



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 341 OF 2019

FORMERLY (KAJIADO) ELC CASE NO 186 OF 2018

KASAINO OLE SELEKA 1 ST PLAINTIFF
JAMES MOKOIRE MOONKA..... 2 ND PLAINTIFF
JOHN MILIA MULI3 RD PLAINTIFF
KILELO OLE SEITA 4 TH PLAINTIFF
MANINA RIKOYIAN. 5 TH PLAINTIFF

VERSUS

DANIEL KIRIA LETURESH 1 ST DEFENDANT
ELIJAH KEEN NAINI2 ND DEFENDANT
JOSEPH KIPAIPAI NTAANI 3 RD DEFENDANT
EUSTACE N KITHUMBI4 TH DEFENDANT
JOSIAH K LESSAN 5 TH DEFENDANT
DIRECTOR OF LAND ADJUDICATION &
SETTLEMENT..... 6 TH DEFENDANT
MINISTRY OF LANDS AND PHYSICAL PLANNING,
KAJIADO COUNTY SURVEYOR 7 TH DEFENDANT
KAJIADO COUNTY REGISTRAR 8 TH DEFENDANT
DIRECTOR OF PHYSICAL PLANNING,
KAJIADO COUNTY..... 9 TH DEFENDANT

RULING

1. The ruling herein relates to two applications. The first one dated 12.5.2021 was filed by 1st – 3rd Defendants who seek orders to set aside Judge Eboso’s orders of 25.11.2020. The second application is dated 17.11.2021 filed by Plaintiff who are seeking orders to join other parties. On 18.11.2021 the court gave directions on the hearing of the two applications in which parties were to file and serve their respective responses and submissions within given timelines. In respect of the application of 12.5.2021, only the Applicant therein and the Plaintiff/Respondent complied, while in the application of 17.11.2021 no documents were filed in opposition to the said application.

Application Dated 12.5.2021.

2. The 1st – 3rd Defendant/Applicants are seeking the following orders;

1) spent

2) That this honourable court be pleased to discharge, vary and set aside the orders issued on 25th November 2020 by Hon. Justice B. M. Eboso suspending the sub-division of Land Parcel Number LTK/Olgulului/Ololarashi/6477 and the Registrar of Community Land be at liberty to register instruments relating to Land Parcel Number LTK/Olgulului/Ololarashi/6477 pending the hearing and determination of this application.

3) That this honourable court be pleased to discharge, vary and set aside the orders issued on 25th November, 2020 by Hon. Justice B. M. Eboso suspending the sub-division of Land Parcel Number LTK/Olgulului/Ololarashi/6477 pending the hearing and determination of the main suit.

3. The grounds in support of the application are that:

1) On 17th February, 2020 the 1st Defendant/applicant received a letter from the County Land Adjudication & Settlement Officer, Kajjado County directing that the now suspended sub-division of Land Parcel Number LTK/Olgulului/Ololarashi/6477 be finalized by the end of June, 2021, in view of the fact that the Group Ranch had been dissolved.

2) The sub-division of the group ranch has been ongoing with the approval of members and in the event the provisions of the Community Land Act apply, all gains made by the 1st, 3rd Defendants/Applicants to have each member of the group ranch allocated a portion of the land will be rendered futile at the great financial loss.

3) The Olgulului/Ololarashi Group Ranch had been dissolved pending sub-division of the group ranch among its members.

4) The Plaintiff/Respondent would not suffer any prejudice as they would also get their individual parcels of land equal to the rest of the other 11,000 members.

5) It is only fair, just and in the interest of justice that the orders sought herein be granted.

4. The 1st Defendant has also sworn a supporting affidavit reiterating the averments set out in the application. He contends that the suit by the Plaintiff is challenging the election of the group representatives which should remain the focus of the dispute hence the process of sub-division should continue. The 1st -3rd Defendants have again emphasized that the orders should be discharged under order 40 rule 7 of the Civil Procedure Rules in light of the letter dated 17.2.2021 from the County Land Adjudication & Settlement Officer.

5. The 1st – 3rd Defendants contend that this court has unfettered discretion to grant the orders sought.

6. In support of their arguments, the 1st – 3rd Defendants have relied on the case of **St Patricks Hill School Ltd v Bank of Africa Kenya Ltd (2018)eKLR**, **James Jumo Muchemi & Partners Ltd v Barclays Bank of Kenya & Another (Nairobi) HCCC No. 339 of 2011 (2012) eKLR**, **Heri Development Limited v First Community Bank Ltd (2021) eKLR** and **Ocholo Kamili Holdings v Guardian Bank Ltd (2018 eKLR)**.

7. The Plaintiffs have opposed the application via grounds of apportionment via grounds of apportionment as well as the replying affidavit sworn by John Milia Muli (3rd Plaintiff) both dated 5.7.2021. The Plaintiff's contend that:

1) The certificate of Incorporation issued by the Registrar of Group Representatives on 21st May 2018 pursuant to which the 1st to 3rd and 11th to 17th Defendants purport to exercise management of the suit land, including sub- division is null and void.

2) The 1st to 3rd and 10th to 17th Defendants made an application for incorporation of Group Representatives Pursuant to Section 7 of Cap 287 in 2018.

3) The sub-division of the land cannot progress as the relevant provisions of the land Registration

Act 2012, the Environmental Management and co-ordination Act 1999, as well as the Wildlife Conservation and Management Act have not been complied with.

4) The injunction stopping and suspending the sub-division of the suit land is valid, effectual and proper in the circumstances given the apparent illegality, inconsistency and lack of veracity of the 1st to 3rd Defendants/Applicant's evidentiary material.

8. The gist of their case is that Olgulului/Lolorashi group Ranch

is not allowed to carry out the sub-division of the land due to issues appertaining to the dissolution of the group.

9. In their submissions, the Plaintiffs have reiterated the issues raised in their grounds of opposition and replying affidavit.

10. I have considered all the issues relating to the aforementioned application. The provisions of **Order 45 rule 1** of the **Civil Procedure Rules** Provides that:

“45, rule 1 (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;

(b) or by a decree or order from which no appeal is hereby allowed, and who from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or the order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review of judgment to the court which passed the decree or made the order without unreasonable delay.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the appellate court the case on which he applies for the review.”

11. A quick glance at the documents of the 1st- 3rd Respondent reveals that their claim is anchored on discovery of new and important matter or evidence. This new and important evidence appears to be the letter dated 17.2.2021 mentioned in paragraph 9 of the affidavit of 1st Defendant in which the county Land Adjudication & Settlement Officer Kajiado County was giving directions that the suspended subdivision of the suit parcel be finalised by June of 2021.

12. Firstly, the directive by the County Land Adjudication and Settlement Officer did not state what the timelines were all about. Nevertheless, we are now in year 2022, and the month of June 2021 is now in the past.

13. Secondly, the directive given by the County Land Adjudication Officer by a letter cannot be construed in a manner as to scuttle an order of the court (read the order of 25.11.2020).

14. Finally, I find that the 1st – 3rd Defendants are re-litigating the issues which culminated in the ruling of 25.11.2020. The 1st – 3rd Defendants should put their focus on fast tracking the main trial so that all the issues in dispute including the representation of the group, and the applicable law and regulations are resolved once and for all.

15. **The application dated 12.5.2021 is found to have no merits. The same is dismissed with costs to the Plaintiff.**

Application dated 17.11.2021.

16. The Plaintiff seeks the following orders in the above application:

*1. That leave of the court be granted to join **Leperes Ole Kosei, Thomas Marimpet, Lenkishon Kamaiti Sitoyi, Keen Ole Nkomiya, Rinkoine Kalama, Simon Mpute Oloitiptip and Loningo Ole Sereka** as the 11th to the 17th Defendants respectively in this suit.*

2. That leave of the court be granted to further amend the amended plaint to include such particulars as align with the inclusion of the 11th to the 17th Defendants as parties to the suit.

3. That leave of the court be granted that the further Amended Plaintiff annexed herein be filed and served.

4. That the costs of this application be costs in the cause.

17. The grounds in support of the application are that:

*i. The 11th to the 17th Defendants are among the individuals who were illegally elected on 19th November 2018 as officials of **Olgulului Ololarashi Group Ranch**.*

ii. The 11th to 17th Defendants were inadvertently left out of the Plaintiff's' plaint dated 27th November 2018.

iii. The Plaintiffs' further amended plaint dated 18th December 2020 was struck out by the judge for failure to obtain leave of the court before joining the 11th to the 17th Defendants.

iv. The 11th to 17th Defendants are proper and necessary parties to this suit and therefore germane for its effective determination.

v. It is in the interest of justice that leave be issued to join the 11th to the 17th Defendants in this suit for the complete and effectual determination of this suit.

18. There is also a supporting affidavit by John Muli (3rd Plaintiff) equally dated 17.11.2021 where he has reiterated the averments set out in their application.

19. The provisions of **Order 1 rule (2)** of the **Civil Procedure Rules** provide that:

“Where it appears to the court that any joinder of plaintiffs may embarrass or delay the trial of the suit, the court may either on the application of any party or of its own motion put the plaintiffs to their election or order separate trials or make such other order as may be expedient.”

20. The court notes that the issue as to who are the proper officials to steer the group appear to be at the heart of the dispute. The proposed parties are apparently the ones who were elected as officials of the group in year 2018 and the Plaintiffs are challenging their legality in that capacity.

21. I find that the application dated 17.11.2021 is merited and the same is allowed in the following terms;

1) That leave of the court is hereby granted to join Leperes Ole Kosei, Thomas Marimpet, Lenkishon Kamaiti Sitoyi, Keen Ole Nkomiya, Rinakoine Kalama, Simon Mpute Oloiptip and Loningo Ole Sereka as the 11th to the 17th Defendants respectively in this suit.

2) That the further amended plaint is to be filed and served upon all parties within 14 days.

3) The costs of this application shall abide the outcome of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 23RD DAY OF FEBRUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

M/S Koki Mbulu for the Plaintiff

Mukeli for Mr. Sankole for 1st – 3rd Defendants

Court Assistant: Eddel Barasa