



REPUBLIC OF KENYA



KENYA LAW

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**Koirak & 7 others v Loonkushu & 14 others; Naroosura Group Ranch (Interested Party)
(Environment & Land Case E005 of 2023) [2023] KEELC 19051 (KLR) (26 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19051 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE E005 OF 2023**

CG MBOGO, J

JULY 26, 2023

BETWEEN

**JAMES OLOSERIAN KOIRAK 1ST PLAINTIFF
KESWE OLE KARENKA 2ND PLAINTIFF
NKONYOYO OLE KISEENTU 3RD PLAINTIFF
LEMPOYIO LEKISHON 4TH PLAINTIFF
DANIEL OLIRUMBE SEKUT 5TH PLAINTIFF
SWAKEI ILE YAILE 6TH PLAINTIFF
NTIKISE OLE KUYIONI 7TH PLAINTIFF
NGOOMBE OLE NKURUMWA 8TH PLAINTIFF**

AND

**SARUNI OLE LOONKUSHU 1ST DEFENDANT
KIPRON OLE SIMPAI 2ND DEFENDANT
DAVIES SANARE NEILLIANG 3RD DEFENDANT
JOSEPH KITIREI SARITE 4TH DEFENDANT
DALTON OLTETIA LILA 5TH DEFENDANT
TARIMO OLE KITALO 6TH DEFENDANT
KIJUKU OLE KESIER 7TH DEFENDANT
KANTAI OLE KOITUMET 8TH DEFENDANT
KONENE OLE NAIJI 9TH DEFENDANT
WILLIAM KALEKU 10TH DEFENDANT**



**THE DIRECTOR LAND ADJUDICATION AND SETTLEMENT 11TH
DEFENDANT**

SUB-COUNTY LAND ADJUDICATION OFFICER, NAROK 12TH DEFENDANT

NATIONAL LAND COMMISSION 13TH DEFENDANT

THE COUNTY COMMISSIONER, NAROK 14TH DEFENDANT

OFFICER OF THE ATTORNEY GENERAL 15TH DEFENDANT

AND

NAROOSURA GROUP RANCH INTERESTED PARTY

RULING

1. Before this court for determination is the Notice of Motion Application dated 10th March, 2023 and a Notice of Preliminary Objection dated 20th April, 2023 respectively. The notice of motion filed by the plaintiffs/applicants herein is expressed to be brought under Order 40 Rule 1, Order 51 Rule 1 of the *Civil Procedure Rules* and Sections 1A, 1B and 3A of the *Civil Procedure Act* seeking the following orders: -
 1. Spent.
 2. Spent.
 3. That pending the hearing and determination of this suit, this honourable court be pleased to issue orders of temporary injunction restraining the defendants whether by themselves, their servants, the provincial administration, agents and/or anyone else acting under their authority from calling for unstructured and illegal meetings of Naroosura Group Ranch on 14th March, 2023 or any day thereafter.
 4. That the costs of this application be provided for.
2. The application is premised on the grounds on its face and more particularly in the affidavit annexed to the application.
3. The application is supported by the affidavit of James Oleserian Koirak, the 1st plaintiff/applicant herein which was sworn on even date. In this affidavit, the plaintiffs/applicants deposed that they are members of Naroosura Group Ranch which was incorporated sometime in the year 1970 and that it is in last phase of dissolution wherein land known as Narok/Cis-Mara/Naroosura/1 is being subdivided and distributed to its members.
4. The plaintiffs/applicants further deposed that the register for the group ranch was closed sometime in the year 2014 but the officials of the group ranch were directed to ensure that the suit property was subdivided and distributed to its members accordingly. That the plaintiffs/applicants with the approval of the members sought for consent to subdivide which was allowed sometime in the year 2015.
5. Further, they deposed that the subdivision was to be undertaken in phases and in the initial phase, it was agreed that that members who had settled in the water rich area (irrigation block) would be



- considered for the area they occupy as the irrigation block was not enough to settle all members as per their share as the subdivision required to cover a larger portion.
6. The plaintiffs/applicants further deposed that in the group ranch, each member was eligible for 27 acres but in the irrigation block, the resulting units would range between a quarter of an acre to 29 acres and as such a total of nine RIM registration sheets for the irrigation block were prepared. Further, that the total parcels of land in the irrigation block is 1742 parcels of various sizes which have been distributed to members accordingly.
 7. The plaintiffs/applicants further deposed that it was at this stage when distribution was slowed down as some of the petitioners herein filed petition no. 4 of 2018 seeking to stop the distribution but was dismissed by this court on 9th February, 2022 and survey and subdivision of the suit property which had been halted resumed. That before resumption of the survey, the defendants/respondents through their advocates, demanded and pleaded with the Director of Land Adjudication to convert the group ranch to community land by making reference to the applicable law.
 8. That the Director of Land Adjudication and Settlement vide a circular letter dated 9th March, 2022 expressly stated that the transition of group ranches to community land shall only apply to group ranches which were yet to be dissolved and the chairman of Naroosura Group Ranch was instructed to continue with the completion exercise of the survey and subdivision.
 9. The plaintiffs/applicants further deposed that unknown to the leadership of the group ranch, the defendants/respondents approached the Director of Land Adjudication and Settlement and were able to make the Director of Land Adjudication and Settlement believe that the pending issue is that of change of officials and the said Director has now gone ahead and issued a notice for a meeting that was scheduled for 14th March, 2023 to resolve leadership wrangles. Further, that the Director of Land Adjudication and Settlement issued a letter putting on hold any subdivision activities until the meeting scheduled is held and a way forward is mapped out.
 10. The plaintiffs/applicants deposed that the act of halting the process is meant to serve the interests of the defendants/respondents which is in total disregard of the interests of thousands of other members who wish that the process continues. Also, that the claim of leadership wrangles has never been an issue since the members by majority elected the current leadership following an AGM held on 18th February, 2014. And, the handing over of the old leadership to the current leadership was overseen by the District Land Adjudication Officer vide his letter dated 27th February, 2014.
 11. The plaintiffs/applicants deposed that on 7th March, 2023, the chairman of the group ranch received a letter from the Sub County Land Adjudication and Settlement Officer indicating that the subdivision of the suit property should be halted on claims that consent to subdivide had not been obtained which is totally misleading as the same author had written to the Land Registrar on 16th August, 2022 over the same issue.
 12. That it is only recently that the public officers have now changed tune arising from the influence of the political class who are hell bent on ensuring that the suit property is not subdivided and distributed to the bona fide members of the group ranch. The plaintiffs/applicants deposed that the surveyors who were contracted to undertake the subdivision process ought to be allowed to finalise the process and this court ought to protect them from intimidation and threats being peddled to them.
 13. The plaintiffs/applicants deposed that besides the meeting being illegal, the same shall be attended by anyone and resolutions affecting the group ranch and its registered members shall be discussed and made which means that strangers shall be making decisions on the operations of the group ranch.



14. The application was opposed by the replying affidavit of the 1st Defendant/respondent-Saruni Ole Loonkushu which was sworn on 25th April, 2023 on behalf of the defendants/respondents. The defendants/respondents deposed that the issues in the instant case are before the dispute resolution mechanism under the stewardship of the office of the Director of Land Adjudication and Settlement and is yet to be concluded by the said office.
15. Further, that this court delivered a ruling in ELC Petition No. 4 of 2018 after which they resorted back to the mechanisms as laid out under the Land Adjudication Act. That a committee comprising of the Member of National Assembly, Narok South Constituency, the County Secretary and intelligence committee, the adjudication officer, Narok County Government, religious leaders, 10 representatives and 10 petitioners in Petition No. 4 of 2018 was formed to resolve the issue emanating from the land in Naroosura.
16. The defendants/respondents further deposed that the plaintiffs/applicants in this case have not exhausted the dispute resolution mechanism provided under the Act and that all the parties in the instant case are members of the group ranch but the plaintiffs/applicants are not group ranch officials as claimed. Further, that on 24th April, 2014, the members of the group ranch resolved to dissolve the incorporated group representatives and that the incorporated group representatives can only be considered to be dissolved once the group ranch parcel of land is fully subdivided and members allocated individual parcels of land.
17. Further, they deposed that the effect of elections not being conducted after the lapse of the two-year term yet the dissolution of the ranch has not been finalised is that the group ranch is left without a lawful committee. That the only circumstance provided by law where officials continue to serve around the time of dissolution of an incorporated group representatives is where there is a criminal investigation, proceedings or prosecution which is not the case for Naroosura Group Ranch. Further, that the assertions by the plaintiffs/applicants that they are the officials of the group ranch despite the clear provisions of the law are matters that can be raised to the Land Adjudication Officer who has the requisite mandate to find a way forward on the issue.
18. The defendants/respondents further deposed that it is not disputed that members of the group ranch made a resolution to dissolve the incorporated group representatives and that it is not in dispute that the subdivision was to be done in two phases with the first phase being subdivision of the irrigable land. Further, that the subdivision as commenced is an illegality as the consent of the Land Control Board predates the resolution to dissolve the incorporated group representatives, the appointment of the surveyor was questionable as it lacked a resolution and the allocation of the subdivided parcel came with forced subdivision of the members parcels that attracted a fee of Kshs. 39,700/- per subdivision which resulted in each member owing the surveyor approximately Kshs. 200,000/-.
19. The defendants/respondents deposed that it is clear that there exists real issues regarding the dissolution of the incorporated group representatives and that despite a letter from the County Commissioner to the plaintiffs/applicants requesting them to put on hold any subdivision activities until a meeting that was scheduled for 14th March, 2023 was held, the plaintiffs/applicants continued with the subdivision. Also, that despite another letter from the Land Adjudication and Settlement Officer notifying the plaintiffs/applicants to cease subdivision, the plaintiffs/applicants continued with the said subdivision.
20. As such, the defendants/respondents deposed that the plaintiffs/applicants ought to await the conclusion of the dispute resolution mechanism before invoking the jurisdiction of this court. Also, that the plaintiffs/applicants have no prima facie case as the disputes they allege are not within the



jurisdiction of this court and the orders sought are an affront to the law and only seek to cripple the operations and implementation of the dispute mechanism under the [Land Adjudication Act](#).

21. The defendants/respondents filed a preliminary objection dated 20th April, 2023 and filed in court on 9th May, 2023 challenging the application on the following grounds: -
 1. That this honourable court does not have jurisdiction to hear and determine the present suit and application as the subject matter concerns land adjudication which is under the jurisdiction of the Land Adjudication Officer as expressly provided for under Section 10 (1) of the [Land Adjudication Act](#), Cap 284, Laws of Kenya.
 2. That the suit is premature as it is currently the subject to the dispute resolution mechanism provided for under Section 10 as read together with Sections 26,27,29 and 30 of the [Land Adjudication Act](#) and the same has not been disclosed to this honourable court.
 3. That the suit is a non-starter as plaintiff/applicant is precluded by Section 30 (1) of the [Land Adjudication Act](#), Cap 284, Laws of Kenya couched in mandatory terms from moving this honourable court without consent of the Land Adjudication Officer when the matter is subject of dispute resolution mechanisms under the [Land Adjudication Act](#).
 4. That the suit is frivolous and bad in law as it seeks orders that prevent the Land Adjudication Officer from proceeding with the dispute resolution meetings and inhibiting the exhaustion remedies expressly provided for under Section 10 as read with Sections 26,27, 29 and 30 of the [Land Adjudication Act](#), Cap 284, Laws of Kenya.
 5. Any other grounds and reasons may be adduced at the hearing thereof.
22. On 8th May, 2023, this court directed that both the application and the preliminary objection be canvassed together by way of written submissions. The plaintiffs/applicants did not file their written submissions.
23. On 5th July, 2023 the 1st to 10th defendants/respondents filed their written submissions dated 27th June, 2023. On the preliminary objection, the 1st to 10th defendants submitted that by dint of Section 10 of the [Land Adjudication Act](#), the land adjudication officer is conferred the exclusive original jurisdiction of disputes arising from the [Land Adjudication Act](#) which the plaintiffs/applicants have to exhaust this avenue before moving to this court.
24. Further, that even if the plaintiffs/applicants were to be displeased with the decision of the Land Adjudication Officer, an appeal still lies with the Minister pursuant to Section 29 of the [Act](#). The 1st to 10th defendants relied on the cases of [Daniel Musili Nyeki & 49 Others versus Cabinet Secretary of Lands & Settlement & Another](#); [Bernard Malonza Musya & 30 Others](#) [2021] eKLR, [Secretary, County Public Service Board & Another versus Hulbhai Gedi Abdille](#) [2017] eKLR and [Tobias Achola Sindi & 13 Others versus Cyprianus Otiemo Ogalo & 6 Others](#) [2013] eKLR.
25. The 1st to 10th defendants/respondents further submitted that from the authorities cited above, it is determinable that the jurisdiction of this court has been invoked prematurely as the disputes in question fall under the jurisdiction of the Land Adjudication Officer under Section 10 as read together



with Sections 26,27, 29 and 30 of the [Land Adjudication Act](#). Reliance was placed in the case of Owners of the Motor Vessel “Lillian S” versus Caltex Oil (Kenya) Limited [1989] eKLR.

26. With regard to the application, the 1st to 10th defendants/respondents submitted that the threshold to be met for a court to grant a temporary injunction has been well established and the plaintiffs/applicants ought to satisfy this court that they have a prima facie case before an order of injunction can be issued. That in this case, the subject meetings that the plaintiffs/applicants seek to injunct are forums to ensure that there is transparency and accountability in the subdivision process and alleviate mistrust as that could potentially cause conflict.
27. The 1st to 10th defendants/respondents further submitted that the plaintiffs/applicants have not adduced evidence to show any prejudice that may be occasioned to them if the orders they seek are not granted as the Land Adjudication Officer in calling for the meetings to resolve the dispute and find a way forward is fulfilling the mandate of his officer under the [Act](#). Further, that an injunction being and equitable remedy, requires the plaintiffs/applicants to make full candid disclosure of all material facts in order to benefit from the equitable relief. The 1st to 10th defendants/respondents relied on the cases of [Giella versus Cassman Brown & Company Limited](#) [1973] EA 358, [Kenleb Cons Limited versus New Gatitu Service Station Limited & Another](#) [1990] KLR 557 and [Mutanga Tea & Coffee Company Limited versus Shikara Limited & Another](#), [2015] eKLR.
28. They urged this court not to usurp the jurisdiction of the Land Adjudication Officer by granting the prayers sought and in doing so, they relied on the cases of [Mohamed Ahmed Khalid \(Chairman\) and 10 Others versus Director of Land Adjudication & 2 Others](#) [2013] eKLR and [Ahmad & Another versus Kadhi Mombasa; Khalifa & Another](#) [2021] KEHC 133 (KLR).
29. I have considered the notice of motion application, replying affidavit, the preliminary objection and the written submissions filed by the 1st to 10th defendants/respondents.
30. I will begin with the preliminary objection as it raises the issue of the jurisdiction of this court to hear and determine this suit. The threshold for preliminary objections is now well settled and there would be no reason to reinvent the wheel. Courts have held that a preliminary objection deals with purely points of law and where facts are not disputed. Where the court has to look outside the case for evidence to establish the facts presented, then this falls under a case where a full hearing has to be conducted to disprove certain facts. In [Mukisa Biscuit Manufacturing Co. Ltd vs West End Distributors Ltd](#) (1969) EA 696, the court stated as follows: -

Per law, JA

“So far as I’m aware, a preliminary objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit.”

This was followed up by the judgment of Sir Charles Newbold, P in the same case:

“The first matter relates to the increasing practice of raising points, which should be argued in the normal manner, quite improperly by way of Preliminary Objection. A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does nothing



but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop.”

31. In the case of *Lemitei Ole Koros & another v Attorney General & 3 others* (2016) eKLR, Munyao, J. stated as follows:

“Where facts are not contested, the court is able to make a determination of law on the preliminary objection, but where facts are in contest, then automatically, the issue falls out of the ambit of a preliminary objection. It would be improper for a court to make a contested determination of fact within a preliminary objection.”

32. Having looked at the definition and what constitutes a preliminary objection, and the preliminary objection filed by the 1st to 10th defendants/respondents, I am satisfied that it merits consideration to the extent that it raises the issue of jurisdiction of this court to hear and determine the suit as there exists mechanisms to resolve the dispute under the provisions of the *Land Adjudication Act*.

33. The plaintiffs/applicants in this case are seeking injunctive order restraining the defendants/respondents from calling unstructured and illegal meetings of Naroosura Group Ranch on 14th March, 2023 or any other day thereafter. Annexed to the application are supporting documents. Chief among them are the letters written by the Director of Land Adjudication and Settlement dated 9th March, 2022 to the Chairman of Naroosura Group Ranch notifying them of the extension of time until May, 2022 to complete the remaining work of survey. There is also another letter dated 1st March, 2023 by the Director of Land Adjudication and Settlement addressed to the County Commissioner informing him of a meeting scheduled for 14th March, 2023 as a culmination of efforts to resolve the leadership wrangles facing the group. It is followed by a letter dated 2nd March, 2023 addressed to the County Commissioner to inform the group ranch to put on hold any subdivision activities until the meeting scheduled for 14th March, 2023 is held and a way forward mapped out.

34. Section 10 (1) of the *Land Adjudication Act* provides that:-

“The adjudication officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connection with such claims, and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of the adjudication.”

35. My analysis of the pleadings points to leadership wrangles within Naroosura Group Ranch and which the Director of Land Adjudication and Settlement in his letter dated 1st March, 2023 seeks to resolve. The plaintiffs/applicants on the other hand contended that by a reading of the said letter, the issue of the group ranch has now taken a political turn and the Director of Land Adjudication and Settlement rather than amicably dealing with the few teething issues, has allowed himself to take sides and allow the political class take over the matter.

36. However, the political angle said to have been taken by the Director of Land Adjudication and Settlement has not been proven for the reason that the same letter also refers to the Principal Secretary.

37. In my view, the claims by the plaintiffs/applicants are speculative in nature and there is no direct claim of interference by the political class. Also, the leadership wrangles said to be within the group ranch is a matter that can be solved by the Adjudication Officer pursuant to Section 10 (1) of the *Land Adjudication Act*.



38. This court, therefore, does not have jurisdiction to hear and determine the suit at this stage and as such, the notice of motion application dated 10th March, 2023 and the undated amended plaint filed in court on 13th March, 2023 are hereby struck out. The preliminary objection dated 20th April, 2023 is hereby upheld. The orders issued by this court on 14th March, 2023 are hereby vacated. Each party to bear their own costs. It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 26TH DAY OF JULY, 2023.

HON. MBOGO C.G.

JUDGE

