



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL CASE NO.8 OF 2004

JULIUS KERIKA LEPERES & 19 OTHERS PLAINTIFFS

VERSUS

NKAMA GROUP RANCH & 2 OTHERS DEFENDANTS

RULING

The Applicants by their Chamber Summons of the 9th January, 2004 seek the following orders:-

(4) A TEMPORARY INJUNCTION be and hereby granted to restrain the Defendants jointly and severally whether by themselves, their agents or servant of howsoever from subdividing the parcel of land known as KAJIADO/KAPUTIEISOUTH7/ 94 and issuing individual title deeds until this application is heard inter-parties determined.

(5) AN ORDER compelling the defendants jointly or severally to issue the Plaintiffs certificate of membership and register them in the said group ranch.

It is the contention of the Applicants that they are members of the Nkama Group Ranch as they claim they were born on the Group Ranch. They claim that despite that, the Respondents have refused to register them as members.

In the Supporting Affidavit the second Applicant/Plaintiff states that 164 members were registered but that 20, being the Plaintiffs herein, were not so registered.

In the Replying Affidavit of the 3rd Respondent who is the Secretary of the 1st Respondent depones to the fact that the 1,3,5, 6,9,10,11,16 and 19 Applicants in RMCC No.32 of 1993 Kajiado sought an injunction against the sub-division of the Ranch and a declaration that they were members of the 1st Respondent. He states that the injunction application was dismissed on its merits and no appeal has been preferred against the Ruling. Annexed to the Replying Affidavit are copies of the Complaint, Chamber Summons and Defence in that suit. However the relief sought in the Chamber Summons is for an injunction to restrain the 3rd and 4th Defendants in that suit, who are the 2nd and 3rd Respondents herein from acting as officials of the 1st Respondent. No Ruling is annexed and I will not deal with this matter further as the question of res-judicata does not appear to arise.

It was Mr. Ombete's submission that every person whether minor or otherwise incapacitated or an adult should have been registered as a member.

The Land Adjudication Act (CAP) 284 provides for the recording of rights and Interests in Trust land and section 13 provides a method for any person to make a claim to trust land.

The Land (Group Representative) Act 287 (The Act) provides for the Incorporation of representative groups who have been recorded as owners under the Land Adjudication Act. The Act in section 17 provides for a Register of members (including those under a disability). Section 28 of the Act states that where a question arises whether a particular person is a member of a group, a certificate signed by a majority of the group representatives shall be conclusive of the question. Provided that a person who is aggrieved by issue of such a certificate may apply to a District Magistrate Court's having jurisdiction in the area to determine the question, and in such a case the determination of the court shall be conclusive.

The issue in this matter is simple, were the Plaintiffs included in the register of members or not.

They say they were not so included. As such their remedy is to apply to the District Magistrate's Court Kajiado as they are aggrieved by not being included in the register.

Mr. Ombete submitted that the High Court has unlimited jurisdiction. However where a special procedure is provided for in an Act, that procedure must be observed and the jurisdiction of the High Court is therefore restricted.

In the result I do not see that the Applicant has shown that it has a prima facie case with a probability of success and as a result I dismiss this application with costs to the Respondent.

Dated and delivered at Nairobi this 26th day of April, 2005

P.J. RANSLEY

JUDGE