



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 68 OF 2017**

**FORMERLY ELC CAUSE NO. 478 OF 2013**

TILAL OLE KAURA & 3 OTHERS.....PLAINTIFF

VERSUS

BARTAN KAURA & 3 OTHERS.....DEFENDANTS

**JUDGEMENT**

This suit was instituted through a Complaint filed in court on 23<sup>rd</sup> July, 2013 wherein the Plaintiff sought for the following orders:-

1. A declaration that the 4<sup>th</sup> Plaintiff is the absolute owner of land parcel Cis-Mara/Siana 'A'/129 and that the Defendants have a legal claim over the said parcel of land.
2. A permanent injunction restraining the Defendants by themselves, their agents or servants from interfering with the Plaintiff's use, occupation and quiet possession of the suit land.
3. Costs of the suit
4. Any other relief the court may deem fit and just to grant.

The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiff had brought the suit as the Chairman, Secretary and Treasurer of the 4<sup>th</sup> Defendant which is an entity registered under the Land Group Representatives, Act Cap 287 of the Laws of Kenya and that it was registered as the absolute owner of the suit land with the right to use and occupy the same.

It is the Plaintiffs' case that on the diverse dates the Defendants have interfered with the suit land by denying the Plaintiffs the use and occupation of the same access to the land and to lease out the same by intimidating and threatening potential lessees.

When summons were served upon the Defendants they filed a Joint defence and counter claim and in their defence they contend that the Plaintiffs registration as the proprietors of the suit land was irregular but they denied having interfered with the use and occupation of the land and they maintained that the Plaintiff's claim to the land was fraudulent and unlawful.

The Defendants on their counter claim stated that they were allocated the suit by an adjudication committee and that the Plaintiffs were ordered by the Narok District Land Registrar and the Land Adjudication Officer that they surrender the title to the land but they refused.

It is the Defendants case that they were allocated the land in 1970's when Siana was a trust land and in a nutshell they sought the court to issue an order of declaration that the Land Parcel No. CIS- MARA/SIANA/'A'/129 belongs to the Defendants

- (i) An order compelling the Plaintiff to surrender the title deeds to the said land to the Narok Land Registrar for the purpose of cancelling the same.
- (ii) In the alternative the court directs the District land Registrar to rectify the register and have land parcel Cis-Mara/Siana 'A'/127 registered in the name of the Plaintiff and Cis- Mara/Siana/'A'/129 registered in the Defendant's name.
- (iii) Costs of the suit.

When the suit came up for hearing the 1<sup>st</sup> plaintiff testified on his own behalf and on behalf of the other officials. In his evidence he stated

that he is the chairman of the 4<sup>th</sup> Group Ranch and he same is duly registered. He stated that the Group Ranch has a parcel land which is Land Reference No. Cis-Mara/Siana/127 measuring about 35.9ha and he produced a certificate of title for the said land. He stated that he got the land after they consolidated their individual parcels to create the Ranch.

He further stated that the 1<sup>st</sup> to 3<sup>rd</sup> Defendants are members of Barkitabu Group Ranch and they own their own parcels of land which is registered as Land Reference No. Cis-Mara/Siana/127.

I have heard the testimony of the Plaintiffs and their witnesses and more particularly that of the DW2 and DW 3 who are the District land Registrar Narok and Surveyor Narok and the report that was filed by then.

From the testimony of the witness and the documents that they produced it is not disputed that there exist two parcels of land namely CIS-MARA/SIANA 'A'/127 and 129 which are registered in the names of the Plaintiffs and the Defendants respectively.

Accordingly a report which was prepared by the registrar and the surveyor who visited the ground on 13<sup>th</sup> March, 2013 they confirmed that CIS-MARA 127 was occupied by Mbartan Group Ranch and Cis-Mara 129 was occupied by Barkitabu which they said are two distinct parcels of land and he noted that the dispute between the 2 parcels of land is as a result of mix up of numbers in the adjudication register.

The evidence of PW1 and DW1 rightfully seem to confirm the position taken by the registrar and the surveyor and in view of the above, I find that this is a matter that could be sorted out administratively at the Registrar's office rather than being brought to court and I thus enter judgement in the following terms:-

1. That a declaration is hereby issued that the 4<sup>th</sup> Plaintiff is the owner of that parcel of land known as Cis-Mara/Siana/'A'/129 and that the 3<sup>rd</sup> Defendant is the owner of that parcel of land known as Cis-Mara/Siana/'A'/127
2. An order do hereby issue to the District Land Registrar Narok and surveyor within **90 days** of the Judgment to carry our amendment so that each parcel of land can be accorded its parcel number to the ground position and RIM.
3. Each party to bear its costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **20<sup>th</sup>** day of **DECEMBER, 2018**

**Mohammed Noor Kullow**

**Judge**

**20/12/18**

In the presence of:

Mr. Masikonde holding brief for Kahiga for the Plaintiff

N/A for the Defendant

CA:Chuma

**Mohammed Noor Kullow**

**Judge**

**20/12/18**