



**Motonga (Also suing on behalf of the Estate of Shori Motonga) & 2
others v Lempaka & 6 others (Environment & Land Case 75 of 2017)
[2024] KEELC 13498 (KLR) (3 December 2024) (Judgment)**

Neutral citation: [2024] KEELC 13498 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 75 OF 2017
CG MBOGO, J
DECEMBER 3, 2024**

BETWEEN

**KIRAES MOTONGA (ALSO SUING ON BEHALF OF THE ESTATE OF SHORI
MOTONGA) 1ST PLAINTIFF
KIRORET KEDOKI 2ND PLAINTIFF
MIKAEL OLOTUROMOM (ALSO SUING ON BEHALF OF THE ESTATE OF
IGANE LOTUROM) 3RD PLAINTIFF**

AND

**JAMES LEMPAKA 1ST DEFENDANT
JOHN AMABAI 2ND DEFENDANT
ROSEMARY LEMPAKA 3RD DEFENDANT
OLE LEMPAKA GROUP RANCH 4TH DEFENDANT
THE LAND REGISTRAR NAROK 5TH DEFENDANT
NAPUNYA KONGO 6TH DEFENDANT
ROSEMARY CHEKOECH RUTO 7TH DEFENDANT**

JUDGMENT

1. By an amended plaint dated 4th July, 2018 the plaintiffs are seeking that judgment be entered against the defendants for: -
 - a. Cancellation of all titles no. CisMara/ Ololpironito/ 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771 and 772 issued from parcel no. CisMara/ Ololpironito/ 342.



- b. Declaration that the removal of the names of Shori Motonga and Kikanae Sekento alias Igane Loturom by notification of cessation of membership communicated to the Registrar of Group Representatives and striking out the name of Shori Motonga and Igane Loturom alias Kikanae Senkento from the members' register without replacement by lawful representatives/beneficiaries was irregular and intended to disinherit their estates and therefore null and void.
 - c. Declaration that the distribution of CisMara/ Ololpironito/ 342 was unfair, discriminatory and not equitable and order for equitable re-distribution of the group ranch among members including estates of Shori Motonga and Kikanae Sekento alias Igane Loturom.
 - d. Declaration that the changing of names of the group ranch from Kutenoi to ole Lempaka Group Ranch was mischievous and actuated by ill-motive and intended to disinherit the plaintiffs and the estate of Shori Motonga and Kikanae Sekento alias Igane Loturom.
 - e. Costs of the suit and further or any other relief deemed just by this court.
2. The gist of the plaintiffs' claim is that the 2nd plaintiff, the late Shori Motonga, and the late Kikanae Sekento alias Igane Loturom, were bona fide members of Kutenoi Group Ranch and that the late Shori Motonga and the late Kikanae Sekento passed on sometimes in the year 1999 and 1992 respectively. The plaintiffs averred that the late Kikanae was the treasurer of Kutenoi Group Ranch and at the time of his demise, the group ranch had not changed names to Ole Lempaka group ranch. Further they averred that the change of name from Kutenoi to Lempaka was masterminded and executed by the 1st, 2nd and 3rd defendants with the purpose of disinheriting the estates of the late Shori and Kikanae.
 3. The plaintiffs further averred that on 27th October 2009, the 1st, 2nd, 3rd and 4th defendants notified the registrar of the group ranches of the cessation of membership of the group in respect of Sampeya Lempaka, Lenkima Lempaka, Matuyia Lempaka Shiori Motonga, Ntipapa Kongo and Igane Loturom without notifying their dependents with the aim to declare the dependants' squatters on the group ranch. They went on to aver that the purported subdivision of CisMara/ Ololpironito/ 342 by the defendants was irregular, and the exclusion of the estate of the 1st and 3rd plaintiffs was a scheme by the 1st to 3rd defendants to benefit themselves.
 4. The plaintiffs averred that the beneficiaries of the estate of the 1st and 3rd plaintiffs have been termed as trespassers despite being the legitimate children and legatees of their fathers' estate and that they risk being evicted from the land. They averred that changing the name of the group ranch to bear a family name-Lempaka was intended to justify the composition of the adjudication committee by members of one family to the detriment of the other members of the group ranch. They also averred that the distribution of the group ranch was unfair and discriminatory as the committee labelled the beneficiaries of the estate of the 1st and 3rd plaintiffs as invitees.
 5. The plaintiffs contended that the adjudication committee subdivided the group ranch and retained some parcels of land in the name of Lempaka group ranch for undisclosed reasons and that after changing the name, incorporated other persons as members which is a departure from the original members of Kutenoi group ranch. They averred that 1st and 3rd plaintiffs were allocated 8.09 hectares each while the rest of the members were getting huge chunks of land.
 6. The plaintiffs pleaded particulars of fraud and illegality by the 1st to 5th defendants as follows: -
 - a. Fraudulently changing the group ranch name from Kutenoi to Ole Lempaka Group Ranch.
 - b. Registering and/or transferring or issuing titles from parcel no. CisMara/ Ololpironito/ 342 with intent to defraud and disinherit the estates of the deceased.



- c. Altering and/ or amending the original register and excluding the original beneficiaries.
 - d. Notifying the registrar of group representatives of cessation of membership of the 1st and 3rd plaintiffs and other deceased persons with intent to deprive the legitimate beneficiaries and/or estates of the deceased of their rightful share of the group ranch.
7. The 1st, 2nd, 3rd, 4th, 6th and 7th defendants filed their defence to the amended plaint dated 17th August, 2018. While denying the contents of paragraphs 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 and 24 of the amended plaint, the aforementioned defendants averred that the suit land that is the subject of this matter is a family property named Lempaka group ranch, and that the plaintiffs were squatters and/or invitees to the family group ranch who have stayed on the land and put up temporary structures.
 8. The aforementioned defendants further averred that they are not aware of Kutenoi group ranch and that the plaintiffs were invitees of the defendants except the 5th defendant. They averred that the plaintiffs have huge land elsewhere within Kutenoi area where part of their families reside, and that it is not possible that the invitees would get an equal share of land with Lempaka family members who are the original owners. They stated that the whole exercise of demarcation, allocation and transfers were done through the land adjudication office, the Land Control Board and all the relevant government agencies, and that it is wrong to suggest that fraud was committed.
 9. The plaintiffs case proceeded for hearing on 17th May, 2023. Kireas Motonga, the 1st plaintiff adopted his witness statement dated 26th January, 2019 as his evidence in chief. He produced the certificate of death of Shori Motonga issued on 17th April, 2018 as P. Exhibit No. 1, and the letters of administration ad litem issued on 16th May, 2018 as P. Exhibit No. 2. The 1st plaintiff stated that it is not true that they are invitees or squatters of the group ranch as their father was born in the area, and as per the cessation of membership of a group ranch dated 27th October, 2009 under receipt No. A3648371 addressed to the registrar of group representatives, the 4th person in the said document is the late Shori Motonga who was a member. He produced the document as P. Exhibit No. 3.
 10. The 1st plaintiff testified that the survivors of his late father were not allocated land which was due to him, and that he was never involved in the sub division of the suit land. It was his testimony that no surveyor has been to the ground to sub divide it, and that he only heard that title deeds had been issued in respect of the parcels within the suit land.
 11. On cross-examination, the 1st plaintiff testified that he resides in Kutenoi. He added that Kutenoi is a group ranch, and that it is neither a group or a sub location, as their location is Ildamat or Olopilonito. It was his testimony that he resides within the suit land, and that he cannot ascertain the acreage that he occupies as it has never been surveyed. He testified that his late father's name was in the register of the members of the group ranch and that apart from P. Exhibit No. 3, he does not have any other document in respect of Kutenoi group ranch. He admitted that the 3 people who were dissatisfied are the ones who have filed this suit, and that paragraph 12 of the amended plaint shows the original members of Kutenoi group ranch. He admitted that 6 of the original members of the group ranch were satisfied, while the 3 of them were dissatisfied with the sub division of the group ranch. He further admitted that he owns another parcel of land in Sikerot which is 10 acres parcel of land, and that he does not have any other parcel of land in Kutenoi.
 12. The 1st plaintiff further informed the court that he is the only son of his father, who was a neighbour of one Lempaka, and that there was no intermarriage between the two. He disagreed that his father was invited by one Lempaka to live near him, and further, he stated that they have never had any meetings before the area chief before the suit land could be sub divided. He acknowledged to have known one



Daniel Tanyasis who was the chief of Olopilonito location, and stated that Daniel Tanyasis never called for my meeting, and he, the 1st plaintiff, has never attended a Land Control Board meeting where a consent to sub divided the land was issued. He informed the court that after they learnt that the suit land had been sub divided, and that some people had been issued with title deeds, they filed a document in order to prevent further issuance of title deeds. He also stated that it is not true that he has been allocated 20 acres in parcel number 70.

13. On re-examination, the 1st plaintiff testified that he has not been shown any document to show that he has been allocated 20 acres of land, and that he had no documents to show that he owns land in Kutenoï. He testified that the suit land was initially known as Kutenoï, and that there is no land known as Ole Lempaka, as the latter name is a family name. According to him, he has brought this suit to claim a share of what his late father was entitled to, and that his land in Ntulele and other places are his and he did not inherit the same. He further testified that the area chief did not call for any meeting regarding the sub division of the suit land, and that if his father was an invitee of the same, there would have been a notification to the members of the suit land. He reiterated that his father was a member of the suit land, and the committee members have never shown him the boundaries of his late father's parcel of land.
14. Kiroket Kedoki, the 2nd plaintiff adopted his witness statement dated 12th August, 2014 as his evidence in chief. He testified that he wrote the letter dated 24th July, 2013 (P. Exhibit No. 4) to the registrar of the group ranch complaining about the sub division of the suit land. He testified that he complained because no surveyor visited the land to carry out the sub division, and that he is an original member of the suit land. It was his testimony that the initial members were 11 in number, and that they have never held a meeting to agree on how the suit land was to be sub divided. He stated that he knew the late Shori and the late Kikanae were members of the group ranch and not invitees. He also testified that the area was initially known as Kutenoï, and that he does not know who changed it to Ole Lempaka group ranch as they have never held a meeting to have it renamed. The 2nd plaintiff further stated that he was a committee member of the suit land, and that he does not recall holding or attending a meeting to decide on sub division. It was his testimony that he does not know if he has been allocated any land, and that he still resides on the same spot that he has always occupied which is in the suit land.
15. On cross examination, the 2nd plaintiff informed the court that he resides in Kutenoï and that he is aware that Ole Tanyasis group ranch and Ole Nangarri group ranch are not within Kutenoï. It was his evidence that his location is known as Olopilonito which also has two other group ranches. He also said that he has been an official of the group ranch, but he does not remember when he was a committee member. He admitted that he did not have any document to show that the suit land was originally Kutenoï group ranch, and he does not remember when the area came to be known as Ole Lempaka group ranch. He further testified that the initial members of the group ranch were 11, and that the dissatisfied members were more than 3. The 2nd plaintiff informed the court that he has never attended any meeting, and that whereas he knows Daniel Tanyasis, the retired chief of the area, it was his testimony that Daniel Tanyasis has never called for any meeting over the suit land. He further stated that he has never attended any Land Control Board meeting over the suit land, and that he does not know if the other members have been issued with title deeds. He testified that he was dissatisfied with the parcel of land that was allocated to him, and neither does he know its acreage. In P. Exhibit No. 4, the 2nd plaintiff stated that he does not remember when he learnt that the suit land was in the process of sub division but that he complained over the area map which he saw a long time ago in the lands' office. It was his testimony that he complained of discrimination in that some members were allocated bigger portions than others yet he does not know how many acres that were allocated to him.



16. The 2nd plaintiff testified that he only saw the land allocated to him in the map but he does not know its size. He also testified that he would like to be allocated the same size of land like the other members. He went on to testify he testified that he does not know the total acreage of the suit land. He stated that the defendants referred to them as invitees but they are members and that the family of Ole Lempaka are his in laws. He stated that his family resides in Kuteno, and that one of his brothers Lepeyo Kedoki owns land in the suit land but he is now deceased. He stated that it is not true that he ought to get his share of land from his brother as his brother's complaint involves a boundary dispute.
17. On re-examination, the 2nd plaintiff stated that his brother is deceased, and that he has no capacity to discuss about his estate. That in their complaint letter, one of the issues was the manner in which the sub division of the suit land was being carried out and discrimination over some people being referred to as invitees whereas they were members. According to him, it is only the chairman of the group ranch who could call for a meeting, and not the chief. He further testified that he has not been shown the boundaries of his land, and that he does not have a title document to his land. In addition, he stated that he was not involved in the preparation of the map.
18. Lesiamin Ole Kedoki Senter (PW1) adopted his witness statement dated 26th July, 2019 as his evidence in chief. PW1 informed the court that the suit land is in Kuteno, which is its original name, and that in 1975, he caused 11 people to be registered as members of the suit land which was then known as Kuteno. He said that he knew the late Shori and the late Kikanae who were members of the group ranch but they are now deceased, and that it is not true that the two and others were invitees of the group ranch.
19. On cross examination, PW1 testified that he resides in his own parcel of land in Olopilonito location and that he knows all the 11 members of the group ranch. He testified that the majority of the members of the suit land belong to Lempaka family. PW1 testified that the 2nd plaintiff is married to a daughter of the Lempaka family, and that the 2nd plaintiff was born within the suit land. PW1 stated that he was the chairman of Olopilonito Adjudication Section in 1975, and that his committee worked closely with the Adjudication and Settlement office. He testified that the family group ranches were small in size and he does not know of Ole Lempaka family group ranch. It was his testimony that the surveyor by the name of Wanjohi visited the suit land, and that together with Shori and the 2nd plaintiff, they attended a meeting with the surveyor. It was his testimony that the group ranch that he knows is Kuteno, but he does not know if there is a register. It was also his testimony that the plaintiffs have called him as a witness because they are being discriminated upon. Further, he testified that he did not sit to resolve the dispute as chairman of the Adjudication Committee. He also said that he does not know whether Daniel Tanyasis was involved in any meeting, but that the chief was never a resident of the area occupied by Ole Lempaka family. He knew the 2nd plaintiff and it was his testimony that the 2nd plaintiff was removed from the group ranch.
20. In re-examination, PW1 testified that the meetings that he attended were concerned with the registration of the area occupants, and that he did not see the surveyor who surveyed Ole Lempaka group ranch. He said that the 2nd plaintiff did not attend such a meeting and neither did he. He pointed out that he would not be able to know if Daniel Tanyasis called for any meeting, and that he has never been involved in Land Control Board meetings concerning Ole Lempaka group ranch as there was no Ole Lempaka group ranch when he was the chairman of the Adjudication Committee.
21. Mikael Oloturomom, the 3rd plaintiff stated that he has brought this suit on behalf of his late father. He adopted his witness statement dated 26th January, 2018 as his evidence in chief. He produced the certificate of death dated 16th April, 2018 as P. Exhibit No. 5 and the letters of administration ad litem dated 16th May, 2018 as P. Exhibit No. 6. According to the 3rd plaintiff, his late father was not an invitee



- to the suit land but an original member as per the exhibit no. 3 where his late father is listed as number 6. It was his testimony that the notification confirms his late father's membership of the suit land, and that his late father was not allocated land after his death. While producing P. Exhibit. No. 7, the 3rd plaintiff testified that the members list shows the size of the land allocated to the members, and in this case, members were allocated different sizes of land. He went on to state that he does not know the criterion that was used to allocate land. The 3rd plaintiff produced the area list as P. Exhibit No. 8, the 11 certificates of search as P. Exhibit no. 9 (i) to (q) respectively.
22. On cross examination, the 3rd plaintiff testified that his brothers reside on the suit land, and that they have given him the authority to sue on their behalf. He admitted that most of the original members came from Lempaka family, and that they have no relationship with his father. It was his testimony that his father's family name is Oloturomon, and that the other members of Oloturomon reside in their own parcels of land, and only his father resided in the suit land. He said that his late father had another parcel of land elsewhere. The 3rd plaintiff informed the court that he learnt of Ole Lempaka group ranch immediately after its registration in 2009, but before that the area was known as Kuteno group ranch, and that it did not have a title deed registered in its name. He added that he was not aware if a title deed was issued to Ole Lempaka group ranch after registration. As per the different searches, he noticed that there was Ole Lempaka primary school.
23. According to the 3rd plaintiff, he did not register a protest with the land registrar, he did not attend any Land Control Board meeting, and that he did not attend any adjudication committee meetings. He testified that he realized that the committee had allocated him land after it was done, and he did not complain to the Land Adjudication Officer on the same. He also admitted that he did not attend any group ranch meetings after the demise of his father, and that they had no issues amongst the community before the issuance of title deeds. He also said that he was never informed of any development by the officials. He testified that one of the officials are neighbours with his brother, and that the 1st defendant did not offer any information. The 3rd plaintiff further stated that he was aware that the 2nd defendant was the secretary, the 3rd defendant was the treasurer, but the said officials were not reachable. He also knew Tanyasis, a retired area chief but he did not attend any meeting organized by the said chief for the reason that he was never notified. He went on to state he was not aware that the government policy was that the group ranches were supposed to issue title deeds to their members, and that he did not protest to the Land Control Board over the consent to sub divide the suit land. He blamed the land registrar for sub dividing the land in the wrong way. He also agreed to have been shown the survey map by the area chief but he was not present when the actual survey was carried out on the ground.
24. In re-examination, the 3rd plaintiff testified that he wrote a complaint letter dated 24th July, 2013 (Exhibit No. 13) where he complained of sub division of the suit land, drawing of the map and discrimination. It was his testimony that the officials of the suit land are the ones who convened the meetings and the area chief had no role to play in the meetings. He further testified that in the consent to sub divide the suit land, the registered owner is Ole Lempaka group ranch and that several persons were registered in the name of Ole Lempaka group ranch. It was his testimony that he was not a member of the suit land, but he is pursuing the interests of the estate of his late father. With the testimony of the 3rd plaintiff, that marked the close of the plaintiffs' case.
25. On 13th June, 2024, Daniel N. Tanyasis (DW1) while adopting his witness statement dated 20th August, 20218, stated that he is a retired chief of Olopironito location. He testified that he knows where all the parties reside except the 5th defendant. He further stated that he has been a chief and assistant chief for 32 years. It was his position that he was not allocated land in the suit land since he has his own separate parcel of land next to Ole Lempaka group ranch, and besides, he belongs to the family of Tanyasis. He



- testified that the plaintiffs are not family members of Ole Lempaka group ranch but they were allocated land by Ole Lempaka group ranch. He went on to state that there were no disputes when the group ranch was dissolved, and that he only heard of the dispute after title deeds were issued.
26. On cross-examination, DW1 testified that before the suit land was named as Ole Lempaka, it used to be known as Kutenoi. He recalled that in the meeting of 13th May, 1988, the plaintiffs were invited by Ole Lempaka group ranch as in laws and brothers, and that the family of the 1st plaintiff and that of Ole Lempaka do not intermarry. DW1 further stated that he was not present when the proposal to form Ole Lempaka group ranch was made, and that the defendants never sought permission from him to liaise with the lands' office. DW1 further stated that he knows the initial members of the suit land were 13, and that some of them have passed on including Sampiya Lempaka, Lenkima Lempaka, Mateyaa Lempaka, Shoori Motonga, Ntipapa Kongo and Kikanae. DW1 admitted that on 27th October 2009, the registrar of group representatives was notified of the death of the 6 persons and he stated that had they been alive, they would have remained as members. He agreed that their survivors ought to have inherited their shares, and that in this case Kiraes Motonga who is the son of the late Shori and Michael Oloturi, the son of the late Kikanae. He also knew the 2nd plaintiff whom he said was a member and that he is entitled to his share.
27. DW1 testified that the three mentioned above do not belong to the family of Lempaka, and he agreed that all of them were entitled to their fair share. On being shown the cessation of members of the suit land, DW1 testified that he did not have any document to show that new officials of the group ranch were elected on 27th October, 2009. He also agreed to have talked of various days when meetings were held but he does not know if the minutes of those meetings are part of the defendant's documents. Further, that he ceased being a chief in 1988, and that whereas he attended a meeting of the suit land on 12th December 2012, the minutes of the meeting that was held on the material day are not amongst the documents relied on by the defendants. According to him, he held 2 meetings and summoned the plaintiffs to attend but they failed to do so. That whereas he was not an official of the suit land, his statement shows that over 70% members attended the meetings that were held but he did not have the minutes. According to DW1, the decision of the 4th defendant was supported by a majority of the members but he did not have the minutes of the resolution. He testified that the original members of the suit land were 12 to 13 members and that the minutes of Lempaka group ranch meeting held on 27th October 2009 at the District Land Adjudication and Settlement office resolved that the deceased members be replaced, and that their survivors were to get the deceased member's shares.
28. DW1 did not know if the plaintiffs were the rightful members or invitees while agreeing that all members of the suit land were entitled to equal shares. He admitted that the 13 initial members were entitled to equal share of the suit land, but he did not have the minutes that show what (shares) the invitees were entitled to. DW1 further stated that he knew James Moonken Ole Lempaka the chairman was allocated parcel number 758, measuring 51.40 hectares, John Ambai Meeli inherited his grandfather's land and he does not know whether he applied for letters of administration but he was allocated parcel number 764, Rosemary Lempaka's late husband was Jonah Lempaka and she was allocated parcel number 765. He stated that Sambae Ene Lempaka who is the wife of the late Sambae was allocated parcel number 759 but he did not know if she applied for letters of administration before the allocation. He also said that Napunya Kongo was allocated 760, Ole Lempaka primary school was allocated parcel number 761, Nangulimo Lempaka was allocated parcel number 762, and Meeli Lempaka was allocated 763.
29. DW1 added that knew Tinta Lempaka who inherited his uncle, Matuyian Lempaka who had no children of his own was allocated parcel number 766 but he does not know whether there were succession proceedings before Tinta got the land. He did not know Ole Lempaka future school which



was allocated parcel number 767, and that he has never heard of an entity by that name. It was his testimony that the 2nd plaintiff- Kiroket Ole Kedoki was allocated parcel number 768, and that 5 people have shared parcel number 769, and that they are to inherit the late Kikanae.

30. DW1 further stated that Kirais Motonka was allocated parcel number 770, and he did not know Ole Lempaka water point which was allocated parcel number 771. He added that parcel number 772 was allocated to 2 people who inherited their father, Ntipapa Kongo. It was his testimony that parcel number 759 which is 40.47 hectares is in the name of Ole Lempaka group ranch as per the search and parcel number 760 which is in the name of Napunya ene Kongo is 64.75 hectares. He further stated that parcel number 761 was allocated 8.09 hectares, and the title reads Ole Lempaka group ranch. He said that parcel number 762 measuring 47.35 hectares and that parcel number 763 measuring 49.37 hectares are registered in the name of Lempaka group ranch, as well as parcel number 764 which measures 51.40 hectares. DW1 further stated that parcel number 765 whose size is 40.47 hectares is registered in the name of Rosemary Chepkoech Ruto, and that parcel number 766 whose size is 40.47 hectares is in the name of Ole Lempaka group ranch. He went on to say that parcel number 767 which measures 19.43 hectares is known as Lempaka future school, and that the title is in the name of Ole Lempaka group ranch. He further stated that the 2nd plaintiff has parcel number 768 which measures 8.09 hectares, and the title of this parcel of land is in the name of Lempaka group ranch. He said that parcel number 769 has a size of 8.09 hectares and parcel 771 was allocated 12.17 hectares. Both of these titles are in the name of Ole Lempaka group ranch.
31. DW1 testified that there are disparities in the size of the parcels of land and he cannot be able to explain those disparities as he is not an official of the suit land. He stated that the allocation list is signed by 3 persons who are James M. Ole Lempaka, John Ambai Medi and Rosemary Lempaka.
32. On re-examination, DW1 testified that he has not been shown the list of the persons who replaced the deceased members, and that there was no replacement of the members of the suit land. He stated that the 2nd plaintiff belongs to Kedoki family, and that he was not shown if the plaintiffs' made financial contribution to the subdivision of the suit land. It was his testimony that the title deeds were issued after the deceased members had passed on. He also stated that Ole Lempaka primary school, Ole Lempaka future school and the water points were set aside for the benefit of the community. He added that all the certificates of search shown to him except parcel numbers 760 and 765 are in the name of the suit land, and that they show who the beneficiaries are.
33. Charles Tauta Kongo (DW2) stated that he comes from Kutanoi. He adopted his witness statement dated 20th August 2018 as his evidence in chief. He stated that he knows all the parties to this suit and that he is one of the beneficiaries who were allocated land. It was his testimony that he is the son of an original member whose name was Naponya Ene Kongo. He stated that his mother was allocated parcel number 760 whose size is 64.75 hectares, and that the title deed is registered in his mother's name. He was also aware that his colleagues were allocated different sizes of land for the reason that some places are hilly while others have good soils. He went on to state that some parcels of land have been set aside for schools and water points. According to him, some of the plaintiffs were invitees, and that they include the families of Motonka, Kedoki and Toromon. He stated that they own other parcels of land elsewhere.
34. On cross-examination, DW2 testified that he is the son of Naponya ene Kongo who is the 6th defendant, although he did not have written authority from the 6th defendant to testify on her behalf. He stated that he was not an official of the group ranch but only came to court on behalf of the 6th defendant. DW2 testified that he knew Kikanae but he does not remember when he passed away. He later stated that he did not know him. He also stated that he knew Shori, but did not know when he passed



on. DW2 further testified that the original members of the group ranch were 9, and 4 of them are now deceased. He stated that the 5 members who are alive are his mother Naponya, Motonka, Meeli, Nagolima and Rose Lempaka. DW2 further stated that he knows the persons who were the incorporated officials of the group ranch; that Mzee Monka was the chair, John Ambali, and Rose Lempaka, and that his mother were members. He said that the 2nd plaintiff was also a member of the committee and a member of the suit land but he was not entitled to equal shares with others because he was an invitee.

35. DW2 agreed that the certificate of incorporation dated 17th November 2009 shows that the 2nd plaintiff was an official of the committee, and that he (DW2) was not an official and further, he was not involved in the running of the group ranch. It was his testimony that he attended the meetings that resolved to sub-divide the suit land, but he could not remember the dates of the meeting. He said that he went to the lands' office as a child of a member. He maintained that the suit land belongs to the Lempaka family and that his mother, the 2nd plaintiff and Oloromon do not belong to Lempaka family. He was also aware of the meeting held on 27th October 2009 at Kutenoi, but he does not remember the time when the meeting ended or what time it started. His evidence was that all the members attended, and there was no other meeting on that day.
36. He stated that he attended the meeting organized by the District Land Adjudication and Settlement Officer where some officials were elected. That whereas the 1st and the 3rd plaintiffs are sons of members and the 2nd plaintiff was allocated 8 hectares, he did not know why his mother got a larger portion of land than the plaintiffs and yet she does not belong to Lempaka family. Further, he stated that he did not have minutes of the suit land that resolved that members would be allocated larger portions of land than the invitees. He said that he knew that the plaintiffs did not contribute financially towards the sub division of the group ranch, but he did not have the list of the persons who made their financial contribution to the same. He said that did not have summons issued to the plaintiffs to attend meetings.
37. DW2 further stated that he attended all the meetings held but he does not remember when the consent of the Land Control Board was issued. He said that he forgot who subdivided the suit land, and he did not know how much money was paid for the subdivision. It was his position that the plaintiffs have the right to pursue their rights, but he did not know if they are right to demand for equal shares as the others. He added that he did not have the minutes of the meeting which resolved on how the land was to be allocated to individual members. He agreed that the 2nd plaintiff is a full member of the suit land, even though he did not have list of the invitees and members of the group ranch.
38. On 11th July, 2024, Ernest Kwambo Musembi (DW3) introduced himself as an Assistant Director, Land Adjudication and Settlement in charge of Narok North, Central and East. He stated that he was not in the office during the demarcation of the suit land. He testified that the title holder of the suit land was Lempaka group ranch, and that the process of settlement was initiated by the members of the suit land. He stated that there was a general meeting held on 27th October 2009 at the Narok District Land Adjudication and Settlement's office where minute 5/2009 provided a resolution to dissolve the suit land. He pointed out that the agenda of the meeting was: -
 - i. Complaint of Harrison Kedoki and Keraes Mutonga
 - ii. Confirmation of elected officials.
 - iii. Cleansing of the register.
 - iv. AOB.



39. DW3 produced the document as DEX NO.1, and further stated that there was another meeting held on 12th September 2012, whose agenda included: -
- i. Subdivision
 - ii. Ole Mpaka constitution or standing orders.
 - iii. Unity amongst the group members
 - iv. AOB.
40. DW3 testified that in minute number 1 of 2012, the members agreed that subdivision was very crucial. It was also agreed that it was the family members' affair to replace their deceased members, and that the land was to be subdivided in various sizes. It was also resolved that the suit land belonged to Lempaka group ranch, and that the invitees were to be given 50% less land than Lempaka group ranch members. The members were identified as the late Shori, the 2nd plaintiff and the late Kikanae. He said that all members were to agree with any change that would occur during subdivision, and that public land was to be provided. He added that the committee was to discuss an issue that was to arise during subdivision and that the majority would carry the day. He produced the second document as D. Exhibit No. 2.
41. DW3 further talked of the minutes of the Annual General Meeting held on 18th May 2013 which listed all the members who attended. He stated that there were 3 items in the agenda i.e. addition of 3 portion in parcel number 342, unity amongst members, and AOB. He said that the parcels that were added were the water point, land for school and land for a trading centre. He stated that Lempaka Group Ranch was supposed to have 15 portions. He produced the minutes together with the 15 portions as D. Exhibit No. 3. DW3 further produced D. Ex. No. 4, D. Ex. No. 5 and D. Ex. No. 6 and stated that to the best of his knowledge, his office complied with all the procedures.
42. On cross examination, DW3 testified that the group ranch being referred to is Ole Lempaka group ranch. He stated that the registrar group representatives issued a certificate of incorporation dated 17th November 2009, and that is when Ole Lempaka became an entity. Being familiar with the process of dissolution of group ranches, DW3 stated that once dissolution occurs, the next step for the group ranch would be to seek for consent for its subdivision, and that in this case, he did not have any application from Ole Lempaka group ranch to the registrar of group representatives seeking to be dissolved. It was also his testimony that he has not seen any consent from the registrar for dissolution of Ole Lempa group ranch. While he agreed that the process of dissolution of group ranches are conducted under the supervision of the District Land Adjudication and Settlement Officer, he stated that the document that would confirm membership is the members register but he did not come across the register for Ole Lempaka group ranch from the documents that he had. He also had not come across a register of the invitees, as well as a certificate of finality issued by the registrar upon completion of the process.
43. DW3 further agreed that in case of a group ranch, there is a constitution and regulations that govern its affairs, but from the documents in his custody, he has not come across Ole Lempaka group ranch constitution. He also said that from the meeting said to be held on 12th September 2012, he was not able to tell where the meeting took place, and that he did not see any notice convening the said meeting. He added that he did not see the list of the people who attended other than those who were present. With regard to item number 2 of the agenda, DW3 could not tell if *the constitution* of the group ranch was discussed and adopted. He went on to say that there were no names under the minutes of the deceased members. He testified that the suit land was to be sub divided into 12 portions. He added that the case before the tribunal, case number 11 of 1990 was about a boundary dispute between parcels number



342 and 474, and that the tribunal held that the dispute concerned a boundary between the 2 families. He further stated that the certificate of incorporation dated 17th November 2009 shows 7 members who were issued with the certificate. He pointed out that parcel number 5 indicates to belong to the 2nd plaintiff who is member number 5.

44. DW3 further testified that in the minutes of 12th September 2012, under minute number 2, bullet 5 – parcel number 2, who was now being treated as an invitee is the 2nd plaintiff, and he had been downgraded to an invitee. He confirmed that the document is the notification of cessation of membership of a group ranch, and that there are 6 people who were confirmed as being members of the group ranch but they were deceased. It was his testimony that even if the said members were dead, their rightful share did not die, and that they could not get lesser share on account of their death. DW3 admitted that the notification emanated from his office and that Kiraes Motonga who is the son of the late Shori who was a member has been treated as an invitee, as well as the estate of the late Kikanae. DW3 testified that the deceased members were not supposed to be discriminated on account of death. That based on the minutes of 27th October 2009 (DEX No.1) which shows that the meeting was held at District Land Adjudication and Settlement Officer’s office, the invitees were supposed to get at least 50% less land.
45. DW3 did not have a notice of the said meeting, and he stated that the minutes do not show the persons who were in attendance. He said that as at 27th October 2009, Ole Lempaka group ranch had not been incorporated as an entity, as the certificate of incorporation is dated 17th November 2009 means that the minutes came before the incorporation of the group ranch. He also agreed that the officials of a group ranch are elected in an Annual General Meeting, but under minute number 3 of 2009, there was no proposers or seconder for each of the elective positions of the officials. With regard to minute number 5 of 2009, on the dissolution, DW3 testified that the same is dated 20th October 2009 whereas the certificate of incorporation was issued on 17th November 2009. DW3 further testified that there was no communication to the registrar of group representatives to get consent to dissolve the suit land, and that an area list does not have to contain the name of the members allocated land, the size of the land and the parcel number.
46. With regard to the minutes of 18th May 2013 for the Annual General Meeting, he stated that the words “AGM” do not appear at the top of the minutes, and that it was attended by 12 persons. He testified that Daniel Tanyasis is not a member of the suit land, and that he does not know in what capacity the non-members attended. He went on to say that the column of parcel numbers does not have parcel numbers that were allocated and to whom they were allocated to. It was also his testimony that he has never come across a future school in his experience, and in this case, it happens when a group ranch is yet to decide what project to carry out. With regard to the subdivisions, DW3 stated that there were members who were allocated more parcels of land than others, and that the list has what is known as other projects which have no names. He added that in the list of documents forwarded on 20th August 2013, there is no document called a consent to dissolve the group ranch. He testified that there was no certificate of finality issued by the registrar of group representatives.
47. The plaintiffs filed their written submissions dated 28th August, 2024 where they raised four issues for determination as listed below: -
 1. Whether the plaintiffs are invitees or bona fide members of the Group Ranch.
 2. Whether the change of name from Kutenoi Group ranch to Lempaka Group Ranch was a scheme to deprive and discriminate the plaintiffs from equal treatment in sharing the suit property.



3. Are the plaintiffs entitled to the reliefs sought in the plaint.
 4. Who shall bear the costs of the suit.
48. On the first issue, the plaintiffs submitted the certificate of incorporation proves that they are bona fide members of the group ranch but were unfairly treated by the defendants. While relying on the cases of *Evans Otieno Nyakwana v Cleophas Bwana Ongaro* [2015] eKLR and *Semera & 3 Others v Osilalei Group Ranch & 18 Others* [2017] eKLR, the plaintiffs submitted that the deceased plaintiffs should have been allocated equal shares, and accorded the same treatment as the other members who are still alive and not treated as squatters. They submitted that given the fact that the register of members is a crucial document and whereas the group representatives refused to testify on the affairs of the group ranch, the grievances that they have raised have not been rebutted.
49. The plaintiffs further submitted that they have demonstrated that the late Shori and Kikanae were original members of the group as per the notification of cessation of membership dated 27th October, 2009. They submitted that the appointment of the late Shori and Kikanae by their personal representatives gave the plaintiffs status of equal members of the group ranch and not invitees, squatters or applicants. They relied on the case of *Macfoy v United Africa Co. Ltd* (1961) 3 ALL ER 1169.
50. On the second issue, the plaintiffs submitted that through the evidence of PW1, the change of name was orchestrated so as to convert the affairs of the group ranch into a family affair. They submitted that there was no compliance with Section 5 (1) of the Land (Group Representative) Act (repealed), and that the defendants never availed the group ranch constitution and that the Land Adjudication and Settlement Officer testified that *the constitution* of the group ranch is not in their record. While relying on the case of *Nthumbi Muchungu & 12 others v Herbert Nthiiri & 16 others* [2018] eKLR and further citing the provisions of Section 12 and 13 of the Land (Group Representative) Act (repealed), the plaintiffs submitted that the change of name from Kuteno to Lempaka group ranch did not comply with Section 13 of the repealed Act, and that the defendants also failed to produce the consent of the registrar of the group representatives for the dissolution of the group.
51. The plaintiffs further submitted that the distribution of the land owned by the group ranch was unfair and to their detriment as the officials allocated themselves more land than other deserving members. They submitted that the subdivision was done on paper only and no surveyor was ever contracted to carry out demarcation of the group ranch.
52. On the third and fourth issues, the plaintiffs submitted that the group ranch was owned by members of the group in equal but undivided shares, and that they have a legal right of ownership in common with the defendants. They submitted that they have demonstrated the betrayal of trust and irregular distribution of the suit land, and that they are thus entitled to the reliefs sought. To buttress on this submission, the plaintiffs relied on the case of *Koilel & 47 others v Ntiyia & 2 others* [2022] eKLR. In conclusion, the plaintiffs submitted that they have on a balance of probabilities proved their case and the amended plaint ought to be allowed with costs.
53. The 1st, 2nd, 3rd, 4th, 6th and 7th defendants filed their written submissions dated 23rd September, 2024 where they raised three issues for determination as listed below: -
- a. Whether the adjudication process was properly and legally done as per the regulations.
 - b. Whether the title deeds issued after the process are genuine and the holders are genuine.
 - c. Whether there was a fraud committed at all or any illegality in bad faith.



54. On the issues above, the aforementioned defendants submitted that the plaintiffs did not raise any complaint with the adjudication officer concerning the adjudication process. They submitted that the Constitution and the Community Land Act fails to recognise adjudicated and registered freehold rights on community land which is quite apparent in this matter. The aforementioned defendants further submitted that the present suit did not have the consent of the adjudication officer pursuant to Section 30 of the Land Adjudication Act. To buttress on this submission, they relied on the case of *Bhaijee & Another v Nondi & Another* (Civil Appeal 139 of 2019) [2022] KECA 119 (KLR) (18 February 2022).
55. The aforementioned defendants further submitted that as far as the adjudication process, the registration of title, proof of ownership and fraud is concerned, the plaintiffs were driven by malice and bad faith. They also submitted that the plaintiffs have not proved the allegation of fraud and that their claim as to their interest in the suit land has also not been established.
56. I have considered the pleadings, the evidence produced, the testimonies of the witnesses as well as the written submissions filed. In my view, the issue for determination is whether the plaintiffs are entitled to the orders sought in their amended plaint.
57. The dispute in this case revolves around the adjudication process of the suit land being Cis-Mara/Ololpironito/342. The plaintiffs contended that the distribution and subdivision of the suit land was irregular, wanting and excluded the estates of the 1st and 3rd plaintiffs as well as the 2nd plaintiff. Further, the plaintiffs stated that they risk being evicted for being termed as invitees or squatters on the suit land which they claim to have a rightful share and which they are entitled to. It was their case that initially, the group ranch was called Kutenoï but it later changed the name to Ole Lempaka group ranch with the intention to disinherit the estates of the 1st and 3rd plaintiffs. The plaintiffs pleaded particulars of fraud and illegalities and further sought for a cancellation of the titles emanating from the suit land as well as declaratory orders.
58. On the other hand, the defendants with the exception of the 5th defendant stated that they are not aware of Kutenoï group ranch and further, that the plaintiffs were invitees and they could not get an equal share of land with Lempaka family members who are the original owners.
59. The amended plaint was brought forth pursuant to the provisions of the Land (Group Representative) Act (repealed), and it thus should be noted that the law applicable at this stage and in determining the dispute before this court is the Community Land Act, Cap 287. The 1st and 3rd plaintiffs in their evidence stated that they are the beneficiaries of the estate of their fathers' who were original members of the suit land and they seek an equal share of their fathers' estate following their death. The 1st and 3rd plaintiffs produced copies of certificates of death as well as the respective letters of ad litem in support thereof. They based their claim on the strength of the notification of cessation of membership of a group dated 27th October, 2009. In their testimonies, all the plaintiffs and PW1 stated that no survey was conducted over the suit land, and interestingly, the 2nd plaintiff maintained that he resides on his parcel of land which he does not know its acreage.
60. While there was documentary evidence produced to show that the suit land was initially known as Kutenoï, all the witness except DW3 stated that the suit land was initially known as Kutenoï before the name changed to Ole Lempaka group ranch. I have no reason to doubt whether the suit land was initially known as Kutenoï with or without its registration. I say so because the documents that were produced and more so by DW3 refer to the suit land as Ole Lempaka group ranch, and it appears that documentation or paper work as concerns the suit land may have begun sometime in the year



2009. The question that this court seeks to answer is whether the procedures as provided under the Community Land Act were followed until the registration of the titles to the respective members.

61. Section 7 of the Community Land Act provides: -

- “(1) A community claiming an interest in or right over community land shall be registered in accordance with the provisions of this section.
- (2) The community land registrar shall by notice in at least one newspaper of nationwide circulation and a radio station of nationwide coverage, invite all members of the community with some communal interest to a public meeting for the purpose of electing the members of the community land management committee.
- (3) The notice shall also be given to the national county administrators and county government administrators in the area where the community land is located.
- (4) The community land registrar may use all available means of communication including electronic media to reach the community members.
- (5) The community shall elect between seven and fifteen members from among themselves to be the members of the community land management committee as provided in section 15, who shall come up with a comprehensive register of communal interest holders.
- (6) The community land management committee shall come up with the name of the community and shall submit the name, register of members, minutes of the meeting and the rules and regulations of the committee to the Registrar for registration.”

62. Sections 8 (4), (5), (6) and (7) of the Act further provides that: -

- “(4) The Cabinet Secretary shall issue a public notice of intention to survey, demarcate and register community land.
- (5) The notice shall—
 - (a) contain the name of the community;
 - (b) state which land is to be adjudicated;
 - (c) invite all interested persons with overriding interests or any other claim on the land, to lodge their claims;
 - (d) specify an area or areas of land to be a community land registration unit; and
 - (e) be for a period of sixty days.
- (6) The Cabinet Secretary shall cause the land to be adequately surveyed but such survey shall exclude—
 - (a) all parcels already in use for public purposes; and
 - (b) adjudicated private land.



- (7) A cadastral map of the land shall then be produced and presented to the Registrar for registration.”

63. Section 10 of the *Community Land Act* states that,

- “(1) There shall be maintained for each registration unit, a community land register in accordance with section 8 of the *Land Registration Act* (Cap. 300) in which shall contain—
- (a) a cadastral map showing the extent of the community land and identified areas of common interest;
 - (b) the name of the registered community;
 - (c) a register of members of the registered community which shall be updated annually;
 - (d) the user of the land;
 - (e) such particulars of members of the registered community as the Registrar may determine;
- and
- (f) any other requirement under this Act.
- (2) The Registrar shall not register any instrument purporting to dispose of rights or interest in community land except in accordance with this Act or any other written law.
- (3) For the avoidance of doubt, until any parcel of community land has been registered in accordance with this Act, such land shall remain unregistered community land and shall, subject to this Act, be held in trust by the county governments on behalf of the communities for which it is held pursuant to Article 63(3) of *the Constitution*.”

64. Section 21 on conversion of community land to private land as it is the case here provides that: -

- “(1) The community land register shall, in addition to the particulars set out under section 8(1) of the *Land Registration Act* (Cap. 300) contain the particulars of all conversions involving community land.
- (2) A registered community shall, before the conversion of registered community land into any other category of land seek and obtain approval from two thirds of the assembly in a special meeting convened for that purpose.”

65. I have taken time to carefully consider the evidence tendered by all the parties, and looking at the above provisions of the law vis a vis the evidence of DW3, I am certain that none of the procedures listed above was followed. There was no notice issued to the members of the community, there was no register of members, the minutes of the meetings said to be held on various dates were in my view not sufficient for the reason that there was lack of quorum of the required numbers. In addition, there were no regulations that provided for the conduct of the affairs of the group ranch. In other words, the defendants failed at their job in ensuring a transparent process of converting the ownership of the



suit land to the plaintiffs as required by the law. In a nutshell plaintiffs have proved the allegation of fraud and illegality against the defendants.

66. From the above, I am satisfied that on a balance of probabilities, the plaintiffs have proved their claim and they are entitled to the reliefs as sought in the amended plaint. For this reason, the amended plaint dated 4th July, 2018 is hereby allowed and I hereby issue the following orders: -

- i. Cancellation of all titles no. CisMara/ Ololpironito/ 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771 and 772 issued from parcel no. CisMara/ Ololpironito/ 342.
- ii. A declaration is hereby issued that the removal of the names of Shori Motonga and Kikanae Sekento alias Igane Loturom by notification of cessation of membership communicated to the Registrar of Group Representatives and striking out the name of Shori Motonga and Igane Loturom alias Kikanae Senkento from the members' register without replacement by lawful representatives/ beneficiaries was irregular.
- iii. A declaration is hereby issued that the distribution of CisMara/ Ololpironito/ 342 was unfair, discriminatory and not equitable.
- iv. Costs of the suit to be borne by the defendants jointly.

Orders accordingly.

DATED, SIGNED & DELIVERED VIA EMAIL on this 3RD day of DECEMBER, 2024.

HON. MBOGO C.G.

JUDGE

03/12/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

