



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
CIVIL CASE 64 OF 2012

ELIJAH MWACHIRONDA CHENGO PLAINTIFF

V E R S U S

1. ATHUMAN HASSAN MWANGUVU 1ST DEFENDANT

2. OMARI GOSI 2ND DEFENDANT

3. ALI JUMA GOSI 3RD DEFENDANT

4. BAKARI JUMA GOSI 4TH DEFENDANT

5. ALI HASSAN MWANGUVU 5TH DEFENDANT

6. ALI MWABAVU 6TH DEFENDANT

7. RAMA OMAR KARAUKA 7TH DEFENDANT

8. YUSUF MHAMEDI 8TH DEFENDANT

RULING

1. The parties herein are members of Mwereni Group Ranch. The dispute is in respect to ownership of 198.88 acres (*hereinafter the suitland*) within the said Ranch. The Group Ranch is a body corporate duly incorporated in terms of the provisions of Section 7 of The Land Group Representatives Act (Chapter 287).

2. At the outset the court needed to satisfy itself that it had jurisdiction to deal with the dispute. The constitution of the Group Ranch is annexed to the Plaintiffs affidavit sworn on 12th April 2012. The document does not provide for a dispute resolution mechanism. The Land Group Representatives Act itself provides for procedure for resolving disputes in respect to officers of a Group Ranch (Section 20) and to membership (Section 28) but not for disputes between members in respect to the Group matters.

3. Article 63(2)(a) of The Constitution classifies land lawfully registered in the name of Group Representatives under the provisions of any law as community land. The suitland a small part of some whopping 43466 hectares of land described as Kwale/Mwereni/14 registered in the name of Mwereni Group Ranch and is therefore community land.

4. Part III of The Environment and Land Court Act provides for the jurisdiction of The Environment and Land Court and Section 13(2) (d) clothes that court with jurisdiction to hear and determine disputes; inter alia,

“Relating to public, private and community land and contract, choses in action or other instruments granting any enforceable interest in land.”

The Court is yet to be established and in matters such as this, the High Court is holding fort in the meantime.

5. I now turn to the business at hand. The application for determination is a prayer for injunction by the Plaintiff in the following terms-

“That the Honourable Court, be pleased to issue a temporary injunction against the Defendants through themselves, and/or their employees and/or their servants and/or their agents and/or whosoever acting on their behalf to stop cultivating, harvesting mangoes, coconuts, cassava, entering, planting any crops or dealing with the undivided portion of Plot No. KWALE/MWERENI/14, measuring about 198.88 acres owned by Plaintiff pending the hearing and determination of this suit.”

The application is not defended although the Defendant were duly served. No appearance or defence have as well been filed.

6. The Plaintiff avers that he, together with his family members, are owners of the suit land. It is alleged by the Plaintiff that the Defendants have invaded that portion of land and are cultivating and using it against the wishes of the Plaintiff and his family members. This is how the Plaintiff states it in paragraph 12 of the Plaint-

“The Plaintiff avers and states that the Defendants have invaded the Plaintiffs portion of land within Mwereni Group Ranch and continues to cultivate and utilize (sic) against the wishes of the Plaintiff and her family members.”

7. Based on that claim the Plaintiff seeks the following prayers-

“(a) A mandatory injunction against the Defendants restraining the Defendants jointly and/or severally forming anyway interfering wit the Plaintiff parcel of land comprising 198.88 acres or thereabouts and forming part of Plot No. KWALE/MWERENI/14 also known as MWERENI GROUP RANCH.

(b) Vacant possession of the parcel of land measuring 198.88 acres forming part of Plot No. KWALE/MWERENI/14 known as MWERENI GROUP RANCH, by the defendants.”

8. The position, it seems, is that the Defendants were on the suitland at the time this suit was filed. In paragraph 7 of his affidavit of 12th April 2012, the Plaintiff states as follows-

“That the invasion of the parcel of land which occurred on the 25th February, 2012 and continues to-date, and has deprived the Plaintiff and his family members from utilizing the 198.88 acres (One hundred and ninety eight point eight acres) of the MWERENI GROUP RANCH.” (emphasis mine)

9. From the pleadings and the evidence of the Plaintiff the Defendant have occupied the suitland since 25th February 2012 which is about two (2) months before the suit was filed. Secondly the invasion has excluded the Plaintiff and his family from utilizing the 198.88 acres. This is the entire suitland.

10. If I were to grant the prayers as sought in the application then it would mean that I will have granted the prayers sought in the plaint in their entirety. What the Plaintiff is doing at this interlocutory stage is to seek a mandatory injunction in the guise of a temporary one. It will entail changing the status on the suitland.

11. The effect of a mandatory order would be drastic. An application for a mandatory injunction at an interlocutory stage must not only be clearly expressed but must also meet the high threshold set by the law.

12. I am afraid that I cannot grant such a drastic order when what the Plaintiff has expressly sought is a temporary injunction.

13. There is some other matter. The second schedule of The Land (Group Representatives) Act sets out provisions which are deemed to be contained in the Constitution of every Group Ranch. One such provision is that-

“Every member shall be deemed to share in the ownership of the Group land in undivided shares.” (my emphasis)

The Plaintiff did not address this at all. The court needed to be persuaded that the Plaintiffs claim for a portion of the Ranch is not in conflict with this provision.

14. On the basis of the reasons given I do hereby dismiss the application of 12th April 2012 with costs.

Dated and delivered at Mombasa this 18th day of June, 2012.

**F. TUIYOTT
JUDGE**

**Dated and delivered in open court in the presence of:-
Mwijuma for Okanga for the Plaintiff
No appearance for the Defendants
Court clerk - Moriasi**

**F. TUIYOTT
JUDGE**