



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ISIOLO

PETITION NO. 005 OF 2021

ABDI SORA DALLA.....1ST PLAINTIFF

ISACK ABDUBA FAYO.....2ND PLAINTIFF

-VERSUS-

ADAN DENGE GURACHA & 9 OTHERS.....DEFENDANTS

-AND-

NORTHERN RANGELANDS TRUST & ANOTHER.....INTERESTED PARTIES

RULING

1. The Notice of Preliminary Application filed by the 1st Interested Party states as follows:

NOTICE OF PRELIMINARY OBJECTION (PO)

TAKE NOTICE that the 1st Interested Party, **THE NORTHERN RANGELANDS TRUST**, will raise the following preliminary points of law at the earliest available opportunity and urge the Court to strike out the entire Petition on the following **GROUNDs**:

1. This Honourable Court lacks jurisdiction to entertain the Petition and the Notice of Motion dated 21 September 2021 (the ‘Motion’) in view of s. 117 of the **Wildlife Conservation and Management Act, 2013**.
2. There are no requirements known to law of declaration or gazettelement of a community or any other **Wildlife Conservancy**. As such, the Petition and the Motion are misconceived, fatally incompetent and an exercise in futility.
3. This Honourable Court lacks first-instance jurisdiction to entertain the Petition and the Motion in view of s. 42 of the **Community Land Act, 2016**. In any event, the Petitioners have not demonstrated any exceptional circumstances.
4. The petition does not meet the basic threshold requirements for a constitutional Petition.

DATED at NAIROBI this 11th day of NOVEMBER, 2021

OCHIENG’ OGOLA & COMPANY

ADVOCATES FOR THE 1ST INTERESTED PARTY

2. From the record, it is clear that the 7th respondent and the 2nd Interested Party were all along aware of the dates when this matter was to be handled by the Court, although they absented themselves. Hence the fixing of the date of delivery of this ruling in their absence.
3. I have very carefully considered the submissions filed by the concerned parties in support of their veritably incongruent assertions. The arguments raised in their submissions, in many respects, raise matters that can only be canvassed in the main suit.
4. A Preliminary Objection only deals with pure points of law. Where the grounds proffered in support of a Preliminary Objection raise

arguments, it is no longer tenable to term such as pure points of law.

5. Ground 1 brings up the issue of S. 117 of the Wildlife Conservation and Management Act, 2013. This is a matter that can only be conclusively handled after arguments of both parties are heard. Ground 2 to the effect that there are no requirements known to law for declaration on gazettelement of a community or any other wildlife conservancy, straight away invites arguments. Ground 3 regarding jurisdiction of this court also invites arguments concerning if or if not this court has jurisdiction. Ground 4 to the effect that the impugned Petition does not meet the basic threshold requirements for a Constitutional Petition is veritably nebulous and, therefore, ipso facto, invites arguments and explanation.

6. In the circumstances, this court issues the following orders:

a. This Notice of Preliminary Objection is hereby dismissed

b. Costs shall be in the cause.

c. Directions on 30/5/2022.

DELIVERED IN OPEN COURT AT ISIOLO THIS 14TH DAY OF MARCH, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Miss Nyasani h/b Ogolla for the 1st Interested Party.

Ashava h/b Manassess Kariuki for 1st to 6th Respondents

HON. P. M. NJOROGE

JUDGE