



REPUBLIC OF KENYA

High Court at Nakuru

Civil Miscellaneous Application 33 of 2012

IN THE MATTER OF ARTICLE 40 (1) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF LAND ADJUDICATION ACT (CAP 284) LAWS OF KENYA

AND

IN THE MATTER OF NAIKARRA LAND ADJUDICATION SECTION

AND

**IN THE MATTER OF AN APPLICATION FOR ORDERS OF MANDAMUS AND
PROHIBITION BY WAY OF JUDICIAL REVIEW**

BETWEEN

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REPUBLIC APPLICANT

VERSUS

THE DIRECTOR OF LAND ADJUDICATION

AND SETTLEMENT 1ST RESPONDENT

DISTRICT LAND ADJUDICATION

AND SETTLEMENT OFFICER, NAROK SOUTH 2ND RESPONDENT

EXPARTE

TAYIAI KOSHAL, DANIEL PARSILANKE KOSHAL, TOMAE KOSHAL,

KIMAREN OLE KOSHAL, RISA OLE KOSHAL, RINKON KOSHAL,

TIMOTEO KOSHAL, ALEX MOSOITO KOSHAL, OSEUR PERE,

MUSANA OLE PER, RUKAI NKUYU, METAKAI TINGISHA,

SARAMPASHI TINGISHA, N KINGIS TINGISHA,

JOHN TUMATE NKUYU & JACKSON TINGISHASUBJECT

AND

LEKUDATE OLE NYAKUNI..... 1ST PROPOSED INTERESTED PARTY

PARSIMEI OLE NKOYO 2ND PROPOSED INTERESTED PARTY

KENNETH KETAGUES KOIKA 3RD PROPOSED INTERESTED PARTY

RULING

By the Notice of Motion dated 19/7/2012, Lekudate Ole Nyakuni, Parsimei Ole Nkoyo and Kenneth Ketagues Koika (1st – 3rd proposed interested party, hereinafter referred to as applicants) seek the following orders:-

- a) ...;
- b) **That this honourable court be pleased to grant leave to the applicants herein to be enjoined in there proceedings as interested parties;**
- c) **That pending the hearing and determination of this application, this honourable court be pleased to suspend the operations of the stay orders of 25th day of May 2012 which were issued on 29th day of May 2012;**
- d) **That this honourable tribunal be pleased to set aside the stay orders of 25th May of 2012 which were issued by the Deputy Registrar on 29th day of May 2012.**

The motion was premised upon the grounds on the face of it and the affidavit sworn by Kenneth Ketagues Koikai on 19/7/2012. He deponed that the applicants herein are members of Naikarra Group Ranch which comprise of over 4861 members. The ex parte applicants obtained stay orders which halted the survey work, sub-division and demarcation of a parcel of land belonging to Naikarra Group Ranch. The said stay orders were obtained without full disclosure of all the relevant facts and in particular a mention of the applicants. He further deponed that over 1,250 members had contributed a sum of Kshs.5,000,000/= towards survey, sub-division and demarcation of the Naikarra Group Ranch. The ex parte applicants herein belong to Siana Group Ranch and are therefore intermeddling with the affairs of a Naikarra Adjudication Settlement area which they are non members. Non disclosure of these facts led to the ex-parte applicants obtaining stay orders which are prejudicial to the applicants and over 4861 other members of the Ranch.

The application was opposed by the ex-parte applicants. They filed grounds of opposition and two affidavits sworn by Daniel Saingeu on 20/9/2012 and Daniel Parsilanke Koshal on 16/9/2012. The grounds of opposition can be summarised into the following:-

- 1.The applicants are intermeddlers of the adjudication process in Naikarra Adjudication Section;**
- 2.The 1st applicant is the chairman of the Naikarra Land Adjudication Committee and has exhibited bias by seeking to be a party to this application.**

In the affidavit of Daniel Saingeu, he deponed that 1st applicant, Lekudate Ole Nyakuni, is the chairman of the Naikarra Land Adjudication Committee. He was likely to be summoned as a witness in an arbitration complaint filed by the ex-parte applicants at the District Land Adjudication and Settlement Committee; That the inclusion of the 1st applicant in these proceedings would be prejudicial and his participation would not be in the interest of justice. He further deponed that they had lived in the Ranch for over thirty years and denied being intruders or intermeddlers. Though they were in the register of

Siana Group Ranch they live at Naikarra Adjudication Area.

Ms. Khatambi for the Attorney General did not object to the application by the applicants.

I have considered the affidavits, grounds of opposition and submissions by both counsel. The issue for determination in this application is whether the applicants can be enjoined to these judicial review proceedings as interested parties. **Order 53 Rule 3(2) and (4) of the Civil Procedure Rules** allow the court to order that a person who may be interested in the outcome of a judicial review matter be served with the notice of motion. The Rules provide as follows:

3(2) “The notice shall be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any action in relation to the proceedings or to quash them or any order made therein, the notice of motion shall be served on the presiding officer of the court and on all parties to the proceedings.

3(4) if on the hearing of the motion the High Court is of the opinion that any person who ought to have been served therewith has not been served, whether or not he is a person who ought to have been served under the foregoing provisions of this rule, the High Court may adjourn the hearing, in order that the notice be served on that person, upon search terms (if any) as the court may direct”.

Order 53 Rule 3(2) of the Civil Procedure Rules requires that the applicant serves the notice of motion on all persons directly affected. In the event that the ex-parte applicants do not serve the persons interested, those interested persons have a right to move the court by application and it is in so doing they came on time instead of waiting till the notice of motion comes up for hearing so that the court in its own motion moves under Rule (4) to order that certain Interested Parties be joined to the proceedings.

In my view, the interested parties are such persons that ought to be served. The ex parte applicants are challenging the decision of the Naikarra Land Adjudication Committee not to register them as residents of Naikarra Adjudication section which is chaired by the 1st applicant. In the letters dated 2/6/2011 and 10/11/2011, counsel for the ex parte applicants indicates that he acts “*for residents of Naikarra Location who have been aggrieved by the decision of the Naikarra Land Adjudication Committee*”. The aggrieved persons are the ex parte applicants herein who have appealed to the District Land Adjudication and Settlement Officer to have their names included in the Naikarra Adjudication Section and by this judicial review application, they seek to have the process of arbitration speeded up and in the meantime the process of subdivision and demarcation be stopped. The applicants claim that the ex-parte applicants are intruders and intermeddlers, likewise the ex-parte applicants claim the applicants are intruders and intermeddlers. The applicants have shown that they have a genuine interest in the matter, being residents of Naikarra. They cannot be locked out of the proceedings. Whatever the decision this court will make in this judicial review matter will have a bearing on the Committee's decision. I therefore reject the opposition raised by the ex parte applicants.

As to whether the stay orders should be vacated, if they are vacated it means that the demarcation and sub-division continues even before the arbitration proceedings are concluded. That may result in prejudice to the ex-parte applicants. In the result, I decline to vacate the stay orders. They will remain in force till the judicial review application is heard and determined.

I grant prayer (b) of the notice of motion dated 19/7/2012 to join the applicants as interested parties in this

matter but decline to grant prayer (c) and (d). Costs to be in the cause.

DATED AND DELIVERED this 28th day of March, 2013.

R.P.V. WENDOH
JUDGE

PRESENT:

Ms Koina for the Exparte applicants

Mr. Kabaiku holding brief for Mr. Karanja Mbugua for the Interested Parties

Mr. Njuguna for the Respondent.

Kennedy- Court clerk