



**Keekonyokie Community Trust (Suing through its duly appointed Trustees) v Parantai & 2 others  
(Environment & Land Case 410 of 2017) [2024] KEELC 3309 (KLR) (4 April 2024) (Judgment)**

Neutral citation: [2024] KEELC 3309 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 410 OF 2017**

**CA OCHIENG, J**

**APRIL 4, 2024**

**BETWEEN**

**KEEKONYOKIE COMMUNITY TRUST (SUING THROUGH ITS DULY  
APPOINTED TRUSTEES) ..... PLAINTIFF**

**AND**

**MOSES PARANTAI ..... 1<sup>ST</sup> DEFENDANT**

**JOHN KAMUYE OLE KIOK ..... 2<sup>ND</sup> DEFENDANT**

**THE CABINET SECRETARY, MINISTRY OF LANDS HOUSING AND URBAN  
DEVELOPMENT ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. Through a Plaint filed on 15<sup>th</sup> July, 2015, the Plaintiffs’ sought the following orders against the Defendants:-
  - a. Mandatory injunction compelling the Defendants to hand over vital documents in relation to the Keekonyokie Community Trust including the original Title Deed to land L.R No. Ngong/ Ngong/12418 to the duly elected and newly registered board of trustees.
  - b. Mandatory injunction compelling the Defendants to peacefully hand over office of the Chairman and Vice Chairman of the Keekonyokie Community Trust and cease all form of rebellion, resistance and disturbance.
  - c. Permanent injunction restraining the Defendants, their Agents and/or servants from subdividing, alienating, wasting, demarcating, disposition and/or in any manner dealing with the land L.R Number Ngong/ Ngong/12418.
  - d. Cost of the suit jointly and severally against the Defendants and;



- e. Any other reliefs as this honourable court may deem fit to grant.
2. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed a Statement of Defence dated the 20<sup>th</sup> August, 2015 wherein they denied the averments in the Plaint and contended that any alleged change of Trustees was unprocedural, illegal and invalid as they were not in accordance with the Constitution of the Trust, thus they were void ab initio.

The matter hence proceeded for hearing.

### **Evidence by the Plaintiff**

3. PW1 Moses Masek Monik testified that he was the Chairman to the Plaintiff. He listed the first seven registered Trustees of the Plaintiff as Moses Parantai, John Kamuye Ole Kiok, William Mopel, Samuel Mantina, Parsereti Sakuda Mpoyo and Peter Kaaka. It was his testimony that as per the Declaration of Trust, any trustee could be removed from office by a decision of the majority of the members of the community and that such decision shall be effective immediately. He further testified that one of the Trustees' Parsereti Ole Ngomea Ngussur, had informed the community of the intended sale of a portion of their land by the former Chairperson, occasioning the calling of an urgent meeting on 1<sup>st</sup> October, 2013 wherein the members agreed to elect new members of the Trust and invoke Clause 16 of the Declaration of Trust since the Chairperson had refused to surrender the title documents. He confirmed that they held elections on 24<sup>th</sup> October, 2013, notice of which was done through the media, word of mouth and other means. He further confirmed the election of the following new Trustees; Moses Masek Monik (Chairperson), Natimana Ole Mamaa (Vice-Chairperson), Jeremiah Ole Mpoyo (Secretary), Parsereti Ole Nkonoye (Treasurer), Samuel Mantina (Member), William Ole Mopel (Member) and Lawrence Ole Sentero (Member). It was his testimony that one Peter Kaaka resigned in writing from the previous board of Trustees and they applied for inclusion of the new Trustees and the Certificate of Change was issued by the Ministry of Lands on 4<sup>th</sup> November, 2013. He stated that the 1<sup>st</sup> Defendant was ousted from office for failing to exercise power in the interest of the community and he should not be allowed to continue possessing the title deed to the suit land as this would prejudice the Plaintiff. Further, that the Trust was ready to comply with the orders of the court.
4. Upon cross-examination by Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants, he confirmed that he did not have any documents to demonstrate that the Trustees of the Plaintiff wanted to sell the suit land. He explained that the meeting was called by the other five (5) Trustees to remove the leadership. He was aware of the meeting held on 1<sup>st</sup> October, 2013 called by the leadership and the Administration, which discussed allegations by the Treasurer. It was his testimony that there was meeting in October 2013 which was called by the elected leaders, upon the request of prophet Ole Nkotoki. He clarified that the Defendants had called other meetings which he did not attend. He insisted that the leaders were removed from office on 24<sup>th</sup> October, 2013 and that Francis Makori was present in the meeting as an expert. He claimed other Trustees (Parsereti Ole Nkomea Ngussur, Samuel Ole Mantina and Jeremiah) appeared but they ought to have resigned. He averred that the four (4) remaining Trustees applied for registration of a new Trust and that he was not aware whether the registration of new Trustees was cancelled. He further confirmed that they had not challenged the minutes of 10<sup>th</sup> October 2013 and denied knowledge of the meeting held on 3<sup>rd</sup> August 2018.
5. Upon further cross-examination by Mr. Motari representing the 3<sup>rd</sup> Defendant, he confirmed that there were management issues. He stated that the Treasurer had raised an issue of an intended sale of the suit land, leading to the meeting held on the 11<sup>th</sup> October, 2013. He acknowledged that there was also a meeting held on 1<sup>st</sup> October, 2013. He insisted that the meeting scheduled on the 11<sup>th</sup> October, 2013 was postponed to 18<sup>th</sup> October, 2013, so as to resolve the issue through the prophet and the



- new officials were elected on 24<sup>th</sup> October, 2013. On further cross-examination, PW1 stated that the Treasurer named in the minutes of 10<sup>th</sup> October 2013, is Parsitai Sammy Nasira. Further, that the correct secretary was Jeremiah Sakorea. He further clarified that the three (3) named Trustees (Parsereti, Samuel and Jeremiah) were not listed as present even in the minutes.
6. Upon re-examination, he clarified that the meeting scheduled on the 11<sup>th</sup> October, 2013 was called by the Trustees of the Plaintiff, being Samuel Ole Mantina, Parsereto Ole Nkonoye, Jeremiah Ole Mpoyo and William Ole Mopel. He confirmed that some Trustees never resigned but Peter Kaaka gave a resignation in writing. He further clarified that the meeting held on the 3<sup>rd</sup> August, 2018 was conducted during the pendency of this case. He reiterated that they needed the following documents to be handed over: Title Deed, Seal of Trustees, Account Statements, List of existing members and other relevant documents.
  7. PW2 Parsereti Ole Ngomea Ngusur confirmed being the Treasurer to the Plaintiff. It was his testimony that they had been given the suit land by the government and a Trust was created to hold the said land in trust for the community. He explained that interim trustees were appointed and held the suit land in trust until 2013 when they were summoned by the then Chairman. Further, at the meeting which was held in Nairobi, the then Chairman had introduced them to some strangers who wanted to buy the land at Kshs. 30,000,000.00 per acre and put up a cemetery thereon but they declined. He further testified that they had called the community for a meeting in October 2013 but the Chairman did not show up. Further, they held another meeting at Ole Tepes where the Chief and the prophet Ole Nkotoki were present, wherein the prophet blessed them to conduct elections since the Chairman had failed to attend the said meeting. It was his further testimony that they convened a third meeting at Kibiko ground wherein they held elections and the new officials were elected but he remained the Treasurer. He reaffirmed that they sent a letter to the Ministry of Lands with the names of the new officials for registration. He was emphatic that the former Chairman had refused to hand over the relevant documents which led them into filing the instant suit.
  8. Upon cross-examination by the Counsel for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants', he confirmed that the meeting held on the 10<sup>th</sup> October, 2013 was the Annual General Meeting (AGM) where elections were conducted. He claimed they convened the meeting on 10<sup>th</sup> October, 2013 with all the other leaders except the 1<sup>st</sup> Defendant. He denied that during the AGM, he stated that he did not want to work with the 1<sup>st</sup> Defendant. He clarified that they held elections on 10<sup>th</sup> October, 2013 and gave the names of the elected Trustees. It was his further testimony that the 1<sup>st</sup> Defendant filed his Application dated the 10<sup>th</sup> October, 2013, and they also file theirs. He denied knowledge of the meeting held in 2012 and 2013 but insisted that the AGM was held on 11<sup>th</sup> October, 2013. He confirmed to have disclosed the issue of the intended sale of the land during the meetings. He also stated that there was no specific Chairperson for the meeting held at Kibiko grounds and did not know the Secretaries for the meetings held on 24<sup>th</sup> October 2013 and 11<sup>th</sup> October 2013 respectively.
  9. On re-examination, he stated that ever since he disagreed with the former Chairman, he had not attended any meeting with him. He denied attending the meeting held on 10<sup>th</sup> October, 2013 and confirmed attending the meeting scheduled on 11<sup>th</sup> October, 2013. He explained that one Francis Makori, a lawyer, attended the meeting of 24<sup>th</sup> October, 2013 on the invite of the community. He further clarified that the four afore-mentioned Trustees were retained after the elections and that they had filed an application at the Lands offices through their lawyer. He denied resigning as a trustee. The Plaintiff produced the following documents as exhibits: The declaration of Trust for Keekonyokie Community Trust; Copy of Certificate of Incorporation of Keekonyokie Community Trust; Minutes of meeting held on 1<sup>st</sup> October, 2013 and list of attendees; Summons dated 4<sup>th</sup> October 2013; Minutes



and list of attendees for meeting held on 18<sup>th</sup> October, 2013; Minutes and list of attendees for meeting held on 24<sup>th</sup> October, 2013; Peter Kaaka's resignation letter; Letter dated 1<sup>st</sup> November, 2013; Certificate of change of Trustees dated 4<sup>th</sup> November 2013 and A standard Newspaper extract dated 22<sup>nd</sup> June 2015.

### **Evidence by the Defendants**

10. DW1 Edwin Muata Wafula who is a Land Registrar with the 3<sup>rd</sup> Defendant testified that they received the Plaintiff's application for Change of Trustees on the 4<sup>th</sup> November, 2013 and annexed to the said application were minutes of an election held on 24<sup>th</sup> October, 2013 which had a List of Attendees as well as their National Identity Cards. It was his testimony that on the 28<sup>th</sup> November, 2013 an application booked as Day book number 4047 was launched for effecting new Trustees on and over the application dated the 4<sup>th</sup> November, 2013 and this was rejected due to early approval and lack of sufficient documents. He explained that as per the application dated the 4<sup>th</sup> November, 2013 and booked as Day Book 193 of November, 2013, the following persons were entered as officials: Moses Masek Monik, Natimana Ole Mamaa, Lawrence Ole Sentero, William Mopel, Samuel Mantina, Parseketo Ole Ngomea Ngusur and Jeremiah Sakuda Mpoyo. It was his further testimony that the Plaintiff had placed before Court a duly approved and registered Change of Trustees vide an official entry made on 4<sup>th</sup> November, 2013, on the Certificate of Incorporation.
11. On cross-examination, he stated that the 3<sup>rd</sup> Defendant duly registered the Change of Trustees on 4<sup>th</sup> November, 2013 pursuant to the meeting held on 24<sup>th</sup> October, 2013. He then confirmed that the Ministry of Lands is not the custodian of the original Certificate of Incorporation as the same is held by the Trustees. Further, that there was a request made to the Ministry of Lands for a provisional Certificate of Incorporation. He confirmed that in the aforementioned application made by one Moses Parantai Ole Shupuru, they had stated that they had lost the original Certificate of Incorporation. He confirmed that the Application was not successful since there was no Police Abstract nor a gazette notice to confirm the loss. He stated that the Change of Trustees was done in accordance with the law.
12. On further cross-examination by Counsel for 1<sup>st</sup> and 2<sup>nd</sup> Defendants', he explained that when presented with minutes for an application, they do not find out what transpired on the ground. Further, that they cannot process an application for change of registration, without the Certificate of Incorporation. He also confirmed that the application dated the 28<sup>th</sup> November, 2013 was given daybook number 4047 and that one Mucheke Z.Y had written a letter on behalf of the Chief Land Registrar to Migos & Company Advocates concerning the subject Trust. He reiterated that a letter was written by their office to Moses Parantai informing him of the rejection of his application on grounds that there was an election and changes had been effected.
13. On re-examination, he confirmed that there were minutes referring to a meeting of 30<sup>th</sup> August, 2018 yet the court had barred any dealings on suit land. He clarified that the Affidavit dated the 15<sup>th</sup> June, 2015 does not state that the Applicant submitted the original Certificate of Incorporation to the Land's Registrar.
14. DW2 Moses Parantai Ole Shukuru, who was the 1<sup>st</sup> Defendant confirmed to be one of the founding trustees of the Plaintiff. He testified that the leadership of the trust had never been questioned until 2013, when some disgruntled members who wished to take over the control of the trust started spreading malicious rumors, leading to the filing of a defamatory suit being Civil Suit No. 141 of 2014. He claimed that they had held a meeting on 10<sup>th</sup> October 2013 wherein new Trustees were elected to replace three (3) Trustees who had refused to cooperate with the others, while two had resigned. Further, they lodged an application for registration but they did not get a response. He explained



that their advocates had followed up with the Ministry of Lands who confirmed that the original Certificate of Incorporation was lost. Further, that subsequent attempts to get feedback even after a fresh application, failed. It was his further testimony that he was shocked to learn from the local daily newspapers that other individuals claimed to be the trustees and that a new Certificate had been issued to them. He insisted that he was only holding the Title in trust until the community authorizes the land to be subdivided and distributed to the members. Upon further cross-examination, he stated that a trust was established in 2008 for the land known as Kibiko Holding Ground. He confirmed to have been named as one of the trustees and that the day to day governing including management was done through the Declaration of Trust. He argued that any election of the board of trustees had to be done vide an Annual General Meeting and the minutes of the meeting held on 24<sup>th</sup> October 2013 were not signed by the Secretary hence not a proper meeting. He could not confirm if Jeremiah Sakuda Mpoyo was present during the meeting held on 24<sup>th</sup> October, 2013. He contended that at the time of the first inauguration of the trust, the members who were in the declaration were Samuel Ole Mantina, Pasereti Ole Ngomea, Jeremiah Sakunda Mpoyo and William Ole Mopel. He averred that he had filed Nairobi Civil Suit No. 141 of 2014, which was still pending. He stated that there was an order issued on 19<sup>th</sup> June, 2018 directing him to surrender documents but he declined to do so. Further, that he did not appeal against it. He apologized to the court and explained that it was the duty of the Chairman is to keep records and the meeting held on 10<sup>th</sup> October, 2013 replaced the five (5) Trustees and only retained the Chairperson and his Vice. He reaffirmed that the three (3) Trustees had verbally resigned and confirmed that Mr. Sailash was appointed to take minutes of the AGM on 10<sup>th</sup> October, 2013. He explained that by the time they were writing a letter to the Chief Land Registrar, the instant suit had not been filed and they did not inform the said Registrar that they had been ousted in a meeting held on 24<sup>th</sup> October, 2013. He testified that he had participated in the meeting held on 3<sup>rd</sup> August, 2018 but did not know of any court orders that barred them from dealing with the suit land. He reiterated that the list of attendees as included in his bundle of documents had several errors.

15. Upon re-examination, he clarified that he did not call for any meeting on 1<sup>st</sup> October, 2013 but convened the AGM on 10<sup>th</sup> October, 2013 and listed the trustees who were elected. He further confirmed to have made an Application to the Ministry for registration of the new officials who had been elected which was received on 28<sup>th</sup> November, 2013 by the Ministry of Lands. He denied being present during the meeting of 1<sup>st</sup> October, 2013 nor 11<sup>th</sup> October, 2013 nor convened the meeting of 24<sup>th</sup> October, 2013. It was his testimony that his application was rejected by the Ministry of Lands. Further, that the Ministry of Lands indicated that they had lost the Certificate of Incorporation which culminated in the lodging of an application for issuance of a provisional certificate. He further clarified that the community had over 1220 members, while the members present during the meeting held on 10<sup>th</sup> October, 2013 were 1133. He insisted that he handed over the original Certificate of Incorporation to the Ministry at the time of making the Application but they have never returned the same to him. Further, that the board of trustees attended the meeting of 3<sup>rd</sup> August, 2018 and no other election has been held after 3<sup>rd</sup> August, 2018. He produced the following documents as exhibits: Declaration of Trust to Keekonyoike Community Trust dated 2<sup>nd</sup> October 2009; Certificate of incorporation for the Keekonyoike Community Trust dated 21<sup>st</sup> July, 2009; Copy of the Title Deed for Land Reference No. 12418 (I.R 6404); Copy of Complaint in Civil Suit No. 141 of 2014; Copy of the minutes and list of attendees for the AGM held on 10<sup>th</sup> October, 2013; Letters dated 1<sup>st</sup> November and 25<sup>th</sup> November, 2013 by Tobiko Njoroge & Co. Advocates; Demand letter dated 26<sup>th</sup> March, 2015 to the Ministry of Lands; Letter dated 22<sup>nd</sup> April, 2015 from Ministry of land to Migos Ogamba & Co. Advocates; Letter dated 27<sup>th</sup> April, 2015 by Migos Ogamba Advocates to Ministry of Lands; Letter dated 20<sup>th</sup> May, 2015 by the Ministry of Lands to Migos Advocates; Letter dated 21<sup>st</sup> May Migos Ogamba Advocates to ministry of Lands; Application for provisional certificate dated 8<sup>th</sup> June, 2015; Resubmission for



the application for provisional certificate; Letter dated 25<sup>th</sup> June, 2015 by Migos Ogamba Advocates to Ministry of Lands; Letter dated 1<sup>st</sup> July, 2015 by Ministry of lands to Migos Advocates; Letter dated 2<sup>nd</sup> July 2015 by Migos Ogamba Advocates to acting cabinet Secretary Ministry of Lands; Letter dated 3<sup>rd</sup> July, 2015 by Migos Ogamba Advocates to Ministry of Lands; Letter dated 21<sup>st</sup> July 2015 by Migos Ogamba Advocates to Ministry of Lands; Letter dated 21<sup>st</sup> July, 2015 by the Ministry of Lands to Migos Advocates; Letter dated 29<sup>th</sup> July, 2015 by Migos Ogamba Advocates to Ministry of Lands and Excerpt from the Standard Newspaper of 5<sup>th</sup> June, 2015.

## Submissions

### Plaintiff's Submissions

16. The Plaintiffs in their submissions enumerated several Constitutional and statutory provisions upon which their case was pegged, which included Articles 2(1), 40, 50, 60(1), 63(2)(d) and 63(3) of *the Constitution* and certain sections from the *Environment and Land Court Act*, the *Trustees (Perpetual Succession) Act*, *Registration of Documents Act* and the *Land Registration Act*. It was their submission that the parties were bound by their pleadings and since there was no counterclaim filed, parties should not be permitted to make claims outside the Plaintiff. They contended that the change of Trustees was initiated by the members of the community and previously there had been attempts to amicably settle the leadership issue prior to the ouster of the 1<sup>st</sup> and 2<sup>nd</sup> Defendants. They made reference to the events leading to the elections held on 24<sup>th</sup> October, 2013 and insisted that this was aimed at giving the community leaders an opportunity to resolve the leadership issues including the mistrust surrounding the title of the Kibiko land. It was their submission that they hence invoked Clauses 8 and 16 of the Declaration of Trust after all the other means had failed. They further submitted that they had adhered to the procedure for the Change of Trustees as set out under the Declaration of the Trust and the Trustee (Perpetual) Succession Act. They were emphatic that the Plaintiff had followed the due process in their application for change of trustees on 4<sup>th</sup> November, 2013 and annexed all the relevant documents thereto. Further, that the Defendants' application dated the 28<sup>th</sup> November, 2013 came over a month later, after the purported AGM. They reiterated that the Court had dealt with the issue of holding documents in trust including the 1<sup>st</sup> Defendants' acts of contempt and argued that the Court had severally issued orders of surrender to the 1<sup>st</sup> Defendant but he defied them same, culminating in his being fined Kshs. 200,000.00 for contempt of court orders. They further submitted that the 1<sup>st</sup> Defendant had defied court's orders by holding the meeting on 3<sup>rd</sup> August, 2018. It reiterated that the Defendants had infringed on *the Constitution*, Statute as well as Declaration of Trust and breached their fiduciary duty as trustees of the trusts' beneficiaries. They contended that the community's power superseded those of the 1<sup>st</sup> Defendant and that he should have returned the title deed to them. They disparaged the List of Attendees of the meeting held on 10<sup>th</sup> October, 2013 arguing that it had several errors including repeated names, hence lacked legitimacy, verifiability and ultimately not conducted in accordance with the Declaration of Trust. To buttress their averments, they relied on very many decisions including: *David Kipsang Kipyego v Registrar of Documents & Others*; *Erick Kiptum Teimuge (Interested Parties) (2019) eKLR*; *Nduva & 3 Others v John Ndar & 3 Others (2023) KEHC 3185 (KLR)*; *Econet Wireless Kenya Ltd v Minister for Information & Communication of Kenya & Another (2005) KLR 828*; *Pablo D. Palma v Eduardo Reyes Cristobel G. R No. L – 49219 (1946)*; *Hodgkinson v Simms (1944) 3 SCR 377* and *Stephens & 6 Others v Stephens & Another (1987) eKLR*.



### **Submissions by the 1<sup>st</sup> Defendant**

17. The 1<sup>st</sup> Defendant in his submissions argued that there is no such entity as ‘board of trustees’ which allegedly called for the meeting of 1<sup>st</sup> October, 2013 as the same is not provided for in the Trust Deed. He contended that the four (4) Trustees who were present in the said meeting did not Chair it, while the attendance was by a minority, being 81 members hence could not create any changes in leadership as Agenda on elections was not included therein. He submitted that the AGM of 10<sup>th</sup> October, 2013 was the valid meeting with a majority attendance of 1133 members. He insisted that the meeting held on 11<sup>th</sup> and 18<sup>th</sup> October, 2013 respectively were invalid. He challenged the election of the alleged Trustees and their capacity to institute the suit. Further, that the persons allegedly elected as Trustees during the said meeting were not in the attendance list of the meeting, while the minutes were dated the 30<sup>th</sup> October, 2013 and not the purported 24<sup>th</sup> October, 2013. He reiterated that the 3<sup>rd</sup> Defendant interfered with the proper registration of the Defendant’s team as trustees by unprocedurally registering the alleged Plaintiff’s team. He outlined his compliance with the process of registering new Trustees and highlighted the confirmation of the 3<sup>rd</sup> Defendant to have lost the original Certificate of Incorporation which he had surrendered in his Application for change of Trustees. He denied interfering with L.R Number 12418 I.R No. 6404 by any sub-division, alienating, wasting, demarcation or disposing off the land. Further, that he was not aware nor in custody of the land being referred to by the Plaintiffs as L.R 12418. He invited the court to consider Kajiado ELC Petition No. 6 of 2019 which he opined would shed light on who the true Trustees were. It was his further submission that in the said matter, the alleged Trustees of the Plaintiff had also been sued for contempt since they also subdivided and sold the same land they are allegedly protecting by suing the Defendants’ herein. He also cited Kajiado ELC No. 79 of 2019 which he opined was filed over the same subject against the same Defendants in a bid to annoy them. To support his averments, he also relied on very many decisions including: *Habiba Mohamed Al -Amin & 2 Others v Standard Chartered Kenya Ltd & Others* (2020) eKLR; *Symon Philip Koech v Litein Tea Factory & 5 others* (2014) eKLR; *East African Portland Cement Ltd v Capital Markets Authority & 4 Others* (2014) eKLR; *Dull Chand v Mahabir Pershad Trilok Chand* AIR 984 Delhi 144, 25 (1984); *Independent Electoral & Boundaries Commission & Another v Stephen Mutinda Mule & 3 Others* (2014) eKLR; *Joseph Mbuta Nziu v Kenya Orient Insurance Company Ltd* (2015) eKLR; *Republic v Minister for Transport & Communication & 5 Others Ex parte Waa Ship Garbage Collectors & 15 Others* (2006) 1 KLR (E & L) 563; *Muchanga Investments Limited v Safaris Unlimited (Africa) Ltd & 2 Others* Civil Appeal No.25 of 2002 (2009) eKLR 229 and *Stephen Somek Takwenyi & Another v David Mbuthia Githare & 2 Others* Nairobi (Milimani) HCCC No. 363 of 2009.

### **Submissions by the 2<sup>nd</sup> Defendant**

18. The 2<sup>nd</sup> Defendant in his submissions stated that the community had advised the two factions to work together to secure the land rights of the members’ but the 1<sup>st</sup> Defendant failed to heed to the advice unless he remained the Chairperson. It was his further submission that the Certificate of Incorporation was with the Plaintiff’s team but the title to the suit land was in the custody of the 1<sup>st</sup> Defendant.

### **Submissions by the 3<sup>rd</sup> Defendant**

19. The 3<sup>rd</sup> Defendant in its submissions provided an outline of the progress of the matter and submitted that Clauses 4 and 6 of Section 6 of the Trustees (Perpetual Succession) Act provides for the Certificate of Incorporation in which all interest in relation to the movable and immovable property of the trust are to be recorded and how the trustees elected or appointed should be noted in the register by the Principal Land Registrar under [Registration of Documents Act](#) Cap 285. Further, that it had recorded



the said changes upon confirming that the same were in accordance with the law and hence the 1<sup>st</sup> and 2<sup>nd</sup> Defendants ceased being Chair and Vice Chairman of the Plaintiff. He argued that the 1<sup>st</sup> Defendant should not have audience before the court after failing to purge the contempt and that the parties who have caused the filing of the case should pay the costs. To buttress its averments, it relied on the following authorities: Trust Bank Limited –vs- Shanzu Villas Limited & 3 Others (2004) 2 KLR, 299; Carol Construction Engineers Ltd v Naomi Chepkorir Langat (2016) eKLR; David Kiptum Korir v. Kenya Commercial Bank & Another (2021) eKLR and Republic v. Rosemary Wairimu Munene (Ex parte Applicant) v. Ihururu Diary Farmers Co-operative Society Ltd. Judicial Review Application No. 6 of 2004.

20. The Plaintiff filed supplementary submissions reiterating its averments and controverting the 1<sup>st</sup> Defendant's submissions.

### **Analysis and Determination**

21. Upon consideration of the Pleadings, testimonies of the witnesses, exhibits and the very extensive rivalling submissions, the following are the issues for determination:-

- a. Who are the Valid Trustees of the Keekonyokie Community Trust?
- b. Whether the Change of Trustees was properly done in accordance with the Declaration of Trust.
- c. Whether the Plaintiff is entitled to orders sought in the Plaintiff.
- d. Who shall bear the costs of this suit.

22. The Plaintiff's trustees claim the 1<sup>st</sup> Defendant was removed from office on 24<sup>th</sup> October, 2013 due to his alleged intended sale of two hundred acres of the community's land, which fact was denied by the 1<sup>st</sup> Defendant. They insist they are the validly elected Trustees which fact is also disputed by the 1<sup>st</sup> Defendant whose faction also claims to be Trustees. Both the Plaintiff and 3<sup>rd</sup> Defendant insist in their submissions that since the 1<sup>st</sup> Defendant failed to surrender documents and purge the contempt, he should not be granted audience. However, at this juncture I find that since the issue in dispute is the identity of the valid trustees, and a right to be heard being a Constitutional right, I cannot deny him audience. Before I proceed to make a determination of the issues highlighted above, I wish to reproduce excerpts from the paramount document governing the Plaintiff (Trust) which is the Declaration of Trust for Keekonyokie Community Land Reference Number Ngong/Ngong/12418, dated the 2<sup>nd</sup> October, 2008:-

6. Trustees Power. All the powers vested in the Trustees under the provisions hereof or by law shall only be exercised with the prior approval of a majority of the members of the Community. In addition to any powers which may expressly or by implication be vested in the Trustees under the provisions hereof or by law the Trustees shall have the following powers: -

To Institute or Defend Proceedings

- o) To institute prosecute, or defend any suits or actions or other proceedings affecting the Trust Fund or any part thereof.

8. Power for the Trustees to act by majority



All or any of the trusts and powers vested in or exercisable by the Trustees under this Deed shall so long as there shall be not less than seven Trustees hereof be capable of being performed or exercised by a majority of the Trustees hereof for the time being and any action or decision of such majority shall be as valid and effectual as it would have been if done or made by all the Trustees for the time being.

10. Appointment of new Trustees

- a. A majority of the members of the Community may at any time appoint new and additional trustees hereof by deed and the statutory power of appointing new and additional trustees contained in Section 37 of the *Trustee Act* shall not apply to this Trust Deed.
- b. In the event of the death or incapacity for any reason whatsoever of any one more Trustees herein, a majority of the members of the Community shall appoint a new trustee as provided herein in place of any Trustee or Trustees who has died or has been incapacitated as aforesaid.
- c. The number of Trustees under the Trust Deed shall not exceed more than seven.

15. Resignation of Trustees

- a. Any Trustee may (subject to the provision hereto) resign his office as Trustee by notice in writing delivered to his co – Trustees provided that he shall have given not less than 30 days prior written notice of his desire to resign his said office.
- b. In the event of the resignation of a Trustee as aforesaid a majority of the members of the Community shall appoint a new trustee as provided herein in place of any resigned Trustee.

16. Removal of Trustees

Any Trustee or Trustees may be removed from his office or their office as trustees of this trust by the decision of a majority of the members of the Community. Such decision shall be effective immediately.”

23. It is not in dispute that the suit land is legally registered in the name of the initial trustees of the Plaintiff. It is further not in dispute that the following persons were the initial interim trustees of the Plaintiff: Moses Parantai, William Mopel, Samuel Mantina, Parsereti Ole Nkomea Ngussur, Jeremiah Sakuda Mpoyo, John Kamuye Ole Kiok and Peter Kaaka. From the pleadings, evidence presented including parties’ submissions, I find that the main fulcrum of the dispute herein revolves around the identity of validly elected trustees of the Plaintiff which is claimed by two factions, drawn from both the Plaintiff and 1<sup>st</sup> Defendant respectively. From the proceedings in court, the Plaintiff’s witnesses alleged the 1<sup>st</sup> and 2<sup>nd</sup> Defendants were removed from office on the 24<sup>th</sup> October, 2013 when new trustees were elected by the community to take over the running of the Plaintiff. PW1 in his testimony was categorical that elections were held on 24<sup>th</sup> October, 2013 and the following persons were duly elected as trustees of the Plaintiff: Moses Masek Ole Monik, Natimana Ole Mamaa, Jeremiah Ole Mpoyo, William Ole Mopel,



Samuel OIe Mantina, Parsereti Ole Nkomeya and Lawrence Ole Sentero. The 1<sup>st</sup> Defendant on the other hand insisted that the said elections were not validly held. DW1 in his testimony confirmed that he registered the aforementioned elected officials as trustees for the Plaintiff after they had presented minutes of the meeting held on 24<sup>th</sup> October, 2013. During cross-examination, when referred to a letter from the Ministry of Land written by Mucheke Z Y dated the 20<sup>th</sup> May, 2015 on behalf of the Chief Land Registrar in respect to loss of Certificate of Incorporation, he confirmed that the said Certificate of Incorporation of the Plaintiff was indeed missing but I note he still proceeded to register the new trustees of the Plaintiff. At this juncture, the main question that we have to ponder is whether the community adhered to the Declaration of Trust in conducting the elections.

24. It is trite that each Trust is governed by its Constitution (Trust Deed) as stipulated in Sec. 2 of the *Trustees (Perpetual Succession) Act* (Cap 164): ‘In this Act, unless the context otherwise requires constitution means the rules, regulations, terms and documents relating to the object of the trust and regulating the affairs thereof and appointment of trustees and other officers thereof’.
25. From the excerpt of the Declaration of Trust above, it is clear that the Trustees have to be elected by a majority of community members. From the testimonies of the witnesses, it is pertinent for the court to decipher what constituted a majority of the community members while electing the new trustees.
26. Black’s Law Dictionary 10<sup>th</sup> Edition defines a majority as: ‘a number that is more than half of a total’. In this instance, since the Plaintiff’s Declaration of Trust did not qualify what a majority would constitute, I opine that it means fifty percent (50%) of the membership. However, I note none of the parties herein submitted the register of members of Keekonyokie Community Trust to confirm what 50% would constitute.
27. In the current scenario, the Composition resignation and appointment of Trustees for the Plaintiff is governed by Article 10 of the Declaration of Trust which I have cited above. From the above provisions of the Trust Deed, it is clear that the most vital requirement for removal of trustee(s) is a majority of the community members’ approval. The only way to confirm which of the two elections was validly conducted to lead to change of Trustees is by the number of attendees which would then constitute the ‘majority’ views of the community. Both sides of the divide have confirmed that the ‘other election’ did take place although they did not attend, but they have not disputed that indeed each of the two opposite factions held their respective different elections. The 3<sup>rd</sup> Defendant further confirmed to have acted on the evidence of the minutes dated the 24<sup>th</sup> October, 2013 as presented by the Plaintiff to effect new Changes of the Trustees. On perusal of the documents produced by the respective parties as exhibits, I note there were several meetings held in October, 2013 by the Community. On the 11<sup>th</sup> October, 2013 there was an AGM held at Kibiko Grounds which was attended by 587 members and whose main agenda was election of new trustees but the said meeting later aborted as the prophet Ntokoti sought to consult the Chairman. On the 24<sup>th</sup> October, 2013, there was a Special General Meeting attended by 560 members (as per the 17 leaflets of 35 members each), wherein there were elections of new Trustees. I note the said List is not signed by any of the attendees whose names and Identity Card Numbers are indicated therein, but some ID Numbers are missing. From the 1<sup>st</sup> Defendant’s bundle of documents and Attendance list, the meeting where the first alleged election was conducted was on 10<sup>th</sup> October 2013. Further, I note it was attended by 1133 members of the Community, who voted in, the Trustees named by the 1<sup>st</sup> Defendant. From this evidence alone, there is a clear disparity of the attendees as well as what the majority of the community members constituted as per the Declaration of Trust. DW2 confirmed that the trust had over 1000 members which fact was not controverted by the Plaintiff. The 1<sup>st</sup> Defendant has held the position that he was not legally or procedurally removed from office. However, it is trite that there can only be one valid board of trustees of a Trust at any particular time. From the two Lists of Attendees



produced by the two factions as having attended the AGM and SGM respectively, there are very many glaring anomalies which as a court I cannot ignore. I reiterate that in the Plaintiff's List, none of the attendees has signed or thumbprinted thereon. Further, there are some identify card numbers missing. As for the List produced by the 1<sup>st</sup> Defendant, there are various names repeated thereon. Except for claiming that the intended AGM and SGM was announced in the media, none of the parties' produced any media advertisements, notices or invitations calling for the AGM and SGM respectively nor the Agendas. It is my considered view that the purported AGM and SGM seemed to have been conducted haphazardly without adhering to the laid down legal procedures governing corporate bodies as well as the Declaration of Trust. Participation in elections is a civic and Constitutional right of each community member and it is pertinent that this should be conducted properly. Further, it is important for the leaders to confirm they were indeed elected by a majority of the community members to represent them. From the list of community members who attended the SGM on 24<sup>th</sup> October, 2013 that culminating in registration of new trustees by the 3<sup>rd</sup> Defendant, I opine that it barely represented the majority of membership of the community.

28. It is my considered view that the 3<sup>rd</sup> Defendant hence acted unprocedurally as well as on a misrepresentation from the Plaintiff by registering the new Trustees. Notably, the issue of the 'lost' Certificate of Incorporation is questionable as the Ministry acknowledged misplacing it and still proceeded to register the Plaintiff's new trustees but failed to approve the 1<sup>st</sup> Defendant's application on this basis.
29. In the current scenario, I opine that the burden of proof was upon the Plaintiff's trustees to prove that they were duly elected by a majority of the members to represent the Trust which I find they have not discharged. Further, it emerged in submissions that three trustees being Samuel Mantina, Jeremiah Ole Mpoyo and William Ole Mopel have since died, which fact has not been disputed by the Plaintiff. This in essence means, the number of trustees are now reduced to four (4) and from the Declaration of Trust, it indicates that total number of trustees should be seven. As for the purported AGM held by the 1<sup>st</sup> Defendant on 3<sup>rd</sup> August, 2018, I find the same is void ab initio and inconsequential as there was already a court order in place barring him from interfering with the trust.
30. In my view, since the two purported election of trustees were held in October 2013 which is almost eleven (11) years ago, in the interest of justice and to avert any chaos, I hold that it would be proper if the community conducted fresh election.
31. In the foregoing, I find that there were no Valid Trustees of the Keekonyokie Community Trust of the Plaintiff as the elections held on 10<sup>th</sup> and 24<sup>th</sup> October, 2013 respectively changing the Trustees did not adhere to the Declaration of Trust.
32. Based on the facts as presented including my analysis above, I find that the Plaintiff is hence not entitled to the orders as sought in the Plaintiff.
33. In the circumstance, I find that the Plaintiff has not proved its case on a balance of probability and will proceed to dismiss it but make no order as to costs.
34. I direct that the Keekonyokie Community Trust do hold fresh elections of the trustees within Ninety (90) days from the date hereof.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MACHAKOS THIS 4<sup>TH</sup> DAY OF APRIL, 2024**

**CHRISTINE OCHIENG**

**JUDGE**



**In the presence of;**

Mrs. Hashi for Plaintiff

Cohen and Kyobuka for 1<sup>st</sup> Defendant

Motari for 3<sup>rd</sup> Defendant

Court Assistant – Simon/Ashley

