



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Civil Appeal 1092 of 2005

- 1. PARSALOI OLE MEIPOKI)
- 2. NTETU OLE MOIKON)
- 3. LESALON OLE ARAMATO)
- 4. KASAINO OLE MPASOI)
- 5. TURAIYA OLE ARAMATO)
- 6. KIRINGAI OLE ARAMATO)
- 7. NKORA OLE NGAIRWA)

8. SALAU OLE KOLELA)PLAINTIFFS

VERSUS

1. OLKIRAMATIAN GROUP RANCH

2. REGISTRAR OF GROUP RANCH REPRESENTATIVES..... DEFENDANTS

RULING

There is a Preliminary Objection filed in this Court on 12th January 2006 by the 1st defendant objecting to the authority granted to one of the plaintiffs *Parsaloi Ole Meipoki* to appear, plead and act on behalf of all the other eight (8) plaintiffs.

It says precisely that the plaintiffs' suit is incurably defective hence incompetent for want of authority on the part of the 1st plaintiff *PARSALOI OLE MEIPOKI* and the same should be struck out with costs to the defendants.

The 1st defendant is the name given to a group ranch, a body corporate duly established under the *Group Representatives Act Chapter 287* of the Laws of Kenya. The group ranch for which this group is registered is *Kajiado/Olkiramatian/8*.

Paragraph 7 of the plaint filed in Court on 6th September 2005 states that at some meeting in 1974 it was resolved by the defendants that names constituting twenty eight (28) households be removed, deleted and cancelled from the adjudication register and this rendered them to no share of land for being members of

purko clan.

This gave rise to this suit being filed in Court to question the legality of this move by the nine (9) plaintiffs, eight of whom said they were giving authority to the 1st plaintiff to appear, plead and act on their behalf in a document dated 8th September 2005.

In a defence filed in Court on 27th January 2006 – at paragraph 16 it was stated that

“The 1st defendant states the plaintiff’s suit is incurably defective and incompetent for want of authority on the part of the 1st plaintiff Parsaloi Ole Meipoki and the same should be struck out with costs to the defendants”

This is why this preliminary objection has been filed in this Court on 17th January 2006.

In the Court on 30th October 2007 counsel for the defendants, one *Njongoro* urged the preliminary objection and said the suit was filed in the name of the 1st plaintiff on the basis of an authority, given to him by the other eight (8) plaintiffs.

But in counsel’s view the authority was not valid as it fundamentally affects the suit itself hence it should be struck out.

Counsel says the authority should be in writing per **Order 1 Rule 12** of the Civil Procedure Rules and that it should be signed by the party giving it.

That in the case of the authority herein, the authority was only signed by the 1st plaintiff in the presence of the other plaintiffs.

According to counsel the document does not convey the authority to the 1st plaintiff because plaintiffs’ 2-9 signed it as mere witnesses.

Counsel for the plaintiff opposed the preliminary objection and said the suit was not defective since the plaintiffs have adhered to the provisions of **Order 1 Rule 12(2)** of the Civil Procedure Rules.

That they have appointed one of them to appear, plead and act on their behalf in this suit through the authority dated 5th September 2005 which they thumb printed.

According to counsel the intent is clear on the document and the defendants do not suffer any prejudice.

That the plaintiffs came to Court under Certificate of Urgency when they were on the verge of being evicted and invalidating the suit will expose them to that eviction.

He repeated that the authority was valid and that if it is not, a proper one can be drawn. He urged Court to dismiss this preliminary objection.

The document referred to as the authority to the 1st plaintiff to appear, plead and act on behalf of the other eight (8) plaintiffs is dated 5th September 2005. It is in writing and has names of nine (9) plaintiffs – a plaintiff and the two defendants. Its heading is:-

“AUTHORITY TO PLEAD PURSUANT TO ORDER 1 RULE 12 OF THE CIVIL PROCEDURE RULES”.

Then it says

“We” and gives names of the eight (8) plaintiffs ***“do hereby authorize PARSALOI OLE MEIPOKI to***

appear, plead and act on our behalf in the suit herein”.

Though it says “***signed by the said PARSALOI OLE MEIPOKI*** – in presence of “then gives names of all the eight plaintiffs, his signature does not appear at the space provided for this.

But in view of the fact that there are four thumb prints at the space provided at the space of witnesses and only three names appear for these thumb prints, the first thumb print must be that of the said ***PARSALOI OLE MEIPOKI***.

On the second page of the document are names of five (5) other plaintiffs who have also thumb printed at the space of witnesses.

The impression I get from these set of events is that these are rural folks who do not know how to read and/or write, but who knew at the time that the document they were thumb printing was an authority to one of them ***Parsaloi Ole Meipoki*** to appear, plead and act for them in the case before the Court and not mere witnesses.

This document serves the same purpose as a letter written and thumb printed by them in the manner counsel for the preliminary objector would want it to be. To me it would be expecting too much from these disadvantaged people to be so meticulous about this procedure.

In my view, this document in the circumstances of this case is valid but if counsel for the preliminary objection insists on what he would consider the real authority then nothing would prevent the Court from allowing the plaintiffs to amend the document, on an application.

Otherwise ***I dismiss*** this preliminary objection with costs.

Delivered and signed at Nairobi this 22nd day of February 2008.

D. K. S. AGANYANYA

JUDGE OF APPEAL