



**Lenanyangerra v Letaare & 2 others (Environment & Land Petition  
6 of 2021) [2022] KEELC 61 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 61 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND PETITION 6 OF 2021**

**YM ANGIMA, J**

**MAY 12, 2022**

**BETWEEN**

**DIPA LENANYANGERRA ..... PETITIONER**

**AND**

**ARUMON LETAARE ..... 1<sup>ST</sup> RESPONDENT**

**LOILA LETININA ..... 2<sup>ND</sup> RESPONDENT**

**LAND ADJUDICATION & SETTLEMENT OFFICER (SAMBURU  
COUNTY) ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The Petitioner filed a petition dated 28.7.2021 challenging the elections of the Community Land Management Committee representative for Lerata Zone of Sapache Group Ranch held on 20.7.2021. The petition was based upon Articles 21, 22, 23(3) 28, 40 and 43 of *the Constitution* of Kenya, 2010 and Sections 4, 5, 6, 9 and 11 of the *Fair Administrative Action Act*, 2015. The Petitioner considered the said elections to have been irregular, unlawful and fraudulent which had denied him and the residents of Lerata Zone a chance to elect a representative of their choice.
2. The Petitioner contended that the declaration of the 1<sup>st</sup> Respondent as the elected representative was discriminatory and an affront to his right to be treated with equality and dignity. The Petitioner contended that he had been validly elected as a representative of the same zone in an earlier election held on 9.04.2021. He consequently considered that his constitutional rights under Article 27 and 28 of *the Constitution* had been violated.
3. For the said reasons, the Petitioner sought the following reliefs in the petition:
  - a. A declaration that the Petitioner and the people he represented in Lerata Zone were entitled to the constitutional rights enshrined in Articles 27 and 28 of *the Constitution*.



- b. A declaration that the Petitioner was the duly elected representative of Sapache Group Community Land Management Committee in elections held on 09.04.2021.
  - c. A declaration that the elections of the Lerato Zone representative of Sapache Group Community Land Management Committee held on 20.7.2021 in the Petitioner's absence was null and void.
  - d. Costs of the Petition.
  - e. Any other relief the court shall deem fit to grant.
4. Simultaneously with the filing of the petition, the Petitioner filed a notice of motion under certificate of urgency dated 28.7.2021 under Rules 4, 13 & 23 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013, Sections 7, 45 & 47 of the Community Land Act and Section 86 of the Elections Act seeking the following pertinent orders:
- (a) An order of injunction be issued stopping the 1<sup>st</sup> Respondent from assuming the leadership of Sapache Group Ranch Management Committee representing Lerata Zone pending the hearing and determination of the Petition.
  - (b) An order be issued invalidating the Lerata Zone elections of 20<sup>th</sup> July, 2022 pending the hearing and determination of the Petition.
5. The said application was based upon the grounds set out in the body of the motion and the contents of the supporting affidavit sworn by the Petitioner on 28.7.2021 and the exhibits thereto. The grounds were essentially the same ones upon which the petition was based. The gist of the application was that the 3<sup>rd</sup> Respondent had acted improperly in accepting the 1<sup>st</sup> Respondent as the Lerata Zone representative pursuant to flawed repeat elections held on 20.7.2021 whereas he the Petitioner had been elected as the Lerata Zone representative in an earlier election held on 09.04.2021. The Petitioner termed the repeat elections of 20.7.2021 as unlawful, illegal and against the rules of natural justice.
6. The material on record indicates that the 1<sup>st</sup> Respondent appointed a law firm which entered appearance on 04.10.2021 and filed grounds of opposition dated 18.10.2021 in opposition to the application. The record further shows that the 1<sup>st</sup> Respondent filed a notice of preliminary objection dated 4.10.2021 which was withdrawn on 5.10.2021. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not enter appearance and neither did they file any responses to the application for interim orders.
7. When the application came up for inter partes hearing on 05.10.2021 it was directed that the application shall be canvassed through written submissions. The parties were granted timelines within which to file and exchange their written submissions. By the time of preparation of the ruling, however, none of the parties had filed submissions.
8. The court has considered the notice of motion dated 28.7.2021 together with the material on record. The court is of the opinion that even though the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not file any responses and even though the 1<sup>st</sup> Respondent filed only grounds of opposition, the court is obligated to consider whether or not the Petitioner has satisfied the legal requirements for granting the interim orders sought.
9. The first issue for consideration is whether or not the Petitioner has satisfied the requirements for granting an interim order as set out in the case of *Giella v Cassman Brown & Co Ltd* [1973] EA 358. The Petitioner has to satisfy the court that he has a prima facie case with a probability of success at the trial; that he shall suffer irreparable damage in the absence of such an order; and where the court is in doubt that the balance of convenience lies in his favour. It is evident from the material on record that the subject matter of the petition is the disputed election for Lerata Zone representative of Sapache Group



Community Land Management Committee. The Petitioner contended to have won the election on 9.4.2021 and considered the election of the 1<sup>st</sup> Respondent in the election of 20.7.2021 as illegitimate.

10. The Respondents did not file any replying affidavits to give their version of events. The court is thus inclined to accept that the Petitioner has demonstrated a prima facie case with a probability of success in the absence of a response disputing the Petitioner's factual allegations in the application.
11. The court has further considered the material on record against the second principle. Apart from alleging the violation or threatened violation of his fundamental rights under Articles 27 and 28 of *the Constitution*, the Petitioner has not demonstrated what irreparable loss or damage, if any, he shall suffer in the absence of the interim injunction sought. In fact, there is no allegation in the supporting affidavit that the Petitioner stands to suffer irreparable loss should he await the hearing and determination of the petition. Accordingly, the court is not satisfied that the Petitioner has satisfied the second principle for the grant of an injunction.
12. The court is further of the opinion that there is a risk of granting an interim injunction in vain. The disputed election of the 1<sup>st</sup> Respondent was held on 20.7.2021 which is about 10 months ago. There is no current information on record to indicate whether or not the 1<sup>st</sup> Respondent has assumed the land leadership as a member of the Management Committee of Sapache Ranch. An equitable order should not be issued in futility.
13. Even if the court were to consider the third principle on balance of convenience, the court is of the opinion that granting an injunction would cause greater harm to the people of Lerata than by denying it. The court is of the view that restraining the 1<sup>st</sup> Respondent from assuming office would mean that the people of Lerata Zone shall remain unrepresented for an indefinite period of time in the management of their community land. It would be better to have the petition heard first so that should the Petitioner succeed in the end then he can simply replace the 1<sup>st</sup> Respondent in the Management Committee.
14. The court has also considered the material on record on whether or not the Petitioner is entitled to an 'interim' order nullifying the Lerata Zone elections held on 20.7.2021 pending the hearing and determination of the petition. If the court were to grant such order at the interlocutory stage, it shall amount to granting a final order at the interim stage without the benefit of a trial. The court is thus of the opinion that the prayer for invalidation of the impugned elections held on 20.7.2021 should await the hearing of the petition. In fact, that is one of the reliefs sought in the petition.
15. The upshot of the foregoing is that the court finds that the Petitioner has not satisfied the requirements for the grant of the interim orders sought. Accordingly, the notice of motion dated 28.07.2021 is hereby dismissed. Costs of the application shall be in the cause.

It is so ordered.

**Ruling dated and signed at Nyahururu and delivered** via Microsoft Teams platform this **12<sup>th</sup>** day of **May, 2022**.

In the presence of:

No appearance for the Petitioner

No appearance for the 1<sup>st</sup> and 2<sup>nd</sup> Respondents

No appearance by the Attorney General for the 3<sup>rd</sup> Respondent

C/A - Carol



.....  
**Y. M. ANGIMA**  
**JUDGE**

