



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Suit 95 of 2003**

**LEMITEI OLE KOROS .....1<sup>ST</sup> PLAINTIFF**

**PARIT OLE SETEK .....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**ATTORNEY GENERAL .....1<sup>ST</sup> DEFENDANT**

**KIPIRA OLE SANTAI .....2<sup>ND</sup> DEFENDANT**

**MEMUSI OLE NYAMO .....3<sup>RD</sup> DEFENDANT**

**KING'ORE OLE NYAMO .....4<sup>TH</sup> DEFENDANT**

**RULING**

(1) This Chamber Summons was taken out on the 4<sup>th</sup> July 2003 by Kipira ole Santai (the Second Defendant), Memusi ole Nyamo (the Third Defendant) and King'ore ole Nyamo (the Fourth Defendant (hereinafter called "**the Defendants**"). In the application they seek a temporary injunction against Lemitei ole Koros and Parit ole Setek, the two Plaintiffs, to restrain them, their servants and agents from trespassing into, ploughing, cultivating or grazing on the Defendants' parcels of land Nos.1540, 1541 and 50 at Olokurto in Narok District. They also seek an order restraining the Plaintiffs from evicting them or interfering with their quiet possession and enjoyment.

(2) The application is based on the grounds that the Defendants are the rightful owners of the three parcels and are in possession and occupation of the same. It is also alleged that the Plaintiffs have threatened to invade the parcels and forcibly evict the Defendants.

(3) In the supporting affidavit dated the 4<sup>th</sup> July 2005, Kipira ole Santai says that the parcels in question formed part of the Olokurto Land Adjudication Section. After ascertainment of interests the parcels were demarcated and allocated to various owners. Objections and disputes were dealt with by the Adjudication Officer and finally by way of appeals to the Minister. The Defendants were confirmed as the owners of the parcels after appeals to the Minister.

(4) The Plaintiffs were not happy with the decisions of the Minister and on the 31<sup>st</sup> January 2003, they filed this suit against the Attorney-General and the Defendants seeking a number of reliefs including —

(a) A declaration that the District Commissioner's decision made on the 23<sup>rd</sup> April 2002 was

irregular.

- (b) A declaration that the creation of parcels Nos.1540 and 1541 is null and void.
  - (c) An order that the Chief Land Registrar do register the Plaintiffs as proprietors of parcels Nos.138 and 139 without the excisions known as Nos.1540 and 1541.
  - (d) Injunction to restrain the Defendants from trespassing on those parcels.
  - (e) Damages for loss of user and breach of the Plaintiffs' rights and interest in the parcels.
- (5) The Plaintiffs claim to be the owners of those parcels under Maasai customary law. They also say that the District Commissioner heard and determined the appeals without jurisdiction. The allegations are repeated in detail in the replying affidavit of Lemitei ole Koros (the First Plaintiff) sworn on the 25<sup>th</sup> July 2003. He claims to be the owner of parcel No.139. In the Grounds of Opposition filed on the 25<sup>th</sup> July 2003, it is stated that the Defendants have misrepresented the facts and also that the application is defective.
- (6) Parit ole Setek (the Second Plaintiff) also filed a replying affidavit on the 25<sup>th</sup> July 2003. He claims to be the owner of parcel No.138. When parcel No.1541 was carved out of parcel No.138, he appealed. The appeal was dismissed and he is now questioning the decision in this suit. He says parcel No.1541 was wrongly given to the Fourth Defendant by the District Commissioner.
- (7) The two Plaintiffs swore a joint affidavit on the 5<sup>th</sup> April 2006 in which they repeated their claim to the three parcels. It is clear from that affidavit that the Plaintiffs' main grievance is that the District Commissioner's decision was wrong. That is also the premise of their case as pleaded in the Plaint. It is alleged that the District Commissioner had no jurisdiction to exercise the powers of the Minister and consequently, his decision was null and void. That is also the position which learned counsel appearing for the Plaintiffs in this application has taken.
- (8) If the averments in the Plaint are true, then it must follow that the plank of the Plaintiffs' case is that the Adjudication process was null and void and consequently did not affect customary interests on the ground. The claim by the Plaintiffs that the process was null and void cannot be decided in this application. That is for the Judge who will hear the case to determine. The trial Judge will also have to decide whether there is any substance in the Plaintiffs' claim that the District Commissioner had no jurisdiction to hear the appeals. That again is not for me to decide — not even the claims based on customary law.
- (9) For the purposes of this application, I have to assume that the Adjudication process took place and was completed. I have no power, in view of the clear provisions of section 29(1) of the Land Adjudication Act [Cap.284], to question the validity of the adjudication register compiled by the Director of Land Adjudication. Section 29(1) of the Act states —
- “29. (1) Any person who is aggrieved by the determination of an objection under section 26 of this Act may, within sixty days after the date of the determination, appeal against the determination to the Minister by —
- (a) **delivering to the Minister an appeal in writing specifying the grounds of appeal; and**
  - (b) **sending a copy of the appeal to the Director of Land Adjudication, and the Minister shall determine the appeal and make such order thereon as he thinks just and the order shall be final.”**  
[Emphasis added].
- (10) In challenging the jurisdiction of the District Commissioner, the Plaintiffs and their Advocates may wish to consider the provisions of section 29(4) of the Act, which give the Minister power to delegate his

powers to hear appeals.

(11) Before I conclude, I think I should deal with a point raised by learned counsel for the Plaintiffs, to the effect that the Defendants have no right in law to make this application in the absence of a counter-claim in the suit. With respect, that objection is misplaced in view of the provisions of Order 39 rule 1(a) of the Civil Procedure Rules.

(12) For the reasons I have outlined, I am satisfied that the Defendants have made out a case for an injunction against the Plaintiffs. Accordingly, I do hereby grant a temporary injunction in terms of prayer No.2 in the Chamber Summons dated and filed on the 4<sup>th</sup> July 2003, such order to remain in force until the hearing and determination of the Plaintiffs' suit. Prayer 3 in the application is denied as I do not consider it the work of the Police to enforce injunction orders except, perhaps, in very exceptional circumstances which the Defendants have not shown. Finally, the costs of the application will be in the suit.

Dated and delivered at Nairobi this Eleventh day of October 2006.

P. Kihara Kariuki

Judge