



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KAJIADO**

**ELC SUIT NO. 99 OF 2019**

**JOHN LEMARPE TAMEI & 416 OTHERS.....PLAINTIFFS**

**-VERSUS-**

**MAIMPI KAYIE & 9 OTHERS.....DEFENDANTS**

**RULING**

This ruling is on the Notice of Motion dated 1<sup>st</sup> November, 2019.

The said motion which is under **Order 40 Rules 1, 2 and 4 of the Civil Procedure Rules, Sections 1A, 3, 3A, and 63 (e)** of the Civil Procedure Act and the inherent –power and jurisdiction of the Court seeks the following prayers;

1. That the Defendant be restrained by themselves and anybody acting through them from convening an Annual General Meeting whose agenda would be to subdivide or allocate the 10<sup>th</sup> Defendant namely Torosei Group Ranch pending the hearing and determination of this suit.
2. That the orders issued by this Court be served upon the OCPD Kajiado and the County Land Adjudication and Settlement Officer for enforcement and compliance.
3. That costs be provided for.

The grounds for seeking the above orders can be summarized by stating that the applicants are members of the Group Ranch having been born and brought up there. They are apprehensive that the Respondents may subdivide the ranch and exclude them.

Further, the Respondents have issued a Certificate to the effect that the applicants are not members of the Group Ranch. They have also applied for consent from the relevant Land Control Board for subdivision and unless restrained, they will proceed to subdivide the ranch to the detriment of the applicants.

The applications is supported by an affidavit of John Lemarpe Tamei in which he deposes that though there have been two cases at the Magistrates Court and at the High Court respectively, they have been excluded from the list of beneficiaries of the Group Ranch.

None of the cases has been determined on merit.

Annexed to the affidavit are several annexures which include a Certificate of Confirmation dated 1/8/2016 which states that the applicants are not registered members of the Group Ranch.

In opposing the Notice of Motion, the 10<sup>th</sup> Defendant has filed a Notice of Preliminary Objection dated 13<sup>th</sup> September, 2021 urging that the suit is Res Judicata since the Plaintiffs filed case no 236 of 2011 and 180 of 2012 relating to the same parties over the same subject matter, that the application is frivolous in nature and the entire suit has been filed in violation of **Order 53** of the **Civil Procedure Rules**.

Counsel for the parties filed written submission on 4<sup>th</sup> March, 2021 and 8<sup>th</sup> November, 2021 respectively.

I have carefully considered the application in its entirety including the affidavits, annexures, grounds and the case law cited in the submissions.

I find that the Plaintiffs have established a prima facie case with a probability of success. The balance of convenience also tilts in their

favour.

The Plaintiffs stand to suffer immensely if the Group Ranch is subdivided without them getting land that they claim to be entitled to.

Secondly, I find that none of the former suits has decided on whether or not the Plaintiffs are members of the Group Ranch yet that is the crux of the matter in this case.

Finally, I find that striking out a suit is a draconian move that will result in the derogation of the right to a fair hearing enshrined in **Article 50(1)** of the **Constitution**.

For the above reasons I allow the application dated 1<sup>st</sup> November, 2019.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18<sup>TH</sup> DAY OF JANUARY, 2022**

**M.N. GICHERU**

**JUDGE**