



**Paika & 27 others v Nkipapai & 17 others; National Land Commission
(Interested Party) (Environment & Land Case E043 of 2022)
[2023] KEELC 21570 (KLR) (15 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21570 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E043 OF 2022
MN GICHERU, J
NOVEMBER 15, 2023**

BETWEEN

KAPAITO OLE PAIKA & 27 OTHERS PLAINTIFF

AND

JOHN SITELU NKIPAPAI & 17 OTHERS DEFENDANT

AND

NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. This ruling is on the notice of motion dated 17/5/2022. The motion which is by the twenty eight (28) Plaintiffs is brought under Articles 35 and 40 of the *Constitution*, Orders 40 Rules 1(a), 2 and 10, 51 Rule 1 of the *Civil Procedure Rules*, the *Land Act* (Act No. 6 of 2012) and all other enabling provisions of the law.
2. The motion seeks the following orders.
 4. injunction to restrain the 1st, 2nd, 3rd, 4th, 15th and 16th defendants, their employees, agents and/or servants from further surveying, demarcating and subdividing LR Loitoktok/Rombo “B”/406, suit land, situated in Kajiado County pending the hearing and determination of this suit.
 5. Injunction to restrain the 1st, to the 4th Defendants by themselves, their employees, agents and/or servants from entering, trespassing, ploughing and/or occupying the portions of land occupied by Kapaita Ole Paika and Benson M. Muleu or any other member of Rombo Group Ranch pending the hearing and determination of this suit.



6. The 1st Defendant be restrained from further issuing and/or transferring land title deeds in respect of parcels excised from the suit land.
 7. The first, second, third, fourth and sixteenth defendants do furnish the Plaintiffs with
 - a. Minutes of the community Assembly's meeting that approved the survey, demarcation and subdivision of the suit land.
 - b. A list of the original members of the Group Ranch.
 - c. A list of the current members of the Group Ranch.
 - d. The survey contract between the 16th and 17th Defendants.
 - e. A list containing persons allocated land by the group ranch and their acreages thereof.
 8. The 18th Defendant do furnish the Plaintiffs with
 - a. A cadastral map presented by the 17th Defendant to it for registration.
 - b. A schedule containing names of persons allocated land by the 16th defendant, their ID card numbers and the acreage of parcels of land allocated to each one of them.
 9. Pending the hearing and determination of this suit, there be an order of status quo in respect of all parcels of land excised from the land hitherto registered as Loitoktok Rombo "B" 406.
 10. Leave be granted to the Plaintiffs to serve this suit and orders/directions issued by this court through a newspaper publication of national circulation in the Republic of Kenya.
 11. The OCS, Ilasit Police Station to enforce the orders issued herein.
 12. Costs of this application be borne by the Defendants.
3. The motion is supported by three affidavits. The first one is sworn by the first Plaintiff, Kapaito Ole Paika is dated 17/5/2022 and it has six (6) annexures. The other two affidavits are dated 15/12/2022 and they are by the first and second Plaintiffs. They have a total of eleven (11) annexures. In addition, there are (11) grounds all of which are on the face of the motion. The gist of the above material is as follows.
 4. Firstly, the Plaintiffs are members of Rombo Group Ranch which is registered as the owner of the ranch which measures approximately 38, 236.42 hectares.
 5. Secondly, the first, second, third and fourth Defendants surveyed, demarcated and subdivided the suit land in total disregard of the resolutions passed by the members. This arbitrary action of the Defendants has caused a lot of hardships and suffering to many members of the group. Some members have been relocated to far flung areas 14-30 Kilometres away from their homes to near Tsavo National Park close to the wild animals. Others have been moved to hilly places and valleys where they are exposed to floods and mudslides.

In contract, the officials of the group ranch have allocated themselves, their family and friends bigger land in the areas where other members of the group ranch have constructed permanent houses, dug borehole and wells and had thriving farms. As if that is not enough, children of many members have not been allocated land yet the officials of the group ranch have allocated land to their minor children and even unborn children.



6. Thirdly, the officials of the group ranch have allocated land to non-members and members of other group ranches. One such person is Kitum Jepkorir Risper, a former DO, who has been allocated 6 parcels measuring 22.6899 hectares. Others are Aurea Ahmed Jane, Mutaria Ntoyian who is an in law to the secretary, Peter Muinde Mutia, Esther Mbae Kiteko, Abigael Sein Ntawasa and Samuel Motonga Korioko.
7. Fourthly, the Plaintiffs are entitled to the information sought by dint of Article 35 of the Constitution.
8. Fifthly, the officials of the group ranch and members who were illegally allocated land are in a rush to sell the land parcels to third parties in an attempt to conceal their illegal and fraudulent acts.
9. Sixthly, opinion leaders such as pastors, retired and current chiefs have been allocated three (3) extra parcels to buy their silence.
10. Finally, some members of the group ranch including the first Plaintiff's father and son were not allocated any land even though they had paid for it and were issued with receipts.
11. Over and above the foregoing, despite the order dated 14/11/2022 to the effect that no party should be evicted the first, fifth, sixth and 7th to twelfth Defendants have with the assistance of the OCPD Illasit destroyed the fence belonging to Benson M. Muleu, uprooted his passion fruit crop and grazed their animals on his land.
12. The motion is opposed by the first to fourteenth and sixteenth defendants. John Sitelu Nkipapai the first Defendant has sworn a replying affidavit dated 15/8/2022 and in a further affidavit dated 17/4/2023 in which he responds as follows.

Firstly, the officials of the Group Ranch acted prudently and in the best interest of the members by appointing the seventeenth defendant, a reputable survey firm and headed by the 15th Defendant who carried out the task of survey, subdivision and issuance of title deeds in an excellent manner to the satisfaction of the majority of the 6,000 members save for the two defendants who swore the affidavits in support of the motion.
13. Secondly, the entire group ranch including the hills and valleys had to be shared out and there was a formula whereby members whose land was in the wetlands got 9 acres each while those in the rangelands got 12 acres each.
14. Thirdly, where a member drilled boreholes or farmed on more than 9 acres on the wetlands or 12 acres on the rangelands prior to the subdivision, they had to surrender the boreholes or the farmland.
15. Fourthly, during the subdivision only community boreholes were recognized to prevent a situation whereby boreholes drilled without authority on land belonging to others were used to blackmail the group ranch officials and the surveyor to give them more land than other members.
16. Fifthly, 5800 members of the Group Ranch have been issued with title deeds and they have no complaint whatsoever hence it would be illogical and improper to cancel the already concluded subdivision. The proper course is to deal with each dispute as it arises rather than cancelling the entire subdivision exercise which will prejudice the members who are legally and peacefully occupying their land parcels.
17. Finally, the applicants have failed to establish the three prerequisites to the grant of an order of injunction namely prima facie case with a probability of success, loss that cannot be adequately compensated by an award of damages and balance of convenience. The fifteen respondents therefore pray for the dismissal of the motion.



18. The fifteenth defendants has also opposed the motion in his own behalf and that of the seventeenth defendant in a replying affidavit dated 18th October 2022.

Firstly, it is denied that the services of the 17th defendant to plan, survey and subdivided Rombo Group Ranch were procured unilaterally.

19. Secondly, it is deposed that all members paid Kshs. 23,000/- only and the funds were spent transparently as the account in Equity Bank was operated by the officials of the group ranch together with the fifteenth defendants.

20. Thirdly, the two defendants add that they were not involved in allocation of land to the members of the sixteenth defendant and since no evidence has been adduced by the applicants to show any failure on their part, the suit against them as well as the application lack foundation and the motion should be dismissed with costs.

21. Counsel for the parties filed written submissions on 9/2/2023, 22/2/2023 and 29/5/2023 respectively. The issue raised by the defendants is only one and it is common to the two counsel on record.

i. Whether the applicants have met the threshold for granting of injunctive orders. While the plaintiffs' counsel agrees with this single issue, he has also raised the critical issue of access to information in the hands of the first, second, third, fourth, sixteenth, seventeenth and eighteenth defendants.

22. I have carefully considered the motion in its entirety including the grounds, affidavits, annexures, submissions and the law cited therein. I agree that the two issues identified by the counsel for the two sides will determine this application. I make the following findings.

23. On the first issue, I find that a case has been made out for the grant of the order of injunction. The reasons are as follows.

Firstly, there is prima facie that seven non members named in paragraph six (6) above have been allocated land meant for members of the group ranch. No evidence in form of a further affidavit has been adduced to controvert this very serious anomaly.

Secondly, if non members are allowed to own land which is not meant for them and to dispose it off, the members of the group ranch stand to lose. There should be no rush to conclude the exercise until all the members are satisfied. If the defendants have done a good job, they should co-operate in the audit that this suit intends to carry out. They have nothing to fear.

Thirdly, the balance of convenience tilts in favour of the applicants. They should not move from the land that they occupy until the issues of ownership of land by non members is resolved.

Fourthly, there is also the question of some members of group ranch getting bigger land than others and their relatives and friends being allocated prime land. All these pertinent issues ought to be resolved before the defendants can be given a clean bill of health.

24. On the second issue, I find under Article 35 of the *Constitution*, the plaintiffs are entitled to all the information that they seek in paragraphs 7 and 8 of the motion. This right is guaranteed in Article 35 which provides as follows.

1. Every citizen has the right to access to –
 - a. Information held by the state; and



- b. Information held by another person and required for the exercise or protection of any right or fundamental freedom.

This right, being in the supreme law of the land, cannot be denied to the applicants.

For the above stated reasons, I find merit in the motion dated 17/5/2022 and I allow it in terms of prayers 4 to 9.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 15TH DAY OF NOVEMBER, 2023.

M.N. GICHERU

JUDGE

