



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

Civil Case 407 of 2008

MALOI OLE KIU 1ST PLAINTIFF
NEPATAU OLE NJAPTI 2ND PLAINTIFF
SANKAU OLE NKOITIKO 3RD PLAINTIFF
REREU OLE KIU 4TH PLAINTIFF
PARIT OLE KIU 5TH PLAINTIFF
OTUMA OLE MPETTI 6TH PLAINTIFF
SEMEYIOI OLE GILISHO 7TH PLAINTIFF
PARSALOI OLE LEMURT 8TH PLAINTIFF
MANCHAU OLE YENKO 9TH PLAINTIFF

VERSUS

DUKUNYAI OLE LEPORE 1ST DEFENDANT
SAMMY NAKATE OLE NKOITOI 2ND DEFENDANT

RULING

APPLICATION DATED 10 SEPTEMBER 2008 FOR AN INJUNCTION TO RESTRAIN THE MEETING/ELECTION OF 11.9.2008

1: Background

1. Siana Maasai mara area has a conservancy which contains up to ten trusts. The land is used for Eco-tourism. I understand that it had been under the management of the Narok County Council who in effect had ceded their rights to the group ranch themselves.

2. What became apparent is that the area in question had not been adjudicated, as a result, there is no title deed or registration of the land in question to the respective beneficial owners.

3. In order to remedy this, a group of about 200 members, it is alleged set the 11 September 2008 at a date in which the elections should be held to select persons to manage the conservancy.

4. The plaintiff herein objected saying there were 3,000 members not consulted. They filed this suit to correct this and asked that there be no election. They were not heard and the election proceeded.

5. On the day the matter came up for inter parties hearing, the defendants were obliging to have “fresh elections”. This court directed that an inter parties be heard first.

II: Application 10.9.08

6. The applicant/plaintiff claim that the said elections should be stopped nonetheless it has been conducted but it was so done contrary to the adjudication Act Cap.287 laws of Kenya. This meant that the District Officer who conducted the election had no powers to do so. It was null and void and as such of no effect.

7. The law in question was adjudication under the Land (Group Representative) Act. It is therefore the adjudication officer under this act who ought to conduct the proceeding and not the District Officer.

8. In reply the defendant respondent claim since the election is complete it has been overtaken by event. It was therefore important to note that there was nothing further in this matter.

III: Opinion

9. There are two issues herein. The first is that of a trust. The management of the conservancy and the collection for the funds. The second is the issue of land ownership and the management of that land.

10. The plaintiff’s case is that the Land Adjudication must first be complete. In order for this to occur the process under the act must be done and so done accordingly to the constitution under the act.

11. The election of 11.9.08 was indeed irregular. It was presided over by the District Officer who had no authority or powers to do so.

12. I would accordingly hold that the election conducted on 11.9.2008 be and is hereby set aside. That the management of the conservancy revert back to the Narok County Council until the issue of the adjudication is completed and the finalization of this suit.

13. There will be costs to the plaintiff/applicant.

DATED THIS 23RD DAY OF SEPTEMBER 2008 AT NAIROBI.

M.A. ANG’AWA

JUDGE

B.N. Kiptoo instructed by B.N. Kiptoo and Co. Advocates for the plaintiff/applicant – present

J. I. Kuluo instructed by J.I. Kuluo & Co. Advocates for the defendant/Respondent – present