



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAHURURU

ELC PETITION NO. E007 OF 2021

**IN THE MATTER OF ARTICLES 1, 2, 3, 10, 20, 21, 22, 23, 27, 35, 40,
48, 73, 159, 165 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

- AND -

**IN THE MATTER OF ALLEGED VIOLATION OF ARTICLES 10,
27, 40, 63 OF THE CONSTITUTION OF KENYA, 2010**

- AND -

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER CHAPTER FOUR OF THE CONSTITUTION OF KENYA, 2010**

- AND -

IN THE MATTER OF THE SUBDIVISION OF SIRATA OIROBI GROUP RANCH

- BETWEEN -

GEOFREY LENGAMALDANYNYANI.....1ST PETITIONER

FREDRICK LEMPIRIKANY.....2ND PETITIONER

- VERSUS -

SIRATA OIROBI GROUP RANCH.....1ST RESPONDENT

THE CHAIRPERSON SIRATA OIROBI GROUP RANCH.....2ND RESPONDENT

THE SECRETARY SIRATA OIROBI GROUP RANCH.....3RD RESPONDENT

THE TREASURER SIRATA OIROBI GROUP RANCH.....4TH RESPONDENT

THE COUNTY LAND REGISTRAR NYAHURURU.....5TH RESPONDENT

THE CHIEF LAND REGISTRAR.....6TH RESPONDENT

THE HON. ATTORNEY GENERAL.....7TH RESPONDENT

THE NORTHERN RANGELANDS TRUST.....8TH RESPONDENT

RULING

1. By a petition dated 24th September, 2021 based upon **Articles 1, 2, 3, 10, 20, 21, 22, 23, 27, 35, 40, 48, 73, 159, 165 and 259 of the Constitution of Kenya, 2010**, the Petitioners sought the following reliefs against the Respondent:

(a) An order declaring the process of subdivision of Sirata Oirobi Group Ranch to be null and void for lack of public participation contrary to Article 10 of the Constitution of Kenya, 2010.

(b) An order declaring the process of subdivision of Sirata Oirobi Group Ranch to be null and void for lack of accountability and transparency by the officials of the 1st Respondent on the part of the registered members and failing to avail the final register for verification by the members.

(c) An order of permanent injunction against the 2nd, 3rd, 4th, 5th, 6th and 7th Respondents from allocating any further the aforesaid parcel of land pending the hearing and final determination of this suit.

(d) An order prohibiting the issuance of title deeds and order of certiorari quashing the subdivision of the group ranch that had been made and any title deeds that may have been issued pending the hearing and final determination of this suit.

(e) An order seeking to prohibit the Chief Land Registrar, Nyahururu Land Registrar from processing or issuing title deeds in respect of Sirata Oirobi Group Ranch pending the hearing and final determination of this suit.

(f) Pending the hearing and determination of this suit, this honourable court be pleased to make an order directed at the County Land Registrar Nyahururu forbidding all dealings or further registration of any entries in the register in respect of all that piece of land known as Sirata Oirobi Group Ranch pending the hearing and final determination of this suit.

(g) Costs of this suit and interest thereon.

(f) Any other relief and/or further relief that this honourable court may deem fit to grant at the circumstances.

2. The petition was supported by affidavits sworn by Fredrick Lempirikany, Godfrey Lengamaldanyani on 24th September, 2021 and the various exhibits thereto. The Petitioners pleaded that they were members of the 1st Respondent and that they had instituted the proceedings on their own behalf and on behalf of other members of the Group Ranch. The Petitioners alleged discrimination, lack of consultation and public participation, favoritism and nepotism in the allocation of land within the Group Ranch by the officials who were sued as the 2nd – 4th Respondents in the petition.

3. Simultaneously with the filing of the petition, the Petitioners filed a notice of motion dated 24th September, 2021 under **Section 30 of the Community Land Act, 2016, Section 13 (7) of the Environment and Land Court Act, Articles 40, 63 (1) & (2) of the Constitution and all**

a) ...spent

b) ...spent

c) A temporary order of injunction be issued restraining the Respondents, individually or collectively, whether by themselves or by their servants, agents, employees or otherwise howsoever interfering with property known as Sirata Oirobi Group Ranch (herein “the Suit property”) by way of subdividing, surveying, allocating and or/alienating the same including setting aside part of it for conservancy pending the hearing and determination of the main herein.

d) An order be issued compelling the 1st, 2nd, 3rd and 4th Respondents herein to produce current, true and full list of all members of the group ranch known as Sirata Oirobi Group Ranch (herein “the Ranch”).

e) The costs of this application be provided for.

4. The application was based upon the grounds set out in the motion and the contents of the two supporting affidavits sworn by the Petitioners on 24th September, 2021. The grounds in the application are essentially the same grounds set out in the petition. The Petitioners faulted the process of subdivision and allocation of the Group Ranch by the sued officials and contended that the process was being undertaken irregularly and illegally. It was contended that some *bona fide* members were left out whereas some non- members were included in the allocations.

5. The Petitioners contended that whereas the Land Control Board granted consent for subdivision and allocation to 799 members of the Ranch, the official, had unlawfully inflated the list to 875 members. The Petitioners also contended that there were double allocation to individuals using different names and that some genuine members stood to be left out of the allocations.

6. The Petitioners, therefore, contended that unless the interim orders were granted they and other members of the Group stood to suffer

irreparable damage by missing out on their entitlement to community land.

7. The 1st, 2nd and 3rd Respondents filed a replying affidavit sworn by Peter Lekampus Lempirikany on 27th October, 2021 in opposition to the application. He contended that the Group Ranch had already been dissolved. It was further contended that the Petitioners were not members of the 1st Respondent hence they could not be said to be aggrieved by any activities of the Ranch.

8. The 1st, 2nd and 3rd Respondents denied all the allegations made by the Petitioners in the application. They stated that the process of land allocation was conducted regularly and lawfully after public participation and after approval by a general meeting of the members of the Group Ranch. They contended that after preparation of the beneficiaries list another meeting of members was called for verification of the names and sizes of the allocated parcels. It was further contended that the impugned process was almost complete and that over 300 individual title deeds had already been prepared awaiting presentation to the members at a later date. The court was consequently urged to dismiss the application.

9. The 1st Petitioner filed a supplementary affidavit sworn on 18th November, 2011 in response to the 1st – 3rd Respondents' replying affidavit. He disputed that proper public consultations were done and contended that the general meeting referred to was attended by only 10 out of the 799 members of the Group hence not representative. He further contended that the members' register was not accessible to ordinary members for inspection and that, in any event, the Respondents had exhibited two different copies of the register one of which had 820 members and another having 875 beneficiaries.

10. The 1st Petitioner further stated that the 2nd, 3rd and 4th Respondents had irregularly allocated their wives and young children parcels of land to which they were not entitled. He set out the names of the alleged beneficiaries and the respective parcel numbers allocated in paragraphs 30 and 31 of the affidavit.

11. When the application was listed for hearing it was directed that the same shall be canvassed through written submissions. The parties were granted timelines within which to file and exchange their respective submissions. The record shows that the Petitioners filed theirs on 23rd November, 2021 whereas the 1st – 4th Respondents filed theirs on 6th January, 2022.

12. The court has considered the application dated 24th September, 2021 the replying affidavit in opposition thereto as well as the supplementary affidavit filed herein. The court is of the opinion that the following issues arise for determination herein:

(a) Whether the Petitioners have made out a case for the grant of an interlocutory injunction.

(b) Whether the Petitioners are entitled to the order for production of the full list of members of the Group Ranch.

13. The court has considered the material and submissions on record on the 1st issue. The principles for the grant of an interim injunction were restated in the case of **Giella v Cassman Brown & Co. Ltd [1973] EA 358** as follows:

(a) The applicant must establish a *prima facie* case with a probability of success at the main trial.

(b) An injunction will not normally be granted unless the applicant might otherwise suffer irreparable damage.

(c) If the court is in doubt on (b), it shall determine the application on a balance of convenience.

14. The court has noted that the Petitioners have raised some weighty issues regarding the alleged discrimination, favoritism, nepotism and irregularity in the sub-division and allocation of community land amongst members of the Group Ranch. The court has warned itself that at this juncture it is not required to make any conclusive findings on the issues in controversy since that is the sole function of the trial court. At the interlocutory stage, the court is only required to assess whether or not the petitioners have made out a *prima facie* case without examining in great details the material on record.

15. The court has noted that there are some discrepancies in the number of members belonging to the Group Ranch. Whereas the Land Control Board granted consent for sub-division of land amongst 799 members the list provided by the Respondents indicates a much higher number were allocated land. One of the copies exhibited showed a total of 820 members and there is no indication that consent was obtained for the additional sub-divisions.

16. The court has further noted that whereas the Petitioners provided detailed particulars of some alleged double allocations and additional allocations to the wives and children of some of the officials of the Group, there was no specific response to those allegations. The court is of the opinion that allegations of serious flaws in the allocation process should be resolved before the allocation is finalized.

17. The court is further of the opinion that the issue of whether or not the Petitioners are *bona fide* members of the Group Ranch ought to be ventilated and resolved before the allocation process is finalized. It would not serve any useful purpose to adjudicate on the issue of membership long after the allocation process has been finalized and the available land exhausted. The court is thus satisfied from the material on record that the Petitioners have demonstrated a *prima facie case* with a probability of success at the trial.

18. The court has also considered the material on record against the 2nd principle on irreparable loss. Whereas the Petitioners submitted that they and other aggrieved members shall suffer serious and irreparable loss unless the interim orders were granted, the Respondents contended otherwise. The court has noted the nature of the dispute amongst the parties. The court is further aware of the risk of displacement of the members who may have been left out of the allocations. The court is further aware that the Group Ranch shall stand

dissolved once the land is shared out and individual members issued with titles.

19. The court is thus satisfied that once the allocation process is concluded and individuals titles issued, it might be impossible to reverse the process should the Petitioners ultimately succeed at the trial. Their eventual success might remain merely an academic exercise. The court is of the opinion that damages cannot be adequate compensation for loss of community land in the circumstances of this case. Accordingly, the court is satisfied that the Petitioners have satisfied the 2nd principle for the grant of an interim injunction.

20. Even if the court were to consider the 3rd principle, the court is of the opinion that the balance of convenience would tilt in favour of the Petitioners. For the reasons already given above, the court is of the opinion that it would cause greater hardship to the Petitioners by denying the injunction than the Respondents would suffer by granting it.

21. The court has also considered the material and submissions on the 2nd issue. The Petitioners have asked for an order for production of the full list of the members of the Group Ranch. It is evident from the material on record that the Petitioners take the view that the membership is about 799 whereas the 1st – 4th Respondents hold the view that the number is much higher. That means that the exact number is disputed by the warring parties. The Respondents have already exhibited copies of what they believe to be the genuine list of membership but which is disputed by the Petitioners. In those circumstances, it would not serve any useful purpose to grant an order for production of the list of membership at the interlocutory stage. The Petitioners shall, however, be at liberty to call for production of the original membership register during discovery in preparation for trial.

22. The upshot of the foregoing is that the court finds merit in the Petitioners' application with regard to an interim injunction. Accordingly, the court makes the following orders for disposal of the notice of motion dated 24th September, 2021:

- (a) A temporary order of injunction is hereby granted in terms of Order No. 3 thereof pending the hearing and determination of the petition.
- (b) The prayer for production of the full list of members of the Group Ranch at the interlocutory stage is hereby declined.
- (c) Costs of the application shall be in the cause
- (d) The parties shall take a date for pre-trial directions on priority basis.

Ruling Dated and Signed in Chambers at Nyahururu this 27th day of January, 2022 and delivered via Microsoft Teams platform.

In the presence of:

Mr. Lesanko for the Petitioners

No appearance for the Respondents

CA- Carol

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Y. M. ANGIMA

JUDGE