



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC MISC. APPLICATION NO. E006 OF 2021

KABON CHELIMO CHUMO.....APPLICANT

VERSUS

MARIGAT GROUP RANCH.....1ST RESPONDENT

COUNTY GOVERNMENT OF BARINGO.....2ND RESPONDENT

CHIEF LAND REGISTRAR.....3RD RESPONDENT

NATIONAL LAND COMMISSION.....4TH RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....5TH RESPONDENT

RULING

1. The Applicant filed a Notice of Motion dated 18/2/2021 in which she sought the following orders: -

1) Spent.

2) **THAT** this court issues an order declaring that the actions of the 1st Respondent in setting aside the portion of land meant for the Applicant, is illegal, null and void for all purposes.

3) **THAT** this court issues an injunctive order restraining the 1st Defendant/Respondent from interfering or otherwise dealing with the Applicant's share of portion of land.

4) **THAT** this court issues an order compelling the 1st Defendant/Respondent to issue the Applicant with a share certificate, a copy of certificate of registration, the list of members in the ranch and all other documents pertaining to the Marigat Group Ranch in relation to the land in dispute.

5) **THAT** this court issues an order compelling the 3rd Respondent to issue a certified copy of the mother title to the applicant for parcel Number Baringo/Marigat/1.

6) **THAT** this court issues restraining orders directing one Mr. Michael Kipkoech, who is a representative of the 1st Respondent and his relatives from occupying and dealing in any way with my father's land.

7) **THAT** the 2nd Respondent be compelled to issue all documentation in relation to the Marigat Group Ranch to the Plaintiff.

8) **THAT** the registrar of group representatives be compelled to provide all registration documents in respect to Marigat Group Ranch to the Plaintiff.

9) **THAT** the 3rd Respondent be compelled to provide all the certified copies of documents including the copies in relation to the Marigat Group Ranch to the plaintiff.

10) **THAT** this Honourable Court grants any order and/relief it deems fit to grant.

11) ***THAT*** costs of this application be provided for.

2. The Applicant contends that she is a member of Marigat Group Ranch by being the only surviving daughter of the Late Kipkanin Chumo. The Applicant states that her late father was entitled to 30 acres within Marigat Group Ranch which had 6644 hectares. When Marigat Group Ranch was dissolved and individual members were allocated land and the process of issuance of titles started, the Applicant was allocated a piece of land measuring about 30 X 50 meters which is about one acre.

3. The Applicant argues that her late father had been given 30 acres but that the officials designated the father's portion as a public utility land but which land is currently being occupied by the family of Michael Kipkoech who is an official of Marigat Group Ranch.

4. The Applicant further argues that she has tried to have the issue of the 30 acres sorted out but the officials of Marigat Group Ranch have not listened to her, arguing that a woman has no business demanding for land. The Applicant's efforts to seek assistance from the County Government of Baringo have borne no fruits. This is the basis upon which the Applicant seeks the orders in this application.

5. The Applicant argues that she wants to be allocated the 30 acres where her Late father's remains were interred. She argues that she was never invited to the Annual General Meeting of Marigat Group Ranch where a resolution to give her father's land as a public utility was made and that the resolution was made to benefit individuals under the guise of public utility.

6. The Applicant's application was opposed by the 1st Respondent through a replying affidavit sworn on 18/3/2021. The 1st Respondent contends that the Applicant's application is fatally defective and contains half truths. The 1st Respondent further contends that the Applicant has no capacity to bring this application on behalf of the estate of her deceased father.

7. The 1st Respondent denies the Applicant's contention that her late father occupied 30 acres. The 1st Respondent stated that its officials applied for dissolution which request was granted by the Director of Land Adjudication and Settlement on 1/12/1994. The land held by the 1st Respondent was to be subdivided among the members. The members were allocated land where they were residing and that the Applicant was given Baringo/Marigat/256 which measures about 5 acres.

8. The 1st Respondent states that its members were found to be 333 after a rigorous exercise. The 1st Respondent denies that the Applicant is one of the members and that the Applicant's father had relocated from the portion where the Applicant wants to be allocated and he went to live elsewhere where he was buried after he died.

9. The 1st Respondent states that the Applicant's father and the grandfather of Michael Kipkoech were residing on the area being claimed by the Applicant but that the Applicant's father relocated. When the subdivision process began, Michael Kipkoech and other Group Ranch members were allocated the portion they occupy.

10. The parties were directed to dispose of the application through written submissions. The Applicant filed her submissions dated 3/5/2021. The 1st Respondent filed its submissions dated 25/5/2021. The Applicant filed supplementary submissions dated 29th June 2021.

I have carefully considered the Applicant's application together with the opposition to the same by the parties. The Jurisdiction of this court to handle this application has been raised by the 1st Respondent. This issues has to be addressed because if it is found that this court has no jurisdiction, it will down its tools and there will be no room for making any further steps.

11. Marigat Group Ranch was registered pursuant to the provisions of the Land (Group Representatives) Act Cap 287 Laws of Kenya. It therefore follows that any dispute arising between a member and the Group Ranch should be solved in accordance with the provisions of the Act. In the instant case, the Applicant contends that she is member No 377 whereas the 1st Respondent contends that its register has only 333 members.

12. The Applicant contends that she is entitled to 30 acres by virtues of being a member of Marigat Group Ranch. The 1st Respondent on the other hand maintains that she is not a member of the Group Ranch. Section 28 of the Land (Group Representatives) Act provides as follows:
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“Where a question arises whether a particular person is a member of a group, a certificate signed by a majority of the group representatives shall be conclusive of the question:

Provided that a person who is aggrieved by the issue of such a certificate may apply to a District magistrate's court having jurisdiction in the area to determine the question, and in such a case the determination of the court shall be conclusive”.

13. It is therefore clear that the issue of whether the Applicant is a member or not of Marigat Group Ranch can only be determined by a Magistrate having jurisdiction in the area where the subject matter of the dispute falls. Section 25 of the Act is also clear that any person may inspect at the Office of the Registrar the register and any documents relating to any group lodged with the Registrar under the Act and may obtain from the Registrar a copy of an extract from such register or document.

14. In the case of **Owners of the Motor Vessel “Lillian’s” -Vs- Caltex Oil (Kenya) Ltd (1989) eKLR** Nyarangi JA stated as follows: -

“I think that it is reasonably plain that a question of jurisdiction ought to be raised at the earliest opportunity and the court seized of the matter is then obliged to decide on the issues right away on the material before it. Jurisdiction is everything. Without it, a court has no power to make one more step. Where a court has no jurisdiction there would be no basis for a continuation of

proceedings pending other evidence. A court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction”

15. The Land (Group Representatives) Act has set out elaborate ways of solving disputes and how one can obtain documents from the Registrar. The Court mandated to resolve whether one is a member of a group or not is a magistrate and not a Judge of the Environment and Land Court. I therefore find that I have no jurisdiction to grant any orders which the Applicant seeks. I proceed to strike out the Notice of motion dated 18/2/2021 with costs to the 1st Respondent.

It is so ordered.

Dated, signed and delivered at Eldoret on this 20th day of January 2022.

E. OBAGA

JUDGE

In the virtual presence of:

Ms. Moraa for 1st Respondent

Mr. Odongo for 3rd to 5th Respondents

Mr. Maina for Mr. Lubeto for 2nd Respondent

Court Assistant: Mercy

E. OBAGA

JUDGE

20/1/2022