



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC NO. 2918 OF 1997

JAMES N. LENGES.....PLAINTIFF

VERSUS

THE HON. ATTORNEY GENERAL & 11 OTHERS.....DEFENDANTS

JUDGMENT

The dispute herein relates to the land adjudication process that took place at Poro “B” Adjudication Section in the former Samburu District. It is not clear from the material on record as to when Poro “B” was declared an adjudication Section. From the records before the court, the adjudication officer gave notice of completion of adjudication register under Section 25 and 26 of the Land Adjudication Act, Cap 284 Laws of Kenya on 22nd June 1982. The Plaintiff herein raised an objection with respect to Plot No. 8, Poro “B” Adjudication Section that had been demarcated in favour of Siampu Group Ranch. The Plaintiff’s objection was heard by the Land Adjudication Officer who allowed the same in a ruling that was delivered on 30th December 1982. Through that ruling, the adjudication officer awarded the Plaintiff a portion of Plot No. 8, Poro “B” Adjudication Section. The said portion of land that was awarded to the Plaintiff was described in the ruling as “a portion of land which the court visited and summon (sic) (saw on) the ground”.

The Plaintiff brought this suit against the 1st to 11th Defendants on 20th November 1997. The plaint was amended on 20th May 2011 to add the 12th Defendant into the suit. In the amended plaint, the Plaintiff averred that during land adjudication at Poro “B” Adjudication, Plot No. 30, Poro “B” Adjudication section measuring 155 acres was demarcated and registered in his name. The Plaintiff averred that there was no appeal lodged against the demarcation and registration of the said parcel of land in his name. The Plaintiff averred that sometimes in the year 1993 the 1st Defendant through the Chief Land Registrar purported to nullify the adjudication process at Poro “B” through which the Plaintiff had been awarded the said parcel of land known as Plot No. 30 Poro “B” Adjudication Section. The Plaintiff averred that the 1st Defendant ordered a new adjudication process through which the Plaintiff’s parcel of land which hitherto measured 155 acres was reduced to 17 acres only. The Plaintiff averred that the remainder of his former parcel of land measuring 138 acres was wrongfully and unlawfully demarcated and registered in the names of the other Defendants herein who proceeded to take possession thereof. The Plaintiff averred that the despite demand and notice of intention to sue, the Defendants have refused to surrender the land that was unlawfully allocated to them back to the Plaintiff. The Plaintiff has sought the following reliefs against the Defendants;

- a. An order revoking the second adjudication that was carried out at Poro “B” Adjudication Section and the rectification of the register to show that the Plaintiff is the proprietor of the parcel of land known as Plot No. 30 Poro “B” measuring 155 acres.

b. A permanent injunction restraining the 12th Defendant from entering, remaining on and/or in any way interfering with the suit premises.

c. Costs.

All the Defendants were served with summons to enter appearance. It is only the Attorney General, the 1st Defendant, who entered appearance and filed a statement of defence. The 1st Defendant denied the Plaintiff's claim in its entirety. When the suit came up for hearing, the 1st Defendant did not appear. After satisfying myself that the 1st Defendant was duly served with a hearing notice, I allowed the hearing to proceed in the absence of the 1st Defendant notwithstanding. The Plaintiff gave evidence and called one witness. The Plaintiff told the court about the history of the adjudication process at Poro "B" Adjudication Section from the beginning until the time when the adjudication register was declared complete and he lodged an objection which was determined in his favour. The Plaintiff told the court that Plot No. 30 Poro "B" Adjudication Section that was demarcated and registered in his name during the adjudication process at Poro "B" Adjudication Section measured 155 acres. He told the court that ten (10) years after the adjudication process had been completed, he was summoned by the Land Adjudication Officer for the Second round of adjudication which summons he refused to honour. He stated that the purported second round of adjudication proceeded despite his protest and the 1st Defendant purported to subdivide the parcel of land which had been demarcated and registered in his favour and allocated the same a fresh to a number of people who have occupied the same. He mentioned the 4th, 7th, 8th, 9th, 10th and 11th Defendants as the persons who are in actual occupation of the portion of land previously part of Plot No. 30 Poro "B" which had been adjudicated and demarcated in his favour. He stated that during the purported second adjudication the parcel of land formerly known as Plot No. 30 Poro "B" was allocated to the 12th defendant. He urged the court to affirm the first adjudication and reinstate his original Plot No. 30 Poro "B" in his name. The Plaintiff produced as exhibits among others, notice of completion of Adjudication Register for Poro "B" Adjudication Section dated 22nd June 1982, the proceedings and ruling in objection No. 20 of 1982 which he lodged in respect of Plot No. 30 Poro "B" Adjudication Section, undated letter from the District Land Adjudication Officer Samburu District to the Director Land Adjudication and settlement, Registry Index Map for Poro "B" Adjudication Section, a letter dated 29th May, 1987 from the Director of Land Adjudication to Muthoga Gaturu & Company Advocates, summons dated 26th August 1986 addressed to the Plaintiff by the District Land Adjudication Officer Samburu District and notice of intention to sue the Attorney General dated 3rd September 1996.

The Plaintiff's witness was Pius Njogu Nguu (PW 2). PW 2 told the court that he is a retired demarcation officer. He testified that he was involved in the demarcation of land at Poro "B" Adjudication Section, Samburu District. He stated that Plot No. 30 Poro "B" Adjudication Section was demarcated in favour of the Plaintiff. He stated that the demarcation committee had allocated to the Plaintiff land measuring 155 acres which allocation was confirmed in the objection proceedings. He stated that no appeal was filed against the decision of the Adjudication officer who upheld the Plaintiff's objection in respect of Plot No. 30 Poro "B" Adjudication Section. He stated that he had learnt that after 10 years there was a purported fresh adjudication of the land that had been demarcated in favour of the Plaintiff. He stated that after the adjudication register was completed, there was no room for another adjudication to be carried out in Poro "B" Adjudication Section.

I have considered the Plaintiff's claim and the evidence that has been tendered in proof thereof. The parties did not agree on the issues for determination by the court. From my analysis of the pleadings, the following in my view are the issues which arise for determination in this suit:

- i. Whether the parcel of land known as Plot No. 30 Poro "B" Adjudication section was demarcated and recorded in the name of the plaintiff as the owner thereof?
- ii. Whether the said parcel of land measured 155 acres?
- iii. Whether the said parcel of land was adjudicated for the second time after the initial adjudication

and a portion thereof measuring 138 acres curved out and allocated to the 2nd to 12th Defendants and whether the process was valid?

iv. Whether the 12th Defendant is registered as the owner of the former parcel of land known as Plot No. 30 Poro “B” Adjudication Section?

v. Whether the Plaintiff is entitled to the reliefs sought?.

From the evidence on record, it appears that during the land adjudication process at Poro “B” Adjudication Section in the former Samburu District, there was a dispute over Plot No. 8 Poro “B” Adjudication section between the Plaintiff and Siampu Group Ranch. The Plaintiff had laid a claim to a portion of the said parcel of land which he claimed to have used for a long time and which he wanted to be registered in his name. Siampu Group Ranch objected to this claim. The dispute went through the dispute settlement mechanism provided under the Land Adjudication Act, Chapter 284 laws of Kenya up to the objection stage at which the plaintiff was held to be entitled to a portion of Plot No. 8 Poro “B” Adjudication Section. The Plaintiff’s entitlement was described in the ruling by the Land Adjudication Officer but no measurement was given. There is no clear evidence on record as to what happened after this decision by the Land Adjudication Officer in objection case No. 20 of 1982. It is not clear whether the ruling was enforced or effected by excising the portion of land that was awarded to the Plaintiff from Plot No. 8 Poro “B” Adjudication Section which belonged to Saimpu Group Ranch. It is not very clear to me how Plot No. 30 Poro “B” Adjudication Section which is claimed by the Plaintiff came about. I would assume however in the absence of evidence to the contrary that Plot No. 30 Poro “B” Adjudication Section was excised from plot No. 8 Poro “B” Adjudication Section following the ruling in objection No. 20 of 1982 and recorded in the name of the Plaintiff. As to the measurement of the Plot No. 30, there is conflicting evidence.

According to the ruling of the Land Adjudication Officer in objection No. 20 of 1982, the measurement of the land that was awarded to the Plaintiff is not given. According to the letter from the District Land Adjudication Officer Samburu District reference LA/Sec/11/323 which is attached to the Plaintiff’s list of documents dated 25th July 2000, the measurement of the land that was awarded to the Plaintiff was to be ascertained during the implementation of the award that was made in his favour and was so ascertained as 17 acres. There is also the letter dated 29th May, 1987 that was addressed to the firm of Muthoga, Gaturu & Company Advocates by the Director of Land Adjudication Officer and settlement (P. Exhibit 4) in which he stated that during the land adjudication, the plaintiff was awarded Plot No. 30 which measured 155 acres in objection No. 20 of 1982. The Director of Land Adjudication and settlement being the custodian of all adjudication records, I am prepared to accept his word on the measurement of the land that was awarded to the Plaintiff.

The Plaintiff has claimed that after the initial demarcation in which he was awarded Plot No. 30 as aforesaid, the 1st Defendant purported to carry out another adjudication and demarcation in respect of Poro “B” Adjudication Section through which a portion of Plot No. 30 was curved out and allocated to the other Defendants. In his letter dated 29th May 1987 (P. Exhibit 4) which I have referred to above, the Director of Land Adjudication and settlement stated that due to technical complications that arose during the adjudication at Poro “B” Adjudication Section, the process of adjudication was to be repeated in the whole Adjudication Section. This confirms that plaintiff’s contention that the 1st Defendant re-opened adjudication process after the Adjudication Register had been completed. I am in agreement with the contention by the Plaintiff that once the Adjudication Register had been completed and the period of objection and appeals under sections 25 and 26 of the Adjudication Act, Chapter 284 Laws of Kenya had lapsed, the 1st Defendant could not re-open the adjudication process.

The 1st Defendant did not tender any evidence. The court may never know in the circumstances what technical complications led to the carrying out of fresh adjudication at Poro “B” Adjudication Section. I am of the view that unless the earlier adjudication process was nullified by the court, there was no basis for the second adjudication process. The Director of Land Adjudication and settlement has no power under the Land Adjudication Act, Chapter 284 Laws of Kenya to nullify an adjudication process. It is my

finding therefore that the purported fresh adjudication process that was ordered by the Director of Land Adjudication and settlement for Poro “B” Adjudication Section was unlawful. It follows therefore that excision of a portion of Plot No. 30 measuring 138 acres and allocation of the same to third parties that was carried out during the impugned second adjudication process at Poro “B” Adjudication Section was equally unlawful. The plaintiff has claimed that 138 acres of land that was curved from Plot No. 30 was allocated to the 2nd to 12th Defendants. I must say that the Plaintiff placed none or very little information before the court connecting the 2nd to 12th Defendants to the subject matter in dispute in this suit. There is no evidence that the 2nd to 11th Defendants were allocated any portion of the 138 acres said to have been curved from Plot No. 30. For the 12th Defendant, the Plaintiff has claimed that it is now the registered proprietor of what was formerly Plot No. 30. No evidence has been availed in proof of this fact. According to the material on record some of which the plaintiff failed to produce in evidence for reasons only known to him, Poro “B” is no longer an adjudication section but a registered area. See, a letter from the District Land Adjudication and Settlement Officer, Samburu District reference LA/SEC/11/VOL. 11/2 which is number 6 in the Plaintiff’s list of documents dated 25th July, 2000. According to this letter, land at Poro “B” has been registered and title deeds issued. The registration is said to have been done on 23rd December 1992 before the institution of this suit. According to that letter, Plot No. 30 is registered in the name of one **“Teresian Lesiyanga”** It is not clear whether **“Terisian Lorobat”** sued herein as the 12th Defendant is the same as **“Teresian Lesiyanga”**. The issue as to who owns Plot No. 30 would have been easily resolved by the Plaintiff conducting a search on the register of the said parcel of land. Why he chose not to go this way is not easy to understand. Again, I am unable to follow the Plaintiff’s claim that a portion of Plot No. 30 was allocated to the 2nd to 12th Defendants while at the same time he has contended that plot No. 30 is registered in the name of the 12th Defendant only. The Plaintiff did not tell the court the relationship if any between the 2nd to 11th Defendants and the 12th Defendant. On the material before me, I am not satisfied that the portion that was excised from Plot No. 30 during the second adjudication process at Poro “B” was allocated to the Defendants or any of them.

The last issue to determine is whether the Plaintiff is entitled to the reliefs sought. I have set out the reliefs sought by the Plaintiff earlier in the judgment. The Plaintiff’s first prayer is for the revocation of the second adjudication that was carried out at Poro “B” Adjudication Section and the rectification of the register for Plot No. 30 by cancelling the names of those who are registered as the owners thereof and replacing the same with the name of the Plaintiff. This relief cannot be granted for a number of reasons. First, there were several people who owned land at Poro “B” Adjudication Section. According to PW 2, the land at Poro “B” Adjudication Section was adjudicated in favour of 42 people. It follows that it is not the Plaintiff and the Defendants herein only who were affected by the second adjudication. If I was to grant an order revoking the said adjudication, which I have found to have been carried out illegally, my order would affect other people who are not before me. I have noted that the land in contention between the Plaintiff and the Defendants belonged to Siampu Group Ranch. It is not clear why the said Group Ranch was not made a party to these proceedings. I am in the circumstances reluctant to make an order that will affect the rights of the third parties without giving them a hearing. As regards the second limb that seeks the rectification of the register, again, this prayer cannot be granted. As I have mentioned earlier, land at Poro “B” is now registered. Although there is no evidence before me as to the land registration system under which land at Poro “B” was registered, all indications are that the same was registered under the Registered Land Act, Cap 300 Laws of Kenya (now repealed). It is under that Act that title deeds used to be issued after land adjudication. See, Section 28 of the Land Adjudication Act, Cap 284 Laws of Kenya and Section 11(2A) of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed). As I have stated above there is no sufficient evidence before me that the former Plot No. 30 Poro “B” Adjudication Section is registered in the name of any of the Defendants. There is no basis therefore for rectifying the register of the said parcel of land in a suit against the Defendants. Even if there was evidence that the said parcel of land is registered in the name of the Defendants or any of them such registration coming immediately after adjudication would be first registration. Section 143 of the Registered Land Act, Chapter 300 Laws of Kenya (now repealed) forbids rectification of the register of land registered on first registration. This court cannot therefore grant the order sought by the Plaintiff.

The second relief sought by the plaintiff is a permanent injunction against the 12th Defendant restraining him from interfering with Plot No. 30. Again I am unable to grant this order. As I have stated above, the

