



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL SUIT NO. 276 OF 2009

SALE

SIMON TAPAI SANTETO KIMUNYAK OLE

(Suing on behalf of 78 OLEPOLOS VILLAGE
MEMBERS)

.....PLAINTIFFS

VERSUS

ITA OLE BULATI & 8

OTHERS.....DEFENDANTS

RULING

The chamber summons dated 28th July 2010 is brought pursuant to Order 39 Rule 1 (a) of the Civil Procedure Rules. The applicants are **Simon Tapai Santeto** and **Kimunyak Ole Sale** who are suing on behalf of 78 Olepolos Village members against the 9 Defendants/Respondents namely:

1. *Ita Ole Bulati*
2. *Oloolasho Ole Tago*
3. *Kantai Ole Bulati*
4. *Saiboku Ole Koikai*
5. *Leshinana Ole Parsooi*
6. *Kipailoi Ole Mpo*
7. *Kamorrer Ole Tago*
8. *Koinange Ole Tago*
9. *Sanare Neilliang*

The applicants' prayer is that, pending the hearing and determination of this suit, the defendants be restrained by themselves, their agents, servants or employees, from interfering with the plaintiff's 8 acres of land which form part of the plaintiffs' 200 acres of land allotted from **LR NO. CIS/MARA/NAROOSURA/1**. The application was supported by the affidavit of the two plaintiffs who deponed that they hail from Olepolos village and are allottees of the suit land owned by Naroosura Group ranch which was used for grazing. The defendants have invaded the said land and cultivated 8 acres there from which despite protests by the plaintiffs.

The Defendants were warned vide the letter of the District Officer dated 13th May 2010 but they have persisted. A further affidavit was sworn by the same deponents on 30th September 2010 regarding

allegations by the Defendants that they are vexatious, troublesome and have filed many cases there before. The applicants have explained that the cases which had been filed earlier were by different parties and sought different prayers.

They recalled that in the 1980s, Naroosura Group Ranch members agreed to group themselves as villages for ease of allocation of land pending dissolution of the Group ranch which they did. They exhibited as **STS.29**, a record of a meeting of Olepolos village elders held on 30th December 1998, which deliberated on land and development issues, and was witnessed by the Assistant Chief of the area. **STS2(b)** is an internal memo from the District Officer's office dated 30th December 1998 about the above referred meeting and **STS.3** are 2 letters from Naroosura Group Ranch allocating land to **Tapai Ole Santeto** and **Kimunyak Ole Sale**.

In opposing the application, one **Suakel Ole Yeile** swore an affidavit dated 16/8/2010 as the chairman of Naroosura Group Ranch. He said the Group was incorporated in 1983. He deponed that the members share the Group Ranch in undivided shares but not villages. He further deponed that the members agreed to delineate all boundaries between families and clans and all to recognize grazing and farming areas for each clan and that the land is held in trust by the officials of the group. He further deponed that any decision by a village had to be brought to the attention of the officials and any dispute arising in the Group must be deliberated by the committee. He deponed that the two plaintiffs are members of the Group Ranch and have been trying to get elected as officials and no the part of the Ranch has been allocated to any individual and there is a process under the Land Group Act Cap 287 for allocation of land which involves dissolution of the Group.

Though served with the hearing notice, counsel for the Respondent, **Kenta Moitalel Advocates**, did not appear at the hearing of the application. The court was satisfied that the firm of Advocate was duly served.

Apart from the replying affidavit that had been filed, the Respondent had also filed a notice of preliminary objection to the effect that the suit offends the Civil Procedure Rules, offends provisions of the Land (Group Representative) Act Cap 287, and that the plaintiffs lack the *locus standi*, to bring this suit and that it is an abuse of the court process. Since the affidavit and the objection are on record, the court can not ignore them.

It does not seem to be in dispute that the land in issue generally belongs to Naroosura Group Ranch. It has not yet been subdivided. The land is therefore governed by the **Land Group (Representative) Act Cap. 287**, Laws of Kenya. The question is therefore whether the applicants are properly before the court. Under Section 5 of the Act, a meeting of the Group, convened by the Registrar after due notice, elects its representatives. Under **Section 7**, the said representatives who then apply for incorporation and under Section 8, the certificate of incorporation confers on the representatives power to sue and be sued in the corporate name, acquire, hold or charge and dispose of property of any kind and borrow money with or without security. **Section 9** then provides for change in the Group representatives. In the event of disputes, Section 10 allows the Registrar to intervene or the same be adjudicated upon by the District Magistrate's Court. It seems that there are disputes in the Group Ranch over leadership and ownership or use of land as admitted by the applicants in the further affidavit at paragraphs 9 to 14. That being the case, the applicants should first exhaust the dispute resolution mechanism under the Act (**Section 10**) before they can venture to come to this court. Besides, it is clear from Section 5 and 7 that the applicants have no locus to bring this application as they are not Group representatives recognized under Section 8 of the Act. The Group Ranch is still in existence and the applicants must comply with Chapter 287, Laws of Kenya, and Rules of the Group to which the Group is subject.

From the replying affidavit, it seems that the Group has put in place committees for settlement of disputes. If they fail then the Registrar should be invited into the disputes for resolution or reference to the court.

Apart from the applicants lacking the necessary *locus standi* to bring this suit matter, this application offends provisions of the Group Ranch Representatives Act. I do uphold the objection based on the

preliminary objection filed by the Respondent and the application dated 28/7/2010 is hereby dismissed with the applicants bearing the costs.

DATED and DELIVERED this 11th day of May, 2011.

R.P.V. WENDOH
JUDGE

PRESENT

Mrs. Kereri for Plaintiffs

No appearance for Defendants

Kenney Oguma – Court Clerk