



Tamei & 416 others v Kaiye & 9 others (Environment & Land Case 99 of 2019) [2024] KEELC 6934 (KLR) (17 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6934 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 99 OF 2019
LC KOMINGOI, J
OCTOBER 17, 2024**

BETWEEN

JOHN LEMARPE TAMEI & 416 OTHERS & 416 OTHERS & 416 OTHERS & 416 OTHERS PLAINTIFF

AND

**MAIMPI KAIYE 1ST DEFENDANT
LEMUNKE MAINKA 2ND DEFENDANT
SOPON SHUNGEYA 3RD DEFENDANT
KIAMPA KUSHU 4TH DEFENDANT
LESAAN MERERU 5TH DEFENDANT
LEMOMO KUSHU 6TH DEFENDANT
NACHARO MESEYIEKI 7TH DEFENDANT
SIMINTEI KELOI 8TH DEFENDANT
LAKARA KIPIROI 9TH DEFENDANT
TOROSEI GROUP RANCH 10TH DEFENDANT**

JUDGMENT

1. By the Complaint dated 1st November 2019, the Plaintiffs claim that they were born, raised and reside at Torosei Group Ranch registered the 10th Defendant herein. The land is LR NO. Kajiado/Torosei/11. The 1st to the 9th Defendants are its representatives duly elected and incorporated under Section 7 of the Land (Group Representatives) Act.



2. They claim that they are entitled to be registered as members of the Group Ranch as outlined under Section 46(1) of the [Community Land Act](#) and have on diverse dates in the year 2007 and 2011 applied to be registered as such. The Defendants however declined to register them without valid reasons despite them having registered their friends and family. Following a Court order in ELC Appeal No. 180 of 2012 in Nairobi the Defendants issued them with a Certificate confirming that they are not registered members of the Group Ranch. The certificate was issued on 1st August 2016.
3. It is their case that the 10th Defendant is in the process of subdivision and if they are not registered as members, the subdivision and registration of the ranch to the registered members will leave them without land. They additionally claim that the Defendants have sought consent of the Land Control Board to undertake the subdivision, an action that is contrary to Section 47 of the [Community Land Act](#). They therefore seek for the following orders jointly and severally against the Defendants:
 - i. A permanent injunction to issue restraining the Defendants by themselves, their agents and/or servants from surveying, subdividing or disposing off the Group land known as Kajiado/Torosei/11 or any part or parts thereof and from interfering with the Plaintiffs' use, occupation or enjoyment of the group land until the issue of registration of the Plaintiffs as members of the 10th Defendants Group Land has been determined.
 - ii. An order compelling the Defendants to admit and register the Plaintiffs as members of the Torosei Group Ranch.
 - iii. An order directed to the Registrar of Community land his/her authorised agents to enter the names of the Plaintiffs herein in the register of members of Torosei Group Ranch, within 30 days of issuance of such orders by this Honourable Court.
 - iv. Cost of this suit
 - v. Such other or further relief that this Honourable Court shall deem fit to grant.
4. The Defendants in their statement of Defence confirmed that the 10th Defendant is the rightful owner of property Kajiado/Torosei/11 and has unfettered rights to administer the land. The Defendants confirm that the Plaintiffs' parents were members of the group and the plaintiffs being their children are entitled to their parents' portions of land as per Maasai customs. Therefore, the claim that they are likely to be disinherited if they are not registered as members is unsubstantiated and cannot claim registration to be members by birth. And if their families denied them land, then that would be a succession issue to be addressed in a different forum. The Defendants also averred that the issue of registration being an administrative decision, no evidence had been tabled to show that they had acted ultra vires or unlawfully. As such, asking the court to determine and issue of membership and allocation of land was asking the court to usurp the powers of the group representatives.
5. The Defendants also contested the re-opening of the members register stating that it was closed in 1989 through a legal notice and re-opening it would be illegal. They added that Section 47 of the [Community Land Act](#) would be applicable if the register was still open and that was no application has been made to reopen it. Therefore, the only thing left for the group to do, is carry on with subdivision of the ranch.
6. The Plaintiffs in their reply stated that the Defendants claim that they could not reopen the register was false because they had registered their children and their friends. This refusal was plain discrimination against them in breach of Article 27 as read together with Article 10 and 60 of [the Constitution](#). The Plaintiffs also indicated that the issue of jurisdiction could not be raised at this point because it ought to be canvassed properly.



Evidence of the Plaintiffs

7. John Leshoko Marona, the 3rd Plaintiff adopted his witness statement as his evidence in chief. He also relied on the Plaintiffs' bundle of documents dated 1/11/2019 and a supplementary bundle of documents dated 16/2/2023. The documents were produced as exhibits in this case. He stated that he resides in Torosei. He further stated that in the year 2007, he and his co-plaintiffs approached the committee with a view to being registered as members but they declined. They filed a suit at the Magistrate's court to compel the committee to issue them with a certificate of registration. The lower court held that it did not have jurisdiction. An appeal was preferred to the ELC [vide Appeal No. 180 of 2012](#) and a consent was recorded. He further stated that on 1/8/2016, the defendants issued them with a certificate indicating that they were not members of the 10th Defendant. This necessitated the filing of this suit.
8. He further stated that they ought to be registered as members by virtue of having been initiated into adulthood, knowledge of the Maa language and adherence to Maasai customary laws. It is his testimony that they have been discriminated against since the defendants had registered their sons and daughters as members after the register had allegedly been closed.
9. It was his further testimony that the subdivision has not commenced because there was a court order stopping the same and that the mutation form submitted to the Land Control Board had not been approved. He stated that the defendants had reserved some portions for their personal and that since the land was enough for allocation to all those residing thereon.
10. On cross-examination by counsel for the defendants, he stated that he occupies about 20-25 acres which he had not been asked to surrender. He stated that he would be rendered landless if he is not registered, as his father's land would be inherited by his wives. He admitted that none of the 351 members had their children in the register. He also confirmed that it is only through an Annual General Meeting that new members would be admitted after a resolution but none had been held due to the ongoing cases.
11. He also admitted that the plaintiffs herein were dependants of the 351 registered members. He confirmed that the letter dated 10th March 2022 from the County Land Adjudication and Settlement Officer, stated that the Group Ranch having been dissolved, the officials could carry out subdivision. He admitted that the said subdivision was stopped by a court order.
12. On re-examination, he pointed out members numbers 232, 235, 237 and 247 as relatives of the defendants.
13. Daniel Lemerian Partore, the 15th Plaintiff, adopted his witness statement as his evidence in chief. He stated that he would not be allocated any land if his name is not in the register. He further stated that some of his agemates' names had been entered in the register while they had been left out. He told the court that upon the death of his father, his eldest brother would take his place.
14. On cross-examination by counsel for the defendants, he confirmed that any resolution to register new members has to be passed in an Annual General Meeting. He also stated that they refused to attend one such meeting because the agenda was subdivision. He also confirmed that the court proposed that the parties do resolve the dispute amicably but the defendants were not willing. He also stated that all the 417 plaintiffs are children of the members. He admitted that his father is member number 21 on the register and is entitled to 350 acres. He stated that there are other residents who have attained the age of majority but whose names are not in the register.



15. On re-examination, he stated that the refusal to admit them as members necessitated this suit. He also stated that after his father's death, his eldest brother inherited him. He reiterated that they want the court to compel the defendants to register them as members.
16. John Lemarpe Tamei, the 1st Plaintiff, also adopted his witness statement as his evidence in chief. He also adopted the testimonies of P.W.1 and P.W.2 in their entirety.
17. On cross-examination by the defendants' counsel, he confirmed that by 1989 when the Group Ranch was dissolved, he was 14 years old hence he was not eligible for membership. He also confirmed that his family members were registered members. He stated that if registered, he would be entitled to a separate parcel of land as he has fifteen (15) children. On re-examination, he reiterated that he would like to be registered as a member.
18. Yiapas Ole Pargatian, the 145th Plaintiff, adopted his witness statement as his evidence in chief. He also adopted the testimonies of P.W.1 and P.W.2. On cross-examination, he confirmed that his father was a registered member of the Group Ranch, though his brothers are among the plaintiffs herein. He stated that the register should be updated periodically to avoid leaving out some people hence rendering them squatters.
19. Peter Kila Tatayia, the 84th Plaintiff also adopted his witness statement as his evidence in chief. He also adopted the testimonies of P.W.1 and P.W.2. On cross-examination, he stated that he was 51 years old and some of his age mates were registered as members. He confirmed that his father and some of his uncles were each entitled to get 351 acres. He also stated that his eldest brother would inherit his father. On re-examination, he stated that one of his brothers was a registered member.
20. John Nkaapapa Parshenke, the 22nd Plaintiff adopted his witness statement as his evidence in chief. He also adopted the testimonies of P.W.1 and P.W.2. On cross-examination, he confirmed that his father was a registered member, number 66. He also stated that he was a former councillor. On re-examination, he stated that the register was not closed in 1989 as alleged by the defendantS.

Evidence of the Defendants

21. D.W.1, Lesaan Ole Raaria, Secretary of the 10th Defendant adopted his witness statement as his evidence in chief. He produced the documents in the bundle of documents as exhibits in this case. He told the court that the 10th Defendant was incorporated in 1974 and issued with a title deed: Kajiado/Torosei/11. He also stated that Group Representatives were elected to manage its affairs and that at the time there were only 176 members. It is his testimony that by 1985, the plaintiffs had not attained the age of majority hence they could not be registered as members. The plaintiffs' parents were however registered members. He gave several examples to confirm this. He further stated that the plaintiffs would claim from the share of their parents hence the plaintiffs' claim that they were not direct members was not legitimate.
22. It is his testimony in 1989, the register was reviewed to include the widows whose husbands had passed on and those who had become adults. Thereafter, the register was closed after resolution in an Annual General Meeting. They then wrote a letter dated 23/10/1989 to the Director Land Adjudication for approval for subdivision. He stated that the plaintiffs are children of registered members hence their claim that they would become squatters cannot be true. On cross-examination by the counsel for the plaintiffs, he confirmed that the Group Ranch had been dissolved. He also stated that a wife/wives inherit their husbands contrary to the plaintiffs' claim that it is the eldest son. He also stated that the subdivision would have been complete were it not for the court order stopping the process. He also stated that land set aside for public utilities was for use for the whole community.



23. On re-examination, he reiterated that land was allocated to each household and if a member dies, the widow took over the property which would be subdivided among the members of the said household and subsequently to the children.
24. D.W.2, Lemomo Ole Kushu, a committee member adopted his witness statement as his evidence in chief. He confirmed that the register was closed in 1989, and at the time the plaintiffs could not be registered as members as they were not adults. It was his testimony that registering the plaintiffs as new members will bring confusion as the land has already been subdivided. He stated that the plaintiffs would get a share of their parents' portions.
25. On cross-examination by counsel for the plaintiffs, he stated that the beacons had not been placed as the survey work was not complete. He stated that those who had not been initiated into adulthood in 1989 could not be registered as members. He confirmed that the plaintiffs were residing on their fathers' parcels of land. On re-examination, he confirmed that they applied for dissolution of the Group Ranch in order to proceed with subdivision.
26. D.W.3, Masaille Karangut, adopted his witness statement as his evidence in chief. On cross-examination by the counsel for the plaintiffs, he stated that he was member number 253. He said he was the only son of his father. He stated that the plaintiffs reside on their fathers' parcels of land and they have not been discriminated against. On re-examination, he confirmed that each member would get approximately 350 acres which was sufficient to settle the children.
27. D.W.4, Okoth Charles Ameso, a licensed surveyor and a registered physical planner, adopted his witness statement as his evidence in chief. It was his testimony that the committee had all the documents required before the subdivision commenced. The land was to be subdivided as per the approved scheme. It was his testimony that he identified the external boundary of the whole ranch and existing public utilities such as schools, roads, dams among others. He also proposed new trading centres. He was following the demarcation report carried out in 1995 where major road networks had been identified.

These public utilities were to be handed over to the County Government of Kajiado and the National Land Commission to manage. He further stated that dissolution of a Group Ranch is a lengthy process.

21. On cross-examination by counsel for the plaintiffs, he stated that his mandate was to undertake physical planning, surveying and to ensure the members were issued with title deeds. He confirmed that the subdivision scheme was approved by the County Government of Kajiado. Further, that the consent provides for a general overview but the actual survey depends on the actual acreage on the ground and the required land for public utilities, hence there would be a variation. The Land Registrar and the District Surveyor approved the said consent from Land Control Board as sufficient. He also confirmed that the subdivision process was halted by the court order dated 23/2/2022.
22. On re-examination, he clarified that his mandate was to undertake survey and not to allocate land. The area list came from the group representatives. He also clarified that the initial proposal to allocate 375 acres per member did not take into account public utilities such as roads, schools and trading centres hence the reduction in the acreage.
Further, that the lake or the waterpoint was identified by the officials for inclusion.
21. At the close of the oral testimonies parties tendered final written submissions.



The Plaintiffs' submissions

31. On whether the Plaintiffs are entitled to be registered as members of Torosei Group Ranch, counsel submitted that the Plaintiffs had been discriminated against by denying them registration. It was on record that the Defendants' sons who were the same age as the Plaintiffs had been admitted as members of the group but the Plaintiffs were denied registration. He submitted that the Plaintiffs has been following up on this registration from the year 2011 and this denial led to the filing of all the suits between the Plaintiffs and the Defendants. Counsel made reference to the case of John Lemarpe Tamei & 416 vs Maimpi Kaiyie & 10 others [2013] eKLR where Nyamweya J. found that the Plaintiffs had made a case for membership. Similarly, Christine Ochieng J. in Nokoret Ole Meirag & 6 others vs Nkama Group Ranch & 10 others [2020] eKLR ordered the defendants in that suit to register the Plaintiff as a member and be given land like other members. While citing the Nokoret case, counsel added that the Defendants had not given a reasonable cause for not registering the Plaintiffs noting that some of their age mates were registered members but the Defendants continuously declined to register the Plaintiffs.
32. On the issue of dissolution and subdivision counsel submitted that Torosei Group Ranch had neither been dissolved nor subdivided. The letter for dissolution was addressed to the Registrar of Group Ranches but the response came from the Director of Land Adjudication and Settlement which were two different entities. As per Section 13 of the repealed Land Group representatives Act the group representatives ought to have applied for dissolution to the Registrar for consent to dissolve. Therefore, approval coming from a different office was legally null. Additionally, the [Community Land Act](#) also recognized the Registrar as the office to issue approvals for dissolution of group ranches/community land. He also pointed out that the Defendants testified that there were no beacons on the land and the surveyor also confirmed that the mutation form produced by the Defendants had not been registered. Further the LCB consent and the surveyor's subdivision plans were contradictory. On this, counsel referenced Odunga J. (as he then was) in Daniel Chepchieng Chelagat vs Kipkosgei Birgen [2017] eKLR where the court found that "the Defendant knowingly and dishonestly resurveyed the land and presented a mutation other than one presented for consent of the LCB...
33. The surveyor also gave contradictory evidence about payment for the alleged survey. Additionally, a subdivision being a development should not be undertaken without approvals as per Section 57 of the [Physical and Land Use Planning Act](#). The Defendants had not provided evidence to show how they had sought approvals for the subdivision.
34. Finally on the issue of closure of the register, counsel submitted that if the representatives allege that the register was closed in the year 1985 with 176 members, how come the current register had 351 members with most of whom were registered in the year 2007. He also submitted that D.W.3 had clearly testified that he was registered in 1985 when he was 15 years old and had not been circumcised. Therefore, the argument that only circumcised men were to be registered was equally being used in a discriminatory manner. The prayers in the Plaint should thus be allowed with costs.

The Defendants Submissions

35. Counsel highlighted the history of the Torosei Group Ranch stating that it was established on 5/6/1974 following a directive in the 1960s by the then government for members of certain areas to register themselves into group ranches for purposes of resources and land administration. Following this establishment, the representatives opened a register in 1974 where they registered persons residing in those ranches. However, it was not uncommon to have people from other communities residing thereon and they were also registered. In the 1980s the government ordered for closure of the group



ranches and divide land amongst themselves. The register was the closed in 1989 and members resolved to have it subdivided. However, it keeps being updated/adjusted when deaths of members occur.

36. On the issue of admitting new members, counsel submitted that the legislation that guided this was Section 17 of the repealed Land Group Representatives [Act No. 36 of 1968](#) and not the [Community Land Act](#) No. 27 of 2001 since laws do not operate retrospectively.
37. Counsel submitted that the Plaintiffs had rights and interests over the 10th Defendant but through their parents who were registered members of the ranch and had been allocated land. The Plaintiffs had thus not proved that they would suffer irreparable loss and damage if not registered as members and the suit should be dismissed.
38. On whether the Defendants had jurisdiction to reopen the register, counsel submitted that his court did not have jurisdiction to determine an administrative decision. That ordering the Defendants to register the Plaintiffs would open floodgates where descendants of members would all approach court seeking to be registered as members. And in rare circumstances, where a member is inadvertently left out, then the representatives would consider the application. Reference was made to the following cases in support of this position: *Mutunicet Maya Sayianiu & 2 others vs Osilalei Group Ranch & 6 others* [2021] eKLR, *Mary Ruguru Njoroge v John Samuel Gachuma Mbugua & 4 others* [2014] and the Supreme Court in *Getao v Mokare & 4 others* [2011] KESC 36 (KLR)
39. The Plaintiffs' case ought to be dismissed with costs.

Analysis and Determination

40. I have considered the Pleadings, the evidence on record, the written submissions and the relevant authorities. The issues for determination are:
 - i. Whether the Plaintiffs ought to be admitted as members of the 10th Defendant (Torosei Group Ranch).
 - ii. Whether the denial of membership of the Plaintiffs is discriminatory.
 - iii. Who should bear costs of the suit?
41. The Plaintiffs through previous suits and the instant suit, seek to be registered as members of the 10th Defendant. According to them, being a member means that one will be entitled to get a portion of the land upon subdivision. It is their case that if they are not registered, they will not get any land. They claim they are entitled to be registered as members by virtue of having being born and raised on the said land. They also subscribe to Maasai customary laws.
42. The Defendants have declined to register them as members on the ground that the register was closed in 1989 when the group ranch was dissolved. Further that the Plaintiffs' parents are registered members and have been allocated land. The Plaintiffs would therefore benefit from their parents' land hence the claim that they would be rendered landless is untrue.
43. The Plaintiffs in answer to the above position reiterated that new members were added to the register up to the year 2008 and denying them registration is discriminatory.
44. In ELC Appeal 108 of 2012 (Nairobi); *John Lemarpei Tamei & 416 others vs Maimpi Kaiyei & 9 others* [2013] eKLR, the appellants who are the Plaintiffs herein sought to stop the convening of an Annual General Meeting to discuss subdivision of the suit land until their membership status was determined. The Respondents who are the Defendants herein contended that the Annual General Meeting was the only forum where the issue of membership could be discussed and a resolution passed. P.Nyamweya J.



(as she then was) in her ruling dated 29/11/2013, stated thus; “...a legal basis exists for the application for membership. However, the applicable law cited in the foregoing is clear on the procedures to be followed by the appellants in canvassing their claim including the need to have the decision confirmed at an AGM...it is thus my finding that the Respondents have been prevented by various court cases from following the laid down legal procedure needed to address the appellants claim for membership, and that the appellants must bear their part of the blame in this respect...”

45. Section 8(2) of the Land (Group Representatives) [Act No. 26 of 1968](#) states that;

“The group representatives are under a duty to hold any property which they hold as such, and to exercise their powers as such, on behalf and for the collective benefit of all the members of the group, and fully and effectively to consult the other members of the group on such exercise.”

Section 28 of the said act provides;

“Determination of membership of group where a question arises whether a particular person is a member of a group, a certificate signed by a majority of the group representatives shall be conclusive of the question: Provided that a person who is aggrieved by the issue of such a certificate may apply to a District Magistrate’s Court having jurisdiction in the area to determine the question, and in such a case the determination of the court shall be conclusive.”

40. I agree with the Defendants submissions that the [Community Land Act](#), 2016 which repealed the Land (Group Representatives) Act cannot operate retrospectively. It would be unjust to subject the members of the 10th Defendant to the new act. The undisputed facts are the Plaintiffs herein reside on the suit land by virtue of being dependants and/or beneficiaries of the registered members. All the Plaintiffs admitted that their parents are registered members. Each of the Plaintiffs is utilizing about 20-25 acres of the suit land.

41. As per the approved subdivision plan, each member will get about 350 acres to be utilized by members of his/her household. The courts have always implored on the parties to resolve this dispute through alternative dispute resolution. However, this has

not been possible as the Plaintiffs admitted that they have not attended any of the meetings called because the agenda was subdivision. The question would be; why did they not attend and raise the issue of membership? It is my view that the Plaintiffs were not keen on having the dispute resolved but were determined to frustrate the completion of the subdivision process.

40. It is not in dispute that the 10th Defendant was dissolved. On the 29/9/1989, the group representatives applied for dissolution of the Group ranch. On the 2/11/1989, the Director of Land Adjudication Settlement wrote to the chairman “...the group ranch will be dissolved after signing all the necessary documents transferring the created subdivided parcels to the individual members of the group. In the meantime, you should obtain an LCB consent for the subdivision...after fulfilling the aforesaid and every member of the group has obtained his/her title deed, inform this office and I will finally dissolve...” Thereafter by the minutes of 5/8/2008, Number 2/0808, it was resolved “The chairman read the proposed criteria of subdivision by the committee with the surveyor that during subdivision of the group ranch, all members will get equal share of 375 acres...after a long discussion, all members agreed with the proposal but with consideration of previous settlement; nobody should be moved away from his/her place due to biasness or favour. The members unanimously resolved the group ranch be



subdivided without delay so that they share with the sons who are clamouring for registration which was earlier closed in 1989 and settlement done”.

41. From the letter dated 1/2/2022, the Director Land Adjudication and Settlement to the chairman reads; “During the director’s office tour to your ranch on 26/01/2022, it was realised you had completed your survey subdivision plans and submitted to the County Government for approval on 31/05/2021. However, to date the County Government has not approved your survey plans and therefore hindering your progress. The Physical Land Use Planning Act under development control, Section 58 (6) states “Where an applicant does not receive written response for development permission within 60 days, such permission shall be assumed to have been given in terms of this act.” Therefore, it is assumed your plans have been approved and you are hereby authorised to carry on with your survey activities leading to registration and issuance of titles to members...”.
42. By a letter dated 9/3/2022, the Director Land Adjudication and Settlement to the County Land Adjudication and Settlement Officers in Kajiado, Narok among others reads; “Please note group ranches which have not dissolved are to transit to Community Land as per the provisions of the Community Land Act 2016. Liaise with the Community Land Registrars to effect the process. However, group ranches which dissolved, applied for a certificate of dissolution and are undergoing subdivision of the respective lands, are allowed to proceed with the process till their respective members have been issued with title deeds, but for purposes of fast tracking, the office will be issuing administrative timelines to enables members to get their titles.”
43. In a response, the County Land Adjudication and Settlement officer in his letter dated 10/3/2022 states “...the following group ranches had dissolved and hence allowed to subdivide the land to their respective members...Torosei Group Ranch...the purpose of this letter is to notify you that dissolve group ranches should not be interfered with in any way without consultations from the relevant department and don’t fall within the provisions of the Community Land Act”.
44. The foregoing correspondences confirm that the 10th Defendant was dissolved and its register closed. The Plaintiffs have failed to demonstrate that they will be rendered landless if their names are not entered in the register. I find that this court cannot direct the group representatives to arbitrarily register the Plaintiffs who have been given their portions through their homestead heads according to Maasai customs. If this court were to order the re-opening of the register, what will happen when all other persons in the community who also meet the required threshold for registration as members and are not part of this suit demand to be registered? Such an order may open doors for an avalanche of suits seeking registration. What will prevent the great grandchildren of the members and the growing population from making a demand directly from the 10th Defendant? The court ought to take cognisance of the impact of the orders on similar group ranches. The Court of Appeal in *East African Cables Ltd v Public Procurement Complaints, Review and Appeals Board & another* [2007] eKLR held “...the court has a reciprocal duty to ensure that it does not hamstring such bodies like the 2nd Respondent from performing their lawful duties as bestowed upon them by the relevant law. We think that in the particular circumstances of this case, if we allowed the application, the consequences of our orders would harm the greatest number of people. In this instance, we would recall that advocates of utilitarianism, like the famous philosopher John Stuart Mill, contend that in evaluating the rightness or wrongness of an action we should be primarily concerned with the consequences of our action and if we are comparing the ethical quality of two ways of acting, then we should choose the alternative which tends to produce the greatest happiness for the greatest number of people and produces the most goods. Though we are not dealing with ethical issues, this doctrine in our view is aptly applicable.”
45. The Plaintiffs herein are not claiming registration as members per se but proprietorship of the land they were born and raised and continue to occupy within the 10th Defendant. In the Supreme Court



of Kenya, Petition 9 of 2022: James Mbugua Getao v Simon Oarkoyiet Mokare & 4 others it was held “In a nutshell, the Land Group Representatives Act (now repealed) was introduced to enable the inhabitants of large swathes of land in largely semi-arid pastoralism areas, to hold such land as a group, under one title. The title would be issued to and held by elected representatives on behalf of the group. Through this instrumentality, the group ranch not only acquired a “corporate character”, but became henceforth legally insulated from the ‘tragedy of the commons.’³⁹. The group ranch was therefore owned by members of the group, in equal but undivided shares, until such time that each member acquired their individual titles. So what type of tenure is created in these ranches? In the law of property in land, this is what can be characterized as “a community of ownership” (or co-ownership) as opposed to “community or communal ownership”. In the former, each member has an equal share, though undivided, while in the latter, there is no equality of shares. The members derive their security of tenure ‘qua members’ of that community. The nature of that security will also differ depending on the status of members. Therefore, the type of tenure operative in a group ranch under the Land (Group Representatives) Act, is what is known at common law as “a tenancy in common”, as opposed to “a joint tenancy” (the ingredients of which may be clarified in future litigation). Members of the group ranch are “tenants in common” as opposed to “joint tenants.”

I rely on the above authority in finding that the group representatives cannot be compelled to reopen the register to admit the Plaintiffs who were not members in 1989.

40. The claim by the Plaintiffs that the group representatives have admitted their relatives after 1989 is neither here nor there. It is not clear whether the said additional members were those replacing deceased members or not. No birth certificates or identification documents were produced to show that the additional members are related to the officials of the 10th Defendant. To this extent, the Plaintiffs have failed to prove that they were discriminated against, they have not demonstrated that they will not get a share through their parents who are members. I agree with the Defendants’ Submission that any blanket admission of members after several members have moved on with their size of allotment in mind would set complete anarchy in the subdivision.
41. The Plaintiffs have quoted the case of Nokoret Ole Meirag & 6 others vs Nkama Group Ranch & 10 others [2020] eKLR where the court ordered the registration of the 4th Plaintiff as a full member. I find that this case is distinguishable from the instant suit since in the 2020 case there was a consent order directing the registration of the said Plaintiff as a member. This is not the case in the instant suit.
42. On the issue that the necessary documents required before subdivision had not been sought, I find that the evidence of D.W.4, the surveyor and the correspondences from the Director Land Adjudication and Settlement state otherwise. That all the necessary approvals had been obtained for the subdivision to go on.
43. Having stated that the Plaintiffs cannot be registered as members of the 10th Defendant at this stage, it follows that they have not established a prima facie case to warrant the stopping of the subdivision which had started. The orders of permanent injunction cannot issue. The subdivision ought to go on unhindered so that members who have been waiting for too long can finally be issued with title deeds.
44. The upshot of the matter is that the Plaintiffs have failed to prove their case as against the Defendants on a balance of probabilities.
45. I take into account the circumstances prevailing at the 10th Defendant. The suit is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER 2024.



L. KOMINGOI

JUDGE.

In The Presence Of:

Mr. Chacha for Mr. Solonka for the Plaintiffs.

Ms. Mutai for Mr. I. Nyaribo for the Defendants.

Court Assistant – Mutisya.

