



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 317 of 2004**

1. MELTON LENKAKURRO
2. PETER MERIN SESEI
3. TUNGUNGUA OLE NTEETE
4. JACKSON MELIYIO RISIE
5. SAMUEL KAYIOR LOKINYIEI
6. KELUAL LOOWKARARA
7. TEKETI OLE LEKISUMA

**(All suing as representatives of ENTARARA GROUP RANCH)::~::~:PLAINTIFFS**

**VERSUS**

1. TAIKO MARIATI
2. SEELA OLE MORIATI
3. PARSANGA LENKINYI

**4. RIAMET OLE LENKERE :~::~:DEFENDANTS**

**RULING**

The suit herein was presented to this court, by seven plaintiffs namely:-

1. Melton Lenkakurro
2. Peter Merin Sesei
3. Tungungua Ole Nteete
4. JACKSON Meliyio Risie
5. Samuel Kayior Lolkinyiel
6. Lelual Loowkarara

7. Teketi Ole Lekisuma

The action was brought against 4 defendants namely:

1. Taiko Moriati
2. Seela Ole Moriati
3. Parsanga Lenkinyi
4. Riamet Ole Lenkere

Judgment was delivered in this matter by Ang'awa J on the 31<sup>st</sup> day of July 2008. The terms of the judgement, are set out at page 21 of the judgement. It runs thus:-

*“I enter judgement for the plaintiffs as hereby prayed on the following prayers 67.1 that the title LTK/Entatara/145 in names of the four to seven defendants herein be and is hereby cancelled.*

*67.2 That the name of land LTK/Entaraa/145 be substituted with Entarara group Ranch as in incorporated under the land (Group representative) Act certificate of incorporation.*

*67.3 That the Entarara group Ranch being accordingly declared the rightful owner of the property, which property ownership included all the defendants as part of the said group, the eviction orders if any issued in HCCC 335/94 expires.*

*67.4 I award the costs of this suit to the plaintiffs.*

*68. May I thank advocates for their deliberation in this matter.”*

This court, has been informed that there is a decree annexed to the application annexure MW1. The court, has been informed that there is an appeal lodged to the court of Appeal. The appellants filed an application of stay in the CA, vide civil application No. (Nai 311 of 2008 (UR 206/2008). A ruling, on the same was delivered by the CA on the 13<sup>th</sup> day of February 2009 dismissing the application for stay pending appeal and as such there are no stay orders in place.

It is against the afore set out background information that the applicants have come to this court ,by way of Notice of Motion dated 2<sup>nd</sup> day of March 2009 filed the same date of 2<sup>nd</sup> day of March 2009. It is brought under section 3A of the CPA and order XX1 rule 30 (i), order L rule 1 of the CPR, and all other enabling provisions of the law. A total of 4 prayers were prayed for. Prayer 2 is the only prayer which is the subject of this ruling. It reads:-

*“2 That this honourable court, be pleased to direct the officer commanding police Division Loitokitok District, in Liason with the District Commissioner Loitokitok District to supervise/oversee the peaceful execution of the decree of this Honourable court, issued on 23<sup>rd</sup> September 2008”*

The sum total of the arguments in the applicants favour are that:-

- The plaintiff had been evicted from the land parcel number LTK/Entarara/145 belonging to Entarara group ranch.
- This Ranch comprises the plaintiffs and the defendants.
- The plaintiff had been unlawfully evicted from the said Ranch.
- There is a decree in favour of the applicants.
- There is an appeal in place.
- There are no stay orders
- In the absence of stay orders, it is only proper that the decree holders be assisted to reap the fruits of their judgement.

- That the situation on the grounds is volatile and it is only the security forces who can ensure a peaceful execution of the decree.

- It is on this ground that the applicants are asking the officer commanding police station Loitoktok who and the District Commissioner Loitoktok have the means to ensure peaceful settlement.

The Respondents have put in a replying affidavit and a preliminary objection in opposition to the application.

- They concede that they are aware that judgement herein was given on 31<sup>st</sup> July 2008 and issued on 24<sup>th</sup> September 2008.

- Concede that both plaintiffs and defendants are members of the Entarara Ranch.

- There has been no eviction orders for any members of the Ranch.

- That the land is registered in the name of the group Ranch.

- Contend that counsel, is incapable of deponing to issues of the situation on the ground being volatile. This can only be deponed by one of the disputants.

- That all that needs to be done is for the applicants to comply with the requirements in the Group Representative Act cap 287 laws of Kenya.

- The court, is urged to disentitle the applicant the relief sought because they have not exhausted the remedies available to them under the Act.

- The decree has been executed as the title which had been registered in the name of the 4<sup>th</sup> to the 7<sup>th</sup> defendants has been cancelled and new one issued by the Registrar of titles on the 29<sup>th</sup> October 2008, the certificate of incorporation has been issued No. 0338.

Due consideration has been made of the above rival arguments, as regards to the mode of execution of the decree herein. In this courts', opinion since there is a decree in place, and since there is no stay order in place, though the appeal is pending, there is no harm. In the beneficiaries of the decree to enjoy the fruits of the decree.

Indeed the decree does not specify how the execution was to be effected, and the respondents counsel has rightly submitted that the provisions of the Act should be followed. The court, has perused the said Act, and noted that indeed section 14-21 deal with how the group Ranches should conduct their affairs. There is therefore a mechanism or modalities in place. However since parties have been disputing on opposite fronts, and in fact there is an appeal pending, the court, is of the opinion that only a neutral party can come to the aid of the disputants, and make them realize the fruits of the judgement for the benefit of all. This neutral party is nothing but the security Agencies, namely the police and the provincial administration. No harm has been demonstrated that the opposite party will suffer if the execution of the decree is supervised.

For the reasons given in the assessment, there is merit in prayer 2 of the applicants' application dated 2<sup>nd</sup> day of March 2009 and filed on the same date. It is allowed as prayed.

(2) The costs will be in the cause.

DATED, READ AND DELIVERED AT NAIROBI THIS 10<sup>TH</sup> DAY OF JULY 2009.

**R.N. NAMBUYE**

**JUDGE**