



REPUBLIC OF KENYA



Munge v Oloiren Group Ranch (sued through its representatives) & 9 others (Environment & Land Petition 9 of 2021) [2022] KEELC 13526 (KLR) (6 October 2022) (Judgment)

Neutral citation: [2022] KEELC 13526 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT & LAND PETITION 9 OF 2021**

EM WASHE, J

OCTOBER 6, 2022

BETWEEN

JANE NAISIANOI MUNGE PETITIONER

AND

OLOIREN GROUP RANCH (SUED THROUGH ITS REPRESENTATIVES 1ST RESPONDENT

MOIKO OLOIPUTA MIARON 2ND RESPONDENT

JULIUS OLE MOKITA 3RD RESPONDENT

SALATON OLELEKUMO NAITIRA 4TH RESPONDENT

YIAKON OLE MERIAYU 5TH RESPONDENT

TUMPES OLE KARIOKI 6TH RESPONDENT

LENKAKA OLE NARASHA 7TH RESPONDENT

NTOIKA OLE ROITEI 8TH RESPONDENT

SAMUEL LEKISHON OLE SONURUA 9TH RESPONDENT

KIRISWA TUNAI KUYIAYIA 10TH RESPONDENT

JUDGMENT

1. The petitioner herein filed this petition dated January 17, 2018(hereinafter referred to as “this present petition”) against the respondents being the office bearers of Oloiren Group Ranch (hereinafter referred to as “the Group Ranch”).
2. The petitioner’s claims against the respondent are the following; -



- a. A declaration that the provisions of the Constitution of the respondent to the effect that community land within the group ranch can only be given to male members of the community or widows where the male member/father is deceased is discriminatory, unconstitutional, null and void.
 - b. A declaration that the conduct of the representatives of the respondents of preparing a list of beneficiaries of the community land within Oloirien Group Ranch which excluded the petitioner (except the widows where the husband is deceased) contravenes article 27 of the Constitution and section 30 of the Community Land Act and it is discriminatory of the petitioner, unconstitutional , invalid , null and void.
 - c. A declaration that the register, sheets or list of members prepared by the respondent for purposes of allocation of land within Oloirien Group Ranch which excluded women is an invalid document to the extent that it contravenes article 2 and 27 of the Constitution and the letter and spirit of the Constitution and the Community Land Act.
 - d. An order of *certiorari* to quash the register prepared by the respondent discriminating against the petitioner on the basis of her status as an unmarried woman.
 - e. And order of *mandamus* directed to the representatives of the respondent to include the petitioner in the register of members of Oloirien Group Ranch and to allocate her a portion of land equivalent to all the other members of the group ranch.
 - f. Costs of the petition be borne by the respondent.
3. The petition has been opposed by the replying affidavit of one Moiko Oloiputa Miaroi, who is the chairman of the respondent sworn on the May 14, 2018 (hereinafter referred to as “the replying affidavit”).
 4. The petitioner in answer to the replying affidavit filed a further affidavit sworn on the November 10, 2020.
 5. Upon close of pleadings, the parties requested for a oral hearing so that each party would articulate its case and be cross-examined on the testimony and/or evidence adduced therein.
 6. The court indeed accepted this application and the hearing commenced on February 22, 2022.

Petitioner’s Case.

7. The petitioner introduced herself as businesswoman and a farmer within Oloirien area of Transmara sub-county.
8. The petitioner informed the court that she was born and raised in Oloirien area.
9. The petitioner referred to her supporting affidavit dated October 17, 2018 which she adopted as her witness statement and evidence in chief.
10. According to the petitioner, the respondent was registered as a group ranch under the Land (Group Representatives) Act, cap 287 Laws of Kenya.
11. The petitioner produced before the court a certificate of incorporation dated February 15, 2016 which was marked as (petitioner’s exhibit 1.)



12. The property known as Transmara/Oloirien/1 measuring approximately 13,833 hectares was registered in the name of the group ranch on the November 13, 2015 and the group representatives held it in trust for all the members thereof.
13. The petitioner produced a copy of the certificate of official search relating to the property known as Transmara/Oloirien/1 dated August 2, 2017 as (petitioner's exhibit 2.)
14. The petitioner informed the court that although she was a resident within the property owned by the respondent, the office bearers failed to include her as a beneficiary of the group ranch and allocate any portion of land to her.
15. The petitioner feeling that her rights had been violated, approached the secretary of the group ranch who oral informed her that the Constitution did not allow allocation of land to a daughter of an original member in the group ranch.
16. The petitioner not being satisfied with the above oral explanation wrote two letters dated April 24, 2016 and April 6, 2017 to the office bearers of the group ranch requesting to be allocated land. (petitioner's exhibit 3 & 4)
17. The two letters dated April 24, 2016 and April 6, 2017 did not elicit any response and therefore the petitioner proceeded to meet the chair of the group ranch in an effort to assert her rights.
18. The petitioner testified in court that upon meeting the chair of the group ranch, she was informed that the group ranch constitution only allowed widows to be registered in place of their husbands and not unmarried female children.
19. The chair informed her that daughters did not have a direct right to own a portion of the group ranch as per the provisions of the Constitution.
20. Upon realising that the office bearers of the group ranch would not include her in the adjudication register, the petitioner did a letter to the land adjudication & settlement officer on the May 17, 2017 requesting for assistance so that her name would be included in the adjudication register. (petitioner exhibit 5).
21. The response by the land adjudication & settlement officer was that the adjudication register had been closed and the titles were in the process of being issued.
22. Consequently, the land adjudication & settlement officer advised the petitioner to file a suit as their office had become functus officio.
23. According to the petitioner, in the entire group ranch, only widows were allocated their late husbands' portions of land and an addition two (2) women.
24. The two (2) women was her sister who was allocated land in trust of the brother and another one who was a disabled person.
25. The petitioner produced a list of the beneficiaries to the land owned by the group ranch. (petitioner exhibit 6.)
26. The petitioner informed the court that prior to the adjudication process, she occupied a portion of five (5) acres where she did farming.
27. After adjudication, this portion of five (5) acres which she occupied is now in the name of someone else who has a title to the same.



28. In essence therefore, the group ranch constitution and the office bearers have deprived her the rights to own the said land based on her sex and/or marital status in contravention of the Constitution of Kenya and the Community Land Act.
29. The petitioner's prayer was for the court to allocate her land within the group ranch as well as a plot in the shopping centre like any other member of the group ranch.
30. On cross-examination, the petitioner indicated that every member was given 36.5 acres together with a plot at the market place.
31. The petitioner indicated that she had procured the group ranch constitution from the registrar of group ranches in Nairobi.
32. According to the information obtained by the petitioner, she was not indicated as a member of the group ranch.
33. Nevertheless, the petitioner did not challenge the exclusion of her name in any Magistrate's Court as provided by law.
34. The petitioner stated that when adjudication began in the year 1980, she was young.
35. The petitioner further stated that she did not witness any demarcation process on the ground but was just informed that people had registered themselves for the adjudication process.
36. When the adjudication register was complete, the petitioner admitted that she did not raise any objection on the same.
37. The petitioner confirmed to the court that her mother had been registered as member No 106 and her name was Priscillah Rimas Munke.
38. The essence of registering the widow when the husband had passed away was to hold the property in trust for the children.
39. According to the petitioner, the group ranch constitution was discriminatory in terms of sex because it only recognised the male gender capable of being allocated land who included the fathers, sons and grandsons.
40. It is only after a husband had passed away when the wife and/or wives would be allocated land in trust for the rest of the family members.
41. The petitioner testified that although she was denied registration as a member, the brother known as Bernard Kemui Munkewas registered as member No668.
42. The petitioner further gave names of other male members of her family who were also registered and allocated land.
43. The petitioner referred to clause 3.1 of the group ranch constitution which provided in case of an unmarried female child of a group member, such a child shall only reside and have user rights in accordance to the membership accorded of the father as an original member.
44. The petitioner testified that the various letters produced as petitioner's exhibits 3,4 and 5 were served on the office bearers of the group ranch although she confirmed that none of them was acknowledged neither did she have any certificate of postage.
45. As appertains to the land, the petitioner confirmed to the court that it was sub-divided and transferred to individual beneficiaries in the year 2018.



46. As at the time of conducting this hearing, the mother and the brother had been given their title deeds.
47. In essence therefore, the property owned by the respondents known as Transmara/Oloirien/1 no longer exists.
48. The petitioner informed the court that she currently resides with her mother as the portion she occupied and did farming was no longer available to her.
49. The petitioner stated that her claim of the portion she was occupying and/or farming began in the year 2014.
50. The petitioner testified that the male children did not need to make any application to be members of the group ranch.
51. All that the male children required was to present their Kenyan identification cards and they would be recorded as members of the group ranch.
52. However, for the female children, they had to make a formal application which was different from the requirements applicable to the male children.
53. In conclusion, the petitioner indicated that she was born in the year 1969 and has never been married.
54. In re-examination, the petitioner stated that clause 3.1 referred to unmarried female children and not the male child.
55. As appertains the letters of protest produced as petitioner's exhibit 3, 4 and 5, the petitioner confirmed the same to have been received at the group ranch offices although none was stamped.
56. The petitioner reiterated that the male children only presented their kenyan identification cards for registration and did not have to make an application like the female unmarried children.
57. The petitioner indicated that the property registered in the name of the group ranch was for the general membership and persons who resided in it.
58. The petitioner upon completion of this re-examination, closed her case.

Respondent's Case.

59. The respondent's witness was one Julious Ole Mokita.
60. The witness informed the court that he was the secretary of the respondent group ranch and also the 3rd respondent.
61. The witness indicated that the chair was Noiko Oloiputa Miaron.
62. The witness testified that he would rely on the replying affidavit of the chairman dated May 14, 2018 and his own further affidavit dated October 19, 2021 and the witness statement dated November 9, 2021 as his evidence in chief.
63. The witness confirmed that the property known as Trasmara/Oloirien/1 was registered name of the group ranch and adjudicated upon.
64. According to the witness, the adjudication register was prepared by the land adjudication officer and all the beneficiaries either signed and/or affixed their signature their finger prints.
65. However, the witness indicated that all the persons in the adjudication register were those that were on the ground and members of the group ranch.



66. The witness informed the court that the petitioner on this matter raised a complaint as regards the adjudication register.
67. However, the respondent stated that the adjudication register was being prepared by the land adjudication and settlement officers and not the officials of the respondent.
68. However, according to the witness, every deserving resident of the area including girls and women were allocated land.
69. In the event any person and/or resident had any grievances and/or complaints, the witness informed the court that such grievances and/or complaints would be addressed to the land adjudication & settlement officer to make the appropriate ruling and/or decision.
70. The witness informed the court that all persons who were resident in the area registered themselves as members of the group ranch.
71. All these persons were then registered in the adjudication register in accordance to where they occupied.
72. Unfortunately, petitioner was not on the ground.
73. However, the petitioner's mother, sister and brother were on the ground and each of them was entered in the adjudication register and allocated land.
74. The witness stated that the petitioner's sister known as Lena Mungewas registered as member No 671.
75. At the time of preparing the adjudication register, the petitioner's sister was not married.
76. Consequently, the petitioner was not discriminated.
77. The witness testified that the first time he met the petitioner was in the year 2016.
78. However, at this particular time, the adjudication register had already been closed.
79. According to the witness's knowledge, the petitioner was a resident of Nairobi and was not on the ground.
80. The petitioner's sister who was on the ground was registered yet she was not married.
81. On the issue of the letters of protest adduced by the petitioner, the witness denied receiving any of those letters.
82. The witness informed the court that before dissolution of the group ranch in the year 2015, it had an operating office.
83. The witness then presented the adjudication register as respondents exhibit 1.
84. The witness informed the court that an allocation list was prepared which included schools, public utilities and those residents allocated parcels of land.
85. In the event a member of the group ranch had sold off his rights on the land he or she was allocated, the purchaser would then be indicated in the beneficiaries list.
86. It is this allocation list which was then forwarded to the lands offices for issuance of the titles.
87. The witness produced the allocation list as respondent's exhibit 2.
88. The witness then produced the green card of the property known as Transmara/Oloirien/1 as respondent's exhibit 3.



89. In reference to the green card, the witness confirmed that the property known as Transmara/Oloirien/1 was sub-divided on the March 13, 2018 to facilitate the issuance of title deeds to the individual members.
90. The witness testified that the respondent group ranch had a duly registered constitution which had been approved and adopted by all the members of the respondent group ranch.
91. The witness produced the respondent's group ranch constitution as respondent's exhibit 3.
92. In reference to clause 3.1 of the respondent group ranch constitution, the witness's view was that it did not discriminate the unmarried female children.
93. According to the witness, all children of any member were free to join upon following the registration process.
94. Consequently, there was no clause that prohibited unmarried female child to be members of the group ranch.
95. According to the witness, there was no reason to treat the petitioner with any discrimination.
96. All the petitioner's family members who were on the ground were allocated land.
97. In the witness's view, the petitioner only came after the adjudication process had been closed.
98. The witness indicated the petitioner's uncles had old children who were entitled to be registered as members which included both male and female children.
99. All the uncles children both male and female were registered as long as they were on the ground and benefited allocation equal shares of land as everyone else.
100. The size of land allocated to all members was 36.5 acres whether you were male or female.
101. Consequently, the witness denied infringing any constitutional rights as alleged in this petition.
102. The witness indicated that the adjudication process was supervised by various government offices and if there was any discrimination, then the entire process would have been halted.
103. In conclusion, the witness sought to have the petition be dismissed with costs as no infringement as no right had been infringed.
104. In cross-examination, the witness indicated that all deserving residents were allocated land.
105. The deserving residents were identified as those persons who were on the ground and their names entered in the adjudication record.
106. The process of identifying the deserving persons was done over a period of time and everyone was allowed to register as a member of the group ranch and become a member.
107. Consequently, the witness testified that the petitioner was not denied a chance to register as a member just because she was unmarried.
108. In reference to the group ranch constitution, the witness indicated that any child of a member was allowed to register as a member.
109. Similarly, the *Constitution* also provided that any unmarried female child of a member was entitled to usage rights and occupation but not ownership rights.



110. The witness indicated that the adjudication register contained both unmarried male and female children.
111. However, according to the witness, the emphasis of identifying the allocated member was through membership of the group ranch.
112. The inclusion of the provision on the unmarried female child was based on the cultural backgrounds.
113. The witness acknowledged that the Kenya *Constitution 2010* expressly provided that every citizen should have a right to own land regardless of the sex or marital status.
114. As regards the adjudication process, the witness testified that the demarcation and adjudication process of the group ranch property commenced in the year 2014 and was finalised on the February 19, 2016 when the final list was forwarded to the director of adjudication and settlement.
115. At the time the final list was forwarded to the director of adjudication and settlement, the petitioner had not raised any complaint.
116. The witness testified that the petitioner being a child of a member, she was entitled to be registered as a member.
117. Nevertheless, there was a process of registration which was to be observed.
118. The witness informed the court that every member accepted and/or confirmed their occupation by affixing their finger prints and/or signatures in the adjudication register.
119. The witness testified that in the event the petitioner had come earlier, then she would have been registered as a member, allocated land and entered in the adjudication register.
120. The witness reiterated that the petitioner was not a destitute and/or homeless because she was still entitled to rights under the mother's portion.
121. In re-examination, the witness confirmed that the adjudication process was not done in secrecy but openly.
122. The witness acknowledged that the petitioner's family in terms of the mother, brother and sister were on the ground and registered as members hence they were all allocated land.
123. The witness testified that none of the petitioner's family members who were on the ground did not inform the adjudication committee on any family member that was left out.
124. The witness insisted that the petitioner was not on the ground and this is the main ground that she was not allocated any land.
125. The witness explained that clause 3.1 was to cater and/or protect the rights of the unmarried female child even after the dissolution of the group ranch.
126. In particular, the witness stated that this clause 3.1 would cater for those girls who were not there but would come back later and reside within their parents' portion.
127. The witness clarified that in the event both the husband and the wife were alive, it was only the husband who would be registered as the member and not the wife.
128. At the close of this re-examination, the respondent's closed their case.



129. The court then directed the parties to file their written submissions which was complied with the petitioner filing her submissions on the June 10, 2022 while the respondent's filed their submissions on the June 20, 2022.

Analysis & Determination.

130. The court has gone through the pleadings, the oral and documentary evidence adduced in court, the submissions by the parties and the authorities cited therein and in its considered view, the main issues for determination are as follows; -

- a. Whether or not paragraph 5 of clause 3.1 In The Oloirien Group Ranch Constitution contravened article 27 of the Kenyan Constitution, 2010?
- b. Were the petitioner's rights to own a portion of the group ranch asserts hindered by the provisions in paragraph 5 of clause 3.1?
- c. Whether or not the petitioner is entitled to the reliefs sought in the petition.
- d. Costs of the petition.

Issue A- Whether or not paragraph 5 of clause 31. In the Oloirien Group Ranch constitution contravened article 27 of the Kenyan Constitution, 2010.

131. The petition seeks the court to evaluate the constitutionality of paragraph 5 in clause 3.1 the Oloirien Gropu Ranch constitution.

132. The entire clause 3 of Oloirien Group Ranch constitution reads as follows; -

133. Clause 3.1 of the Oloirien Group Ranch constitution provides as follows; -
general membership.

The membership of the group ranch and ownership of the group ranch assets shall be open and limited, in equal undivided shares, to an individual who is a registered member of the group ranch as at the date of adoption of this constitution and any other member who may be admitted or registered as such by fulfilling these conditions;

A child of a member may be registered as a member of the group ranch upon a resolution of the AGM.

In the case that a widowed woman whose husband was a member, she being a residual household head of the family, shall inherit her deceased husband's share of the group ranch area

Further to (2) above, in the case of a deceased member who was polygamous, the widows shall each inherit an equal portion of such member's share in the group

In the case of the unmarried female child of a member of the group ranch shall, automatic residence and user rights shall be accorded under the membership of the father.

A person who is not an original member, may on application and upon a resolution of the AGM be accepted and registered as a member and such member shall be known as an "acceptee". An acceptee shall enjoy any direct privileges as a member. A child of an Acceptee cannot be entitled for registration to membership of the group unless the same is approved by the AGM.

134. Clause 3.2 of the oloirien group ranch further provides as follows; -

The children and spouses of registered members of the group ranch shall have a user rights and beneficial interest in the group ranch deriving from a registered member.



A child of an acceptee cannot be entitled to registration of membership of the group unless the same is approved by the AGM.

The rights and responsibilities of men, women and children shall further be exercised and observed in accordance with the relevant laws of Kenya.

135. Finally, section 3.3 of Oloirien Group Ranch constitution states as follows; -

In the event that an adult qualifying for membership to the group was not included in the original register of members, such a person shall apply for membership through the management committee which shall put the application before the group ranch in the general meeting. Any such application for membership shall be approved by at least sixty percent (60%) of the members present and voting (subject to quorum.)

Where such an application is a qualified child of a registered member of the group, the management committee shall acknowledge and consider him a member and advise the registrar in writing to amend the register accordingly.

136. The petitioner's evidence in chief and which has not been refuted confirms that the petitioner is a daughter to an original member.

137. The petitioner further testified that pursuant to the provisions of paragraph 5 in clause 3.1 of the Constitution, the land adjudication committee of Oloirien Group Ranch, the management committee of the group ranch and the land adjudication & settlement officer failed to recognise the proprietary interests of the women and in particular the "unmarried female child" contrary to article 27 of the Constitution of Kenya, 2010.

138. Article 27 of the Constitution of Kenya, 2010 provides for equality and freedoms from discrimination. article 27 (3) particularly reads as follows; -

"The state shall not discriminate directly or indirectly against any person on any ground, including race, sex, pregnancy, marital status, health status, ethnic or social origin, colour, age, disability, religion, conscience, belief, culture, dress, language or birth."

139. In evaluating the petitioner's claim, this court should at all times endeavour to understand the direct and/or indirect intention of the group ranch.

140. What was the purpose of making this particular provision in paragraph 5 under clause 3.1 of the Oloirien Group Ranch constitution?

141. According to the petitioner, this particular paragraph discriminated the unmarried female child of an original member by limiting the rights of such a person to only user and/or occupational rights.

142. The petitioner's testimony was that the unmarried male child of an original member was allowed to register and be allocated land by just presenting his Kenyan identification card.

143. On the other hand, the unmarried female child was required to make an application and await the deliberations and/or resolutions of the members to the group ranch in either a special and/or general meeting.

144. The petitioner presented to the court various letters dated April 24, 2016, April 6, 2017 and May 17, 2017 to proof her request for allocation of the portion which she was occupying and/or using.



145. The petitioner informed the court that the management committee of the group ranch never acted on the above-mentioned letters and upon further inquiry, she was informed that the group ranch did not allocate land to any unmarried female child of an original member.
146. A plain reading of paragraph 5 in clause 3.1 of the group ranch constitution clearly bring forth the impression that this paragraph was specifically provided to cater for the female unmarried children of the original members.
147. The deliberate use of the words “female unmarried child” connotes that the rights of a female unmarried child were different from those of male unmarried child.
148. The court’s interpretation of the rights and benefits of the female unmarried child under paragraph 5 of clause 3.1 were only limited to user and/or residential rights which are qualified rights.
149. These qualified rights accorded to the female unmarried child were different to those accorded to the male unmarried child who had no qualified rights but full rights including being registered and/or allocated land in the Group Ranch.
150. The distinction of what rights were available between the female unmarried child and the male unmarried child in the group ranch constitution was indeed discriminatory based on the sex and marital status of the petitioner as a citizen of this republic.

Issue.B- Were the petitioner’s rights to own a portion of the group ranch asserts hindered by the provisions in paragraph 5 of clause 3.1?

151. The petition is prayer No c, d and e seeks for a declaration to the effect that the adjudication register, the survey sheets and all other adjudication records relating to the group ranch be declared invalid to the extend that they contravene article 2 and 27 of the Constitution of Kenya 2010 and the spirit and letter of the Community Land Act.
152. Based on the invalidation of the adjudication register, the survey sheets and all other adjudication records, the court to quash the adjudication register of the group ranch and direct the representatives of the group ranch to make a fresh adjudication register which should include the petitioner and allocate her land equivalent to other members of the group ranch.
153. According to the evidence of the petitioner, the management committee of the group ranch failed to act on her request to be allocated land despite occupying some portion of five (5) acres which she had put in agricultural use and occupied the same.
154. A letter dated April 24, 2016 to the land adjudication committee of the group ranch by the petitioner was produced as petitioner exhibit 3.
155. The second letter by the petitioner was dated April 6, 2017 to the chairman of the group ranch and was produced as petitioner exhibit 4.
156. The last letter by the petitioner was dated May 17, 2017 addressed to the district land adjudication officer, Transmara West and produced as petitioner exhibit 5.
157. The letter dated April 24, 2016 to the chairman – Oloirien land committee does not bear any form of acknowledgement.
158. The second letter dated April 6, 2017 to the chairman of the group ranch only has an acknowledgement stamp from the land adjudication officer in Transmara West.



159. The third Letter dated May 17, 2017 to the district land adjudication officer, Transmara West has only an acknowledgement of the district land registry, Transmara West.
160. During the hearing of this petition, the petitioner herein acknowledged that she had never been a member of the group ranch.
161. The petitioner testimony was that she was a female unmarried daughter of an original member who had occupied a portion of five (5) acres separate from the portion occupied by her father who had passed away and now the same was allocated to the mother.
162. In other words, the petitioner's position was that she had qualified to being a member of the group ranch and entitled to an equal share of the asserts belonging to the group ranch as of her own right.
163. The respondent's position of the other hand was that the petitioner herein was never a member of the group ranch at any one particular time.
164. The testimony of the respondent's witness was that the petitioner had modalities of acquiring of allocation within the assert of the group ranch.
165. The first modality was through the father and/or mother who had been recognised as an original member.
166. The second modality was through registering as new member of the group ranch upon a resolution being passed at either a special and/or general meeting of members.
167. The respondent witness confirmed that the second modality of registering as a new member did not discriminate either male or female, unmarried and/or married but simply required an application by anyone who felt entitled to be allocated a portion of the group ranch asserts.
168. The respondent's witness informed the court that the adjudication of the group ranch commenced in the year 2014 and got finalised in the year 2016.
169. Consequently, at the time the petitioner approached the management committee of the group ranch, the adjudication register had been closed and the adjudication documents forwarded to the director of adjudication and settlement for further action and issuance of the title deeds.
170. In conclusion therefore, the respondent's witness denied the allegation that the petitioner's claim was disregarded on the basis of her marital status and/or sex.
171. Looking at clause 3 .1 and in particular paragraph 1, 2 and 6 of the group ranch constitution, the court is of the view that any adjudication rights in the property known as Transmara/Oloirien/1 owned by the group ranch emanated from the various categories of membership open to be general public.
172. Paragraph 1, 2 and 6 of clause 3.1 provide as follows; -
The membership of the group ranch and ownership of the group ranch assets shall be open and limited, in equal undivided shares, to an individual who is a registered member of the group ranch as at the date of adoption of this constitution and any other member who may be admitted or registered as such by fulfilling these conditions;
173. Paragraph 2 of the clause 3.1 reads as follows; -
A child of a member may be registered as a member of the group ranch upon a resolution of the AGM.
174. Paragraph 6 on clause 3.1 further provided as follows; -



- A person who is not an original member, may on application and upon a resolution of the AGM be accepted and registered as a member and such member shall be known as an “acceptee”. An acceptee shall enjoy any direct privileges as a member. A child of an acceptee cannot be entitled for registration to membership of the group unless the same is approved by the AGM.
175. The first group of members were those identified as original members who were the heads of the different family units occupying various portions within the assert of the group ranch.
 176. The original members were specifically those who had registered themselves as members as at the date of adoption of the group ranch constitution.
 177. Clause 3.2 outlined specific rights accorded to the immediate family members of the original members as appertains the portions allocated.
 178. Clause 3.2 reads as follows; -
The children and spouses of registered members of the group ranch shall have a user rights and beneficial interest in the group ranch deriving from a registered member.
 179. The second category of members was provided in paragraph 2 of the clause 3.1 which read as follows; -
A child of a member may be registered as a member of the group ranch upon a resolution of the AGM.
 180. In this provision, any child of a member be it a female and/or male was entitled to make an application to the representatives of the group ranch and upon calling of a special and/or general meetings, a resolution would be passed for them to be deemed as members of the group ranch and entitled to a share of the assert thereof.
 181. The third and last group of members were those provided for under paragraph 6 of clause 3.1 which provided as follows; -
“A person who is not an original member, may on application and upon a resolution of the AGM be accepted and registered as a member and such member shall be known as an “acceptee”. An acceptee shall enjoy any direct privileges as a member. A child of an acceptee cannot be entitled for registration to membership of the group unless the same is approved by the AGM.”
 182. This last category of applied to any general member of the public who was not from the family tree of an original member but had an interest to acquire and/or occupied a portion of the assert to be recognised as a member and thereafter benefit from the adjudication of the group ranch assert.
 183. The court having fully appreciated the various categories of members in the group ranch, the court needs to understand under which category the petitioner applied to be a member and was denied acceptance on the basis of her sex and/or marital status.
 184. As earlier discussed, the first category was specifically for the heads of families who were already registered as at the time of the adoption of the group ranch constitution on the November 6, 2014.
 185. Under this category of membership, the petitioner’s evidence is to the effect that her mother was recognised as the head of the family due to the death of her father and assigned membership No 106.
 186. In essence therefore, this form of membership in the group ranch was not available to the petitioner.



187. The third category of membership known as acceptee members was the one for the general public who either wanted to be adjudicated some portion of the group assert of which the petitioner has not made any claim under this category.
188. The only remaining category left for the petitioner is that one provided in paragraph 2 of the clause 3.1 that catered for the children on the original owners.
189. For clarity, paragraph 2 of clause 3.1 reads as follows; -
- A child of a member may be registered as a member of the group ranch upon a resolution of the AGM.
190. The first point that comes to the court’s mind on looking at this provision is the discretionary nature of this membership.
191. The word “may” clearly indicate that this particular provision is applicable on the discretion of a child making a formal application to be a member of the group ranch.
192. The net-effect of this provision in the mind of the court is that there is no automatic right to be a member of the group ranch only by virtue of being a child to an original member.
193. Any child of an original member must move the management committee who upon receipt of the application present the same to the already existing member for an approval and/or acceptance to be a member.
194. The other point that comes to the mind of the court is that this particular membership was not restrictive in terms of age for a child of an original member.
195. Consequently, nothing would prohibit either a minor and/or adult child of an original member in making an application to be a member of the group ranch.
196. Indeed, the petitioner has testified in court that the younger brother known as Bernard Kemui Munkewho was a minor was duly registered as member No 668 and allocated land.
197. Similarly, it was also the petitioner’s evidence that her sister was also registered as a member and allocated land.
198. The question that begs to be answered at this point in time is whether or not the petitioner made any application for registration as a member of the group ranch?
199. According to the petitioner’s evidence in chief, she admitted that she has never been a member of the group ranch but simply occupied a portion of five (5) acres within the assert owned by the group ranch.
200. The first letter by the petitioner dated April 24, 2016 to the chairman Oloirien Land Committee was clear in terms of its contents.
201. This particular letter was titled “application for a piece of land at Oloirien”
202. The second letter by the petitioner dated April 6, 2017 was addressed to the chairman of the group ranch was again titled as “application for allocation of land as amember of Oloirien Group Ranch.”



203. The court is particularly interested in the first paragraph of this letter which reads out as follows; -
- “I refer to the aforesaid matter and my application dated April 24, 2016 for allocation of land as a member of Oloirien Group Ranch as well as several follow up meetings and telephone conversations.....”
204. The impression the court gets from the contents of these two letters is that the petitioner believed an application to be a member of the group ranch had been made through her letter dated April 24, 2016.
205. The petitioner’s letter dated April 24, 2016 is addressed to “the chairman- Oloirien land committee”.
206. This description of the addressee is rather vague and confusing.
207. The court is unable to authoritatively make a finding whether the letter was addressed to the chairman of Oloirien group ranch or the chairman of land adjudication committee Oloirien group ranch.
208. Either way, the heading and the body of the letter dated April 24, 2016 does not make any reference for the applicant to be registered as a member of the group ranch.
209. It simply refers to the allocation of land and not registration as a member of the group ranch.
210. Looking at all the facts and evidence hereinabove, the court is of the view that the petitioner has failed to produce any application to be a member of the group ranch as envisaged in paragraph 2 of clause 3.1 and therefore has not provided for any basis upon which the respondents could have discriminated her application on the basis of their sex and/or marital status.
211. The next issue is whether or not a person who is not a member of a group ranch can benefit and/or be allocated any rights to the assets of such a group ranch.
212. The answer to the above question is found in the preambles of the [Land Adjudication Act](#), cap 284 and the [Land \(Group Representatives\) Act](#), cap 287.
213. The preamble of the [Land Adjudication Act](#), cap 284 provides as follows; -
- “An act of parliament to provide for the ascertainment and recording of rights and interests in trust land, and for purposes connected therewith and purposes incidental thereto.”
214. On the other hand, the preamble of the [Land \(Group Representatives\) Act](#), cap 287 provides as follows; -
- “An act of parliament to provide for the incorporation of representatives of groups who have been recorded as owners of land under the [Land Adjudication Act](#), for purposes connected therewith and purposes incidental thereto.”
215. Looking at the two preambles, the court is of the view that land to be administered under the [Land Adjudication Act](#) cap 284 is usually trust land and by extension community land which after the adjudication, the registered owner becomes the first registered proprietor of the portion allocated to him/her by the government.
216. Every person who is resident within the area under adjudication or desires to be adjudicated any portion of land within an adjudication area is at liberty to approach the land adjudication committee to be considered for adjudication.
217. An adjudication of land under the [Land Adjudication Act](#), cap 284 does not need any form of membership.



218. On the other hand, an adjudication under the *Land (Group Representatives) Act*, cap 287 has different salient features.
219. First and foremost, the land for adjudication under the *Land (Group Representatives) Act*, cap 287 is seen to be private land in the eyes of the law.
220. The owner of the land under the *Land (Group Representatives) Act*, cap 287 is the group ranch that is registered as the first proprietor.
221. The group ranch will then adjudicate the same to all its categories of members and transfer the members interests into their individual names.
222. In other words, the land owned by a group ranch cannot be adjudicated to a none member just virtue of that person occupying a portion of the group ranch assert.
223. Such a none member is a stranger within the members of the group ranch and can not claim rights in the asset of the group ranch until and unless he or she is lawfully accepted upon which, a right to the assert of the group ranch can arise.
224. In conclusion therefore, the court is of the considered view that the failure by the respondent to allocate the petitioner land within the property known as Transmara/Oloirien/1 was not based on any form of discrimination based on sex and/or marital status pursuant to paragraph 5 of clause 3.1 of the group ranch constitution.

Issue C- Whether or not the petitioner isentitled to the reliefs sought in thepetition.

225. Following the findings in issues a and b hereinabove, the court is of the opinion that the petitioner partially succeeded in prayer (a) only.
226. On prayer no (b)(c)(d) and (e), the court is of the considered view that the petitioner is not entitled to the prayers sought.

Issue D-Costs Of The Petition.

227. As appertains the costs of the petition, the court is of the view that each party should bear their costs.
228. In conclusion therefore, the court makes the following orders appertaining the petition herein; -
 - i. Paragraph 5 of clause 3.1 in theOloirien Group Ranch constitutioncontravenes article 27(3) of the Kenyan *Constitution, 2010* and therefore is therefore unconstitutional.
 - ii. Prayers b, c, d and e of the petition are hereby dismissed.
 - iii. Each party to bear its own costs.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON DAY OF 6TH OCTOBER, 2022.

EMMANUEL.M.WASHE

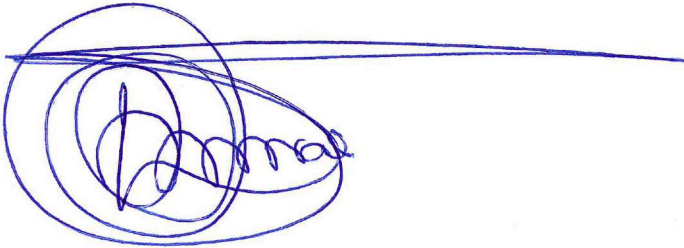
JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT: Ngeno

ADVOCATES FOR THE APPLICANT: Ogolla for Petitioner



A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal line extending to the right.