



IN THE COURT OF APPEAL

AT NAKURU

(CORAM: KWACH, OMOLO & BOSIRE, J.J.A.)

CIVIL APPEAL NO. 71 OF 2000

BETWEEN

LONTEBES GROUP RANCH APPELLANT

AND

KIPKEMOI ARAP MENDERA RESPONDENT

(Appeal from a judgment of the High Court of Kenya at

Kericho (Nambuye, J.) dated 27th September, 1994

in

H.C.C.C. NO. 17 OF 1992)

JUDGMENT OF THE COURT

Kipkemoi arap Mendera, the respondent in this appeal, did not appear either in person or by an Advocate although he was served with the hearing notice. So we only heard submissions from **Mr. Kahiga**, Advocate for **Lontebes Group Ranch**, the appellant in this appeal.

In 1992 the appellant filed a suit in the superior court against the respondent seeking, among other reliefs, an order for the ejection of the respondent from a **parcel of land No. Narok/CIS-Mara/Lemek/129** (the suit land) and damages for trespass. The appellant is the registered proprietor of the suit land. It was alleged by the appellant that the respondent had entered into the suit land without the appellant's consent and against its will and had committed therein acts which caused damage to the appellant.

In his defence filed on 27th October, 1992, the respondent denied being a trespasser and averred that the suit land was a group land held by the appellant under **section 7** of the **Land (Group Representatives) Act (Cap 287) (the Act)** on behalf of the members of the group of which he was also a member.

Although the appellant called evidence in an attempt to show that the respondent was not a member of the group, they did not place before the Judge credible evidence to disprove the respondent's contention. All they did was to disown the respondent by oral evidence which the learned Judge rejected.

On his part the respondent placed before the learned Judge a copy of the **Register of Members** under **section 17(1) of the Act**. In that register the respondent is shown as member No. 8, the other members being Leleito Cheusi, Purpuria Ezekiel, Chelule Kenduywa, Leleito Towet, Leleito Chepkulul, Leleito

Kosiom and Kaplelach Kiptangusi. He also produced a copy of the **Land Certificate** issued to Lontebes Group Ranch dated 2nd September, 1986. He also produced copies of letters from the Provincial Administration confirming that he was a genuine member of the Group Ranch. The appellant produced no credible evidence to the contrary beyond a mere assertion by word of mouth that the respondent is not a member.

Mr. Kahiga persistently contended before us that the extract of the Register produced by the respondent was a forgery but he was unable to show us any evidence placed before the trial Judge by the appellant to show that the document produced by the respondent was not a genuine extract from the register. Since it was the appellant's case that the respondent was not a member of the Group but a trespasser, the appellant had to prove, on a balance of probabilities, that the document produced by the respondent as the basis of his claim to membership was a forgery. All they needed to do to discharge that burden was simply to place before the Judge a copy of what they believed to be the authentic Register of members. They did not discharge that burden and having not done so, the foundation of their case collapsed. In these circumstances, the Judge was quite right to hold that the respondent was a member of the Group and not a trespasser as alleged by the appellant.

In view of what we have said we are clearly of the opinion that there is no merit in this appeal. It is accordingly dismissed with no order as to costs.

Dated and delivered at Nakuru this 27th day of September, 2002.

R. O. KWACH

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JUDGE OF APPEAL

R. S. C. OMOLO

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JUDGE OF APPEAL

S. E. O. BOSIRE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR