



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL CASE NO. 310 OF 2011

EZEKIEL KATATO.....1ST PLAINTIFF/APPLICANT

SIMON SAISA.....2ND PLAINTIFF/APPLICANT

TAINE LADARO.....3RD PLAINTIFF/APPLICANT

VERSUS

WUAPI OLE SIALALA.....1ST DEFENDANT/RESPONDENT

NKALAYI OLE NCHAPE.....2ND DEFENDANT/RESPONDENT

KOTIKASH OLOSIDAI.....3RD DEFENDANT/RESPONDENT

KARRAYIA KUEKA.....4TH DEFENDANT/RESPONDENT

CHICHAAI MATAMPASH.....5TH DEFENDANT/RESPONDENT

TARAYIA OLE ROSHA.....6TH DEFENDANT/RESPONDENT

TAUTA OLE MUNGIRA.....7TH DEFENDANT /RESPONDENT

PIUS NYABUGA.....8TH DEFENDANT/RESPONDENT

JOSIAH KIPELIAN KORES.....9TH DEFENDANT/RESPONDENT

TARAYIA OLE NTARU.....10TH DEFENDANT/RESPONDENT

PARKAU TOMPOI.....11TH DEFENDANT/RESPONDENT

WILLIAM SINGIRA12TH DEFENDANT/RESPONDENT

RULING

1. The applicant herein filed an amended Notice of Motion dated 14th November, 2011 seeking issuance of injunctive orders restraining the defendants from allocating, transferring, selling and/or alienating off **Plot Number Kajiado/Kilonito/97, 107, 108, 147, 169, 190, 193, and 197** till hearing and determination of the application.

2. The application is premised on grounds that the plaintiffs are members of **Kajido/Kilonito Group Ranch** which is a registered proprietor of **LR No. Kajido/Kilonito/3**. Members of the group passed a resolution to sub-divide the land equally amongst themselves and some land was to be preserved as wetlands. The land was demarcated and plans submitted to the Surveyor where after title deeds were issued. It was discovered that the defendants allocated to themselves more than one parcel of land and also allocated to non-members.
3. In affidavit in support of the application the 1st applicant with authority from his co-applicants stated that the group engaged a firm of Surveyors in 1995 following a resolution by the group to subdivide the suit premises equally. Members were shown their respective portions per the entry in the register. The respondents allocated themselves more land and non-members like **Tonta Mungira** and **Josiah Traiya Kones** were allocated **Parcel Numbers 147, 190 and 193**. The defendants have disposed off public utility land including water catchment area named **Lake Kwenia**. **Parcels Numbers Kajido/Kilonito 197, 107, 108, 147, 169, 190, 193 and 197** have been irregularly allocated.
4. In response thereto, the respondents through the 11th respondent, **Parkau Tompoi** deponed that he was a registered member and chairman of the **Kilonito Group Ranch** for 8 years preceding its dissolution and subdivision of land. The resolution to subdivide the land and dissolve the group was made at the Annual General Meeting. This was followed by an application to the Registrar of the Group Ranch for a consent pursuant to **Section 13** of the Land (group Representatives). **Cap 287**. The subdivision was supervised by the District Commissioner; **J. Abuja**- Titles were issued to legal members of the group. Respective owners of land were at liberty to dispose off their own parcels as they found it necessary. They denied the allegation that officials were allocated more than one parcel of land and that non-members were allocated land. They also denied that there was irregular disposing off land set aside for utilities.
5. Conditions for granting of an interlocutory injunction were set out in the case of **Giella versus Cassman nBrown[1973] E.A.** 358. The applicant must establish a *prima facie* case with a probability of success, that he/she will suffer irreparable damage should the orders sought be denied and where the court is in doubt, it should decide the application on a balance of convenience.
6. A *prima facie* case was defined by the Court of Appeal in the case of **Mrao Ltd versus First American Bank of Kenya Ltd & 2 others[2003] eKLR** as:-

“...in a civil application includes but is not confined to a “genuine and arguable case”

It is a case which, on the material presented to the court, a tribunal properly directing itself will conclude that there exist a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the later”.

7. Basically the applicant’s claim is that the respondents have illegally acquired more parcels of land than they were entitled to and have allocated to non-members some of the land. Further they claim that the subdivision was done arbitrarily, and land which should have been used as the public utility including **Lake Kwenia** was subdivided.
8. These allegations are denied by the respondents who argue that the subdivision done was in accordance with the resolution reached.
9. I have perused annexures ‘EK2’ the register of members and annexure ‘EK3’ the area list forming part of affidavit evidence adduced by the applicants. None of the applicant’s names appear on ‘EK3’. The 1st applicant’s name does not appear on ‘EK2’. The respondent’s names, other than **Karaiya Kueka** and **Tarayia Ntaru** are also missing from the 1st list of the registered members. It is therefore not clear who are the official members of the group and how the Chairman’s name could be missing from the original register.
10. The official search certificates annexed fall short of proving that there were illegal allocation of land. They are proof of proprietors of different parcels of land as mentioned by the applicants.
11. The resolution that mandated the group to divide the land equally was not adduced in evidence. Since the respondents refute the claim that they allocated themselves more land and also allocated to non-members land, it would have been imperative for the court to see the resolution and what indeed it stipulated. The applicants who sought to rely on it had a duty of adducing it in evidence

which they failed to do.

12. There is a report of surveyors which indicate that land was set aside for public utilities including trading centers, water well area, public dams and road network accessing each parcel of land. The total acreage of the parcel of land was 2,400 acres which was to be acquired from plot **Lake Kwenia**.
13. The respondent's annexures 'PT2' includes minutes of the meeting held by members of the group on the 19th March, 2001. The District Commissioner was in attendance. According to the minutes there were nine (9) members of the group who had not been registered in the group following ignorance of the genuine members. It was resolved that all these members be allocated part of the land.
14. From the foregoing, and considering the fact that the Group Ranch was dissolved after registered owners took possession of their respective portions of land, no *prima facie* case with a probability of success has been established that require granting of the injunctive orders sought. No loss will be suffered by the applicants if the orders sought are not granted and balance of convenience tilts in favour of the respondents.
15. In the result, the application stands dismissed with costs to the respondents.

DATED, SIGNED and DELIVERED at MACHAKOS this 14TH day of JANUARY, 2015.

L.N. MUTENDE

JUDGE