



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISCELLANEOUS JUDICIAL REVIEW NO. 88 OF 2015

**IN THE MATTER OF THE LAND (GROUP REPRESENTATIVES) ACT (CHAPTER 287 OF
THE LAWS OF KENYA)**

AND

**IN THE MATTER OF AN APPLICATION BY JOSEPH SAPATI SAKAYA, JAMES SANKAIRE
AND ELIUD**

**PUSSAREN NTOMPO FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND
MANDAMUS**

BETWEEN

REPUBLIC.....APPLICANT

AND

**IN THE MATTER OF DECISIONS OF THE REGISTRAR OF GROUP REPRESENTATIVES
DATED 14TH APRIL, 2015 AND THE PROCEEDINGS AND RESOLUTIONS PASSED
PURSUANT THERETO ON 21ST APRIL, 2015 AND THE CERTIFICATE OF
INCORPORATION DATED 27TH APRIL, 2015 IN RESPECT OF OLDONYONYOKIE GROUP
RANCH**

REGISTRAR OF GROUP REPRESENTATIVES.....RESPONDENT

- 1. DANIEL NG'OTIEK NJUI**
- 2. NG'OTIEK MESHOLOLO**
- 3. DAVID SELELA RAKUA**
- 4. JULIUS MATIILONG KAREI**
- 5. KOINATA OLE TIGES**
- 6. BRIAN SHAPASHINA KERETO**
- 7. JOSEPH LENG'EN NKODUPOI**

8. LOISHOO LOLAMAL

9. RAPAIYO KERTELA

10. SAMPERU MARITET.....INTERESTED PARTIES

EX-PARTE 1) JOSEPH SAPATI SAKAYA

2) JAMES SANKAIRE

3) ELIUD PUSSAREN NTOMPO

RULING

On 6th May, 2015, this court granted leave to the ex-parte Applicants (*hereinafter Applicants*) to apply for an Order of judicial review by way of certiorari to remove to this Court and quash the proceedings and election of officials of Oldonyonyokie Group Ranch made on the 21st day of April, 2015.

2. The court also granted leave to the Applicants to apply for an order of judicial review by way of mandamus to compel the Respondent herein, the Registrar of Group Representatives to convene a Special General Meeting in accordance with the provisions of the Land (Group Representatives) Act (*Chapter 287 of the Laws of Kenya*) to deliberate and conduct the matters listed in the Agenda for the Annual General Meeting which was to be held on the 21st day of April, 2015.

3. The court made orders that the prayer that the leave granted do operate as a stay of the execution of the proceedings and election held on the 21st day of April 2015 be heard *inter partes*. The court will not therefore at this stage give a detailed consideration of the issues raised as the same will be determined in the substantive notice of motion.

4. In a nutshell, the Applicant's complaint concerns the manner in which the elections in question were carried out. The Applicants have raised issues regarding the issuance of Notice, the lack of Quorum at the Annual General Meeting and the manner in which the meeting was conducted and elections carried out. The Applicants allege that the Respondent exhibited open bias and malice against them and condemned them unheard.

5. The Respondent opposed the prayer for the leave granted to operate as a stay. According to the Respondent, the Applicants have failed to establish a *prima facie* case with a probability of success. The Respondent's contention is that the Applicants will not suffer any detriment if the stay sought is not granted. The Respondent's accused the Applicants of delay in instituting these proceedings and of failure to call an AGM during their tenure. The court was referred to Section 15 of the Land (Group Representatives) Act, Cap 287 of the Laws of Kenya.

6. The interested parties filed a replying affidavit and further affidavit in opposition to the issuance of stay orders. The interested parties have raised issues of jurisdiction. According to the interested parties, the District Magistrate's Court is the right forum to entertain the dispute herein. To support this contention the interested parties relied on Section 10 & 31 of the Land (Group Representatives) Act, Cap 287 of the Laws of Kenya.

7. The Interested Parties also questioned the competency of the application and stated that it is supported by an affidavit sworn by the Chairman as opposed to one sworn by the Secretary. It is contended that the elections were carried out in a fair manner and that the Applicants are only grumbling because they lost the elections. The interested parties accused the Applicants of mismanagement of the Group Ranch which they say has lead to multiplicity of civil suits. Among the said suits is Civil Suit No. 253 of 2011 pending before the ELC Division which they proffered that this case be consolidated with.

8. I have considered the application, the reply to the same and the written submissions filed by the parties.

9. I will deal with the issue of jurisdiction first. As stated in **The Owners of Motor Vessel “Lillian S.” –vs- Caltex Oil Kenya Ltd (1989) KLR 1:-**

“Jurisdiction is everything. Without it, a court has no power to make one step, where a court has no jurisdiction there would be no basis for a continuation of proceedings pending other evidence and a court of law downs its tools in respect of the matter before it, the moment it holds the opinion that it is without jurisdiction.”

10. I have considered the provisions of Section 10 of Land (Group Representatives) Act (Cap. 287 Laws of Kenya) which provides as follows:

(1) If it appears to the registrar that there has been a dispute among the officers or members of a group so that he is not satisfied as to who are the officers of the group, the registrar may in writing require the officers of the group to produce to him evidence of either—

(a) the settlement of the dispute and the proper appointment of officers of the group; or

(b) the institution of proceedings for the settlement of the dispute and for a declaration as to who are the officers of the group, and where he does so the officers shall provide evidence accordingly within the time specified and it shall be signed by at least three of the officers.

(2) A District Magistrate’s Court shall have jurisdiction to settle disputes and make declarations for the purposes of proceedings instituted under subsection (1)(b) of this section.

11. My view of the above provision is that the disputes which fall under the jurisdiction of the District Magistrate’s court are disputes concerning the lawful officials of a group incorporated under the Act. There is nothing that bars a member of a Group Ranch from going to court for determination of any other dispute. (See for example **PETER TORUTO KORINZO & 2 OTHERS V KORINKO W. NKULIAI & 12 OTHERS 2014 eKLR**). The dispute between the parties herein is an election dispute over who the lawful officers are. I hold that the dispute falls within the jurisdiction of this court.

12. On the question of delay of 14 days, the Respondent has not specifically demonstrated which provisions of the Law or any regulations that have been violated. Order 53(2) of the Civil Procedure Code (Cap. 21 Laws of Kenya) provides for six months.

13. Whether or not to grant a stay pursuant to the leave is an exercise of judicial discretion which must be exercised judiciously. The purpose of stay was well articulated by D. K. Maraga J (as he then was) in the case of **TAIB A TAIB v MINISTER FOR LOCAL GOVERNMENT & 3 OTHERS (2006) eKLR** when he stated that:

“That this court has jurisdiction to grant orders of stay has never been in issue given the provisions of Order 53 Rule 1(4). What is always in issue is whether, in the circumstances of any particular case, a stay order is efficacious.

I also want to state that in judicial review applications like this one the court should always ensure that the Ex-parte applicant’s application is not rendered nugatory by the acts of the respondent during the pendency of the application. Therefore where the order of stay is efficacious the court should not hesitate to grant it. Even with that in mind, however, it should never be forgotten that stay orders are discretionary and their scope and purpose is limited.”

14. In the case at hand, there are allegations and counter allegations concerning the manner in which the elections in question were carried out. If the new officials take over the leadership, the Applicants will be thrown out of office. Clearly this will be detrimental to the Applicants and will render their application nugatory and an academic exercise. On the other hand, if a stay is granted the vice versa will

happen.

15. Consequently, to balance the interests of all the parties herein, I make an order suspending the implementation of the decision complained about and hereby “freeze” the activities of both the new and the old officials until the substantive motion is heard and determined. Costs in cause.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 23rd day of October, **2015**

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B. THURANIRA JADEN

JUDGE