filed before a District Magistrates Court; that this court would only have appellate jurisdiction in respect of the magistrate's decision; that the 1st and 2nd defendants are the administrators of Karayo Chepumbur, that the latter owned **Plot No. 141** in Serewo Group Ranch; that the plaintiff has forcibly entered that land and occupied **10** acres illegally and is therefore a trespasser; that the plaintiff is not a member of the Group Ranch; that the plaintiff is a member of the Chemwochoi Group Ranch and he should confine himself to his plot in that Ranch; that under **Section 7(3)** and **8** of the Act the suit should be struck out for having been commenced against the chairman of the Group Ranch and that the plaintiff's claim is barred by limitation. Their prayer is that the plaintiff's suit be dismissed or struck out with costs and the plaintiff and those claiming under him evicted from the land, costs and interest.

The Plaintiff's reply to Amended Defence and Counterclaim

6. In his reply to the amended defence and counterclaim the plaintiff denied all the averments in that pleading. He averred that the issue of *res judicata* has been dealt with by this court and that if the defendant's claim that the land belongs to them, they hold the same in trust for the plaintiff and limitation of actions does not apply.

EVIDENCE OF THE PARTIES

The Plaintiff's Evidence

7. The plaintiff testified on 27/9/2017. He stated that he was born in 1948 in the Serewo Group Ranch; that his father had land measuring 10 acres there when he was born; that his father slaughtered a goat and the elders gave him the land in the presence of neighbours; that though he can not remember the dates, the family moved out to Kanyarkwat to look for pastures; that when they returned they found the land still unoccupied; that they began building on the land; that later his father passed on and he was buried at Chepchoina; that the plaintiff lives on the Serewo land with his elder wife and his younger wife lives on other land at Chepchoina; that he does not know the defendants; that the defendants do not live on the land and he first saw them in 2013; that the defendants reported the plaintiff to the chief who ordered him to vacate the land hence this suit. Upon cross examination the plaintiff stated that he did not know whether his father had ever been a member of the Serewo Group Ranch; that his father was a member of the Kanyarkwat Group Ranch; that he is a member of the Chemwochoi Group Ranch too; that there was an allotment document but the same was stolen in 1964; that he does not know that the suit land is part of **Plot Number 141**; that on 18/11/2013 the dispute was heard by officials of the Group Ranch; that however he does not know that it was decided that his father came from Chemwochoi and that the decision had been taken to the District Land Adjudication and Settlement Officer Kapenguria; upon re-examination the plaintiff admitted that he was not in occupation of the land when the plot numbers were issued.

8. **PW2 Losiamu Lobong** testified on 25/1/2018. He stated that he knew Alemuluk Korpira; that Alemuluk lived at Cheposoywan on land that neighboured his but later migrated to Kanyarkwat; that Alemuluk merely took possession of the land and lived there without anyone giving him the land; that later on Alemuluk slaughtered a goat in order to be given a piece of land; that he later on left and he never left anyone on the land when he left; that Alemuluk recently returned to the land with his sons; that it is the sons of Alemuluk who live on the land and the witness does not know the defendants; that he knew that there was a dispute that had reached Kapenguria but he never knew what decision was made at Kapenguria. However upon cross examination he stated that he could remember that Alemuluk's wife was raped and that he had to slaughter a goat for the cleansing ceremony that followed.

9. **PW2 Michael Lenaole** testified on 25/1/2018. His evidence was that he was born in 1952 in Cheposoywan in Serewo, that he still lives in Serewo; that he knew Alemuluk since 1956; that they were neighbours; that in 1964 Alemuluk was given land by the elders; that his parents' land bordered Alemuluk's; that Alemuluk migrated from the land in 1968 to seek greener pastures and returned in 2013, built on the land and cultivated it. He further testified that when land is being given a goat is slaughtered and elders cut trees to mark the boundary to the land. Upon cross examination he admitted that the individual portions issued to the members are not titled; that Alemuluk is not a member of the Serewo Group Ranch but the land is his having been given to him in 1964 and that when members were being registered in 1976 Alemuluk was at Kanyarkwat.

The Defendants' Evidence

10. The 1st defendant testified on 5/7/2018. He adopted his statement filed in court record as his evidence-in-chief. In that statement his evidence is that he is a resident of Serewo; that his father was Lowuyareng Karayo; that his grandfather who is father to the second defendant is Karayo Chepumbur; that before his death in 1987 Karayo Chepumbur was a member of the Serewo Group Ranch; that he was Member No 141; that he was allocated Plot Number 141 measuring 600 acres or thereabouts; that before 2013 he never knew the plaintiff or his other family members; that the plaintiff forcibly entered the suit land and build a structure and cultivated the land after clearing the bush; that the plaintiff's father never came to the suit land; that the plaintiff's father was a member of the Chemwochoi Group Ranch where he held membership **Number 7**; that the plaintiff's father is also a member of the Kanyarkwat Group Ranch where he owns plot **Number 16**; that the plaintiff's invasion onto the suit land was reported to the Group Ranch officials who heard the dispute between the parties and issued the decision that the plaintiff's father had no right to be in plot **Number 141** and that they should vacate the suit land. During that hearing the plaintiff's father came from Chemwochoi for the hearing at Serewo. The proceedings of the dispute before the officials were then forwarded to the District Land Adjudication and Settlement Officer who wrote a letter affirming the decision.

11. **DW2 William Nawiy** testified on 5/7/2018. He adopted his statement filed in court record as his evidence-in-chief; his evidence is that he is the chairman of the Serewo Group Ranch since 1999 and that the Group Ranch land has already been subdivided among its members; that the late Karayo Chepumbur was the father to the 2nd defendant and grandfather to the 1st defendant; that Karayo is member No. 141; that members of the Ranch are people who have been owning and occupying land within the Ranch; that the plaintiff's father has never been a

member of the Group Ranch; that upon its being reported the dispute between the parties was heard by the Ranch officials who subsequently held that the plaintiff's father was not a member of the Group Ranch and that his occupation of the land was wrongful; that upon the forwarding of the proceedings of the dispute to the District Land Adjudication and Settlement officer he affirmed the officials' decision.

12. DW3, Josiah Lesang, County Land Adjudication Officer West Pokot testified on **30/7/2018**. He testified that he has been holding that capacity for **15** years; that he keeps the registers of the Group Ranches including Serewo; he produced a certified copy of the register of members of the Serewo Group Ranch and the same showed that the "Chebumbur Karayo" is the owner of **Plot Number 141**. He also produced a copy of a continuation sheet showing that Alemuluk Korpira was among the beneficiaries of the adjudication process in Chemwochoi Group Ranch as **Number 7**. Lastly he produced a copy of the register for the Kanyarkwat Group Ranch which showed that one "Korpira Alemuluk" was Member number **16** in that Group Ranch. He confirmed that the dispute between the plaintiff and the 1st and 2nd defendants had been dealt with by Ranch officials and the decision thereon forwarded to his office; he then produced a letter dated **31/3/2014** from his office to the plaintiff advising the plaintiff to abide by the decision made by the elders in the Ranch in the dispute over the suit land. Upon cross examination he stated that survey work has not been done to determine the exact land that belongs to each member. However, on re-examination he stated that each member knows the extent of his land.

SUBMISSIONS

13. The 1st and 2nd defendants filed written submissions in this suit on **26/9/2018**. I perused through the file record while writing this judgment and found no submissions filed on behalf of the plaintiff.

DETERMINATION

Issues for determination

14. The issues that arise from the pleadings in this suit are as follows:

a) Whether the plaintiff is entitled to be registered as a member of the Serewo Group Ranch;

b) Whether the defendants should be enjoined from evicting the plaintiff and his family from the 10 acres of land he occupies in the Group Ranch;

c) Who should pay the costs of the suit?

a) Whether the plaintiff is entitled to be registered as a member of the Serewo Group Ranch

15. The summary of the plaintiff's evidence upon which he seeks registration of his deceased father as a member of the Serewo Group Ranch is that his father used to occupy the **10** acres about **50** years ago. Clearly his father never became a registered member though according to the evidence given the registration of members can be traced to as far back as **1976**.

16. I agree with the defendants that that prayer in itself is an admission that the deceased was not registered as a member of the Serewo Group Ranch.

17. Is he then entitled to be registered as a member? Their family migrated in search of greener pastures in the **1960s** and they never returned to the land till the year **2013**. They aver that upon return they found the land still unoccupied and retook possession thereof thus triggering a dispute with the defendants which led to this suit.

18. However it is clear from the evidence adduced in court by the defendants that the deceased Alemuluk Korpira was still an active man and he found more than just literal greener pastures in his migrations, for he singlehandedly managed to cause himself to be registered as a member of two Group Ranches that is the Chemwochoi Group Ranch and the Kanyarkwat Group Ranch.

19. History, as deduced from the evidence, has it that he left the Serewo area after disagreement with some people there. This is indicative of the possibility that he did not wish to return there, and indeed the lengthy period during which he was away confirms that desire. It is apparent that that his desire may have contributed to his non-registration as a member in the Serewo Group Ranch.

20. It is the observation of this court that the registration of the deceased Alemuluk Korpira as a member of two other Group Ranches precludes the possibility of an error of inadvertence in his non-registration as a member of the Serewo Group Ranch for nothing could have in the circumstances prevented his multiple membership to include Serewo Group Ranch.

21. It is the conclusion of this court that Alemuluk Korpira consciously made the decision not to go back and register as a member of the Serewo Group Ranch. His attempt to have himself registered through these proceedings after all other members have been registered and the Group Ranch land subdivided is therefore coming too late in the day.

22. Further the plaintiff enjoined only the chairman of the Serewo Group Ranch as the 3rd defendant instead of the Serewo Group ranch, which the defendants objected to as irregular. The defendants cite the Court of Appeal decision in **John Githinji Wangonde Vs Raphael Gitau Njau and 5 Others, Nairobi Civil Appeal Number 241 of 1997**. The defendants submit that under **Section 8(1) of the Land (Group Representatives) Act** the incorporation of the representatives of a group ranch confers in the group representatives power to sue and be sued in their corporate name and to acquire, hold, charge and dispose of property.

23. It is the submission of the defendant that under **Section 28** of the **Land (Group Representatives) Act** a party who is aggrieved by the decision of a group representative is entitled to proceed to court for the determination of the question as to whether he is a member of the group ranch. It is submitted that the group has no vacant land. This court, by virtue of the evidence given by the chairman of the group ranch must reach the conclusion that the land has been distributed and that there would be no reason to presume that there is any left that can be issued to the plaintiff.

24. I agree with that submission.

25. The plaintiff never produced any allotment letter or any other exhibit that could demonstrate that he was entitled to be registered as a member in the Serewo Group Ranch.

26. I therefore find that he is not entitled to be so registered.

b) Whether the defendants should be enjoined from evicting the plaintiff and his family from the 10 acres of land he occupies in the Group Ranch

27. It has been established by way of evidence that the plaintiff's father, Alemuluk Korpira was registered as a member of two other Group Ranches and that he owned land in those other Ranches.

28. This court takes judicial notice that the land that the members of Group Ranches are issued is normally held by them for the benefit of their immediate families and in some cases extended families.

29. In this case the plaintiff is a son and administrator to the estate of the late Alemuluk Korpira. He and other members of the Alemuluk family are therefore entitled to go and claim land which was issued to their father in those other Group Ranches.

30. It is clear that the defendants never consented to the plaintiff's occupation of the land in **2013** when the plaintiff and his father are said to have re-entered the land.

31. The land is not registered land and I would not apply the provisions of the Limitations of Actions Act as submitted by the defendants.

32. However, granted that the plaintiff and his father were previously in occupation of the land, the period of the plaintiff's absence therefrom between **1964** and **2013** and the registration of Karayo Chepumbur and his allocation of the same land by the Group Ranch in the interregnum renders the plaintiff's claim to ownership as having been overtaken by the intervening acts of the defendants.

33. In my view not even a customary right to the land can be established, first, on the evidence given by the plaintiff. The evidence that a goat was slaughtered in a customary ritual so that the land may be given to Alemuluk Korpira was not proved, for it was admitted by the defence witnesses that Alemuluk's wife had been raped and that a goat was slaughtered for cleansing purposes. Secondly, even where the plaintiff may have otherwise established that a ritual was conducted and the land given to him which he has not proved, the advent of registration of members of the group ranch and subdivision and allocation of all Serewo Group Ranch land in accordance with the law found him absent and given his own omissions which render him the author of his own misfortunes. Reversing the process at this juncture would incommode upon an already established status quo and therefore inconvenience innocent parties for no fault of their making. There is no good ground for that proposed reversal and the plaintiff must bear the consequences of his sins of omission in regard to registration as a member with equanimity.

34. In the circumstances I do not find any good ground to hold that the plaintiff and others claiming under him are entitled to remain on the suit land. The prayer for an injunction therefore has no merit.

c) Who should pay the costs of the suit?

35. It was the testimony of the West Pokot County Land Adjudication Officer that though the land in the Serewo Group Ranch is not surveyed each person knows the extent of his land on the ground. From this it is possible to deduce that the survey exercise, once conducted will formally establish the boundaries on the ground for the purpose of certainty while drawing the Registry Index Map and issuing of individual titles.

The dispute has been occasioned by the plaintiff and his father who went to claim land already allocated to Karayo Chepumbur who was the 1st and 2nd defendant's grandfather and father respectively. The plaintiff should therefore meet the costs of the suit and the counter-claim.

CONCLUSION

(d) What orders should issue?

36. In the final analysis I find that the plaintiff has failed to establish his claim against the defendants on a balance of probabilities and that the defendants have established their counterclaim against the plaintiff on a balance of probabilities.

37. I therefore issue the following orders:

(a) The plaintiff's suit is hereby dismissed.

(b) Judgment is entered for the 1st and 2nd defendants on their amended counterclaim.

(c) The plaintiff and all persons claiming under him shall vacate the suit land and remove their property therefrom failure to which they shall be evicted;

(d) The plaintiff shall pay to the defendants' costs to this suit and of the counterclaim.

(e) Only the 1st and 2nd defendants are entitled to the costs of the counterclaim.

It is so ordered.

Dated Signed and Delivered at Kitale this 19th day of November, 2018.

MWANGI NJOROGI

JUDGE

19/11/2018

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Parties absent

COURT

Ruling read in open court.

MWANGI NJOROGI

JUDGE

19/11/2018