



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MACHAKOS

Civil Misc. Appli. 209 of 2008

RISIE OLE MASARIE 1ST APPLICANT
NAANYU OLE NKIRIMBA 2ND APPLICANT
TIMOTHY SAIGILU 3RD APPLICANT
PARMUYA KAMPEI KIRASI 4TH APPLICANT
KASAINO OLE BACKSON 5TH APPLICANT

VERSUS

THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT1ST RESPONDENT
KAJIADO DISTRICT LAND ADJUDICATION OFFICER 2ND RESPONDENT
REGISTRAR OF GROUP REPRESENTATIVES 3RD RESPONDENT
MBIRIKANI GROUP RANCH AFFECTED PARTY

RULING

1. This is an Application for leave to institute judicial review proceedings under Section 8 of the Law Reform Act and Order LIII of the Civil Procedure Rules. Specifically the prayers sought are;
 - a. “THAT leave be granted for the Applicants to apply for an order of certiorari to remove into the High Court, for purposes of being quashed, the decision embodied in the Certificate of Incorporation that the 3rd Respondent issued in respect of Mbirikani Group Ranch on 2nd September 2008 on the basis of decisions, resolutions, a voting process or selection process that took place at the meeting convened by the 2nd Respondent on 29th August 2008.
 - b. THAT leave be granted for the Applicants to apply for an order of prohibition to issue to prohibit the 1st and 2nd Respondents either by themselves or by their subordinate officers from convening any future meeting of the Affected Party or interfering in any manner whatsoever with the affairs and management of the Affected Party.

c. THAT the leave so granted do operate as a stay of validity of the Certificate of Incorporation issued by the 3rd Respondent on 2nd September 2008.

d. THAT costs of this application be provided for.”

2. From the Statutory Statement of Facts dated 30/9/2008 and the Verifying Affidavit sworn on 30/9/2008 by Parmuya Kampei Kirasi, I am able to gather that parties herein had previously filed Misc. Appl.536 of 2008 which was withdrawn on 25/9/2008. Prior to that Misc. H.C. Cause No. 140/2006 had been filed in Nairobi and the said cause was determined by Nyamu J on 27/6/2008. Much earlier, on an unclear date in 1999, Ole Keiwua J (as he then was) had issued certain orders in H.C.Misc. Appl. No. 928 of 1999. All these matters related to one issue; the election of group representatives under the Group Representatives Act, Cap 287 in respect of Mbirikani Group ranch within the now newly created Oloitokitok District.

3. In his submissions flowing from the facts restated above, Mr Macharia for the ex-parte Applicant argued that Nyamu J misdirected himself in cause No.140/2006 when he dismissed the Application before him and when he held inter-alia as follows:-

“It is manifestly clear to the Court that the Respondents do have the powers challenged in this application, and for this reason the application has no basis in law. The application is asking the court to perpetrate an illegality and thereby cause a paralysis of the Group’s activities especially the ability to hold lawful meetings to make decisions and to transact the business of the Group...

Perhaps it is apt to state that judicial review objectives include the preservation of order in the legal system the maintenance and upholding of the rule of law and constitutionalism. The thrust of this application goes counter to the above objectives and in the view of the court, constitutes an abuse of the Court process.”

4. I have little to say on the above issue save that it is still the lawful holding of the learned judge and is binding on all parties inspite of the fact that the ex-parte Applicants therein did file a Notice of Appeal, in respect of the matter.

5. I deliberately digressed but the ex-parte Applicants’ present complaints stem from the following series of events;

On 22/7/2008 the Director of Land Adjudication and Settlement issued a Notice convening an Annual General Meeting of the Mbirikani Group Ranch and the meeting was slated for 27/8/2008. The said Notice is challenged as having been issued unlawfully and the present ex-parte Applicants challenged the notice in H.C.Misc.536/2008 which was subsequently withdrawn but by that time, a new Certificate of Incorporation of the Group Ranch had been issued after elections were held on 29/8/2008. It is their case that the Respondents have abused or exceeded their mandate by conferring upon themselves authority which they lack. It is also argued that Ole Keiwua J in Misc. 928/1999 had stayed all such attempts by the Director of Land Adjudication and Settlement and the present action amounts to contempt of that order.

6. My take of the matter before me is as follows:-

The ex-parte Applicants admit that elections were held on 29/8/2008 and new group representatives were elected. What is sought to be quashed is not the decision to hold those elections or the manner the elections were held but “the decision embodied in the Certificate of Incorporation...on the basis of the decisions, resolutions, voting process or selection process that took place at the meeting convened by the 2nd Respondent on 29th August 2008.” The operative words so far as I can see and what is in issue is the decision as contained in the Certificate of Incorporation hence the resultant prayer for stay of the validity of that Certificate.

7. The other prayer for leave to apply for an order of prohibition relates to the holding of future

meetings as may be convened by the Respondents.

8. I have carefully read the documents attached to the Verifying Affidavit and particularly the decision of Nyamu J. It would seem that Mbirikani Group Ranch has been wallowing in the quagmire of internal infighting for a while. The learned judge tried to put matters to rest by dismissing the motion before him and effectively dismissed the notion that the Group Ranch cannot hold lawful meetings and transact its business. I have seen a letter dated 22/7/2008 in which the Director of Land Adjudication and Settlement used the decision aforesaid to order the Group Ranch to hold its Annual General Meeting on 27/8/2008. Apparently the meeting was held on 29/8/2008 and certain decisions taken. Do I detect any illegality at a prima facie level?

9. I have perused Section 15 (1) of the Group Representatives Act which provides as follows:

“15. (1) The registrar may convene a meeting of a group at any time.”

10. Nyamu J in his Ruling stated partly as follows with regard to that section:-

“Finally I uphold the interested parties Counsel’s argument that the purported amendment of the Group constitution would be illegal because it would contravene s 15 (1) of the Land (Group Representatives) Act Cap 287 LOK. In addition the orders sought in this application would contravene the provisions of s 15(1) and (2) of the Land (Group Representative) Act. It is quite clear to the Court that the Respondent do have powers to manage Group affairs as set out in s 15(1) and 2 which reads:-

i. The Registrar may contravene a meeting of a group at any time.

ii. An annual general meeting of a group shall be held every year in the month prescribed for the annual general meeting in the group’s constitution.”

11. The same arguments are now reinvented before me and I think wholly in vain. I say this because the letter aforesaid calling for a meeting of the Group Ranch is signed by one S Kidemi, apparently in similar circumstances to the matter before Nyamu J. The learned judge found that she was the Registrar of Group Representatives and had authority to convene the meeting. How can I now find differently and that decision is still binding and to my understanding has not been overturned although a notice of appeal has been filed. In the minutes of the meeting held on 29/8/2008, S Kidemi Registrar aforesaid was present and signed those minutes. She went on to issue Certificate of Incorporation as is her duty. It is dated 2/9/2008.

12. Clearly, whether or not, the Land Adjudication Officer or the Registrar had the mandate to convene the meeting or not was settled by Nyamu J. The Certificate of Incorporation has been issued and I do not however, see where the present proceedings are head. Having so said I take the view that for the interests of justice to be met, let the ex-parte Applicants be granted leave in terms of prayer No.1 above to challenge its validity for whatever that venture may be worth. I see no reason to grant prayer 2 as framed because each meeting to be called by whichever party must be looked at in its own circumstances. It is superfluous to peg court orders to the unknown.

13. As for the order of stay of the validity of the Certificate of Incorporation, the ex-parte Applicants and Mr Macharia have only managed to convince me that the said prayer is craftily worded with the end that if I grant it, the ex-parte Applicants will then assume the management of the affairs of the Group Ranch and effectively obtain the prayers intended to be sought in the Notice of Motion to be filed subsequent to the present proceedings. That action is in bad faith and I decline to grant final orders in an application for leave such as this one.

14. In the end, I will only grant prayer 1 of the summons dated 2/10/2008. No order as to costs.

15. Orders accordingly.

Dated and delivered at Machakos this 27th day of November 2008.

ISAAC LENAOLA

JUDGE

In presence of: Mr Solonka for Applicant

ISAAC LENAOLA

JUDGE