



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

JUDICIAL REVIEW NO. 107 OF 2009

FORMERLY NAIROBI HIGH COURT MISCELLANEOUS APPLICATION NO.729 OF 2008

IN THE MATTER OF AN APPLICATION BY PACHA MALOI, MINIK PUNYUA, SANARE PUNYUA, KIROTIE KERIOLALE AND PARIKEN KERIOLALE FOR ORDERS OF PROHIBITION AND MANDAMUS

AND

IN THE MATTER OF THE REGISTERED LANDS ACT, CAP 300

AND

AND THE LAND GROUP REPRESENTATIVES ACT CAP 287 OF THE LAWS OF KENYA

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT LAND REGISTRAR, NAROK.....RESPONDENT

EX PARTE

PACHA MALOI

MINIK PUNYUA

SANARE PUNYUA

KIROTIE KERIOLALE

PARIKEN KERIOLALE.....SUBJECTS

RULING

1.Pursuant to the leave granted on **21st August, 2012** allowing the subjects to apply for prohibition and mandamus, the subjects filed the notice of motion dated **9th December, 2008** seeking an order of prohibition to restrain and prohibit the respondent from conducting the scheduled boundary dispute hearing in respect of parcel **No.CisMara/Nailokilok/Ndero** group Ranch, **Cis Mara/Suswa Kitet, Cis Mara/Nairagie Enkare/268** Entapot scheduled for **24th November, 2008** or any date thereafter without giving them sufficient notice of the meeting and providing them with the particulars of the said meeting.

The subjects also sought an order of mandamus to compel the respondent to formally invite them to attend and participate in any proceedings that he may convene regarding the alleged boundary dispute and to provide them with full and adequate particulars of the alleged boundary dispute.

2. The application is premised on the grounds that on **14th October, 2008** the respondent issued a notice to several persons that he will visit the suit properties; that the suit properties are within Suswa Group Ranch and share a common boundary with Cis Mara/Nailokilok/Ndero Group Ranch; that the boundaries between the suit properties have long been ascertained and fixed under **Section 22** of the Registered Land Act, Cap 300 Laws of Kenya. The subjects contend that since the boundaries were fixed a long time ago, the respondent has no jurisdiction to conduct an inquiry under Section 21 of the Registered Land Act in respect of the suit properties. Further that there is no uncertainty or dispute as to the position of the boundary between the suit properties to warrant the carrying out of the impugned proceeding in respect thereof.

3. The subjects argue that despite being the parties to be affected by the proceedings to be conducted by the respondent, the respondent did not invite them to participate in the purported hearing for **24th November, 2008** or provide them with adequate particulars of the alleged boundary dispute. Further, that the respondent did not afford them a fair opportunity to correct or contradict any statements or evidence prejudicial to their views or interest or to make any relevant statements they may desire to bring forward.

4. The subjects also argue that through court orders made in Nairobi **HCCC No. 1083 of 2003** concerning Suswa Kitet Group Ranch (hereinafter called the suit property), no further sub-division or alienation of the suit property can be done pending the hearing and determination of that suit. The subjects contend that the impugned boundary proceedings and any decision emanating therefrom, would violate the said court order.

5. In reply, the District Land Registrar; Narok, **Philip Munyoki Mengi** swore the replying affidavit filed on **7th May, 2009** in which he deposes that none of the subjects are registered representatives of Suswa Kitet Group Ranch; that on **14th June, 2000** his office received a request from Boma surveyors, acting on behalf of the group ranch, to carry out a determination of a boundary dispute involving the suit property and Kipsie adjudication section. Further that the District Officer (D.O) Mau division wrote to his office on **28th July, 2000** requesting for details of the next site visit with a view to resolving the boundary dispute. He explains that his office wrote to the said D.O on **20th June, 2002** informing him of a site visit scheduled for **26th June, 2002** to ascertain the boundaries of the disputed area.

6. When the deponent took over as the Land Registrar Narok, in November 2005 he found the boundary dispute herein subsisting. Vide a letter dated **12th June, 2006** the D.O Mau, wrote to him requesting for a survey to re-establish beacons in respect of the boundary in dispute. He replied to the D.O's letter through his of **14th June, 2006**.

7. Sometime in 2008, the secretary of Suswa Kitet Group Ranch wrote to him seeking a speedy resolution of the boundary dispute. Besides the letter from the secretary Kitet Group Ranch, he received a letter from the Chief Land Registrar dated **19th August, 2008** directing him to visit the boundary in dispute with a view of resolving the dispute. He explains that in issuing the impugned notice, he adhered to the provisions of **Sections 21, 153 and 154** of the Registered Land Act, Cap 300 Laws of Kenya and those of **Section 8(2)** of Chapter 287 Laws of Kenya.

8. After complying with the aforementioned sections of the law, he scheduled to visit the disputed boundary as he had endeavored to do on previous occasions to make a decision on the same on **24th November, 2008**. In doing so, he gave all the relevant parties an opportunity to be heard by delivering summons through their respective local area administration offices.

Submissions

9. In the submissions filed on behalf of the subjects, it is submitted that under Cap 284, second schedule thereof, every member of a group ranch is deemed to share in the ownership of the group land in undivided shares. Registrar of group representatives is said to have, pursuant to the provisions of the Land Group representatives Act, Cap 287, given consent to subdivide the said group ranch amongst its registered members. As a result, the subjects were each allocated parcels No. 1552, 1553, 1555 and 1556 each measuring approximately 30 acres. The subjects and their respective families are said to have lived on their respective parcels of land and carried considerable developments thereon for over 50 years.

10. Even though the group ranch is the registered owner of the entire ranch, it is submitted that individual members are deemed to share in the ownership of the group ranch in undivided shares. In the instant case, it is alleged that the group ranch has been dissolved and members allocated individual parcels. That being the case, it is argued that the subjects are owners of their respective parcels thereof, within the meaning of **Section 22** of the Registered Land Act.

11. It is reiterated that the respondent by indicating that he would visit the subjects parcels of land on **24th November, 2008** to determine a dispute concerning the said parcel, while no such dispute or uncertainty over the parcels existed and when the said boundary had been fixed earlier on, in 1970's, it exceeded its jurisdiction under **Section 22** of Cap 300.

12. It is contended that the respondent did not address that contention in his replying affidavit but addresses a dispute in respect of a different boundary, Suswa Kitet Group Ranch and Kipse adjudication section. It is reiterated that dealing with the alleged dispute concerning the suit properties would be in violation of the court order referred to herein above. Further that the respondent has not denied the allegation that he failed to involve and/or give the subjects notice of the meeting and/or providing them with the particulars of the alleged dispute.

13. **Section 21** of Cap 300 which the respondent claims to have complied with is said to be in applicable to the proceedings because there is no uncertainty or dispute as regards the position of any boundary as envisaged under **Section 22** of the Act. In any event, **Section 22** mandatorily requires the Registrar to give notice to owners and occupiers of the land adjoining the boundaries in question of the intention to ascertain and fix the boundaries. The subjects argue that there is no evidence that they were issued with the notice contemplated under Section 22 as read with Section 153 of Cap 300 which gives the acceptable modes of service as:-personal service, leaving the document at the person's last known place of residence or business in Kenya or by registered post.

14. With regard to Section 154, it is submitted that the respondent had no intention of giving the subjects an opportunity to be heard, as he excluded them in the notice dated **14th October, 2008**.

15. In the submissions filed on behalf of the respondent, on the other hand, it is submitted that the subjects are not the registered representatives, of the Group Ranch in question. In that regard, it is submitted that the law is clear on who can institute a suit for and on behalf of group ranches and since none of the subjects are its registered representatives the law prevents them from instituting any suit on behalf of the said group ranch. Despite the fact that the subjects as members of the group ranch and have legitimate interest in the suit properties, it is submitted that they cannot institute any action on behalf of land owned by a group ranch.

16. The subjects are blamed for having failed to enjoin the Group Ranch (Suswa Kitet) in the proceedings herein yet it is an interested party to the case. The failure to enjoin the group is said to be understandable given the fact that its secretary wrote to the respondent requesting him to expedite the resolution of the boundary dispute.

17. It is also contended that the subjects have not furnished any evidence as proof that they are members of the group ranch and that they own any parcel of land within the said ranch. No evidence of the alleged dissolution of the group ranch has been produced or certificate of title to any of the parcels and neither was a court order prohibiting the impugned proceedings .

18. With regard to the court order issued in the Nairobi suit, the court order in question is said to be directed at the group ranch and not the respondent (respondent not a party to that suit). It is also contended that the Court order was not brought to the attention of the respondent (only brought to his attention through this case). That being the case, it is submitted that the respondent cannot be said to be in breach of a court order not served on him. Further that what is restrained in that order is different from what the respondent was going to do (demarcation of boundaries between the ranch and other adjacent ranches not sub-division, allocation, transfer or in any other way disposing of land between the members of the group ranch.

19. It is further argued that from the several annexures produced by the respondent, it is clear that there has been a long subsisting dispute regarding the boundary of the Group Ranch and other adjoining ranches.

20. Concerning service of the notice, it is submitted that the law does not compel the respondent to serve all two thousand members of the ranch personally with notices of hearing and that it sufficed to serve the registered representatives of the ranch, which the respondent did.

21. Urging the court to dismiss the application, as it only serves to prolong a long and protracted boundary dispute, it is argued that there is absolutely no correlation between the determinations of inter-group ranch boundaries with the apportionment of individual portions which have not been divided within individual group ranches as they will still get a rateable portion of the whole.

22. From the pleadings and the submissions by the respective parties, the issues for consideration are:-

1. Whether the subjects have *locus standi* to bring the application herein?
2. Whether the respondent exceeded his powers in issuing the impugned notice?
3. Whether the respondent should have served the individual members of the affected group ranches with the impugned notice?
4. Whether the notice issued by the respondent was proper?
5. Whether the subjects have made up a case for issuance of the orders sought?
6. What is the order as to costs?

23. With regard to the first question, the power to sue and be sued in the corporate name of a group ranch vests in the group representatives incorporated under **section 7** thereof. Although that section does not prohibit individual members from suing individually, it would appear that when the interest being defended is that of the group ranch, the group representatives would be the right party to sue or be sued. In the circumstances of this case the impugned notice was issued to 32 individuals listed thereon. It is in respect of three group ranches namely Ndero Group Ranch, Suswa Kitet Group Ranch and Nairagie Enkare Group Ranch. Although it is not clear whether the individuals listed thereon are the Group representatives of those group ranches, under section 8 of Cap 287 laws of Kenya, it is the group representatives who have power to sue or be sued in their corporate name.

24. In this case, the subjects claim to be members of Suswa Kitet Group Ranch, and in particular owners of parcels Number 1552, 1553, 1555 and 1556, being sub-divisions of the said group ranch.

25. In determining whether the subjects had locus to sue on their own behalf, I begin by taking note that the impugned notice was not issued in respect of the sub-divisions in the group ranches but the boundaries between or among the said group ranches. That being the case, it is the group representatives of the various ranches who, in the circumstances of this case, had *locus standi* to sue on behalf of Suswa Kitet Group Ranch, of which the subjects are members.

26. Under Section 16 of Cap 287, each group should to have a postal address where all communications and notices required or authorized to be sent under or for the purposes of the Act. **Section 26** on the other hand, provides for the acceptable mode of service under the Act. The section provides:-

“26. Every notice, requirement or other document issued under this Act or under any constitution or rule made thereunder shall be

validly served—

(a) on a group, if it is sent by registered post addressed to it at its registered postal address; or

(b) on an individual, if it is served on him personally or is sent by registered post addressed to him at the registered postal address of the group with which he is concerned.”

27. Having found that under the circumstances of this case the group representatives were the right parties to sue, I find and hold that the proper method of serving them is that contemplated under **Section 26 (a)** of Cap 287 and not under **Section 153** of the registered Land Act, Cap 300 as suggested by counsel for the subjects.

28. On whether the notice issued by the respondent was proper, having found that the right method is that contemplated under **Section 26(a)** to wit, **by way of registered letter addressed to the group and sent to its registered postal address** and there being evidence that service was effected by leaving letters with the area administration officer, chief, I find and hold that the method used was improper.

29. On whether the respondent exceeded his powers under **Section 21** of the Registered Land Act, there being no evidence to show that the boundaries he wanted to fix, had been fixed and given the fact that the said section gave power to the registrar, on the application of any interested party, and on such evidence as he may consider relevant, to determine and indicate the position of the uncertain or disputed boundary, am unable to agree with the subject's contention that the respondent had no power/jurisdiction to issue the impugned notice. The evidence on record shows that there had been a long outstanding boundary dispute between the group ranches. See the various letters annexed to the respondent's replying affidavit which contrary to the subject's contention, make it clear that there has been a long outstanding boundary dispute between the group ranches mentioned in the impugned notice.

30. The upshot of the foregoing is that the respondent did not exceed his powers in issuing the impugned notice.

31 On whether the subjects have made up a case for issuance of the orders sought, having found them not to have been the right parties for purpose of filing the instant application and being of the view that no prejudice was occasioned on the subjects and the group ranch owing to issuance of the impugned notice, I find the subjects application to be without merit and dismiss it with costs to the respondent.

Dated, signed and delivered in open court at Nakuru this 30th day of January 2015.

L N WAITHAKA

JUDGE

Present

N/A for the applicants

N/A for the respondents

Emmanuel Maelo : Court Assistant

L N WAITHAKA

JUDGE