



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

Civil Suit 252 of 2005

STANLEY KAMAREN RIAMIT.....1ST PLAINTIFF

OMAH M. NAISHO.....2ND PLAINTIFF

VERSUS

ELIJAH SIOLOLO

KEMERAI SILIANTOR

JOSEPH TIKAIRA

OLOISHURO NARIYO

SENET OLE RIAMIT

JEREMIAH K. MEIKWAYA

MEIN OLE NANTENYA

**OLOONFUBIU OLOLDANDASH.....
DEFENDANTS**

RULING

The Applicant applies for an order that:

1. This suit be a representative suit and
2. That an injunction do issue restraining the Defendants from using the funds held in a bank account of the Self Help Group. The Applicants rely on the Supporting Affidavit of the 2nd Plaintiff/ Applicant in which it is stated numerous persons have an interest in the suit.

The orders sought are as follows:

2. THAT this Honorable court be pleased to grant the Plaintiffs/Applicants leave to file this suit in a representative capacity on behalf of members of Maji Moto ranch self help group other than the defendants herein.
3. THAT an injunction do issue restraining the Defendants as directors, trustees and signatories or howsoever of Maji Moto Group ranch self help group wildlife fund by themselves, their agents,

servants, employees and/or otherwise howsoever from continuing to withdraw, utilize, disburse, use funds held in the bank account number 12072815 of Maji Moto Group ranch self help group or such other account of Maji Moto Group Ranch self Help group pending the hearing of this suit and or pending further orders of this honorable court.

I see no reason not to grant the request that this suit be a representative suit and make the order sought in prayer 2. The Applicants to cause an advertisement to be published in the Daily Nation within 14 days from today.

The 2nd Applicant in his Supporting Affidavit for an injunction in paragraph 15 and 16 of his Affidavit makes allegations that the Defendants have failed to account for the funds in the Annuals General Meeting. In paragraph 20 the 2nd Applicant states that he is fearful the Defendant may have misappropriated the group's monies amounting to Kshs 25 Million.

In Reply the 1st Defendant sets out the sources of the Group's funds and explains on what causes the monies are expended. The Replying Affidavit sworn by the 5th Defendant explains in what way the accounts are operated and the procedure for distributing funds to members. It is said hardship has already been caused due to the interim ex parte injunction order granted herein.

In order to succeed the Applicant must show that they have a prima facie case with a probability of success and that damages are not an adequate remedy. In my view, the general allegation of misappropriation and wrong conduct by the defendant are insufficient to say at this stage that the Defendants are guilty as charged. There is indeed a remedy for the members and that is to remove the defendants from office in accordance with the provisions of the Constitution of the Group Ranch. This was not adduced in evidence but I am informed by both counsel that such a constitution exists.

In any event if the Defendants have misappropriated money then they are personally liable to refund it.

I accept that the funds are being used for the welfare of the Group Ranch members and there is nothing on record to refute their statements that this is so. I do not think that this is a proper case to order an injunction as prayed and therefore decline to do so. The interim injunction is therefore discharged. Costs will be costs in the cause.

DATED and DELIVERED at NAIROBI on 7th July 2005

P.J RANSLEY

JUDGE