



**Kelvin & 5 others v Ng'aari Group Ranch & 7 others (Environment & Land Case E005 of 2020) [2025] KEELC 3051 (KLR) (12 March 2025) (Judgment)**

Neutral citation: [2025] KEELC 3051 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE E005 OF 2020**

**AK BOR, J  
MARCH 12, 2025**

**BETWEEN**

**ARAMAN PALORI KELVIN ..... 1<sup>ST</sup> PLAINTIFF  
VINCENT SAM LENGEEES ..... 2<sup>ND</sup> PLAINTIFF  
LASI LETIWA ..... 3<sup>RD</sup> PLAINTIFF  
MARK MUSA ARAMA ..... 4<sup>TH</sup> PLAINTIFF  
SOIM LEKUME ..... 5<sup>TH</sup> PLAINTIFF  
GABRIEL LEKALASIMI ..... 6<sup>TH</sup> PLAINTIFF**

**AND**

**NG'AARI GROUP RANCH ..... 1<sup>ST</sup> DEFENDANT  
CHAIRMAN, NG'AARI GROUP RANCH ..... 2<sup>ND</sup> DEFENDANT  
SECRETARY, NG'AARI GROUP RANCH ..... 3<sup>RD</sup> DEFENDANT  
TREASURER, NG'AARI GROUP RANCH ..... 4<sup>TH</sup> DEFENDANT  
COUNTY GOVERNMENT OF SAMBURU ..... 5<sup>TH</sup> DEFENDANT  
NYAHURURU LAND REGISTRY ..... 6<sup>TH</sup> DEFENDANT  
CHIEF LANDS REGISTRAR ..... 7<sup>TH</sup> DEFENDANT  
THE HON ATTORNEY GENERAL ..... 8<sup>TH</sup> DEFENDANT**

**JUDGMENT**

1. The Plaintiffs claim in the Amended Plaintiff dated 23/11/2023 is that sometimes in 2010 during the annual general meeting (AGM) of Ng'aari Group Ranch, the members agreed to have the group ranch



land measuring approximately 5000 acres demarcated and allocated to its members. Each member of the Ikuroro age set was to be entitled to land for three children, members of Lroli age set were to get land for two children. In addition, no wife was to be allocated land unless she was a widow and her husband had been a member of the Group Ranch. Lastly, non-members were not to be allocated land. Members were to pay certain amounts of money for the allocation.

2. The Plaintiffs' claim is that through gross violations, breach of trust, fraud and illegality, the officials of Ng'aari Group Ranch allocated the group's land and failed to inform the members how the land allocation was done. They set out particulars of breach of trust, fraud and illegality by the officials of Ngaari Group Ranch. They gave a list of 95 members of Ngaari Group Ranch who they claimed were not allocated land. They gave names of 37 persons who they termed as non-members who were allocated land in the Ngaari Group Ranch.
3. The Plaintiffs claimed that members of Ngaari Group Ranch representing those with complaints held a meeting on 12/10/2020 to inquire into the allocation of land to committee members, verify the minors allocated land and those in the register who were not allocated land. Lastly, they were to ascertain the non-members who were allocated land in Ng'aari Group Ranch.
4. The Plaintiffs sought the dissolution of the officials and committee members of Ng'aari Group Ranch and for the election of new office bearers to be conducted within 60 days as the court may order. They sought an injunction to restrain the Defendants from subdividing, processing and issuing titles based on the list provided by Ng'aari Group Ranch and generally prohibit the issuance of title documents to any person with respect to the land covered by Ng'aari Group Ranch located within Samburu County.
5. The Plaintiffs sought a mandatory injunction to compel the 1<sup>st</sup> to 4<sup>th</sup> Defendants to file a statement of account together with bank statements for the payments made by the members on account of registration fees pursuant to the resolution of Ng'aari Group Ranch. They sought that after the taking of accounts, any official found to have misappropriated any group ranch contribution be made personally liable and condemned to pay the misappropriated funds. Additionally, they sought to have the original membership register of Ng'aari Group Ranch delivered in court. They also sought to have the 1<sup>st</sup> to 4<sup>th</sup> Defendants compelled to provide minutes and names of the deceased members and those who replaced them in the allocation; minors allocated parcels of land; and persons who sold their parcels of land and whether they had been reallocated new parcels of land.
6. In their defence dated 5/11/2021, the 1<sup>st</sup> to 4<sup>th</sup> Defendants denied the Plaintiff's claim and averred that Ng'aari Group Ranch was not in support of the suit because the list or consent which the Plaintiffs attached to their claim contained fictitious names and identity card numbers with the signatures appearing to have been signed by the same hand yet most members of the ranch were illiterate. They averred that the 2<sup>nd</sup> to 4<sup>th</sup> Defendants were elected as the representatives of the 1<sup>st</sup> Defendant on 9/9/2010 after Ngaari Group Ranch was incorporated under Section 7 of the Land (Group Representatives) Act. They denied that any deliberations took place in the AGM of 2010 relating to the demarcation and allocation of the group ranch as the Plaintiffs alleged.
7. They averred that in the AGM held on 20/8/2011 at Ng'aari Primary School grounds, it was resolved that registration of new members would commence on 5/9/2011 and the community village elders were to identify and enlist the children of the members in the two age sets of Ikuroro and Lroli. The 1<sup>st</sup> to 4<sup>th</sup> Defendants were emphatic that they did not collect any money from the group members and denied issuing any receipts. They stated that the reconstruction of the 1<sup>st</sup> Defendant's register commenced in 2011 and was completed in 2014 when the register was closed. Further, that the new register was read out to the members in the AGM held on 20/8/2014 at Ng'aari Primary School and



- the members confirmed that it was correct and no objection was raised regarding the register. That it was resolved at that AGM that the group would be dissolved to pave way for demarcation.
8. They claimed that consent for the dissolution of Ng'aari Group Ranch was granted by the Director of Lands Adjudication and Settlement on 8/11/2018 and one of the conditions was that the group was to be dissolved after subdivision and transfer of the group ranch land to members listed in the final register which the 1<sup>st</sup> to 4<sup>th</sup> Defendants stated was completed before this suit was filed. They denied that the register presented by the Plaintiffs emanated from Ng'aari Group Ranch and clarified that it was different from the genuine register. They explained that land was allocated to deserving persons in accordance with the register dated 29/9/2020 and denied that any land was allocated to non-members of the group or that land was not allocated to 170 deserving members as the Plaintiffs claimed.
  9. The 1<sup>st</sup> to 4<sup>th</sup> Defendants averred that the Plaintiffs were allocated land in accordance with the 1<sup>st</sup> Defendant's register and that their title deeds were ready for collection as were titles for the other 2470 members and that this suit was therefore misconceived. They went further to add that the group register and other documents were available for perusal and that it was the six Plaintiffs only who were complaining. They added that the orders granted by the court had created tension and unrest on the ground because the group members expected to collect their title deeds which were ready for distribution.
  10. They denied that the Plaintiffs deserved the orders they seek and added that the 1<sup>st</sup> Defendant was to be dissolved and that the 2464 members who were not parties to this suit would be adversely affected if the orders sought by the Plaintiffs were granted. They explained that all the persons listed in the Ng'aari Group Ranch register dated 29/9/2020 deserved to be allocated land and that some of the persons shared the surname which was common in Samburu since most people came from the same clan. They urged the court to dismiss the suit.
  11. In the statement of defence filed on 17/11/2022, the 4<sup>th</sup> to 8<sup>th</sup> Defendants denied the Plaintiffs' claim and averred that the Ng'aari Group Ranch was subject to adjudication in 2006 and titling for Ng'aari Group Ranch was done in 2010. Further, that the mutation forms, area and beneficiary lists, title deed, Land Control Board (LCB) consent and the registry index map (RIM) amendment were forwarded to the District Land Registrar for preparation and issuance of titles. They maintained that the Plaintiffs' claim did not disclose any cause of action against them.
  12. The hearing of this suit proceeded at the Nyahururu Law Court on 30/9/2024. Araman Palori Kelvin, the 1<sup>st</sup> Plaintiff gave evidence and adopted his witness statement dated 18/7/2023. He told the court that he was member number 1015 of Ng'aari Group Ranch. He produced a copy of the consent signed by members of the 1<sup>st</sup> Defendant who he claimed supported this case. He told the court that sometime in 2010 during the AGM, members of Ng'aari Group Ranch agreed to have the group's land measuring 5000 acres demarcated and allocated to members vide which each member of the Ikuroro age-set, that is those who were circumcised in 1976, were entitled to land for three children while those of the Lroli age-set who were circumcised in 1990 would be entitled to land for two children. No wife was to be allocated land unless she was a widow and her husband was a member of the Ng'aari Group Ranch. In addition, non- members were not to be allocated land from the group ranch.
  13. He told the court that the AGM of 2010 resolved that members were required to pay Kshs. 2,000/= and children Kshs. 600/= for those entitled to be allocated land, he produced copies of some of the receipts. That the 1<sup>st</sup> Defendant started a verification exercise leading to the allocation list which he claimed was compiled secretly without public or the membership participation and they had just been informed that the final list was being forwarded to the land's registry for the processing of the titles and their issuance.



14. He told the court that there was gross violation of trust by the officials of Ng'aari Group Ranch in the allocation process which he claimed was saddled with nepotism, high level secrecy and public officers engaging in unethical conduct such that Samburu County Government officials got land yet they were not members of Ng'aari Group Ranch. He reiterated that 170 lawful members of the Group Ranch were not allocated land.
15. He claimed that as the chairman of the group ranch, the 2<sup>nd</sup> Defendant had allocated land to 22 of his nuclear family including wives, daughters and sons as well as a sister with some having more than two parcels of land. That as secretary, the 3<sup>rd</sup> Defendant allocated land to his children, wife and deceased father and in total they were located 20 parcels of land. That the 4<sup>th</sup> Defendant who was the group treasurer had allocated land to 16 of his children. He claimed that for Geoffrey Lekupuny, a committee member, 17 of his family members who included his wife were allocated land. Lenguro Tiko, an Assistant Chief had 18 of his children allocated 2 parcels each while Mr. Lenabaala had his 18 children allocated land. For Douglas Leboiyare, his 10 children were each allocated land, while for Joseph Lekisolish, his wife and 5 children were allocated land. He added that Joseph Loloju who was an aspiring MCA was allocated land alongside 4 of his children.
16. He told the court that on 12/10/2020 members representing those who had complaints held a meeting with the Deputy County Commissioner, Samburu Central and they were charged to verify those in the register who were not allocated land, the non-members who were allocated land, the allocation of land to committee members and the minors who were allocated land. He relied on the letter dated 26/10/2020.
17. He told the court that he and the persons he presented had a legitimate expectation to have information and records of the group ranch so that they could verify and approve the final allocation list. Further, that if the reliefs sought were not granted their right to own property would be infringed and there would be a breach of peace if the matter was not handled with sobriety.
18. When cross examined, he told the court that he became a member of the group ranch when he was registered in 2010. The group ranch was started in 1990 and the officials who were in office were elected after 1990. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants were elected in 2010. He claimed that he only attended 65% of the meetings because he worked in Nairobi as a police officer. They land demarcation started in 2020 and after allocation the group ranch was to be dissolved. He was emphatic that there was no meeting for replacing deceased members. He later came to learn that the officials held their own meeting and replaced the deceased persons without the knowledge of those who were to replace them and that this happened during the Covid 19 period. He was emphatic that there was no resolution for upgrading the register to include new members. He conceded that the register used to demarcate the group ranch was the one prepared in 1990 which had new members added over time. The process took place in the AGMs, which is how he became a member. He added that the mandate to upgrade the register fell on the officials especially the chairman.
19. He conceded that the registers deposited in court were the final registers for Ng'aari Group Ranch. He told the court that the names in the register were read out to members in the AGM before the register was closed. There were verbal objections by families of the deceased members on the replacement of the deceased persons. He expounded that this happened at a small meeting which he attended and which was not the AGM because there was Covid 19. None of the Plaintiffs raised objections. He conceded that the six Plaintiffs were each allocated one parcel of land. He maintained that they represented other members who were not before court even though they had not sworn affidavits. They could not travel to court but knew that he had filed a case for them and they had had meetings.



20. He took issue with the list for the allocation of the Ng'aari Group Ranch which the 1<sup>st</sup> to 4<sup>th</sup> Defendants were relying on. Some parcels of land were allocated for conservation against the wishes of the members. Some names appeared more than once implying that one person could get 2 or 3 parcels of land. He mentioned that number 42 and 43 were the same person just like 55 and 56. He was emphatic that everyone was to get equal shares in the land allocation. He was not aware that they were required to file objections with the Land Adjudication Officer within 60 days. The Ministry of Lands and Survey Department was involved in the process. He came to learn in October, 2020 that allocation had been done.
21. He claimed that some officials from Samburu County Government benefited from the allocation yet they were not members of Ng'aari Group Ranch. They knew them but did not deem it necessary to add them to the suit. He was emphatic that those persons were not members of the group ranch and did not live in the area. He gave a list containing wives and children of the 2<sup>nd</sup> to the 4<sup>th</sup> Defendants. He explained that it was common in Samburu to use one surname for people who were related as members of the extended family but not for a clan.
22. From his family, three brothers benefited from the land allocation but his two brothers did not get land. The 2<sup>nd</sup> Plaintiff only got one parcel but his brothers and sisters did not. The 3<sup>rd</sup> Plaintiff got one parcel but his family members did not get. The 4<sup>th</sup> Plaintiff who was his brother only got one parcel as did the 5<sup>th</sup> Plaintiff, but his brothers did not get. The 6<sup>th</sup> Plaintiff also got one parcel but his brother did not. He told the court that the list of members of Ng'aari Group Ranch who were not allocated land which he produced in court was compiled when he was there. He did not consult the register. A majority of those persons were from his village and he knew them. Some of the persons appearing on the list were later allocated land after they came to court. He told the court that given time he could verify the position.
23. The list which he produced in court showing identity numbers against parcel numbers allocated was given to him by an informer when they had a meeting at the Safari Hotel. The list was not signed or stamped by the officials of Ng'aari Group Ranch. He added that 70% of that list agreed with what was on the list filed by the 1<sup>st</sup> to 4<sup>th</sup> Defendants. He relied on the receipts issued for payments for title deeds bearing different dates in 2010 and 2011. He stated that he paid Kshs. 2,000/= to the late Joseph Leorpila on 18/12/2010 and added that Joseph was collecting money to forward to the officials of the Ng'aari Group Ranch.
24. He conceded that the process of adjudication, demarcation and processing of titles was a government project funded by the government. Neighbouring group ranches also benefited from a similar government exercise. The process took place and was completed. He had not collected his title. According to him, the group ranch had 2499 members. His prayer to the court was for the demarcation and allocation process to be nullified so that it could start afresh.
25. He hastened to add that the members were not in a position to finance this process while emphasising that there were around 170 members who were not happy with the demarcation and allocation of the Ng'aari Group Ranch land. He clarified that during AGMs the dead members would be represented by their next of kin who would sign against their names in the register. He had not looked at the list filed by the Defendants to see if it tallied with the register, it was the first time he was seeing it. Since the allocation was complete there were many people who had been displaced even though they had not lodged any complaint anywhere.
26. On re-examination, he confirmed that since he worked in Nairobi, he would not know what transpired in the group ranch when he was not there. He was emphatic that there was no meeting to replace the



- deceased members but learned later that there had been replacements. He was emphatic that there were no minutes to show the new members who were added after the upgrade of the register. They were informed that the titling process was being undertaken. He knew people who got land yet they were not members of the group ranch. His two brothers Carlos Araman and William Araman did not get land despite being entitled. He had not been shown the list which the Defendants relied on. He had not seen any title given to any member. He was aware that the court stopped the issuance of titles.
27. Michololo Lalaur, a resident of Lgmi within Ng'aari Group Ranch and member number 2207 gave evidence. He explained that they lived on the land which was their family home and used to be his mother's land under membership number 532. He paid Kshs. 2,000/= to the 2<sup>nd</sup> Defendant in 2010 after it was decided that members would pay for the processing of the titles. He was aggrieved by the lack of transparency in the land allocation process and wanted accountability for the funds which the members paid. He maintained that the members were not involved in the subdivision of the land and plot allocation. Sometime in 2019/2020 people went to his property to survey and put beacons and identified themselves as government officers. He did not object to the process. The exercise resulted in the placing of beacons outside his property and according to him if the survey were upheld, his house comprising two rooms made of mabati, a toilet and two manyattas would fall on someone else's land and could possibly be demolished which will occasion him loss and damage.
  28. He claimed that he was aware that documents relating to the whole group ranch had been processed and that he had been allocated parcel number 2243 even though he had not supplied copies of his identity card, PIN, passport photos nor had he paid stamp duty for registration of the land. Despite paying Kshs. 2,000/= for processing of the title, he had not been provided proof on how that money was utilised. He reiterated what the 1<sup>st</sup> Plaintiff told the court regarding the resolutions passed in 2010 on the land allocation. He claimed that his five brothers had not been allocated land even though they were entitled and had duly paid the requisite Kshs. 2,000/= each. He maintained that the titling process and subdivision of Ng'aari Group Ranch land was undertaken without the public participation of the members and was marred with irregularities and fraud and should therefore be cancelled for the process to start afresh with proper public participation. He sought to have the Defendants account for how the funds collected were used and for the officials to be ordered to refund the monies they received.
  29. On cross examination, he told the court that he became a member of the group ranch by virtue of his mother Nteiye Lalaur having been a member of Ngaari Group Ranch. He did not know where his father was since he left 20 years ago. They were seven in his family, four sons and three daughters. His name was on the list of those allocated land. He did not know whether his brothers and sisters were on the list. He was given parcel number 925 but had not gone for the title because he did not know whether his brothers and sisters would get land. His brothers had not gone to complain that they were not given land. His complaint was over the sum of Kshs. 2,000/= which he paid when he was told it was for processing the title.
  30. The Plaintiffs produced various documents including the list of the members who signed the consent, copies of the shrunk map for the group ranch land, payment receipts, the contested list, list of members not allocated land and a summary of what they termed as illegal allocations. They also produced a copies of the minutes of the meeting held with the Deputy County Commissioner and the letter dated 26/10/2020.
  31. Pitali Lekalantula, the 2<sup>nd</sup> Defendant in the suit gave evidence for the 1<sup>st</sup> to 4<sup>th</sup> Defendants. He is a resident of Samburu County and maintained that this suit was actuated by greed, malice and was brought in bad faith by vexatious people. He told the court that the list submitted by the Plaintiffs contained fictitious names and identity card numbers with the signatures appearing to have been signed



- by the same hand. He explained that most of the 1<sup>st</sup> Defendant's members were illiterate and they used their thumb print as their mode of signing and that the signatures were therefore forged.
32. They were elected as representatives of the 1<sup>st</sup> Defendant on 9/9/2010 after Ngaari Group Ranch was incorporated under Section 7 of the Land (Group Representatives) Act. He stated that contrary to the Plaintiffs' assertion, no resolutions on the demarcation and allocation of the group ranch land were passed in the AGM of 2010. That it was resolved in the AGM held on 20/8/2011 at Ng'aari Primary School grounds that the register would be updated through registration of new members which was to commence on 5/9/2011 at the same school and that task was delegated to the community village elders who were members of the group. He added that it was also agreed that each member of the Ikuroro age set would register a minimum of three children and those of the Lroli age set a minimum of two children. The issue of widows was not discussed.
  33. He stated that the registration exercise took place at Ng'aari Primary School where the chairman and representatives from the land adjudication office were always present to receive and vet the applicants until the exercise was completed. Further, that the officials called a meeting where the updated register was read out to the members of Ngaari Group Ranch and nobody raised any objection to the names in the register, not even the Plaintiffs.
  34. The register was forwarded to the Land Adjudication Officer who sent it to Nairobi where it was approved. It was returned to the Land Adjudication Officer, Samburu and a copy was returned to them. They called an AGM which was held on 20/8/2014 at Ng'aari Primary School where the names in the register were read out to those present and members confirmed that the register was correct with no objections raised. It was then resolved that the group would be dissolved for the demarcation process to commence and that there was no objection to this proposal, not even from the Plaintiffs.
  35. Through the letter dated 26/8/2014, they sought consent from the Director of Lands Adjudication and Settlement for the dissolution of Ng'aari Group Ranch. The request was approved vide the letter dated 8/11/2018, which was conditional upon the group being dissolved after subdivision and transfer of the group ranch land to the members listed in the final register. He stated that exercise was completed before this suit was filed.
  36. He stated that the demarcation exercise was quite complex and involved government officers comprising surveyors, adjudication officers, group ranch officials among others. The exercise was sponsored by the government. Planning and subdivision started in 2020 and they held a meeting where the members were informed that the government surveyors were ready to start the exercise. They showed them the boundary of the group ranch land and identified public facilities such as schools, churches and dams. They did the actual planning and requested for volunteers to guide them and accompany them during the ground survey exercise. According to him, the land was subdivided into six blocks and members volunteered to assist them in the exercise which took almost a month to be completed.
  37. Upon conclusion of the ground survey, they held a meeting at the DC's office where the drawings by the surveyors were projected and the members present were asked to comment on the survey plans which they did. After that came ground picking where parcels of land were allocated to members and the beacons were fixed. The exercise took a month after which they started the land allocation in line with the survey drawings for about a week. He stressed that members were actively involved in the process and it was the surveyors who numbered the parcels of land according to their maps and drawings. The final documents were compiled and forwarded to the Land Registrar for issuance of title deeds.
  38. He maintained that it was not true that they collected money from group members. He denied that they issued the receipts which the Plaintiffs relied on. He contended that those whose names appeared



- on the receipts should be called as witnesses to confirm whom they paid the money to. He was categorical that the register filed by the Plaintiffs did not emanate from Ng'aari Group Ranch and that it was completely different from the one filed in court and the one by the land registrar.
39. He was emphatic that land was allocated to deserving persons in line with the register which they filed in court. He denied that 170 members were not allocated land as the Plaintiffs claimed and went on to add that the list filed by the Plaintiffs contained names of people who were unknown to the officials and a collection of forged signatures yet the genuine members of Ng'aari Group Ranch had confirmed that the demarcation and the land allocation process was transparent and that they were demanding their title deeds. He stated that the Plaintiffs were allocated land in accordance with the register and their titles were ready for collection just like the titles for the other 2470 members.
  40. He argued that the persons whom the Plaintiffs claim to represent should have filed a consent or affidavit in support of the case and added that they should have been joined to this suit. He maintained that the Plaintiffs benefited from the process which they participated in from inception without any complaint. Further, that the Group's register and other crucial documents were open for perusal and that out of the 2470 members, it was only the six Plaintiffs who were complaining. Moreover, that the orders granted in this case had created a lot of tension and unrest because the group members expected to collect their title deeds which were ready.
  41. Mr. Lekalantula emphasised that reversing the entire demarcation process to satisfy the Plaintiffs' selfish egos would occasion irreparable loss and damage to members of Ng'aari Group Ranch because the entire process was sponsored by the government and it would be difficult to get funding yet most of the group members were poor and cannot afford to fund a repeat exercise. He was apprehensive that if the demarcation process were cancelled it may never take place.
  42. He explained that the government identified 9 group ranches including Ng'aari Group Ranch for adjudication and demarcation through its funding and they stood to suffer great loss if the orders sought were to be granted. In his view, the Plaintiffs should have joined the persons mentioned in paragraph 16 of the plaint as non-members who were allocated land to afford them an opportunity to respond to the allegations levelled against them and their family members. He maintained that all the persons listed in the register dated 29/9/2020 deserved to be allocated land and that the mere fact that some of them share a surname did not imply nepotism since this was common in the Samburu culture and that in any event most were from the same clan.
  43. He produced the copy of the letter dated 1/12/2021 which forwarded Volumes I and II of the original registers of Ng'aari Group Ranch to the court. He also tendered in evidence minutes of the 1<sup>st</sup> Defendant's meeting held on 9/9/2010 at Ng'aari Primary School; the meeting held on 14/7/2011; the meeting held on 20/8/2011; the meeting held on 14/7/2013; the meeting held on 20/8/2014; the meeting held on 21/12/2018 at Nkukuruti; and minutes of the meeting held on 27/7/2020 which contained a list of deceased persons and their heirs' names indicating the plots allocated to them.
  44. The 2<sup>nd</sup> Defendant produced a copy of the letter dated 26/8/2014 addressed to the Director of Lands Adjudication and Settlement seeking consent for the dissolution of the group for the purposes of the subdivision as well as the letter dated 8/11/2018 from the Ministry of Lands and Physical Planning addressed to the Chairman of Ng'aari Group Ranch giving consent on certain conditions. He produced the certificate of incorporation giving the names of the representatives of the group ranch dated 26/10/2010. He also produced a copy of the area list for the Ng'aari Group Ranch allocation which specifies the land set aside for conservation and other public uses and lists 2470 persons.
  45. He produced copies of title deeds issued by the Nyandarua District Land Registry in October 2020 in respect of the parcels of land known as Samburu/Ng'aari/2132, 2156, 2068, 994, 2097, 2117, 2066,



2444, 2448, 2443, 2084, 962, 1188, 2193, 2126, 2170, 876, 953, 1019, 554, 1735 and 868. He also produced the two original registers which had been in the custody of the court pursuant to the orders made on 17/11/2021.

46. On cross examination, Mr. Lekalantula told the court that the members of Ng'aari Group Ranch were 2451 and relied on the last page of the register which showed 2451 members. He explained that the allocation list had 2470 but hastened to ass that between the allocation register and the allocation list no people were added. He conceded that some names appeared twice or thrice in the allocation register showing that some members got 2, 3 or 4 parcels. For some members, he explained that they left out their children and registered their own names because the children were young. He claimed that it was approved at the AGM. He clarified that Ng'aari Shopping Centre appearing at number 165 of the allocation register was for the benefit of community members was intact and had not been subdivided. Similarly, Ng'aari conservation appearing at number 363 had not been allocated because members set it aside for conservation. He relied on the minutes of the AGM in support of that assertion.
47. When he was referred to the minutes of the meeting held on 9/9/2010, he stated that about 60% of the members which was about 900 people attended that meeting. He conceded that those minutes were confirmed the same day the meeting took place. The minutes of the meeting held on 14/7/2011 showed that 317 members were present. He could not remember the members who attended because they are over 2000. He disagreed that they were merely complying with the court orders by filing the minutes and was emphatic that they did not receive any money from members. Regarding the signatures on the consent to file the suit, he maintained that the signature for Michololo Lalaur was not his. He confirmed that number 532 on the register showed Nteye Lalaur who was the mother of Michololo Lalaur and was dead. He clarified that on the allocation list, Michololo replaced his mother and was therefore a member courtesy of his mother. He confirmed that Michololo was listed as member number 925.
48. On being questioned about filing bank statements for the group ranch, he explained that despite being served with the Notice to Produce by the Plaintiffs, the whole process was undertaken under the National Titling Program. He explained that there were forms used to transfer land from Ngaari Group Ranch to the individual members and that stamp duty had to be paid to the Land Registrar. The officials did these processes for the members. They did not know how much they paid to the registrar and did not have the receipts. According to him, some money came from the government while some little amount came from members of about Kshs. 500/=. On the criteria for allocation, he explained that the acreage was the same.
49. According to him the group ranch was dissolved in August 2014 when they applied for consent. They held a meeting on 29/8/2014 after getting approval in 2018. He later amended his position and stated that the group ranch was dissolved in November 2018. He relied on the requirements set by the Ministry of Lands before dissolution and explained that the process was to continue until all the members got their titles.
50. He stated that they had agreed that the age set called Ikuroro would get three parcels for three children while Lroli would get a minimum of two parcels. His explanation was that the others had registered their children. Wives were to get land too. When he was questioned about the persons appearing at number 1109 and 2141 he stated that they were members and were in the register. He disagreed that there were challenges like overlapping or that beacons were placed where people had built. He conceded that Michololo Lalaur had lived on his land for long but hastened to clarify that the surveyors would know about the issue of beacons and not Michololo.



51. On re-examination, he stated that before allocation they were just staying on the land as a group ranch and anybody could build their home anywhere. The government was not involved in how people settled and where they built. The allocation process came after the demarcation was done by the government and did not tally with how the members had initially settled on the land. He maintained that they followed what members had agreed upon on how the land would be allocated. The minutes of the meeting held on 20/8/2014 talk about the dissolution of the group. He confirmed that in 2013, the members were less and had not reached 2000. They got to 2000 after the registration of more members since the registration was a continuous process. They had processed about 1800 titles and this depended on when members presented their photos, filled transfer forms, delivered KRA pins and signed the forms. Members had to sign the forms individually.
52. He explained that Letinaur Lesini got four plots because the Ikuroro age set were getting three plots for their children and one was hers and she chose to have her plots in her own name. He denied that there was double allocation. A decision had been taken to have land set aside for community land and a conservation area because according to the physical planners who drew the plans the land in question was not suitable for habitation. The community agreed that some land was to be left for community services. Apart from the six Plaintiffs no other person was complaining about community land or the land reserved for conservation. He maintained that he was not paid any money and that they did not open a bank account that is why they could not bring bank statements.
53. Legin Letiwa also gave evidence for the defence and told the court that she did not know how to read. She was the wife of Lukat Letiwa who was a member of Ng'aari Group Ranch. After her husband died in 2015, she followed up the issuance of the title deed for the land in Ng'aari Group Ranch by attending meetings and signing documents. She explained that she signed against her husband's name by appending her thumb print and that the thumb print appearing against his name was not forged by the officials of the group ranch.
54. On cross examination, she stated that her thumb print was taken in Maralal Police Station where she had gone expecting funds for Inua Jamii because she was a widow. She did not know the process of getting a title. she had not gone to the group ranch or lands office to submit her photos, copy of identity card and PIN. She did not have a PIN but was waiting for the title. She heard that there was money to be paid for issuance of titles, about Kshs. 12,000/= per person. The money was to be paid to Lekalantula the chairman who he pointed at in court that day. She later stated that she had never been in any meeting for the group ranch. She heard that men went for the meeting but that women did not.
55. After both parties had closed their cases, the court directed parties to file and exchange written submissions. The Plaintiffs summarised the facts of the case and framed two issues for determination. Firstly, whether there was any public participation or due process followed with respect to the recruitment of new members of Ngaari Group Ranch and the final allocation and area list dated 29/9/2020 by the 1<sup>st</sup> Defendant. Secondly, whether the process of survey, subdivision and title issuance was done in compliance with the law. The Plaintiffs submitted that the allocation list did not reflect the full list of bona fide members of the ranch based on the fact that there was no public participation and members were not involved in drawing up the final list for title issuance. They raised various questions about the minutes for the AGM including lack of a notice calling the meetings, no list of attendees in accordance with the list of members of the group, women not being allowed to attend the meetings as the second defence witness stated in evidence and lastly, the fact that the minutes were confirmed the same day the meeting took place, which is not the ordinary way this happened.
56. The Plaintiffs pointed out anomalies with the minutes for 9/9/2010, 14/7/2011 and 20/8/2014 with discrepancies of the attendees and lack of notices. The other point taken up was that the membership



register had 2451 members while the plot allocation list had 2470 leaving a difference of 19 allocations. The Plaintiffs argued that the members who appeared more than once were 135 which meant that some members were left out and that the plots left for the shopping centre and conservation were more than 22 entries. The Plaintiffs urged that the minutes were fraudulent and relied on the evidence of Defendant's second witness who stated that women did not go for meetings yet the minutes reflect that women were in attendance.

57. The Plaintiffs relied on Article 47 of *the Constitution* on the right to fair administrative action and Section 5 of the Fair Administrative Actions Act in support of the argument that the allocation of the Ngaari Group Ranch land was not done fairly and was contrary to the law. The Plaintiffs emphasised that the plots which were reserved for conservation, shopping centre, hill resort and others were not approved through the minutes of Ngaari Group Ranch. They argued that the public utilities mentioned and Charles Leshimpiro, Nelson Lelegwe, Annette Lelegwe, Tamiyo Women Group and Dennis Biwott were not members of the group. They urged that the second Plaintiffs' witness Michololo was entitled to his own parcel of land different from his mother who was dead.
58. The Plaintiffs relied on various decisions emanating from our courts and one of the decision cited is from South Africa dealing with public participation and stakeholder's consultation. They submitted that the list used to allocate the group land was not subjected to public participation and that it led to over 170 lawful members not being allocated land making the allocation illegal. They also relied on Republic v Fazul Mahamed and 3 Others, Ex parte Okiyo Omtata Okoiti [2018] eKLR where the court gave the categories of public law wrongs regarding elected representatives in which the court can intervene. These are illegality, fairness and irrationality and proportionality. They submitted that the Ng'aari Group Ranch officials' decisions relating to the allocation of the community land was an administrative action for it affected the legal rights and interests of those who were allocated land and those who were not. Therefore, the decision had to pass the constitutional and statutory tests of lawfulness, reasonableness and procedural fairness. They contended that the Defendants should have given notice of the intended decision, afforded those involved an opportunity to be heard and given reasons for the decisions they made. They submitted that the decision made by the Defendant infringed the Plaintiffs' rights under Article 47 of *the Constitution* and the Fair Administrative Actions Act.
59. Regarding the issue as to whether the survey, subdivision and issuance of titles was done in compliance with the law, the Plaintiffs submitted that the process was flawed and riddled with irregularity since it was undertaken without the involvement of the group members through meetings for public participation. On this point, the Plaintiff relied on a document in the bundle prepared by the Attorney General which the court notes were not produced since the Attorney General did not call any evidence in the matter. The Plaintiffs also referred to the ruling of Angima, J of 27/4/2023 while urging that it was evident from the material on record that the title deed had been issued for the group ranch which could not have been issued while the adjudication process was still going on. The Plaintiffs relied on other documents in the bundle filed by the AG but which were never produced.
60. The Plaintiffs prepared a schedule of members who were allocated two or more plots. Among this is Ng'aari Conservation allocated 26 plots, Ng'aari Community Conservancy allocated 2 plots with the rest of the list containing people's names said to have been allocated 2 or more plots. The Plaintiffs submitted that such allocations were done without the authorisation of the members. They maintained that the list of allocation of land was not subjected to public participation which resulted in non-members being allocated land and some members being allocated large tracks of land contrary to the agreed equal share allocation by the community.
61. On fraud and illegality, the Plaintiffs contended that the allocation of the land was done in secrecy and that the 1<sup>st</sup> to 4<sup>th</sup> Defendants concocted minutes. Additionally, that the 1<sup>st</sup> to 4<sup>th</sup> Defendants failed to



- subject the final list for allocation to the members for approval. The other illegalities cited were some members getting more than one parcel of land and the 1<sup>st</sup> to 4<sup>th</sup> Defendants calling for funds for the processing of titles yet the process was being undertaken under the National Titling Programme where no funds were required to be paid. They also faulted the Defendants for processing title documents without the requisite mandatory documents like the PIN as the defence witness confirmed in her testimony.
62. The Plaintiffs added that they had served notices to produce against the land registrar Nyahururu and the 1<sup>st</sup> to 4<sup>th</sup> Defendants requiring proof of stamp duty payment, sample of 20 payment receipts for title processing, sample of 20-day book numbers, booking transfers for ranch members and evidence of funds paid towards title processing. The notices to produce were not complied with. They cited some authorities dealing with the consequences of the failure to produce or give discovery of documents. The Plaintiffs submitted that such documents do not exist or that they were fraudulent which is the reason for non-compliance with the notice to produce. They invited the court to draw such an inference. Lastly, they urged the court to award them the costs of the suit and to grant the reliefs they sought in the Amended Plaint.
63. The 1<sup>st</sup> to 4<sup>th</sup> Defendants gave a chronology of the proceedings that took place in this matter culminating in the hearing of the matter on 30/9/2024. They summarised issues for determination as follows:
- a. whether the suit as filed was a representative suit;
  - b. whether the 2<sup>nd</sup> to 4<sup>th</sup> Defendants were properly joined in the suit in their official capacity;
  - c. whether the Plaintiffs proved breach of trust, fraud and illegality as pleaded in the amended plaint;
  - d. whether the allocation, subdivision and titling process of the land held by Ng'aari Group Ranch should start afresh; and
  - e. whether the Plaintiffs were entitled to the prayers sought in the Amended Plaint.
64. The 1<sup>st</sup> to 4<sup>th</sup> Defendants relied on Order 4 Rule 4 of the Civil Procedure Rules which stipulates that where a plaintiff sues in a representative capacity the plaint should state the capacity in which he sues and how that capacity arises. They urged that the Amended Plaint did not state anywhere either in the title or in the body of the plaint that the Plaintiffs were suing in a representative capacity and on behalf of the 170 or so persons they claimed to be representing. Further, that the Plaintiffs had attached lists of persons who they claimed had given them authority to sue on their behalf yet that list could have been taken for different reasons. They contended that the Plaintiffs did not adduce evidence to confirm that the persons listed were indeed members of Ng'aari Group ranch. Moreover, that those persons did not attend court nor did they swear affidavits confirming that they had authorised the Plaintiffs to sue the Defendants seeking revocation of the surveying, subdivision and titling process of the 1<sup>st</sup> Defendant's land. They pointed that some identity card numbers and signatures were missing from the list and that the list could not be authenticated at all.
65. They relied on *Kivure and 7 Others v Benson Mulambo xxx and others* on the need to have the list authenticated and for those listed to append their signatures. They also cited *Kahindi Katena Mwango & Another v Canon Assurance K Ltd* [2013] eKLR in which the court found the suit incurably defective for failing to state the capacity in which the Plaintiffs had sued. The Defendants urged the court to find that the suit was filed by the six Plaintiffs in their personal capacity and not on behalf of any other person. They added that the 1<sup>st</sup> Plaintiff did not indicate in his statement that he had the



- authority of the 2<sup>nd</sup> to 6<sup>th</sup> Plaintiffs to plead, act and swear on their behalf. Further, they contended that the 2<sup>nd</sup> to 6<sup>th</sup> Plaintiffs did not file a written authority for the 1<sup>st</sup> Plaintiff to appear, plead or act for them in the suit contrary to Order 1 Rule 13(1) and (2) of the Civil Procedure Rules which requires the authority to be in writing and signed by the party giving it and for it to be filed in the case.
66. The 1<sup>st</sup> to 4<sup>th</sup> Defendant also took issue with the verifying affidavit accompanying the amended plaint dated 23/11/2023 which was only sworn by the 2<sup>nd</sup> Plaintiff and contended that it offended Order 4 Rule 1(3) of the Civil Procedure Rules. The Defendants contended that the suit by the 1<sup>st</sup>, 3<sup>rd</sup> to 6<sup>th</sup> Plaintiffs was defective and should be struck out for the reason that the amended plaint was not accompanied by their verifying affidavit and there was no authority filed giving the 2<sup>nd</sup> Plaintiff power to swear the verifying affidavit accompanying the amended plaint on their behalf. Further, they urged that if the court were to find that the non-compliance with the law was curable then the court should only consider the 1<sup>st</sup> Plaintiff's claim for determination in his personal capacity since the other Plaintiffs did not authorise him to act and testify on their behalf. They emphasised that the case by the 2<sup>nd</sup> to 6<sup>th</sup> Plaintiff was not proved through evidence and that their pleadings were mere allegations.
67. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants submitted that they were wrongly sued yet Section 8(1) of the repealed Land (Group Representatives) Act conferred on the group representatives' powers to sue and be sued in the corporate name upon issuance of the certificate of incorporation of group representatives. They relied on *Nkoirisha Ole Ntompo Kereru & 4 Others v The Chairman Lorngosua Group Ranch & 9 Others* where the court addressed a similar issue of the powers of group representatives to sue and be sued.
68. The Defendants submitted that that the Plaintiffs had failed to prove breach of trust, fraud and illegality. Further, that the Defendants had denied the allegation that 170 members were not allocated land and asserted that all members were allocated land. They contended that no evidence was tendered to prove that the 170 persons were members of the 1<sup>st</sup> Defendant and further, that they were not allocated land. They contended that none of the 170 persons swore affidavits to buttress the arguments put forth by the Plaintiffs. The Defendants also argued that there was no evidence to demonstrate that non-members were allocated land. They questioned why the 1<sup>st</sup> Plaintiff did not join those non-members of the 1<sup>st</sup> Defendant to the suit so that they could defend the claim yet the 1<sup>st</sup> Plaintiff claimed to know them.
69. The Defendants submitted that the 1<sup>st</sup> Plaintiff admitted that the officials of the 1<sup>st</sup> Defendant used to hold public meetings and that at times he would attend the meetings. They relied on the minutes which showed that senior government officials attended the meetings when crucial decisions regarding the 1<sup>st</sup> Defendant were made and argued that there was public participation. They pointed out that the 1<sup>st</sup> Plaintiff had admitted that in 2020 gatherings were prohibited as a measure to curb the spread of the Coronavirus.
70. Additionally, that the Plaintiffs asserted and the 1<sup>st</sup> to 4<sup>th</sup> Defendants admitted that it had been resolved that each member of the Ikuroro age set would be entitled to land for three children while each member of Lroli age set would be entitled to land for two children; a wife was only to be allocated land if she were the widow of a member of Ng'aari Group Ranch; and non-members were not to be allocated land. They contended that this mode of distribution could not have been arrived at if there was no public participation as the Plaintiffs contended. They went further to urge that based on this agreed mode of distribution, land was not to be distributed equally since members of Ikuroro age set would end up getting more than those of the Lroli age set.
71. On the plot allocation list having more entries than the number of members in the register, the Defendants submitted that this was because of the public utility plots set aside by the Government



- surveyors pursuant to the Land Use and Physical Planning Act. They added that the public utility plots set apart were for the benefit of the whole community and pointed out that the land reserved for conservancy was uninhabitable.
72. The 1<sup>st</sup> to 4<sup>th</sup> Defendants relied on *Peter Tomito & 2 Others v Korinko N. Nkoliai & 12 Others* (2018) eKLR where the court noted that no specific person had gone before it and testified that they were not allocated land. The court noted that given the enormity of the exercise of subdivision and allocation of land, errors and mistakes were bound to occur and that those could only be handled on a case by case basis.
  73. The Defendants pointed out that it was expected that some members were bound to move from the place they had settled on once the formal demarcation and survey was carried out. They cited several decisions made by the courts on this issue.
  74. The Defendants submitted that it was not disputed that title deeds had already been issued and urged that cancelling the title deeds would affect the 2470 beneficiaries who were not parties to this suit and who would therefore be condemned unheard. Further, that since the entire process which took almost 10 years was undertaken at government expense, it was unlikely that the government would meet the cost for repeating the exercise as the Plaintiffs seek.
  75. The Defendants submitted that the Plaintiffs had admitted that they were allocated land but that the brothers they claimed were not allocated land neither sued nor testified in the suit. They urged that the Plaintiffs are not entitled to the reliefs they seek because they failed to utilise the mechanisms set out in the *Land Adjudication Act* before the exercise was concluded. Further, that they failed to raise any objections with the adjudication officer. They pointed out that this was an ordinary suit and not a constitutional petition and that the Plaintiffs' submissions on constitutional violations were not applicable to this dispute. They also sought the costs of the suit.
  76. The issues for determination are:
    - i. whether the court should dissolve the current officials and committee members of Ng'aari Group Ranch and direct that the election of new officials be conducted within 60 days;
    - ii. whether the court should restrain the Defendants from subdividing, processing and issuing titles to any person with respect to Ng'aari Group Ranch;
    - iii. whether the 1<sup>st</sup> to 4<sup>th</sup> Defendants should be compelled to file statements of account and bank statements in respect of the payments made for registration and title deed fees;
    - iv. whether the 1<sup>st</sup> to 4<sup>th</sup> Defendants should be compelled to provide minutes of the AGM of Ng'aari Group Ranch and lists of the deceased members and who replaced them;
    - v. whether the allocation and subdivision of Ng'aari Group Ranch and subsequent processing of titles was done without public participation and is therefore a nullity;
    - vi. Should the court nullify all titles processed under Ng'aari Group ranch so that the process can start afresh in compliance with the law?
    - vii. Who should meet the costs of the suit?
  77. The certificate of incorporation dated 26/10/2010 confirmed that Ngaari Group Ranch was incorporated under Section 7 of the Land (Group Representatives) Act. The objections raised by the 1<sup>st</sup> to 4<sup>th</sup> Defendants are therefore not idle regarding the capacity in which they were sued, whether the 1<sup>st</sup> Plaintiff was authorised to sue on behalf of the 170 community members who were not allocated land



and if he could plead on behalf of the other Plaintiffs without stating as much and filing the requisite authority to do so. The Defendants argued that most of the members were illiterate and could not have signed the list presented by the Plaintiffs in court.

78. The crux of the Plaintiffs' grievance is that as officials of the 1<sup>st</sup> Defendant, the 2<sup>nd</sup> to 4<sup>th</sup> Defendants engaged in acts that amounted to breach of trust, fraud and illegality in the allocation of the Ngaari Group Ranch land to its members as a result of which some members were irregularly allocated more than one parcel of land and 170 other members were left out of the allocation. The dispute resolves around this point and it was incumbent upon the officials of the 1<sup>st</sup> Defendant to demonstrate that they acted in the best interests of the members of Ngaari Group Ranch in the allocation of the Group Ranch land and that they discharged their mandate as officials in a fair, transparent and prudent manner. Moreover, they needed to show that they were honest and diligent stewards, all members of Ngaari Group Ranch were allocated land, non-members were not allocated the Group Ranch land and that some members were not allocated more than their fair share.
79. No explanation was given as to why the 170 members left out of the land allocation by the 2<sup>nd</sup> to 4<sup>th</sup> Defendants were not made parties to the suit or why they did not authorise the Plaintiffs to pursue the claim on their behalf.
80. The Plaintiffs produced lists seemingly of persons dissatisfied with the allocation of the land that comprised Ngaari Group Ranch. Only the first page has names, identity numbers and telephone numbers. There is another handwritten list that is barely legible titled "Ngara Group Ranch List of Participants" running up to number 79. It is not clear what the persons named were participating in, where and when. The other handwritten lists contain 24 names, 7 names and the last one bears 17 names. The source of the lists was not established and no evidence was led on how the various lists correspond to the register of Ngaari Group Ranch members. It is unclear who authored the lists and for which purpose.
81. One of the reliefs which the Plaintiffs seek is for the 1<sup>st</sup> to 4<sup>th</sup> Defendants to provide the names of the deceased members of Ngari Group Ranch and the persons who replaced them. The court notes that the 2<sup>nd</sup> Defendant produced a schedule containing the names of deceased members and the persons who replaced them alongside the sizes of the land allocated and parcel number. It was incumbent upon the Plaintiffs to scrutinise the list to determine if all the deceased members were replaced and if those who replaced them had been allocated land.
82. It is not in dispute that the process of adjudication and allocation of the land comprising Ng'aari Group Ranch commenced circa 2010 and titles were issued from 2020. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants position is that the Director of Lands, Adjudication and Settlement granted consent for the dissolution of Ng'aari Group Ranch on 8/11/2018 on condition that the group was to be dissolved after subdivision and transfer of the group ranch land to members listed in the final register. According to the 1<sup>st</sup> to 4<sup>th</sup> Defendants, the transfer of the group ranch was completed before this suit was filed. They annexed copies of title deeds in respect of some parcels created from the subdivision of the Ngaari Group Ranch.
83. It is therefore not feasible for this court to order the dissolution of the current officials and committee members of Ng'aari Group Ranch and direct that the election of new officials be conducted within 60 days. Nor would it be prudent at this point for the court to restrain the Defendants from subdividing, processing and issuing titles to any person with respect to Ng'aari Group Ranch as this exercise was already concluded and titles issued. The other prayers for supply of the documents mentioned in the plaint were dealt with by the Ruling delivered by Angima J. on 21/10/2021.



84. The Plaintiffs produced copies of receipts dated 7/9/2011 for Kshs. 2000/= and Kshs. 600/=; receipts dated 1/2/2011 for 2000/= while the receipts dated 21/9/2011 were for Kshs. 600/=. The payments were indicated to be for title deed fees and registration fees. The Plaintiffs failed to prove the sum paid in total, by which members and who was paid that money. The Plaintiffs did not prove that Joseph Leopila collected those funds from members as the 1<sup>st</sup> Defendant's agent. It may well be that those payments were applied towards processing of titles for members of the Ngaari Group Ranch since it is evident that titles for portions of the Ngaari Group Ranch have already been issued to the registered proprietors. The 4<sup>th</sup> to 8<sup>th</sup> Defendants would have shed light on this point but their witness did not testify. The 2<sup>nd</sup> Defendant stated in his evidence that no bank account was opened for the 1<sup>st</sup> Defendant.
85. The Plaintiffs mentioned a 1990 register of members but only the only two registers were produced in court. The court looked at Volumes I and II of the Ng'aari Group Ranch register of members deposited in court pursuant to the orders made on 21/10/2021. Quite a number of names were crossed out from the register in red ink indicated to be deceased and the new membership number ostensibly given to the guardians, were inserted in the 9<sup>th</sup> column of the register. A few names have "replaced" as the reason for cessation of the member. The register shows that quite a significant number of members' names are crossed out as "deceased" but they were not replaced which confirms that some deceased members were not replaced by their kin and their kin therefore missed out on the land allocation. There is another category of members crossed out in the register and the reason for cessation of membership given is "Delated" without any indication of replacements. The remarks "not replaced" are also notable on the register.
86. Although the Plaintiffs contended that there was no public participation and they challenged the minutes produced by the 2<sup>nd</sup> Defendant, the 1<sup>st</sup> Plaintiff somewhat admitted that there was an AGM at which he claimed there were verbal objections from representatives of deceased persons. He also mentioned an agreement for members of certain age sets to be allocated land for two or three children. It is not entirely correct therefore that there was no public participation as the Plaintiffs submitted. The Plaintiffs raised valid concerns about the minutes produced by the 2<sup>nd</sup> Defendant.
87. The gravamen of the Plaintiffs case is that the community land comprised in Ngaari Group Ranch was to be shared equally. While explaining the issue of double or triple allocation of land parcels to some members, the 2<sup>nd</sup> Defendant cited some decision vide which members of the Ikuroro and Lrooli age sets were to get a bigger allocation. Although the 2<sup>nd</sup> Defendant stated in his evidence that it was resolved at the AGM held on 20/8/2011 that each member of the Ikuroro age set was to register a minimum of three children and those of the Lrooli age set a minimum of two children, the minutes which he produced for the meeting held on that day do not support this proposition.
88. The Plaintiffs claimed that 170 members of the Group Ranch were left out of the final allocation list and included a schedule with 95 names at paragraph 15 of the Amended Plaintiff. On scrutinising and tallying those names with the members in the two registers, the court noted that the names appearing at numbers 11, 13, 16, 17, 19 to 21, 23 to 25, 28 to 30, 32 to 40, 47 to 64, 71 to 75, 78 to 90 and 92 to 94 of the schedule at paragraph 15 of the Amended Plaintiff are registered as members in the two registers for Ngaari Group Ranch. The Plaintiffs therefore proved that some members of the Ngaari Group Ranch were not allocated land by the 1<sup>st</sup> to 4<sup>th</sup> Defendants.
89. Michololo Lalaur's claim was that as member number 925 he was entitled to his own land different from his late mother Nteiye Lalaur. The court notes that on the register for Ngaari Group Ranch, Lalaur Nteiye's name as member no. 532 is crossed out as deceased and it was replaced by no. 876. The member indicated against 876 in the register is Queen Lekupunye. Michololo was entitled to be allocated his own parcel as a member of the Group.



90. The Plaintiffs' claim is that the register had 2451 members while the plot allocation list had 2470 allocations. They challenged the allocation of 22 parcels of the group ranch for conservation, 3 for the Shopping centre and two for community conservancy. The Plaintiffs submitted that Charles Leshimpiro, Nelson Leranga, Tamayo women Group were also allocated land. The shrunk map for Ngaari Registration Section is illegible but the legend shows agricultural, educational reservation, public purpose, commercial, public utility, transportation and conservation meaning land was planned and zoned for these public purposes which would benefit the whole community.
91. The other point which the Plaintiffs strenuously argued was that 37 non-members were illegally allocated land which comprised Ngaari Group Ranch. It was not only proper but also necessary for those persons to be made parties to this suit. If those persons have been registered and titles have been issued to them, then they enjoy certain proprietary rights and protection afforded by registration until their individual titles are lawfully cancelled. If the court were to nullify their titles as the Plaintiffs seek, it would be tantamount to condemning them unheard and violating the protection of their right to property contrary to Article 40 of *the Constitution*.
92. The Plaintiffs did not lead evidence to show how the 37 non-members of Ngaari Group Ranch acquired their titles. Title to land may be acquired through allocation, land adjudication process or transfers in line with Section 7 of the *Land Act*. The 37 persons referred to as non-members of the group ranch could have purchased the land from members who were allocated land by the Defendants.
93. It is noteworthy that the titles for the parcels derived from the Ngaari Group Ranch were issued in October 2020 and there has been passage of time within which various land transactions including sales, transfers or charges could have been carried out and the transactions registered against the parcels of land created from the Ngaari Group Ranch. Issuing blanket cancellation of the titles and nullification of the whole process as the Plaintiffs sought would cause more injustice and hardship.
94. The 1<sup>st</sup> Plaintiff gave a summary of what he termed as grabbing of the group ranch land by committee members. In that list, the 2<sup>nd</sup> Defendant and his family members are indicated to have been allocated 36 parcels of land, the 4<sup>th</sup> Defendant and his family members got 18 parcels of land while the 3<sup>rd</sup> Defendant and his family members got 18 parcels of land. A committee member, Geoffrey Lekupuny is indicated to have been allocated 17 parcels of land while the Assistant Chief, Lenguro and his family got 20 parcels. Lenabaala from the Governor's office is stated to have benefited from 19 parcels while Leboiyare who is deemed to be influential got 11 parcels. Lekisolish and Loloju each got 6 parcels.
95. The two registers for Ngaari Group Ranch contain 2451 members. The practice seems to have been that once a member died their name was crossed out and the person replacing them would be registered as a member under a new membership number. This means that the members of Ngaari Group Ranch who were to be allocated land is far less than 2451 because this number includes the names crossed out. This is the loophole which the 2<sup>nd</sup> to 4<sup>th</sup> Defendants exploited when allocating land and that is how they ended up allocating more than one parcel of land to some of the members and their family members.
96. Turning to the law, Section 8 of the *Land Registration Act* requires a community land register to be maintained in each registration unit in which a cadastral map showing the extent of community land, register of members of the community, user of the land, identity of registered group representatives are to be kept. Section 8(3) forbids the Land Registrar from registering any instrument purporting to dispose of rights or interests in community land except in accordance with the law relating to community land. Had the Honourable Attorney General given evidence on how the titling and registration of those allocated the land comprising the Ngaari Group Ranch was done, it would have



shed light on whether the legal process was followed in the allocation of Ngaari Group Ranch and whether the concerns raised by the Plaintiffs pass muster.

97. When applying or interpreting the [Land Act](#), this court is to be guided by values and principles which include equitable access to land, security of land rights, transparent and cost effective administration of land, conservation and protection of ecologically sensitive areas, elimination of gender discrimination on laws, customs and practices related to land and property in land. The other principles are participation, accountability, democratic decision making within communities and inclusiveness of participation of the people. Section 5(2) advocates for the equal recognition and enforcement of land rights and non-discrimination in ownership of and access to land under all tenure systems, which would include community land. These are the principles that should have guided the 2<sup>nd</sup> to 4<sup>th</sup> Defendants in the allocation of the group ranch. Women should have participated meaningfully in the whole process.
98. Section 10 of the [Community Land Act](#) requires a community land register to be maintained for each registration unit in accordance with section 8 of the [Land Registration Act](#). The register should contain among other details, a register of members of the registered community which should be updated annually. Subsection 2 prohibits the Registrar from registering any instrument purporting to dispose of rights or interest in community land except in accordance with the Act or any other written law. Without the evidence of the 6<sup>th</sup> to 8<sup>th</sup> Defendants, it is difficult to establish if this provision was complied with.
99. A registered community may reserve special purpose areas for among others, community conservation, cultural and heritage sites, urban development pursuant to Section 13(3) of the [Community Land Act](#). Such areas are to be used exclusively for the intended purpose. Based on Sections 26 and 28 of the [Community Land Act](#), a community may set aside part of registered community land for public purposes. Such land is to be gazetted by the National Land Commission as public land and the registered community may reserve special areas for community conservation, urban development, settlement areas and access and rights of way.
100. Pursuant to Section 23 of the [Community Land Act](#), registered community land may, subject to the approval of the registered community, be converted to private land through transfer or allocation by the registered community. This is also subject to ratification by 2/3 of the assembly in a special meeting convened by that purpose. Section 30 of the [Community Land Act](#) bars discrimination in the enjoyment of rights of use or access to community land. The Plaintiffs contended that according to the evidence led by the second defence witness, women were not supposed to attend the Ngaari Group Ranch AGMs. If this is what transpired, then it was in contravention of the law. The minutes which the 2<sup>nd</sup> Defendant tendered in evidence indicate that women attended the AGMs.
101. It would not be efficacious for the court to issue an injunction at this point in time to restrain the Defendants from subdividing Ngaari Group Ranch and issuing titles for all the property covered by Ngaari Registration Section as the Plaintiffs sought. It would also not be tenable to compel the Defendants to supply the names of the persons who sold their parcels of land as this would not be within their knowledge for once a title is granted to a person they are free to deal with the land without involving the Ngaari Group Ranch officials.
102. This court is inclined to make the following orders:
  - a. Under the supervision of the Deputy Registrar of the ELC at Nyahururu, a team comprising two representatives of the Plaintiffs, one representative of the members of Ngaari Group



Ranch who were not allocated land and two representatives of the 1<sup>st</sup> to 4<sup>th</sup> Defendants will be constituted within 14 days of the date of this judgment to undertake the following tasks: -

- i. scrutinise the two registers deposited in court pursuant to the order of 21/10/2021 and compile and file in court a list of the authentic members of Ngaari Group Ranch;
  - ii. prepare and file in court a schedule of the bona fide members of Ngaari Group Ranch who were allocated land that previously comprised the Ngaari Group Ranch showing the number of parcels allocated to each member, the sizes of the parcels and the land reference numbers allocated to each member with a row indicating their membership numbers;
  - iii. prepare and file in court a schedule of all the persons who were allocated parcels of land which comprised the Ngaari Group Ranch by the 1<sup>st</sup> to 4<sup>th</sup> Defendants and yet their names do not appear in the two registers deposited in court pursuant to the order made on 21/10/2021;
  - iv. prepare and file in court a list of all the members of Ngaari Group Ranch who were not allocated land from the allocation exercise overseen by the 1<sup>st</sup> to 4<sup>th</sup> Defendants;
  - v. compile and file in court a genuine list of deceased members of Ngaari Group Ranch and those who replaced the deceased members with a view to ascertaining the deceased members of Ngaari Group Ranch who were not replaced by their representatives during the allocation of land by the 1<sup>st</sup> to 4<sup>th</sup> Defendants. Special attention must be paid to orphans and widows of deceased members of the group ranch.
- b. The tasks under (a) must be undertaken and concluded within 45 days of the date of this judgment.
  - c. The 5<sup>th</sup> to 8<sup>th</sup> Defendants are directed to prepare and file in court a schedule of all the persons who were originally allocated land which comprised the Ngaari Group Ranch. Further, they will deposit in court copies of all the documents, beneficiary and all other lists, mutation forms, maps, amended RIM and other details which they used to prepare the land register and issue titles for the area covered by the Ngaari Group Ranch.
  - d. The lists and schedules prepared under paragraph (a) will be tallied against the plot allocation list which the 1<sup>st</sup> to 4<sup>th</sup> Defendants used for the allocation of the Ngaari Group Ranch land. This exercise must be conducted in a fair and transparent manner.
  - e. The 1<sup>st</sup> to 4<sup>th</sup> Defendants are directed to devise ways of resolving the dispute through consultation and involvement of those affected leading to the voluntary surrender of parcels of land by members of Ngaari Group Ranch who were allocated more than one parcel of land. This will be undertaken in a fair and transparent manner with the leaders of the community spearheading the process.
  - f. The surrendered parcels will be reallocated to the members who were not allocated land and the representatives of deceased persons who were left out of the allocation of Ngaari Group Ranch overseen by the 1<sup>st</sup> to 4<sup>th</sup> Defendants. Special attention must be paid to orphans and widows of deceased members.
  - g. In the event that the members of Ngaari Group Ranch who were allocated more than one parcel of land have already sold the parcels of land which were allocated to them by the 1<sup>st</sup> to



4<sup>th</sup> Defendants, such members will compensate the members who were not allocated any land based on the current market value of one parcel of land in Ngaari area.

- h. All the Plaintiffs and the Defendants are required to cooperate in the resolution of this dispute and in building cohesion and harmony within the Ngaari community.
- I. For the avoidance of doubt, the two registers for Ngaari Group Ranch deposited in court pursuant to the court order made on 1/10/2021 will remain in court until the orders made in this judgment have been fully complied with.
- j. The verification exercise and reallocation of land to the members of Ngaari Group Ranch must be undertaken expeditiously and should be concluded within the next 90 days.
- k. The land reserved for conservation, conservancy and other public utility is not to be interfered with during the land reallocation exercise.
- l. The matter will be mentioned before the ELC Judge, Nyahururu within 6 months of the date of this judgment to confirm compliance and record the final settlement of the dispute.
- m. The 2<sup>nd</sup> to 4<sup>th</sup> Defendants will pay the Plaintiffs the costs of this suit.

**DELIVERED VIRTUALLY AT EMBU THIS 12<sup>TH</sup> DAY OF MARCH 2025.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. E. Okoth holding brief for Mr. A. Mahmoud for the Plaintiffs

Mr. Waichungo Martin for the 1<sup>st</sup> to 4<sup>th</sup> Defendants

No appearance for the 5<sup>th</sup> to 8<sup>th</sup> Defendants

Diana Kemboi- Court Assistant

