



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

Civil Suit 417 of 2007

WANJIKU NJUNGE LIKAMAPLAINTIFF

VERSUS

LENTE KITUNGAT NYAPALWA1ST DEFENDANT

JOEL KANCHORI OLE SINGEEN2ND DEFENDANT

DANIEL KISHIL OLE NKINYI3RD DEFENDANT

AMOS TAJAYIA SANKITI4TH DEFENDANT

DISTRICT LAND REGISTRAR5TH DEFENDANT

RULING

The 1st 2nd, 3rd and 4th Defendants/Applicants sought orders in an application dated 20th May 2009 to stay, discharge forthwith or alternatively set aside or vary in such terms as court may find fair and just, interim injunction orders issued in this case on 8th November, 2007. In addition the Applicants sought orders that Plaintiff/Respondent be restrained from evicting the 1st Defendant from Land Parcel KAJIADO/ELANGATA WUAS/612 (hereinafter referred to as the suit property), and from entering, breaking into or otherwise demanding vacant possession of the suit property until the hearing and determination of this Application and/or further orders of this Court.

An alternative order to the above orders sought by the Applicants was that the Plaintiff's suit herein be dismissed with costs being paid to the Applicants as it is, *inter alia*, an abuse of the process of the Court. Finally, the Applicants also sought an order that the Officer Commanding Police Division (OCS) Kajiado do provide adequate security to safeguard the 1st Defendant, his agents or servants whenever necessary in the implementation of the Court's orders, if granted.

At the hearing of the said application on 25th October 2011, the Applicants' Counsel raised a preliminary objection on a point of law, stating that this Court had no jurisdiction to entertain the application. The proceedings were thereupon adjourned for the Applicants' Counsel to file and serve a Notice of Preliminary Objection, and for the Respondent's counsel to file and serve a reply to the same. The Notice of Preliminary Objection dated 27th October 2011 and filed on the same date, seeks to dismiss the Respondent's suit on the ground that this Court lacks jurisdiction to entertain the Respondent's suit in its entirety, and the said suit is not only misconceived but also incompetent as the same has been filed

outside the jurisdiction contrary to the provisions of the Land (Group Representatives) Act, (Cap 287). The said Preliminary Objection was heard 7th November 2011.

Counsel for the Applicants, Mr. Kamau, submitted that the Respondent filed a Complaint on 26th July 2007 and an amended Complaint on 19th May, 2010 and in both Complaints it is stated that the 2nd to 4th Applicants are sued in their official capacities as Chairman, Secretary and Treasurer of Elengata Wuas Group Ranch. Counsel further submitted that the basis of his Preliminary Objection is that the Respondent thereby concedes that the dispute falls within the provisions of the Land (Group Representatives) Act, and also recognises the said group ranch and the authority of the 5th Applicant to resolve the dispute herein by joining him as a party to the suit.

The Applicants' Counsel relied on section 10 (2) and the Third Schedule of the Land (Group Representatives) Act. Under section 10 (2) of the said Act it is stated that 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 the same section. Counsel's argument was that this section thereby granted jurisdiction to the District Magistrates Courts in the present suit. Counsel also argues that the Third Schedule also provides that appeals from decisions of the committee of a group lie either to the group representatives, or to the Registrar of Group Representatives, or to a subordinate court.

The Applicants' Counsel submitted that as a result of these provisions this Court does not have jurisdiction as the dispute herein is dealing with disputes of ranch group members, and that this Court should transfer the suit filed herein to a subordinate court which is the appropriate forum despite the High court having unlimited jurisdiction. The Applicants Counsel relied on various case law on the issue of jurisdiction, namely **Owners of the Motor Vessel "Lillian S" v Caltex Oil (Kenya) Ltd (1989) KLR 1**, **Mwangi & 7 others v The Attorney General (2002) 2 KLR 709**, **Florence Makotsi T/A Our Connection & Another v Fortune Properties Ltd HCCC (Nairobi) 353 of 2006** and **Adero & Anor v Ulinzi Sacco Society Ltd(2002) KLR 577**

The Respondent's Counsel in reply submitted that section 10 (2) of the Land (Group Representatives) Act deals refers to disputes in section 1(b), which are disputes among the officers or members of a group ranch as to who are the officer of the group, and it is this kind of disputes over which the District Magistrate's Court is conferred jurisdiction. The Respondent's Counsel sought to distinguish the dispute before this court. The Counsel submitted that the dispute was not about who the officers of the group ranch were, but relates to an issue of registration of land which arose after the group ranch was dissolved, after group ranch members applied and were given consent to subdivide the group ranch among individual members which individual members were subsequently given title deeds by the Land Registrar. Counsel further submitted that as at the time of coming to court, there was no land owned jointly by the members of the group ranch. Each member had been given separate title and the same had been registered.

The Respondent's Counsel also submitted that the Third Schedule of the Land (Group Representatives) Act deals with the provisions deemed to be contained in the constitution of every group ranch unless specifically excluded or modified. He further submitted that the Applicants had not provided the constitution of the group ranch in the present application to demonstrate whether the said provisions were modified or excluded. Counsel also distinguished the authorities cited by the Applicants' Counsel stating that they dealt with different subject matter and different fora from those in the present application.

Finally, the Respondent's Counsel submitted that this Court has jurisdiction, and that the Land (Group Representatives) Act does not oust this jurisdiction because the said Act only refers specific types of disputes to the subordinate court. Counsel also submitted that since the titles issued to individual group ranch members were issued under the Registered Land Act (Cap 300), and since the value of the subject matter in this application exceeds Kenya shillings 500,000/=, then under section 159 of the said Act jurisdiction was conferred on this Court.

After readings the pleadings and considering the submissions made by the Counsel for the parties, there are two issues for determination in the Preliminary Objection raised by the Applicants. The first issue is

the legal nature of the dispute between the Applicants and the Respondent. The second issue is whether the said dispute falls within the ambit of the Land (Group Representatives) Act so as to render this Court incompetent to hear the suit and application filed herein.

On the first issue I will refer to the Amended Complaint filed by the Respondent in this Court on 18th May 2010. The prayers sought are for an injunction restraining the 1st Applicant from trespassing on the suit property, as well as orders that the 2nd – 4th Applicants and the District Land Registrar Kajiado rectify their records and that the Land Registrar registers the Respondent as the rightful owner of the suit property. In the alternative the Respondent seeks a declaration that she has acquired adverse possession of the suit property.

The Respondent claims that she while she has all along been in occupation of and was allocated the suit property, a different land parcel was registered in her name. The 1st Applicant on the other hand in his Supporting Affidavit sworn on 20th May 2009, avers that the suit property was rightly allocated to and registered in his name. All the parties do not dispute that the group ranch was subdivided and allocated to individual members following orders given by this Court by Ransley J on 19th May 2005. The dispute herein is therefore one of ownership of and rightful registration of the of the suit property.

As to the second issue on the regime of law governing this dispute, I must at this point state that I agree with the Respondent's Counsel's submissions on the jurisdiction conferred by section 10(2) of the Land (Group Representatives) Act to subordinate courts is limited only to disputes arising among group ranch members and representatives as to the officers of the group. While the resolution of the dispute in this suit filed herein may involve an inquiry into the processes of allocation of land to its individual members by the officers of a group ranch or committee of group representatives, and may therefore fall within the ambit of section 10(2) or Third Schedule of the Land (Group Representatives) Act, the prayers sought by the Respondent as against the District Land Registrar of Kajiado can only be given by this court under section 159 of the Registered Land Act, given the value cited of the suit property.

I therefore find that the dispute in this suit and application can only be effectively decided by this Court, which is granted unlimited original jurisdiction under Article 165 (3) and is obliged to ensure justice is done efficiently and expeditiously under Article 159 (2) of the Constitution and sections 1A and 1B of the Civil Procedure Act (Cap 21). The Applicants' Preliminary Objection therefore fails.

The Applicants shall bear the costs of this application.

Dated, signed and delivered in open court at Nairobi this 20th day of January, 2012.

P. NYAMWEYA

JUDGE