



Senteu & another v Sereu & 3 others; County Government of Kajiado & 2 others (Interested Parties) (Environment & Land Case E053 of 2022) [2023] KEELC 542 (KLR) (9 February 2023) (Ruling)

Neutral citation: [2023] KEELC 542 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE E053 OF 2022
LC KOMINGOI, J
FEBRUARY 9, 2023**

BETWEEN

PAUL KOILEKEN SENTEU 1ST PLAINTIFF

STEINER LESHAO SOMPETA 2ND PLAINTIFF

AND

JOSHUA SALAASH SEREU 1ST DEFENDANT

KIPAINOI PARMUAT OLE MUNKE 2ND DEFENDANT

GEOFLEX CONSULTANTS LTD 3RD DEFENDANT

**COUNTY LAND ADJUDICATION & SETTLEMENT OFFICER-
KAJIADO 4TH DEFENDANT**

AND

THE COUNTY GOVERNMENT OF KAJIADO INTERESTED PARTY

THE COMMUNITY LAND REGISTRAR, KAJIADO COUNTY ... INTERESTED PARTY

THE HONOURABLE ATTORNEY GENERAL INTERESTED PARTY

RULING

1. This is the Notice of Motion dated 7/7/2022 brought under Order 40, Rules 1, 2, 3 and 4, Order 51 Rule 1, Section 1A, 1B, 3, 3A, 63 (c) and (e) of the *Civil Procedure Rules* and Act, Section 13 of the Land and Environment Act, 2012, Article 159 (2) of the *Constitution* of Kenya 2010 and the *Fair Administrative Actions Act* 2015 and all other enabling provisions of the law.



2. It seeks the following orders.
 - i. Spent
 - ii. Spent
 - iii. THAT pending the hearing and determination of this suit, a temporary injunction order to issue, restraining the Defendants/Respondents by themselves, their agents, servants, employees or any other person whomsoever acting on their behalf from subdividing, surveying, developing survey plans, allocating, alienating, transferring and or dealing in any manner whatsoever and howsoever with the parcels of land known as Kajiado/Olkiramatian/17 measuring approximately 21603 hectares.
 - iv. THAT pending the hearing and determination of this application and suit, a temporary injunction order do issue, freezing the illegally and unprocedurally opened joint bank account at Equity Bank, being account no 08601XXXXX12 in the names of Stephen Leyama Sarara, Kipainoi which the Defendants/Respondents are using to illegally solicit funds from unsuspecting members of Olkiramatian community, ostensibly to pay the 3rd Defendant/Respondent for the illegal subdivision of the community land.
 - v. THAT this Honorable Court be pleased to make a declaration that the subdivision of all that parcel of land known as Kajiado/Olkiramatian/17 measuring approximately 21603 Ha purportedly commended and being undertaken by the 3rd Defendant/Respondent is illegal, null and void ab initio as its services were procured illegally, unprocedurally and nefariously without the ratification of the general assembly of the Olkiramatian community as is by law required.
 - vi. THAT costs of this application be provided for.
3. The grounds are in the face of the application and are set out in paragraph (a) to (p).
4. The application is supported by the affidavit sworn by Paul Koileken Senteu and Steiner Leshao Sompetta the, 1st and 2nd Plaintiffs/Applicants herein sworn on the 7/7/2022.
5. The application is opposed. There is a replying affidavit sworn by Kipainoi Parmuat Ole Munke vice chairman of the Olkiramatian Group Ranch sworn on the 9/9/2022.
6. It is the 1st and 2nd Plaintiff's/Applicant's case that on the 15/3/2022, they were elected chairperson and vice chairperson respectively of the 3rd Plaintiff during its annual general meeting. The registration in the Community Register was done on 31/3/2022. It is their case that the 1st and 2nd Defendants have engaged the 3rd Defendant to illegally and unprocedurally subdivide the 3rd Plaintiff's/Applicant's land parcel no Kajiado/Olkiramatian/17 which measures approximately 21603 Hectares.
7. It is their case that two thirds of their members never participated nor approved. They claim that preliminary investigations on illegal tampering of the register by the 1st and 2nd Defendants and other committee members is being conducted by Ngong Directorate of Criminal Investigations.
8. It is also their case that they will suffer irreparable loss and damage if these orders are not granted as the subdivision will result in unending community conflict hence causing a breach of the peace in the area.
9. It is the 1st and 2nd Defendants/Respondents case that the 1st and 2nd Plaintiff/Applicants are not officials of the Olkiramatian Group Ranch. They further state that the delay in sub division of the



- land was caused by the Government Surveyor. That this caused them to engage the services of the 3rd Defendant who from 24/5/2021 commenced the subdivision.
10. It is their case that there are 2nd Interested party is interfering with the group ranch affairs for personal reasons. They claim that unless subdivision is done the members will be deprived of their right to property.
- Further that this application is an abuse of the court process and ought to be dismissed or stayed.
11. The 4th Defendant and the 1st – 3rd Interested parties did not file any response. Mr. Mwambonu for the 4th Defendant informed the court on 2/11/2022 that they would not be participating in the application.
12. On the 3/11/2022, the court with the consent of the parties directed that Notice of Motion be canvassed by way of written submissions.
13. The Plaintiffs/Applicants submissions are dated 9/1/2023. They raise three issues for determination;
- i. Whether the Plaintiffs/Applicants have met the threshold for granting of an injunction?
 - ii. Whether the suit is an abuse of the court process and if it ought to be stayed or struck out?
 - iii. Whether this Honourable Court has the jurisdiction to entertain this dispute?
14. It is submitted that the Defendants/Respondents may proceed to sub divide the suit property in the irregular manner they have commenced the process. If not restrained by orders of this court.
- They have put forward the case of *Pius Kipchirchir Kogo v Frank Kimeli Tenai* (2018) eKLR.
15. It is also submitted that the inconvenience the Plaintiffs/Applicants will suffer should the orders not be granted is greater compared to that of the Defendants/Respondents. The Defendants/Respondents may proceed to complete the process and issue irregular title deeds to individuals who may sell to unsuspecting third parties.
- They have put forward the case of *Robert Mugo Wa Karanja v Eco Bank (Kenya) Limited and Another* (2019) eKLR.
16. ELC Misc. E015 of 2022 raised issues which are distinct and separate from those raised in the suit herein. The issues raised herein are serious hence the suit is not an abuse of the court process.
17. It is submitted that this Honourable Court has jurisdiction to hear and determine this suit. They pray that the Application be allowed.
18. The 1st, 2nd and 3rd Defendants/Respondents submissions are dated 7/12/2022. It is submitted that the suit herein is an abuse of the court process given that the 1st and 2nd Defendants claim to be the officials of Olkiramatian Group Ranch. They claim that the land has already been subdivided with members in occupation and possession of their respective parcels as they await the issuance of titles.
19. It is also submitted that Rule 25 of the *Community Land Regulations*, 2017, requires parties to attempt alternative dispute resolutions mechanism before approaching this court. The suit is therefore premature.
20. The 1st Interested party's submissions are dated 25/1/2023. It is submitted that the 1st interested party has been wrongfully enjoined in these proceedings as it has no identifiable stake or legal interest or duty in the proceedings. It has put forward the case of *Kenya Medical Laboratory Technologist Board & 6 others v Attorney General & 4 others* (2017) eKLR.



The 1st Interested Party has no right or interest in the reliefs sought by the Plaintiffs/Applicants and they pray that the court expunges its participation from these proceedings.

21. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the responses thereto. The written submissions and the authorities cited.

The issues for determination are;

- i. Whether the Plaintiffs/Applicants application has met the threshold for granting of temporary injunction.
 - ii. Is this application and the entire suit an abuse of the court process?
 - iii. Who should bear costs of this application?
22. The principles for grant of temporary injunction were laid down in the precedent setting case of *Giella v Cassman Brown and co Limited* (1973) EA 358, which has been reiterated by the Court of Appeal *Nguruman Limited v Jan Bonde Nielsen & 2 others* (2014) eKLR, where it was held as follows;

“In an interlocutory injunction application the applicant has to satisfy the triple requirements to a, establish his case only at

- a prima facie level
- b demonstrates irreparable injury if a temporary injunction is not granted and
- c allay any doubts as to b, by showing that the balance of convenience is in his favour.

These are the three pillars on which rest the foundation of why order of injunction, interlocutory or permanent. It is established that all the above three conditions and states are to be applied as separate distinct and logical hurdles which the Applicant is expected to surmount sequentially”.

23. It is the Plaintiffs/Applicants case that the 1st and 2nd Defendants/Respondents have tampered with the membership register. That as a result the property rights of the duly registered members will be violated thus causing conflict and breach of peace in the community if the subdivision is allowed to continue.

The Plaintiffs/Applicants have filed a list of the 3rd Plaintiffs management committee and the certificate of registration issued on 31/3/2022.

24. The 1st and 2nd Defendants/Respondents on the other hand, claim the 1st and 2nd Plaintiffs are not the 3rd Plaintiffs officials and cannot act as such. They have filed a copy of the group ranch certificate issued on 28/2/2019 naming them (Defendants) as the officials.

A copy of the title deed to the suit land, application for dissolution of the 3rd Plaintiff, authority the 3rd Defendant to survey and sub divide the land here attached.

25. A perusal of the pleadings and the supporting documents indicate conflicting information relating to the group ranch membership, the actual status of the membership register, elected officials and status of subdivisions of the land.

26. The 1st and 2nd Plaintiffs claim that the membership register has been tampered with by the 1st and 2nd Defendants cannot be taken lightly.



27. It is a serious concern. There is need to preserve suit land and the members proprietary rights. This can only be possible if the subdivision process is halted until these issues are clear.
28. I have gone through the Notice of Motion in Misc E015 of 2022 and I find that the orders sought would require evidence to be taken before any orders are granted. It is a suit on its self. I decline to grant any orders.
29. It is in the interest of all the members that the land be subdivided in a proper manner. This can only be done after all members have been ascertained. This is a matter that can be solved amicably by the members themselves. If this is not possible, then it ought to be heard in the shortest time possible so that the members can be able to enjoy their proprietary rights.
30. In conclusion, I find that the Notice of Motion dated 7/7/2022 is merited and I grant the following orders.
- a. THAT a temporary injunction is hereby issued, restraining the Defendants/Respondents by themselves, employees or any other person acting on their behalf from subdividing, surveying, developing, survey plans, allocating, alienating, transferring and/or dealing in any manner whatsoever with the property of land known as KAJIADO/OLKIRAMATIAN/17 measuring approximately 21603 Hectares pending the hearing and determination of this suit.
 - vii. THAT a temporary injunction is hereby issued freezing the opened joint bank account at Equity Bank being account no 0860XXXXXX12 in the names of Stephen Leyama Sarara, Kipainoi which the Defendant/Respondent are using to solicit funds from unsuspecting members of Olkiramatian Community, ostensibly to pay the 3rd Defendant/Respondent for the subdivision of the community land.
 - b. THAT costs of this application do abide the outcome of the main suit.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF FEBRUARY, 2023.

L.C. KOMINGOI

JUDGE

In the Presence of;

Mr. B. Njou for the Applicant in ELC Misc. E015/2022 and the Defendant in ELC E053/2022.

M/S. Kemunto for Mr. Nyukware for the 1st Interested Party in E053/2022.

Mr. Serpepi for the Plaintiffs in E053/2022 and the Respondent in Misc. E015/2022.

