



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT & LAND COURT AT KITALE**

**LAND CASE NO. 9 OF 2012**

**LOMERINYANG CHEPSIEN::: PLAINTIFF**

**VERSUS**

**ROBERT LOKITAR LOMERINYANG::: DEFENDANTS**

**J U D G M E N T**

**INTRODUCTION.**

1. The plaintiff is the father of the defendant. The plaintiff is so advanced in age that he could not testify. He gave one of his daughters power of attorney to prosecute the case on his behalf. The plaintiff had four wives one of whom has since died. The deceased wife was the plaintiff's third wife and is mother to the defendant and three other girls.
2. The plaintiff was a member of Parua "A" Group Ranch who was member No. 253. He was given land in the Group Ranch in 1984. He showed his three surviving wives portions of their land and left a portion for the third house to which the defendant belongs. When the plaintiff wanted to sub-divide the portion reserved for his deceased wife and share it out to all the children of the third house, the defendant protested and prevented him from doing so. The plaintiff tried to have the dispute resolved but the same was not conclusively done prompting him to file this suit.

**PLAINTIFF'S CASE.**

3. The plaintiff through his daughter PW5 Chepurket Tepeso testified that her father was okay when he filed this suit but he has since become sick due to old age and cannot talk properly. She was given the power of attorney to proceed on his behalf. She testified that her father owned plot 253 at Parua "A" Group Ranch and that he had four wives. The plaintiff has shown three wives their portions. When it came to the turn of her mother's portion to be sub-divided, the defendant who is her elder brother protested. The dispute was taken before the chief who was unable to solve it. The dispute was somehow solved but his father was not satisfied. The defendant has since sold part of the land to third parties some of whom have put up structures on the land. She testified that the sale was not sanctioned by the plaintiff. She testified that she wants her father to be let free to sub-divide his land as per his wish.

**DEFENDANT'S CASE.**

4. The defendant denies the claim by the plaintiff and contends that the plaintiff has his own land which is separate from the land he is occupying. He testified that he was allocated the land in dispute by the land allocation committee of Parua "A" Group Ranch on 19/12/1995. He testified that the land is 7.7 acres. He testified that on 8/6/2012 elders from the Group Ranch resolved the dispute between him and his father. He contends that one of his sisters who testified in this case is

married and that she is the one who is causing problems between him and his father. He contends that he has no problem with his father.

### **ANALYSIS OF EVIDENCE AND THE LAW.**

5. The area where the disputed land is situated is governed by the provisions of the Land (Group Representative) Act Cap 287 Laws of Kenya. Under this Act, the members of a group are identified and then their names are entered in a register kept for that purpose. If more members are admitted into the group, their names are included in the register.
6. In the present case the plaintiff is contending that the disputed parcel belongs to him whereas the defendant contends that the land belongs to him and that it is separate from that held by his father. The question which then arises for determination is whether each of the two is a member of Parua "A" Group Ranch. The plaintiff called PW4 Bernard Ong'au Nyakundi, a Land Adjudication Assistant based at West Pokot. This witness testified that according to the register of members kept in accordance with the provisions of the Land (Group Representative) Act, the plaintiff is a member. The plaintiff is member number 253 and his name was put in the register in 1984. This witness produced a photocopy of the register as exhibit 6. The photocopy was retained in court after the court viewed the original register and directed that the relevant copy be retained and the original register released to the witness. This witness testified that the name of the defendant does not appear in the register. Indeed even the defendant himself conceded that his name does not appear in the register of members of Parua "A" Group Ranch.
7. The only way in which one can prove that he is a member of a group ranch is by production of an extract of the register of members. Section 24 of the Land (Group Representative) Act Cap 287 provides as follows:-

**24 (1) " In any legal proceedings, a paper purporting to be a copy of or an extract from any register or document kept by the registrar, and purporting to be certified by the registrar as a true copy or extract, shall be admissible as prima facie evidence of the contents of the register or document."**

8. As I have said hereinabove, the plaintiff produced the original register which shows that the plaintiff is a member of Parua "A" Group Ranch. The defendant produced a document which he described as an allotment letter by the Land Committee. This document [Defence exhibit 1] which is dated 19/12/1995 purports to have approved allocation of land to the defendant. If indeed the committee of Parua "A" Group Ranch allocated land to the defendant, then the register would have been updated and his name put in the register. The defendant cannot claim that the registrar is still updating the register 19 years from the date of the alleged allocation. The defendant also provided a document dated 8/6/2012 in which it is said that the dispute between the plaintiff and the defendant was resolved by the locational committee as well as Parua "A" Group Ranch Land Committee. The two committees resolved that the disputed land belonged to the defendant. Those present during this meeting was the area chief of Parua location Samuel Tuliareng. This chief was called by the plaintiff as a witness. He produced a letter dated 16/6/2012 [Exhibit 2]. In this letter the chief said that he had convened a meeting between the plaintiff and defendant with view to resolving the dispute but he was unable to do so. On the same day, the same chief wrote a letter [Exhibit 3] addressed to one of the persons who had bought land from the defendant asking him to stop any developments pending resolution of the dispute between the plaintiff and the defendant. The first letter [Exhibit 2] was in response to the District Commissioner's letter of 24/5/2012 [Exhibit 1] asking the chief to convene a meeting between the plaintiff and the defendant.
9. The chief of Parua "A" location is not a truthful witness. Whereas in the letter of 8/6/2012, he was party to a meeting which resolved that the disputed plot belonged to the defendant, eight (8) days later, he was writing to the District Commissioner telling him that he had been unable to resolve the dispute. It is clear therefore that the defendant colluded with the chief and the Parua "A" Group Ranch Committee which purported to give land to the defendant. It is therefore clear that the defendant's exhibits 1 and 2 cannot pass the test of credibility. The chief himself tried to pretend that he was not aware that he had written a letter asking one of the buyers to stop development until the dispute between the plaintiff and the defendant was resolved. When he was

shown his letter of 16/6/2012, he had no words to say.  
10. The defendant's counsel submitted that the plaintiff's case ought to be dismissed as the plaintiff did not obtain consent of the adjudication officer. The land in dispute is governed by the provisions of the Land (Group Representative) Act and not the land Adjudication Act Cap 284. Parua "A" Group Ranch is not declared an adjudication section and therefore no consent was required. This submission as well as the case cited in support thereof is of no assistance to the defendant's defence.

**DETERMINATION.**

11. I find that the plaintiff has proved his case against the defendant on a balance of probabilities. A permanent injunction is hereby given restraining the defendant from preventing the plaintiff from sub-dividing the land amongst his children of the third house. The sub-division should be carried out by the County Surveyor from West Pokot or any surveyor who has jurisdiction in that area under the supervision of the OCS Pokot Central. I make no order as to costs.

**[Dated, signed and delivered at Kitale on this 20th day of January, 2015.]**

**E. OBAGA.**

**JUDGE.**

In the presence of M/s. Arunga for defendant.

Court Clerk – Kassachoon.

**E. OBAGA.**

**JUDGE.**

**20/1/2015.**