



**Tankol & 9 others v Chief Land Registrar & 3 others; Korinko  
& another (Interested Parties) (Environment & Land Petition  
7 of 2021) [2023] KEELC 755 (KLR) (2 February 2023) (Judgment)**

Neutral citation: [2023] KEELC 755 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KILGORIS**

**ENVIRONMENT & LAND PETITION 7 OF 2021**

**EM WASHE, J**

**FEBRUARY 2, 2023**

**(FORMERLY NAROK ELC PETITION NO. 3 OF 2017  
& NAKURU CONSTITUTIONAL PETITION NO.38 OF 2013).**

**IN THE MATTER OF: INFRINGEMENT & CONTRAVENTION  
OF FUNDAMENTAL RIGHTS & FREEDOMS UNDER THE  
CONSTITUTION OF KENYA 2010, ARTICLES  
22,23,36,40,47(1) ,54 ,63 &64.**

**-AND-**

**IN THE MATTER OF: THE LAND (GROUP  
REPRESENTATIVES) ACT CAP 287, SECTION 5,6,7&13**

**-AND-**

**IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP  
284 SECTION 5 & 6**

**-AND-**

**IN THE MATTER OF THE REGISTERED LAND ACT CAP 300  
LAWS OF KENYA SECTION 27,28 & 143.**

**-AND-**

**IN THE MATTER OF REGISTERED LAND PARCELS NUMBER  
SHARTUKA 512-514,518-524,545-569,570,571,573-  
593,595-611,620-639,641-674,676-693,695,700-  
714,717,719-739,743-744,746,748,753-759,762-  
771,774-787,789,791,792,794,818-**



821,823,824,826,835,852-  
854,857,858,859,17,18,26,29,36,45,63,85,92,103,111,11  
2,117,126,127,130,147,149,155,180,182,206,213,221,22  
3,240,251,254,258,297,319,316,332,320,370,369,359,36  
2,350,388-400,386,385,372-382,401-407,411-416,418-

511 INCLUSIVE

-AND-

IN THE MATTER OF TOMITO TANKOI, MULUNTA  
SENTU, OLE KIRIONKI NTUU, JOHN MOMPOSHI  
TALALA, SAMSON OLOKEYAI TIEPOON, KURRU OLE  
SOIT, KONTI TASUR, OLORINKA KIMAIYO, MANYATTA  
KAPASARR, OLE AMPANI LEKAKENY AND 324

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REGISTERED LAND OWNERS OF SHARTUKA GROUP  
RANCH

BETWEEN

TOMITO TANKOL ..... 1<sup>ST</sup> PETITIONER  
MULUNTA SENTU ..... 2<sup>ND</sup> PETITIONER  
OLE KIRIONKI NTUU ..... 3<sup>RD</sup> PETITIONER  
JOHN MOMPOSHI TALALA ..... 4<sup>TH</sup> PETITIONER  
SAMSON OLOKEYAI TIEPOON ..... 5<sup>TH</sup> PETITIONER  
KURRU OLE SOIT ..... 6<sup>TH</sup> PETITIONER  
KONTI TASUR ..... 7<sup>TH</sup> PETITIONER  
OLORINKA KIMAIYO ..... 8<sup>TH</sup> PETITIONER  
MANYATTA KAPASARR ..... 9<sup>TH</sup> PETITIONER  
OLE AMPANI LEKAKENY ..... 10<sup>TH</sup> PETITIONER

AND

CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT  
DIRECTOR OF LAND ADJUDICATION ..... 2<sup>ND</sup> RESPONDENT  
DISTRICT LAND REGISTRAR, TRANSMARA ..... 3<sup>RD</sup> RESPONDENT  
ATTORNEY GENERAL ..... 4<sup>TH</sup> RESPONDENT

AND



MOSES LEMASHON KORINKO ..... INTERESTED PARTY

OLESOPIA MASIBAI ..... INTERESTED PARTY

## JUDGMENT

1. The Petitioners herein filed a Constitutional Petition dated September 24, 2013 (hereinafter referred to as “the present Petition”) seeking for the following Orders against the Respondents herein; -

i. This matter be certified urgent and the service of the Petition be dispensed with in the first instance.

ii. A declaration that the Shartuka Group Ranch was duly dissolved pursuant to the provision of Section 13 of the Land (Group Representation Act) Cap 287 and the minutes of the 7<sup>th</sup> January 1992 and the Consent issued thereof by the Director of Land Adjudication and accordance to Article 36 of the Constitution of Kenya 2010.

iii. A permanent injunction do issue directed against the 1<sup>st</sup> , 2<sup>nd</sup> ,3<sup>rd</sup> , 4<sup>th</sup> and 5<sup>th</sup> Respondents, their agents, servants, employees or any person acting under the direction and/or with their co-operation restraining them from issuing any illegal title deeds based on the purported new register for Shartuka Group Ranch, alienating, wasting, disposing off and or selling any of the following parcels of land known as NO. 512-514,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,740-742,744,745,746,747,748,749,750,751,752,753,754,755,756,757,758,759,760,761,762,763,764,765,766,767,768,769,770,771,772,773,774,775,776,777,778,779,780,781,782,783,784,785,786,787,788,789,790,791,792,793,794,795,796,797,798,799,800,801,802,803,804,805,806,807,808,809,810,811,812,813,814,815,816,817,818,819,820,821,822,823,824,825,826,827,828,829,830,831,832,833,834,835,836,837,838,839,840,841,842,843,844,845,846,847,848,849,850,851,852,853,854,855,856,857,858,859,860,861,862,863,864,865,866,867,868,869,870,871,872,873,874,875,876,877,878,879,880,881,882,883,884,885,886,887,888,889,890,891,892,893,894,895,896,897,898,899,900,901,902,903,904,905,906,907,908,909,910,911,912,913,914,915,916,917,918,919,920,921,922,923,924,925,926,927,928,929,930,931,932,933,934,935,936,937,938,939,940,941,942,943,944,945,946,947,948,949,950,951,952,953,954,955,956,957,958,959,960,961,962,963,964,965,966,967,968,969,970,971,972,973,974,975,976,977,978,979,980,981,982,983,984,985,986,987,988,989,990,991,992,993,994,995,996,997,998,999,1000 respectively and have the status quo maintained thereafter.

iv. An Order that the only 334 bonafide membership register of the Group Ranch to be relied upon on by the time of the dissolution of the Group Ranch and as ordered by the decision of the Court of Appeal of 15<sup>th</sup> September 1998.

v. An Order that the Chief Land Registrar to disregard the fraudulent null and void 1997 register of 363 members and to recognise the list of members, cancel the title Deeds erroneously issued and re-survey the land and that the 1997 register of 363 is illegal fraudulently and null and void.

vi. An Order of this Honourable Court invoking the provisions of Section 143 of the Registered Land Act Cap 300 cancelling and/or revoking all the titles deeds no. 512-514,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,740-742,744,745,746,747,748,749,750,751,752,753,754,755,756,757,758,759,760,761,762,763,764,765,766,767,768,769,770,771,772,773,774,775,776,777,778,779,780,781,782,783,784,785,786,787,788,789,790,791,792,793,794,795,796,797,798,799,800,801,802,803,804,805,806,807,808,809,810,811,812,813,814,815,816,817,818,819,820,821,822,823,824,825,826,827,828,829,830,831,832,833,834,835,836,837,838,839,840,841,842,843,844,845,846,847,848,849,850,851,852,853,854,855,856,857,858,859,860,861,862,863,864,865,866,867,868,869,870,871,872,873,874,875,876,877,878,879,880,881,882,883,884,885,886,887,888,889,890,891,892,893,894,895,896,897,898,899,900,901,902,903,904,905,906,907,908,909,910,911,912,913,914,915,916,917,918,919,920,921,922,923,924,925,926,927,928,929,930,931,932,933,934,935,936,937,938,939,940,941,942,943,944,945,946,947,948,949,950,951,952,953,954,955,956,957,958,959,960,961,962,963,964,965,966,967,968,969,970,971,972,973,974,975,976,977,978,979,980,981,982,983,984,985,986,987,988,989,990,991,992,993,994,995,996,997,998,999,1000 which are all illegal having been issued based on fraudulent , null and void register of the Ranch.

vii. An Order of Stay of proceedings of all the pending cases pertaining to the suit land to wit HCCC Numbers (Kisii) 28 Of 2009 Koonti Tasur & Others-vs- John Kine Musharu, HCCC (Kisii) No. 162 of 2008 Ampani Lekany-vs- Ole Chesuswa Kupit, HCCC (Kisii) No.40 of 2011 Kisembe Ole Tankoi-vs- Babu & 2 Others, HCCC (KISII) No. 175 of 2006 Ololdapash Johnson Oramat-vs- Peter Njuguna Mwai, HCCC (Kisii) No. 36 of 2012 David Kipkorii Koskey-vs- Johnstone Kirui & 6 Others, PMCC (Kilgoris) No. 17 of 2012 Samwuel Mushaku-vs- David Olonkare Pere, HCCC (Kisii) No. 43 of 2012 Moses Lemashon Korinko-vs- Daniel Lekulabu Oldianye, HCCC (KISII) Masharu Ole Ntukai Ntolu-vs- Francis Ngeno & 7 Others and SRMCC (Kilgoris) No. 21 of 2008 Simion Ole Kisira-vs- Sankei pending the hearing and determination of this Constitution Petition herein.



2. The grounds in support of the above prayers have been outlined in the body of the present Petition and in particular Paragraphs 8 to 25 thereof.
3. The summary of the grounds in support of the prayers sought in the present Petition are as follows; -
  - a. The Petitioners herein appear on behalf of the original 334 bona fide and registered members of Shartuka Group Ranch situated within the former Transmara District of Narok County.
  - b. Pursuant to Section 7 (1)(2) and (3) of the Land (Group Representative) Act, Cap 287 Laws of Kenya, a group of persons not more than ten (10) and not less than three (3) shall be elected as representatives of the Group Ranch and issued with a Certificate of Incorporation thereof.
  - c. The persons duly registered as the group representatives of a group ranch shall have perpetual succession powers whereby it can be sued or sue on its own behalf, acquire property, lend or borrow money in its own name.
  - d. Shartuka Group Ranch was incorporated in the year 1973 and by the time of its dissolution in 1992, it had a total of 334 members.
  - e. During the meeting dissolving the said Shartuka Group Ranch, the majority members resolved that the Asset of the Group Ranch comprising of 18,000 Acres be sub-divided with each member being allocated 53 Acres thereof.
  - f. Based on this resolution, the Group Representatives proceeded to apply and procure the relevant Consent to sub-divide and transfer from the Land Control Board.
  - g. Unfortunately, during the processing of the Certificates of Title Deeds of the original 334 members, the process was interfered with by none members who concocted another resolution to register a further set of 363 members in addition to the original 334 members.
  - h. The Petitioners state that the unlawful, irregular and/or wrongful amendment of the Resolution passed in 1992 to register an additional 363 members in addition to the original 334 members affected the original 334 members as follows;-
    1. It was disregarding the wishes and decision of the true members of the group ranch.
    2. It reduced the shares and or entitlement that the original 334 members were expected to benefit from the sub-division.
    3. The additional register prepared in the year 1997 included persons who were not resident and/or members of the group ranch including politicians, senior government officials and/or their relatives and/or proxies.
  - i. As a result of this illegal, irregular and unlawful introduction of none members into the group ranch, various disputes ensued resulting to numerous Court cases being instituted in Kisii, Kakamega, Kisumu and Nakuru High Courts.
  - j. Due to the two conflicting Registers namely the 1992 Register with the original 334 members and the 1997 Register that had an additional 363 members, the Court of Appeal in Civil Application No.159 of 1998 Between Issa Lehsan Keres & 4 Others -versus- Kipoki Oreu Tasur & 10 others held as follows on the 15<sup>th</sup> of September 1998; -

“ The 1992 register is the only register for the purpose of determining the bona fide members of Shartuka Group Ranch.



The second register of new members of the Group Ranch is fraudulent and void and is not to be used. The Chief Land Registrar to continue with reconciliation of membership.”

- k. Based on the Orders issued by the Court of Appeal on the 15<sup>th</sup> of September 1998, the 1<sup>st</sup> Respondent published a Gazette Notice on the 24<sup>th</sup> of January 2008 directing that all titles held by none members contained in the 1997 Register be cancelled forthwith.
  - l. The members of the 1997 Register being aggrieved by the Gazette Notice of the 24<sup>th</sup> January 2008 instituted a Judicial Review Application to wit Miscannalous Application No. 103 of 2003 at the Kakamega High Court seeking for an Order of Certiorari affecting the cancellation of the properties known as Shartuka 512-514,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,740-742,743,744,745,746,747,748,749,750,751,752,753,754,755,756,757,758,759,760,761,762,763,764,765,766,767,768,769,770,771,772,773,774,775,776,777,778,779,780,781,782,783,784,785,786,787,788,789,790,791,792,793,794,795,796,797,798,799,800,801,802,803,804,805,806,807,808,809,810,811,812,813,814,815,816,817,818,819,820,821,822,823,824,825,826,827,828,829,830,831,832,833,834,835,836,837,838,839,840,841,842,843,844,845,846,847,848,849,850,851,852,853,854,855,856,857,858,859,860,861,862,863,864,865,866,867,868,869,870,871,872,873,874,875,876,877,878,879,880,881,882,883,884,885,886,887,888,889,890,891,892,893,894,895,896,897,898,899,900,901,902,903,904,905,906,907,908,909,910,911,912,913,914,915,916,917,918,919,920,921,922,923,924,925,926,927,928,929,930,931,932,933,934,935,936,937,938,939,940,941,942,943,944,945,946,947,948,949,950,951,952,953,954,955,956,957,958,959,960,961,962,963,964,965,966,967,968,969,970,971,972,973,974,975,976,977,978,979,980,981,982,983,984,985,986,987,988,989,990,991,992,993,994,995,996,997,998,999,1000.
  - m. The Petitioners inform the Court that the 1<sup>st</sup> Respondent either intentionally and/or unintentionally failed to attend the hearing of the Judicial Review Application Misc. Application No. 103 of 2003 at the Kakamega High Court and as a result of the same, the Court indeed quashed the Gazette Notice dated 24<sup>th</sup> January 2008 by the 1<sup>st</sup> Respondent.
  - n. In compliance with the Orders issued in the Judicial Review Application Misc Application No. 103 of 2003 issued by the Kakamega High Court, the 1<sup>st</sup> Defendant and/or his officers proceeded to set-aside the Gazette Notice dated 24<sup>th</sup> January 2008 and reorganised the Register of the Shartuka Group Ranch to include the owners of properties known as Shartuka 512-514,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,740-742,743,744,745,746,747,748,749,750,751,752,753,754,755,756,757,758,759,760,761,762,763,764,765,766,767,768,769,770,771,772,773,774,775,776,777,778,779,780,781,782,783,784,785,786,787,788,789,790,791,792,793,794,795,796,797,798,799,800,801,802,803,804,805,806,807,808,809,810,811,812,813,814,815,816,817,818,819,820,821,822,823,824,825,826,827,828,829,830,831,832,833,834,835,836,837,838,839,840,841,842,843,844,845,846,847,848,849,850,851,852,853,854,855,856,857,858,859,860,861,862,863,864,865,866,867,868,869,870,871,872,873,874,875,876,877,878,879,880,881,882,883,884,885,886,887,888,889,890,891,892,893,894,895,896,897,898,899,900,901,902,903,904,905,906,907,908,909,910,911,912,913,914,915,916,917,918,919,920,921,922,923,924,925,926,927,928,929,930,931,932,933,934,935,936,937,938,939,940,941,942,943,944,945,946,947,948,949,950,951,952,953,954,955,956,957,958,959,960,961,962,963,964,965,966,967,968,969,970,971,972,973,974,975,976,977,978,979,980,981,982,983,984,985,986,987,988,989,990,991,992,993,994,995,996,997,998,999,1000.
  - o. The Petitioners state that the failure by the 1<sup>st</sup> Respondent and by extension the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to implement the Orders of the Court of Appeal issued on the 15<sup>th</sup> of September 1998 breached the Petitioner’s rights as guaranteed under Article 27 of the *Constitution* and in particular “every person is equal before the law and has the right to equal protection and benefit of the law.”
  - p. Similarly, the 1<sup>st</sup> Respondent’s actions of not attending Court in Misc Application No. 103 of 2003 at the Kakamega High Court to explain the actual position as held by the Court of Appeal and thereafter proceeding to implement the Ex-parte judgement by cancelling the Gazette Notice dated 24<sup>th</sup> January 2008 constituted an unlawful and poor behaviour of protecting the Petitioners who are entitled to equal protection before the law being citizens and tax payers of Kenya.
  - q. As a result of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent’s actions of cancelling the Gazette Notice of 24<sup>th</sup> January 2008 and non-compliance of the Court of Appeal Orders issued on the 15<sup>th</sup> September 1998, there has been double allocation of various properties belonging to the original members hence depriving, dispossessing and/or illegal disposition of land by none members and/or illegal allottees of land hence numerous cases thereof.
  - r. In conclusion therefore, the Petitioners are seeking for the Reliefs contained in the present Petition.
4. The grounds contained in the present Petition have been further supported by the Supporting Affidavit of the 1<sup>st</sup> Petitioner sworn on the 24<sup>th</sup> September 2013 together with the annexures attached therein.



5. The present Application was served on the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent who then filed Ground of Opposition on the 23<sup>rd</sup> of April 2014 when the present petition was still at the Nakuru High Court.
6. The grounds opposing the present Petition by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondent were as follows; -
  - i. That there is no demonstration laid before this Court on the alleged infringement of any constitutional rights enshrined in the cited Articles.
  - ii. That there has been multiplicity of suits over the suit property and the matter is res judicata.
  - iii. That the alleged parcels of land resulted from the dissolution of the 5<sup>th</sup> Respondent herein and proprietors are not parties to this matter.
  - iv. That the application and Petition herein are not brought in good faith, are bad in law, frivolous and an abuse of the court process as issues therein having been ventilated before and determined.
  - v. That there must be an end to litigation and this Petition should be dismissed with costs to these Respondents.
7. In addition to the response from the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Respondents, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties also filed their Replying Affidavit on the 21<sup>st</sup> of October 2021 in opposition of the present Petition.
8. The substantive grounds contained in the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties Replying Affidavit dated 21<sup>st</sup> October 2021 can be summarised as follows; -
  - i. The issues raised in the present Petition are issues that were previously heard and determined in various Court proceedings namely Nakuru HCC No.252 OF 1998 (Formerly Kisumu HCC No. 149 of 1998, Court Of Appeal, Civil Application No.195 of 1998(Nairobi), Court of Appeal No. 237 of 1998 (nairobi), HCC Misc Application No. 103 of 2003 (Kakamega) and Court of Appeal Civil Appeal No. 5 of 2004 (Nairobi).
  - ii. As a result of the above previous litigations, the issues of the validity of the Shartuka Group Ranch register and well as the title deeds being sought to be cancelled was heard and concluded.
  - iii. In essence therefore, this present Petition is therefore Res Judicata and this Court cannot be reopened in this proceeding.
  - iv. In addition to the foregoing, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties have stated that the title deeds which the Petitioners want to be cancelled do not belong to Shartuka Group Ranch anymore but to individual persons and/or legal entitles who are not parties to this suit and therefore cannot be condemned unheard.
  - v. Further, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties claim that the Petitioners herein have no locust standi to institute these proceedings and are simply busy bodies in law.
  - vi. Lastly, the 1<sup>st</sup> and 2<sup>nd</sup> Interested Parties submit that the present Petition does not disclose any reasonable Cause of action whatsoever.
9. Once pleadings were closed, the Court directed that the parties herein present oral testimonies in support of their positions.

#### **Hearing and/or Oral Testimonies.**

10. The hearing commenced on the 15.02.2022 with the evidence of the 1<sup>st</sup> Petitioner herein.



11. The 1<sup>st</sup> Petitioner introduced himself as a resident of Shartuka and the one who instituted the present Petition.
12. The 1<sup>st</sup> Petitioner confirmed to have prepared and filed Supporting Affidavit dated 24<sup>th</sup> of September 2013 together with the annexures therein in support of the present Petition.
13. The 1<sup>st</sup> Petitioner began his oral testimony by indicating that at the time of dissolution of Shartuka Group Ranch in the year 1992, the original registered members were only 334 members.
14. The entire Asset of Shartuka Group Ranch was to be sub-divided within the original registered members who were 334 only.
15. However, in the year 1997, the membership of Shartuka Group Ranch was increased through an amended Register and sub-division afresh.
16. The net effect of the new sub-division done using the membership register of 1997 was that some original members of Shartuka Group Ranch did not get land at all while others got less than what had been expected from the 1992 Resolution.
17. The 1<sup>st</sup> Petitioner informed the Court that the 2<sup>nd</sup> Register and sub-division done in 1997 was undertaken under the leadership of the 1<sup>st</sup> Interested Party herein.
18. The 1<sup>st</sup> Petitioner stated that by the 1<sup>st</sup> Interested Party using the illegal 2<sup>nd</sup> Register of 1997 in the sub-division of the Shartuka Group Ranch Asset, 42 original members contained in the 1<sup>st</sup> Register of 1992 were not allocated any land.
19. The 1<sup>st</sup> Petitioner further stated that the illegal 2<sup>nd</sup> Register of 1997 increased the number of members for Shartuka Group Ranch from 334 to 907 members without a proper Resolution by its members.
20. As a result of this illegal actions by the 1<sup>st</sup> Interested Party, the 1<sup>st</sup> Petitioner had no choice but to institute this present Petition.
21. The main prayer by the 1<sup>st</sup> Petitioner is that the Court should check, verify and ensure that the sub-division of Shartuka Group Ranch Asset benefits the legal members of the 1<sup>st</sup> Register of 1992 and not strangers who were included in the 2<sup>nd</sup> Register of 1997.
22. The 1<sup>st</sup> Petitioner then proceeded to produce the following documents as Exhibits in support of the present Petition; -
  - i. Petitioner's Exhibit No. 1- Shartuka Group Ranch Certificate of Incorporation dated 21/09/1976.
  - ii. Petitioner's Exhibit No.2 - A Register For the members of Shartuka Group Ranch as at 1992.
  - iii. Petitioner's Exhibit No.3-Copy of the Minutes & Resolutions of Shartuka Group Ranch emanating from the meeting held on 13.02.1996.
  - iv. Petitioner's Exhibit No. 4 – a Copy of the Land Control Board Consent to sub-divide Shartuka Group Ranch Asset known as L.R.No. Narok/Transmara/Shartuka/1.
  - v. Petitioner's Exhibit No. 5 - Copy of the proposed 2<sup>nd</sup> Register for the members of Shartuka Group Ranch.
  - vi. Petitioner's Exhibit No. 6- Copy of the Land Control Board Consent to sub-divide dated 26.09.1996.



- vii. Petitioner's Exhibit No.7-Letter dated 14/12/1995 from the District Commissioner Transmara to the Director of Survey.
  - viii. Petitioner;s Exhibit No.8- Certificate of Incorporation for Shartuka Group Ranch issued on the 13/09/1996.
  - ix. Petitioner's Exhibit No.9- Letter dated 7<sup>th</sup> July 2000 from the Chief Land Registrar addressed to Messrs E.K.Mutua & Company, Advocates.
  - x. Petitioner's Exhibit No. 10- Copy of the Order issued by the Court of Appeal in Civil Application No.195 of 1998 on the 3<sup>rd</sup> of September 1998.
  - xi. Petitioner's Exhibit No. 11- Copy of the Order issued by the Court of Appeal in Civil Application No.195 of 1998 on the 4<sup>th</sup> September 1998.
  - xii. Petitioner's Exhibit No. 12- Copy of the Order issued by the Court of appeal in Civil Application No.195 of 1998 on the 15<sup>th</sup> September 1998.
  - xiii. Petitioner's Exhibit No. 13- Kenya Gazette Notice No. 501 published on the 24.01.2008 by the Chief Land Registrar.
23. Upon production of the above exhibits, the 1<sup>st</sup> Petitioner concluded his evidence in chief.
  24. In cross-examination, the 1<sup>st</sup> Petitioner informed the Court that the present Petition is on behalf of all the 334 original members of Shartuka Group Ranch.
  25. However, the 1<sup>st</sup> Petitioner admitted that he had not filed any authority to swear and/or represent the 334 members of Shartuka Group Ranch as required by law.
  26. The 1<sup>st</sup> Petitioner also admitted that the 8<sup>th</sup> Petitioner in the present Petition had passed away long ago.
  27. The 1<sup>st</sup> Petitioner was referred to the Authority to Swear dated 1<sup>st</sup> October 2013 and confirmed that he did not see a signature on the place where the 8<sup>th</sup> Petitioner had executed.
  28. The 1<sup>st</sup> Petitioner stated that the original Petition was filed in the year 2013 but it is not true that the 8<sup>th</sup> Petitioner had already passed away by then.
  29. The 1<sup>st</sup> Petitioner testified that during the sub-division undertaken in 1992, the Chairman of the Group Ranch was one Kipori Oreu Tasur.
  30. The 1<sup>st</sup> Petitioner testified that Kiporu Oreu Tasur was duly registered in the Certificate of Incorporation as one of the group representatives.
  31. The 1<sup>st</sup> Petitioner further testified that Kiporu Oreu Tasur was the one in charge of the sub-division undertaken in 1992.
  32. However, during the 1992 sub-division, there was a lot of interference by the 1<sup>st</sup> Interested Party.
  33. The interference emanated from the inclusion of other people who were not members into the Group Ranch Register and then being allocated land.
  34. Consequently therefore, the Petitioners proceeded to Court to challenge the illegal inclusion of the new members in the Group Ranch and allocation of the land to them.
  35. Nevertheless, the 1<sup>st</sup> Petitioner stated that the sub-division undertaken in 1992 was valid and it is what has guarded the actual occupation on the ground.



36. The 1<sup>st</sup> Petitioner informed that Court that after the meeting of 1992, some few members of the Shartuka Group Ranch convened another meeting but the same was not properly convened due lack of adequate notice.
37. The 1<sup>st</sup> Petitioner referred to the Minutes produced as Petitioner's Exhibit No. 3 and and stated that they objected to the contents thereof.
38. The 1<sup>st</sup> Petitioner confirmed that in the Minutes produced as Petitioner's Exhibit No.3, the Chairman of the meeting was the 1<sup>st</sup> Interested Party.
39. Referring to Page 46 of the present Petition, the 1<sup>st</sup> Petitioner reiterated that the Resolution by the Original members was to the effect that everyone would be allocated approximately 51 Acres.
40. In the 1<sup>st</sup> Petitioner's view, every original member ought to have been allocated 53 Acres and not 51 Acres as resolved.
41. According to the Resolution of 1992, if any land would remain, then another meeting would be convened and appropriate Resolutions passed on how to deal with the same.
42. The 1<sup>st</sup> Petitioner proceeded to testify that after the meeting held on 13/02/1996, the sub-division proceeded but not all the 334 original members got their portions of 51 Acres.
43. According to the 1<sup>st</sup> Petitioner's knowledge, at least 42 members were not allocated land.
44. In reference to the Petitioner's Exhibit No. 2, the 1<sup>st</sup> Petitioner stated that he was not aware of the Member's Register that the 1<sup>st</sup> Interested Party used to sub-divide the land.
45. However, whichever list was used, the 1<sup>st</sup> Petitioner stated that 42 members in the Original List had not been allocated land.
46. In Reference to the Petitioner;s Exhibit No.6, the 1<sup>st</sup> Petitioner admitted that a Consent to Sub-Divide Shartuka Group Ranch Asset was obtained on the 14<sup>th</sup> of August 1997 by the 1<sup>st</sup> Interested Party.
47. Unfortunately, the said Consent to sub-divide Shartuka Group Ranch Asset was not utilised to sub-divide the land as resolved by the members.
48. In addition to the above, after the sub-division of the 51 Acres to the original 334 original members, there has never been another meeting to discuss how the remaining portion of the Asset would be dealt with.
49. Consequently therefore, the allocation and/or sub-division of the Shartuka Group Ranch to all other persons not in the original list of 334 members is not lawful and sanctioned by the original 334 members.
50. According to the 1<sup>st</sup> Petitioner's considered view, if any land remained after the allocation of the 51 Acres to the original 334 members, then such land should have been sub-divided and allocated to the children of the original 334 members.
51. So far, other persons who are not children or even relatives of the original 334 members have been allocated land contrary to the Resolution of 1992.
52. The 1<sup>st</sup> Petitioner cited a number of persons who benefitted from sub-divisions and/or allocations despite not being members of Shartuka Group Ranch or children of any member.
  - i. Hon. Julious Sunkuli- Not a member or child of a member yet has been allocated 5 Acres.



- ii. Ali Mohamud Mbwari- Not a member or child of a member.
  - iii. John Tera Luvisia- Not a member or child of a member.
  - iv. Hon. Justice Tuiyot (Deceased)- Not a member or child of a member but holds a big chunk of land.
  - v. Aloisio Lekulo- Not a member or child of a member.
  - vi. Musembi- Not a member or child of a member.
  - vii. William Litole- He was a District Commissioner and is not a member or child of a member.
  - viii. John Mmasi Fuchi- He was not a member or child of a member.
53. The 1<sup>st</sup> Petitioner also stated that there were persons who got more than one parcel of land but could not provide the specific names.
  54. Referring to Page 17 of the present Application, the 1<sup>st</sup> Petitioner stated that after the dissolution of the Group Ranch in 1992, the Registrar of Group Ranches prepared and issued a second Certificate of Incorporation in the year 1996.
  55. However, the issuance of the 2<sup>nd</sup> Certificate of Incorporation in the year 1996 was not communicated to the general membership of Shartuka Group Ranch.
  56. The 1<sup>st</sup> Petitioner informed the Court that he was aware of the proceedings instituted at the High Court sitting in Kisumu.
  57. He informed the Court that he was among the Plaintiff's and could remember the Defendants as well.
  58. The 1<sup>st</sup> Petitioner however could not recollect the particulars of the sub-divisions which were adjudicated in that suit.
  59. Similarly, the 1<sup>st</sup> Petitioner would not remember the reliefs sought in the proceedings undertaken in the High Court sitting at Kisumu.
  60. In addition to the above, the 1<sup>st</sup> Petitioner also could not recollect the decision pronounced in the proceedings undertaken in the High Court sitting at Kisumu.
  61. However, the 1<sup>st</sup> Petitioner admitted that the reliefs sought in this suit were similar to those being sought in the proceedings undertaken in the High Court sitting in Kisumu.
  62. The 1<sup>st</sup> Petitioner's position was to the effect that even if the proceedings undertaken in the High Court sitting in Kisumu were dismissed, the Petitioners were still not happy as disputes still existed on the ground.
  63. The 1<sup>st</sup> Petitioner further stated that he was aware the Appeal in the Court of Appeal was dismissed which according to his understanding meant that the additional members would be removed from the 1<sup>st</sup> Register and only 334 members retained.
  64. The 1<sup>st</sup> Petitioner denied knowledge to the fact that if a litigation was concluded by a competent Court, you were not allowed to file a similar case again.
  65. The 1<sup>st</sup> Petitioner also admitted being aware of the Legal Notice No. 501 of 2008 issued by the 1<sup>st</sup> Respondent on the 24/01/2008.



66. The 1<sup>st</sup> Petitioner confirmed to Court that this Legal Notice No. 501 of 2008 was challenged by the 1<sup>st</sup> Interested Party but was not aware of the outcome of this suit.
67. In Re-examination, the 1<sup>st</sup> Petitioner indicated that the Chairman of Shartuka Group Ranch at the time of issuance of the 1<sup>st</sup> Certificate of Incorporation on the 21<sup>st</sup> of September 1976 was one Olkediénye Ole Tasur.
68. During the meeting held in 1992 to dissolve Shartuka Group Ranch and sub-divide the Asset thereof, the Chairman was KEPOKI TASUR.
69. After the meeting and resolutions of 1992, there was not dispute amongst the original members who were to be allocated 53 acres each.
70. It is at this point that the Consent to Sub-divide was procured on behalf of members of Shartuka Group Ranch.
71. The 1<sup>st</sup> Petitioner stated that he did not participate in the meeting held on the 13/02/1996.
72. However, looking at the Resolution passed from this meeting of 13/02/1996, the original members were to be allocated lesser portions of land as compared to the 1992 Resolution.
73. In conclusion therefore, the 1<sup>st</sup> Petitioner stated that the sub-division of Shartuka Group Ranch should be done in line with the Resolutions of 1992 and the Member's Register containing the original 334 members only.
74. The Petitioners after this testimony closed their case against the Respondents herein.
75. The Respondents not being present before Court despite proper service and hearing notice, the Court proceeded to take the evidence of the Interested Parties.
76. The 1<sup>st</sup> Interested Party took the witness box and informed the Court that he resides within Shartuka area.
77. The 1<sup>st</sup> Interested Party further informed the Court that he wishes to participate in the present suit because he is the registered owner of one of the parcels of land listed for cancellation herein.
78. Further to that, the 1<sup>st</sup> Interested Party informed the Court that he was also the Chairman of Shartuka Group Ranch between the years 1995 and 1998 hence familiar with the facts of the present Petition.
79. The 1<sup>st</sup> Interested Party stated that Shartuka Group Ranch was first incorporated in 1973.
80. During its incorporation, the Chairman was one Olkenyiény Tasur.
81. The registration of members was opened and the 1<sup>st</sup> Interested Party was registered as a member in 1988 which was the last group of members to be registered.
82. The total membership of Shartuka Group Ranch was 334 members.
83. In 1990, a meeting of the membership was held and it was decided that the Asset of Shartuka Group Ranch would be sub-divide to the Shareholders so that each one of them would individually own their properties.
84. In 1991, under the Chairmanship of Olkenyiény Tasur, a Resolution was passed that Shartuka Group Ranch be dissolved and the Asset thereof sub-divided to the original 334 members.
85. A demarcation committee of 21 members was then established comprising of 10 members from the duly registered Group Representatives and 11 from general membership of the Group Ranch.



86. After deliberations in the demarcation committee, it was resolved that each member would be allocated 80 Acres.
87. The demarcation committee resolved that they would seek the services of the Government Surveyors from Migori Lands Office to come and do the sub-division.
88. In the same demarcation meeting, it was also recognised that there were other people who resided within the Shartuka Group Ranch Asset who should also be allocated land.
89. Due to the inclusion of these non-members, it was not possible to allocate 80 acres to the original members as earlier proposed and instead, the demarcation committee resolved that every original member would be allocated 50 acres.
90. The balance of the acreage remaining from the allocation to the original members would now be allocated to the non-members.
91. Consequently therefore, the Demarcation Committee reconvened the original 334 members and informed them of their challenge.
92. Upon deliberations with the general membership of Shartuka Group Ranch, it was again resolved that all the 334 members would be allocated 53 Acres instead of 80 acres.
93. Having been directed appropriately, the demarcation committee went back to the ground but instead of first allocating the sub-divisions to the original members, it began allocating the sub-divisions to the non-members first.
94. This action by the demarcation committee created protests from the original members.
95. The dispute was brought to the attention of the Local Administration who unfortunately did not provide any solution.
96. The members of the Group Ranch in an attempt to find a solution held a meeting with the Registrar of the Group Ranches within the Ministry of Lands.
97. The Registrar of Group Ranches convened a meeting of the entire Group Ranch in shartuka and the entire membership denounced the sub-division done by the demarcation committee.
98. The resolution arrived from this meeting held by the Registrar of Group Ranches was that the sub-division should be stopped and the Surveyors immediately vacate the Asset of the group ranch.
99. At this time, some people had been shown their sub-divisions and occupied the same although title documents had not been issued.
100. In May 1995, the general membership of the group ranch and the Director of Group Ranches again reconvened to find a suitable solution.
101. One of the resolutions made in this second meeting by the Director of Group Ranches was that the entire sub-division and/or allocations done by the demarcation committee was null and void.
102. It was further resolved that new Government Surveyors would be dispatched from Nairobi to undertake the sub-division.
103. Lastly, there was also a resolution that the registration of the Group Ranch which had been dissolved by reinstated so that new group representatives can be elected to supervise the new sub-division.



104. To facilitate the sub-division costs, members were advised to contribute KShs 5,000/- and an interim committee was formed to manage these funds.
105. However, this interim committee faced a lot of difficulties in the collection of this funds because those officials who had been removed spread negative opinions.
106. The 1<sup>st</sup> Interested Party informed the Court that in 1996, the interim Committee travelled to Nairobi to update the Director of Group Ranches of the progress thereof.
107. During the meeting with the Director of Group Ranches in 1996, it was mutually agreed that a meeting would be held in Shartuka with the general membership on the way forward with the sub-division.
108. Indeed, the meeting in Shartuka was convened on the 13.02.1996 in the presence of the Director of Lands, Group Ranches, Director of Survey, the local administration and members of the group ranch.
109. During this meeting, new group representatives of Shartuko Group Ranch were elected and the 2<sup>nd</sup> Certificate of Incorporation issued.
110. Thereafter, another demarcation committee of 5 people was appointed with the 1<sup>st</sup> Interested Party as its chair.
111. The 1<sup>st</sup> Interested Party then informed the Court that picking of the entire property was done and at the end of it, the surveyors indicated that after removing public spaces, the only available land for sub-division to be members would produce only 51 acres.
112. The surveyors proceeded with sub-division and allocation of 51 Acres to all the 334 members.
113. At the end of this exercise, it was found that there was still some land remaining.
114. The 1<sup>st</sup> Interested Party testified to the Court that the remaining portion of land was to be dealt as follows; -
  - a. Every village was to identify and bring names of people who were resident around them but not members.
  - b. The non-members for consideration were the children of members and/or other citizens who resided within the Shartuka Group Ranch.
  - c. Once the list of children of members and/or other citizens residing in Shartuka Group Ranch was done, the children of members would be the 1<sup>st</sup> priority.
  - d. The Children on members were to be allocated 5 acres while the other citizens within Shartuka Group Ranch would be allocated 10 acres.
  - e. The last group were people who were from other adjudication sections but were residing in shartuka who were also be given 2 acres.
115. Once these proposals were finalised by the Demarcation Committee, a meeting with the general membership was called and the same were communicated to the members.
116. This meeting convened by the Demarcation Committee was done in 1998 and again marked the closure of the 2<sup>nd</sup> Register.
117. The proposals by the Demarcation Committee did not go down well with some members and the first case to with HCC NO.159 OF 1998 (KISUMU) was instituted but later transferred to Nakuru as HCC No. 252 of 1998.



118. This suit had been filed by one Issa Keres and the 1<sup>st</sup> Interested Party was the 2<sup>nd</sup> Defendant therein.
119. In this suit, the Petitioners had sought for the cancellation of various titles similar to those in the present Petition.
120. The 1<sup>st</sup> Interested Party informed the Court that the suit was heard on its merits and dismissed.
121. The Plaintiff's applied for a Stay of Execution through Civil Application No.195 of 1998 pending the hearing and determination of the substantive Appeal which was indeed granted.
122. Thereafter, the substantive Appeal was filed as Civil Appeal No. 237 of 1998 but was strike out.
123. The 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents then proceeded to prepare, print and issue the appropriate title deeds thereof to all members.
124. As this process was going on, the 1<sup>st</sup> Respondent was cited for contempt of Court based on the stay Orders which had been issued by the Court of Appeal in Civil Application No.195 of 1998.
125. The Contempt of Court application was heard and dismissed thereof.
126. During this period of applications and/or appeals, the Plaintiffs in the first suit approached the 1<sup>st</sup> Defendant with the orders issued in Civil Application No.195/1998 informing him that the Orders were still in force and therefore he should proceed and issue a Gazette Notice cancelling the said titles contained in the suit thereof.
127. Based on this misrepresentation, the 1<sup>st</sup> Respondent published the Gazette Notice No. 501 of 2008 on the 24.01.2008.
128. This Gazette Notice No. 501 published on the 24.01.2008 was challenged at the High Court sitting in Kakamega in Misc. Application No. 103 of 2003 and subsequently quashed.
129. The 2<sup>nd</sup> Gazettement published on 07.06.2011 cancelled the Gazette Notice issued on the 24.01.2008.
130. The 1<sup>st</sup> Interested Party categorically stated that no member was ever allocated more than 1 parcel of land.
131. The 1<sup>st</sup> Interested Party admitted that he owns more than one parcel of land but stated he purchased the same from their lawful owner and were not allocated to him.
132. As appertains the people mentioned by the Petitioner, the 1<sup>st</sup> Interested Party commented as follows; -
  - a. Hon Julious Sunkuli- the allocation was done by the 1<sup>st</sup> demarcation committee and there was no protest.
  - b. Ali Mbwarali – this was a District Commission but was not allocated land
  - c. John Luvusia- it is not true that he was allocated any property.
  - d. Hon. Justice Tuiyot- was given an allocation by the 1<sup>st</sup> dermacation committee but did not take possession.
  - e. Aloisio Lekulo- was a District Officer but was not able to get any land after the sub-division was complete.
  - f. Musembi- was the Registrar of Group Ranches but was not allocated any property.
  - g. William Litole- was District Commissioner but was not awarded any property.



- h. John Fundia- He did not know him but was not given any property.
133. The 1<sup>st</sup> Interested Party then proceeded to produce the following documents in support of his evidence in Chief; -
- i. 1<sup>st</sup> Interested Party's Exhibit 1- Authority to Plead dated 15/10/2021.
  - ii. 1<sup>st</sup> Interested Party's Exhibit 2- Certificate of Incorporation dated 13/09/1996.
  - iii. 1<sup>st</sup> Interested Party's Exhibit 3- Minutes and Resolutions of the meeting held on 13/02/1996 by Shartuka Group Ranch.
  - iv. 1<sup>st</sup> Interested Party's Exhibit 4- Copy of the Ruling in NBI Civil Application No.195 OF 1998 dated 15/09/1998.
  - v. 1<sup>st</sup> Interested Party's Exhibit 5- Copy of the Ruling in NBI Civil Appeal No. 237 OF 2002 dated 11/07/2000.
  - vi. 1<sup>st</sup> Interested Party's Exhibit 6- Copy of the Ruling in NBI Civil Appeal No. 237 OF 2002 dated 04/06/2003.
  - vii. 1<sup>st</sup> Interested Party's Exhibit 7- Copy of the Ruling in Kakamega Misc Application No. 103 OF 2003 dated 04/06/2004.
  - viii. 1<sup>st</sup> Interested Party's Exhibit 8- Copy of the Order from KISII Misc Application No. 80 OF 2010 dated 10/06/2011.
  - ix. 1<sup>st</sup> Interested Party's Exhibit 9- Copy of Ruling from KAKAMEGA HIGH COURT MISC APPLICATION NO. 103 OF 2003 dated 24/06/2009.
  - x. 1<sup>st</sup> Interested Parry's Exhibit 10- Receipt from Government Printer of Kshs 5,470/- (Objected)
  - xi. 1<sup>st</sup> Interested Party's Exhibit 11- Gazette Notice by C.W.Ngatia (Objected).
  - xii. 1<sup>st</sup> Interested Party's Exhibit 12- Copy of Judgement in Kisumu Civil Appeal No. 5 of 2004.
134. After the production of these exhibits, the 1<sup>st</sup> Interested Party concluded his evidence in chief.
135. In cross-examination, the 1<sup>st</sup> Interested Party reiterated that he had been the Chairman of the group ranch between 1995-1998.
136. Initially, the Group Ranch had been dissolved in the year 1991.
137. Thereafter, the Group Ranch was again reinstated in the year 1996 through issuance of the 2<sup>nd</sup> Certificate of Incorporation dated 13/09/1996.
138. In 1995, the 1<sup>st</sup> Interested Party was only the chair of the interim committee that was collecting funds to facilitate the sub-division process.
139. Between 1991 and 1995, the Group Ranch had been dissolved but the demarcation committee was still undertaking the sub-division and processing of tittle deeds.
140. The former chairman of the Group Ranch Olkendeiny Ole Tasur was one of the demarcation committee members but not an official of the Group Ranch which had been dissolved.
141. The 1<sup>st</sup> Interested Party confirmed that during the sub-division undertaken by the 1<sup>st</sup> demarcation committee, there was a number of complaints which were then brought to the attention of the local administration and finally to the Registrar of Group Ranches.



142. The 1<sup>st</sup> Interested Party further reiterated that there was a meeting convened by the Registrar of Group Ranches which resolved that the initial Government surveyors from Migori do stop undertaking the sub-division immediately.
143. This meeting convened by the Registrar of the Group Ranches was held in March 1992.
144. At this time, the 1<sup>st</sup> Interested Party was not an official and does not have the relevant minutes.
145. Nevertheless, it was the 1<sup>st</sup> Interested Party's evidence that the membership of the group ranch in the meeting held in May 1995 resolved to cancel the entire sub-division done by the 1<sup>st</sup> demarcation committee and start afresh sub-division.
146. Unfortunately, the 1<sup>st</sup> Interested Party did not have any minutes and/or resolutions to proof that the initial sub-division was cancelled by the resolutions of the meeting held in May 1995.
147. The 1<sup>st</sup> Interested Party stated that the Group Ranch was re-established in 1995 on the advice of the of Director of Surveys.
148. The 1<sup>st</sup> Interested Party referred to his Exhibit No. 3 which were the Minutes of the meeting held on the 13/02/1996.
149. The Certificate of Incorporation was then issued on the 13/09/1996 after these minutes were presented in Nairobi.
150. In the minutes of 13/02/1996, there was also a resolution to allocate the remaining portion of land to non-members.
151. However, the resolution on how the said remainder of the land could be allocated to non-members has not been attached.
152. Nevertheless, the non-members were mainly children of the original members although not all of them were allocated land.
153. The first group of children to be considered were those belonging to the age group called Ilkabong Oromboi.
154. This resolution has also not been included in the minutes and resolutions of the meeting held on 13/02/1996.
155. The name that was appearing in the Certificate of Incorporation issued on the 13/09/1996 was Shartuka Ranch and not Shartuka Group Ranch.
156. In the sub-division of the group ranch Asset, the 1<sup>st</sup> Interested Party was allocated and registered as the owner of the property known as Transmara/Shartuka/854.
157. The 1<sup>st</sup> Interested Party stated that he is not a beneficiary of any other parcel of land allocated by the Group Ranch.
158. The 1<sup>st</sup> Interested Party confirmed that the list of the original members had been produced in Court but the one for non-members was not provided in Court.
159. The 1<sup>st</sup> Interested Party informed the Court that the 2<sup>nd</sup> Interested Party was not a member of the group ranch but was allocated the property known as Transmara/Shartuka/405.
160. The 2<sup>nd</sup> Interested Party was a resident of Shartuka although he currently stays in Kilgoris because their village was burnt down.



161. The 1<sup>st</sup> Interested Party stated that he does not have the list of people who had purchased land in Shartuka Group Ranch.
162. In re-examination, the 1<sup>st</sup> Interested Party confirmed that Shartuka Group Ranch was first dissolved 1990 and then reinstated in 1995 and dissolved again in 1996.
163. The 1<sup>st</sup> Interested Party stated that Kepoki Tasur had never been a chairman of the group ranch.
164. The chairman of the group ranch in 1991 was Olkendieny Ole Tasur who is an uncle to Kepoki Tasur.
165. In the proceedings known as Kisumu HCC No. 149 of 1998, Kepoki Tasur was a Defendant therein.
166. In the Court of Appeal Application No. 195 of 1998 and Civil Appeal No. 237 of 1998, Kepoki Tasur was a Respondent.
167. The 1<sup>st</sup> Interested party clarified that the issuance of the Certificate of Incorporation done on the 13/09/1996 was not a new registration of the group ranch but simply to show the new group representatives and/or office holders.
168. As regards the extra land remaining upon sub-division and allocation to the original members, the same was discussed in the meeting held on the 21/06/1998 to agree on which people would be beneficiaries.
169. The minutes of the meeting held on the 21/06/1998 were submitted to the Registrar of Group Ranches and were approved and kept in our Register.
170. The 1<sup>st</sup> Interested Party then closed their case on completion of the re-examination.
171. The Last witness to testify in the present Petition was Stephen Waithaka Githinji who is the Sub-County Land Registrar, Transmara East, West and South.
172. The Sub-County Land Registrar, Transmara East, West and South is a successor of the 3<sup>rd</sup> Respondent in the present Petition.
173. The 3<sup>rd</sup> Respondent produced before the Court a copy of the List of beneficiaries of Shartuka Group Ranch which was certified on the 19/05/2020,
174. The 3<sup>rd</sup> Respondent indicated that the List of beneficiaries was made in 1997 and is what is currently being held in their records.
175. The 3<sup>rd</sup> Respondent further stated that there were no entries which were done prior to 1997 against the mother title of the group ranch.
176. All the parcels contained in the List presented in Court were created in 1997.
177. The 3<sup>rd</sup> Respondent stated that indeed, a number of titles within Shartuka Group Ranch had been cancelled through a Gazette Notice by the 1<sup>st</sup> Respondent.
178. Thereafter, after the conclusion of the proceedings known as Kisii Misc Application No.52 of 2009 (Formerly Kakamega HCC No. 103 of 2003), the said Gazette Notice was quashed and all the titles reinstated as before.
179. The 3<sup>rd</sup> Respondent informed the Court that the sub-division of Shartuka Group Ranch was done twice.
180. On cross-examination, the 3<sup>rd</sup> Respondent stated that there was no sub-division which was done before 1997.



181. Similarly, the 3<sup>rd</sup> Respondent informed the Court that the list of beneficiaries present in Court consists of all the land within Shartuka Group Ranch.
182. The 3<sup>rd</sup> Respondent confirmed that he was aware of the gazettelement which cancelled all sub-division and titles issued in 1997.
183. This Gazettelement was challenged in Kakamega Misc Application No. 103 of 2003 although the 3<sup>rd</sup> Respondent was not sure of the prayers sought therein.
184. Nevertheless, at the end of the proceedings known as Kakamega Misc Application No. 103 of 2003, the Court quashed the Gazettelement cancelling the sub-divisions and titles of 1997.
185. The net effect of this ruling was the reinstatement of the sub-division and titles issued in 1997.
186. A gazettelement in line with the ruling issued in Kakamega Misc Application No. 103 of 2003 was published on the 08/06/2011 as Notice No. 6331.
187. The 3<sup>rd</sup> Respondent then confirmed that his office had all the records of the persons allocated land in Shartuka Group Ranch.
188. The 3<sup>rd</sup> Respondent then closed his testimony and was discharged from the witness box.
189. The Court on its own motion requested the 3<sup>rd</sup> Respondent to prepare and present a comprehensive list of the Members Register as well as a list of the beneficiaries of Shartuka Group Ranch.
190. The parties were also directed to prepare and exchange submissions to be considered in by the Court in its judgement.

### **Analysis & Determination.**

191. Before proceeding with the merits of the present Petition, there is a preliminary issue that have been raised by both the Respondents and the Interested Parties that touches on the issue of jurisdiction.
192. The Respondents in their Grounds of Opposition dated 23<sup>rd</sup> of April 2014 have pleaded that this present Petition is Res Judicata.
193. The Interested Parties have similarly in their Replying Affidavit sworn on the 15<sup>th</sup> October 2021 also pleaded under paragraph 23 that the present Petition is indeed Res-Judicata.
194. In the case of Invesco Assurance Company Limited-versus- Auctioneers Licensing Board & Another; Kinyanjui Njuguna & company Advocates & Another (interested Parties) 2020 eKLR, the Court made the following observations

“The doctrine of res judicata is set out in Section 7 of the *Civil Procedure Act*. The doctrine ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title.

A close reading of Section 7 of the Act reveals that for the bar of res judicata to be effectively raised and upheld, the party raising it must satisfy the doctrine’s five essential elements which are stipulated in conjunctive as opposed to disjunctive terms. The doctrine will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.



- ii. That the former suit was between the same party or parties under whom they or any of them claim.
- iii. That those parties were litigating under the same title.
- iv. That the issue in question was heard and finally determined in the former suit.
- v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”

195. In another case known as Civil Application No.71 of 1960 between Siri Ram Kaura-versus- M.J.E Morgan (1961) EA 462 the Court held as follows; -

“The mere discovery of fresh evidence (as distinguished from the development of fresh circumstances) on matters which have been open for controversy in the earlier proceedings is no answer to a defence of res judicata...

The law with regard to res judicata is that it is not the case, and it would be intolerable if it were the case, that a party who has been unsuccessful in litigation can be allowed to re-open that litigation merely by saying, that since the former litigation there is another fact going exactly in the same direction with the facts stated before, leading up the same relief which I asked for before, but it being in addition to the facts which I have mentioned, it ought now to be allowed to be the foundation of a new litigation, and I should be allowed to commence a new litigation merely upon the allegation of this additional fact. The only way in which that could possibly be admitted would be if the litigant were prepared to say, I will show that this is a fact which entirely changes, the aspect of the case, and I will show you further that it was not, and could not by reasonable diligence have ascertained by me before ...

The point is not whether the respondent was badly advised in bringing the first application prematurely; but whether he has since discovered a fact which entirely changes the aspect of the case and which could not have been discovered with reasonable diligence when he made his first application.

It is therefore not permissible for parties to evade the application of Res judicata by simply conjuring up parties or issues with a view to giving the case a different complexion from the one that was given in the former suit.”

196. In the Supreme Court case known as Kenya Commercial Bank Limited-versus- Muiri Coffee Estate Limited & Another Motion No. 42 of 2014 (2016) eKLR, the Court observed as follows;-

“Res judicata is a doctrine of substantive law, its essence being that once the legal rights of parties have been judicially determined, such edict stands as a conclusive statement as to those rights.

It would appear that the doctrine of res judicata is to apply in respect of matters of all categories, including issues of constitutional rights.

Such a perception has a basis in comparative jurisprudence; in the Ugandan case of Hon Norbert Mao v Attorney-General, Constitutional Petition No 9 of 2002; [2003] UGCC3, the petitioner brought an action on behalf of 21 persons from his constituency, for declarations under article 137 of the Uganda Constitution, and for redress under article 50 of that Constitution.



The matter arose from an incident in which officers of the Uganda Peoples Defence Forces attacked a prison, and abducted 20 prisoners, killing one of them.

Unknown to the petitioner, another action had already been filed under article 50, seeking similar relief; and Judgment had been given in Hon Ronald Reagan Okumu v Attorney-General, Misc Application No0063 of 2002, High Court HCT 02 CV MA 063 of 2002.

The Constitutional Court dismissed the petition, on a plea of res judicata, declining the petitioner's pleas that certain important constitutional declarations now sought, had not been accommodated in the earlier Judgment.

197. Lastly, the Supreme Court of Kenya in the case of John Florence Maritime Services Limited & Another-versus-cabinet Secretary Of Transport & Infrastructure & 3 Others (Petition No. 17 of 2015 (2021) KESC 39 (KLR) (CIV) (6<sup>th</sup> August 2021) held as follows; -

“The doctrine of res judicata, in effect, allows a litigant only one bite at the cherry. It prevents a litigant, or persons claiming under the same title, from returning to court to claim further reliefs not claimed in the earlier action. It is a doctrine that serves the cause of order and efficacy in the adjudication process. The doctrine prevents a multiplicity of suits, which would ordinarily clog the courts, apart from occasioning unnecessary costs to the parties; and it ensures that litigation comes to an end, and the verdict duly translates into fruit for one party, and liability for another party, conclusively.”

198. The Court having familiarised itself with the principles of Res Judicata, it will now discuss the merits of the same in the present Petition.

199. The point of departure by the Respondents and the Interested Parties is that the issue of the legality of the Members Register used to sub-divide and/or allocated land within Shartuka Group Ranch had been determined by Courts of competent jurisdiction.

200. Secondly, the Respondents and the Interested Parties also argued that the creation and/or legality of the properties the Petitioner is seeking to cancel in this present Petition had already been determined by other Courts of competent jurisdiction.

201. The Interested Parties in particular expounded these grounds in their Replying Affidavit dated 15<sup>th</sup> October 2015, their witness statement as well as their submissions dated 27<sup>th</sup> of April 2022.

202. The Petitioners unfortunately did not file any further Affidavit in regards to the Replying Affidavit dated 15<sup>th</sup> October 2015 in answer to the allegations of Res Judicata but addressed the said issue in their submissions dated 21<sup>st</sup> March 2022.

203. It is therefore important for this Court to outline the sequence of events and/or decisions placed before the Court in an effort to arrive at the appropriate decision on this matter.

204. The origin of the claim for Res-judicata by the Respondent and the Interested Party emanates from the pleadings known Kisumu HCC No. 149 of 1998 which was later transferred to the High Court in Nakuru and assigned Nakuru HCCC No. 252 of 1998.

205. The Interested Parties submit that the above suit was instituted by some members of Shartuka Group Ranch challenging the authenticity of the Group Ranch Register that was being used to sub-divide and/or allocate land.



206. The Interested Parties further pleaded that the said suit was heard on its merits and a judgement dismissing the same was pronounced thereof.
207. Subsequently thereafter, the Plaintiffs therein being aggrieved with the decision pronounced by the superior Court took the following steps; -
- a. An Application for Stay of the judgement was then filed in the Court of Appeal and assigned Civil Appeal No. 195 of 1998.

Upon hearing of the said Interlocutory Application ex-parte, the Court of Appeal made the following Orders on the 15<sup>th</sup> of September 1998; -

“The 1992 register is the only register for the purpose of determining the bona fide members of Shartuka Group Ranch.

The Second register of new members of the Group Ranch is fraudulent and void and is not to be used.

The Chief Land Registrar to continue with reconciliation of membership.”

- b. The Appellants then proceeded to file the substantive Appeal and was assigned Civil Appeal No. 237 of 1998 but on the 11<sup>th</sup> of July 2000, the Court of Appeal struck out the Record of Appeal for failure to include a copy of the Formal Order appealed against as required under Rule 85 (1) (h) of the Court of Appeal Rules.
- c. However, the 1<sup>st</sup> Respondent not being aware of the Orders issued on the 11<sup>th</sup> of July 2000 by the Court of Appeal in Civil Appeal No. 237 of 1998, published Gazette Notice No. 4984 dated 25<sup>th</sup> July 2003 which read as follows; -

“Pursuant to the Court of Appeal Order dated 15<sup>th</sup> September 1998, in Civil Application No.195 of 1998 and powers of rectification of the land registers under Part X of the Registered Land Act (Cap. 300) of the laws of Kenya.

An in consideration, the Court ordered that the 1992 register for members of Shartuka Group Ranch is the only legitimate register for determining the bona fide members of Shartuka Group Ranch in issuance of land titles deeds.

The second register of new members of Shartuka Group Ranch was found to be fraudulent and void.

And whereas it has come to the notice of this office that there are persons/ organisations holding land titles deeds issued under the second register in contravention of the Court order.

As whereas a notice has been issued to all non bona fide members of Shartuka Group Ranch to surrender titles and any possession of land in contravention of the Court of Appeal Order under ref TM/Shartuka/32/36 of 1<sup>st</sup> April 2003, which notice can be viewed at the District Land Registrar’s office, Transmara District and the District Commissioner’s Office

Be it known by all persons/organisations that:

- a. All titles issued to non bona fide members of Shartuka Group Ranch contrary to the Court of Appeal Order have been expunged from the land register and therefore are now null and void.



- b. Any person/organisation holding a title deed or is in possession of any parcel of land in contravention of the Court of Appeal Order, and having been duly notified risks prosecution for contempt of Court.
- d. The Respondents in Civil Application No.237 of 1998 being aggrieved by the actions of the 1<sup>st</sup> Respondent herein proceeded to file a Judicial Review Application at the High Court at Kakamega to wit Misc Application No. 103 of 2003 seeking to quash the dated Gazette Notice No. 4984 dated 25<sup>th</sup> July 2003.
- e. Upon hearing both parties in this Kakamega Judicial Review Application No. 103 of 2003, the Court indeed proceeded to Quash the Gazette Notice No. 4984 dated 25<sup>th</sup> July 2003 through its judgement pronounced on the 4<sup>th</sup> of June 2004.
- f. Looking at the Interested Parties Exhibit 10, it is clear that indeed the Plaintiffs in the proceedings known as Kisumu HCC No. 149 of 1998 decided to file a second Appeal which was assigned Civil Appeal No. 5 of 2004.
- g. This particular Appeal was heard on its merits and a judgement dismissing the entire Appeal was delivered on the 17<sup>th</sup> of December 2010.
- h. However, for some strange reason, the 1<sup>st</sup> Respondent in the present Petition again published a second Gazette Notice No. 501 dated 24<sup>th</sup> of January 2008 which read as follows; -

“Pursuant to the Court of Appeal Order dated 15<sup>th</sup> September 1998, in Civil Application No.195 of 1998, Issa Keres & 4 Others-Vs-Kipoki Oreu Tasur & 10 others;

And in consideration that the Court of Appeal ordered that; -

- a. The 1992 register for members of Shartuka Group Ranch is the only legitimate register for determining the bonafide members of Shartuka Group Ranch in issuance of land title deeds;
- b. The 2<sup>nd</sup> Register of new members of Shartuka Group Ranch was fraudulent and void and is not to be used.

And whereas it has come to the notice of the Chief Land Registrar that there are titles deeds, registers (green cards) and maps prepared or issued under the second register in contravention of the Court Orders

Be it known by all affected persons or organisations that; -

- a. All title deeds, green cards or registers and maps prepared or issued contrary to the Court of Appeal Order have been expunged and therefore are now null and void;
- b. Any person or organisation holding a title deed or is in possession of any parcel of land in contravention of the Court of Appeal Order risks prosecution of contempt of Court.
- i. The actions of the 1<sup>st</sup> Respondent in publishing this second Gazette Notice No. 501 of 24<sup>th</sup> January 2008 forced the Respondents to file a contempt of Court Application dated 21<sup>st</sup> May 2009 in the file known as Kakamega Judicial Review Application No. 103 of 2003.



- j. The Court indeed heard the application on its merit and found the 1<sup>st</sup> Respondent herein to be in contempt of the Ruling and Orders issued on the 4<sup>th</sup> of June 2004.
  - k. According to the Orders issued on the 10<sup>th</sup> of June 2011, the Court noted that the 1<sup>st</sup> Respondent had sufficiently purged the contempt and consequently discharged the contempt.
208. It seemed like after the Orders issued on the 10<sup>th</sup> of June 2011 this matter had been put to rest, but against in 2013 this present Petition was filed afresh.
209. Consequently therefore, based on the above detailed background of the litigations outlined hereinabove, is the Court satisfied that this present Petition is Res-judicata based on the principles discussed earlier in this Judgement?

**Principle 1-The suit or issue raised was directly and substantially in issue in the former suit?**

210. Under this principle, the Court is required to evaluate the issues raised in the former suit and compare the same with those currently before the Court to satisfy itself on whether the issues are similar.
211. Although none of the parties in this present Petition has presented the pleadings filed in the original proceedings known as Kisumu HCC No. 149 of 1998 and subsequently Nakuru HCC No.252 of 1998, it is clear from the Ruling pronounced by the Court of Appeal in Civil Application No.195 of 1998 dated 15<sup>th</sup> September 1998 that the dispute between the parties in Kisumu HCC No.149 of 1998 and subsequently Nakuru HCC No. 252 of 1998 was regarding the bona fide members of Shartuka Group Ranch and the issuance of Title Deeds within the said Shartuka Group Ranch.
212. The two Gazette Notices No.4984 dated 25<sup>th</sup> July 2003 and No. 501 of 24<sup>th</sup> January 2008 both refer to the two issues of who should be the bona fide members and the issuance of titles within Shartuka Group Ranch.
213. Further to that, the Judgement determining the Civil Appeal No. 5 of 2004 which was the substantive Appeal emanating from the proceedings known as Kisumu HCC No.149 of 1998 and subsequently Nakuru HCC No. 252 of 1998 clearly identified the issues for determination being the legality of the Resolutions passed in 1991 and 1996 as well as the sub-division of Shartuka Group Ranch property.
214. Now turning to this present Petition, the Petitioners herein under Reliefs 4,5 and 6 on Page 10 are seeking the determination of the bona fide members of Shartuka Group Ranch and cancellation of various titles outlined therein.
215. The Titles being sought to be cancelled are similar to those contained in the Gazette Notice dated 25<sup>th</sup> July 2003 by the 1<sup>st</sup> Respondent and outlined in Page 2 of the Ruling pronounced on the 24<sup>th</sup> of June 2009 in Kakamega Misc Application No. 103 of 2003.
216. Consequently therefore, this Court is of the considered opinion that the issues raised in this Petition are directly and substantially similar to those contained in the original suit known as Kisumu HCC No 149 of 1998 and Nakuru HCC No.252 of 1998.

**Principle no. 2- That the former suit was between the same parties or parties whom they or any of them claim.**

217. In this principle, the Court is obligated to look at the parties in the previous suit and compare with those in the present suit so that it decides as to whether the parties are one and the same or otherwise.
218. In the initial suit known as Kisumu HCC No.149 of 1998 and subsequently Nakuru HCC No.252 of 1998, the Plaintiffs therein were Issa Leshan Keres & 4 Others-versus- Kipoki Oreu Tasur & 10 others.



219. According to the description given by the Court in the Judgement pronounced on the 17<sup>th</sup> December 2010, the Plaintiffs therein described themselves as bona fide members of Shartuka Group Ranch while the Defendants therein were the duly registered members of Shartuka Group Ranch.
220. Again, in this present Application, the Petitioners have also described themselves under Paragraph 4 as the duly registered members of Shartuka Group Ranch.
221. Looking at the description of the Plaintiffs in the previous suit known as Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No. 252 OF 1998 and the Petitioners in this present Petitioner, it is not in doubt that both of them base their claims from one and the same point which is they are bona fide members of Shartuka Group Ranch.
222. In respect to the Defendants and/or Respondents herein, the previous suit known as Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No. 252 OF 1998 had Kipoki Oreu Tasur & 10 others.
223. Indeed, referring to the heading of the Order issued on the 11<sup>th</sup> of July 2000 in Civil Appeal No. 237 OF 1998, the 8<sup>TH</sup> Respondent was the Director of Land Adjudication , the 9<sup>th</sup> Respondent was the Director of Surveys, the 10<sup>th</sup> Respondent was Shartuka Group Ranch and the 11<sup>th</sup> Respondent was the Chief Land Registrar.
224. In this present Petition, the 1<sup>st</sup> Respondent is the CHIEF LAND REGISTRAR, the Director of Land Adjudication is the 2<sup>nd</sup> Respondent and Shartuka Group Ranch is the 5<sup>th</sup> Respondent.
225. In other words, the 8<sup>th</sup>, 10<sup>th</sup> and 11<sup>th</sup> Defendants in the previous suit known as Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No. 252 of 1998 are similar to the present Petitioner's 1<sup>st</sup>, 2<sup>nd</sup> and 5<sup>th</sup> Respondents.
226. The question then that begs to be determined is whether the mere change of names at the filing of new proceedings sufficient to mitigate and/or negate the principle of Res Judicata?
227. In the case of Thuo -versus- Attorney General & another (NBI Petition No.212 of 2012) the Court observed as follows; -
- “The courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court in another way and in a form a new cause of action which has been resolved by a court of competent jurisdiction.”
228. In another case of Omondi-versus- National Bank of Kenya Limited & others (2001) EA 17, the Court was of the following view; -
- “parties cannot evade the doctrine of res judicata by merely adding other parties or causes of action in a subsequent suit”
229. Lastly, in the unreported case of Njangu -versus- Wambugu & another (HCCC No. 2340 of 1991), the Learned Judge pronounced himself as follows; -
- “If parties were allowed to go on litigating forever over the same issue with the same opponent before courts of competent jurisdiction merely because he gives his case some



cosmetic face lift on every occasion he comes to court, then I do not see the use of the doctrine of res judicata .....

230. Indeed, looking at the parties in this suit, the Court is of the considered view that the Petitioners herein although have different names from those in the previous suit known as Kisumu HCC No.149 OF 1998 and subsequently Nakuru HCC No.252 OF 1998, their locus emanates from being members of Shartuka Group Ranch.
231. If this Court is to treat every member of Shartuka Group Ranch raising the same issues as separate and distinct persons, then litigation within this area will never end and justice will never be seen to have been done.
232. In conclusion therefore, the Court is persuaded that the parties herein are effectively and constructively similar to those in the previous suit known as Kisumu HCC No.149 OF 1998 and subsequently known as Nakuru HCC No. 252 of 1998.

**Principle No. 3- That those parties were litigating under the same titles.**

233. In this principle, the issue for determination is whether the parties in the previous suit litigated on the same titles as is in the present Petition or suit.
234. Referring to the Ruling pronounced on the 24<sup>th</sup> of June 2009 in the proceedings known as Kakamega Misc Application No. 103 OF 2003, page 2 provides the parcel numbers that were on litigation beginning with Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No. 252 OF 1998.
235. The parcel numbers under litigation in the previous suit known as Kisumu HCC No. 149 OF 1998 and Nakuru HCC No. 252 OF 1998 and specifically outlined in Kakamega Misc Application No. 103 OF 2003 were as follows;- 512-514, 518-524, 545-569, 570, 571, 573-593, 595-611, 620-639, 641-674, 676-693, 695, 700-714, 717, 719-739, 743-744, 746, 748, 753-759, 762-771, 774-787, 789, 791, 792, 794, 818-821, 823,824,826,835, 852-854, 857, 858, 859, 17, 18, 26, 29, 36, 45, 63, 85, 92, 103, 111, 112, 117, 126, 127, 130, 147, 149, 155, 180, 182, 206,213, 221, 223, 240, 251, 254, 258, 297, 319, 316, 332, 320, 370, 369, 359, 362, 350, 388-400, 386, 385,372-382,401-407, 411-416, 418-511
236. In the present Petition, Prayers No. 6 on page 10 seeks for the revocation and cancellation of the following titles; Shartuka Parcel Numbers 512-514, 518-524, 545-569, 570, 571, 573-593, 595-611,620-639, 641-674, 676-693, 695, 700-714, 717, 719-739, 743-744, 746, 748, 753-759, 762-771, 774-787,789, 791, 792, 794, 818-821, 823, 824, 826, 835, 852-854, 857, 858, 859, 17, 18, 26, 29, 36, 45 ,63,85, 92, 103,111, 112, 117, 126, 127, 130, 147, 149, 155, 180, 182, 206, 213, 221, 223, 240, 251, 254, 258, 297, 319, 316, 332, 320, 370, 369, 359, 362, 350, 388-400, 386, 385, 372-382, 401-407,411-416, 418-511.
237. In essence, the parties in the present Petition are litigating on the same titles as those litigated in the previous case known as Kisumu HCC No. 149 OF 1998 and Nakuru HCC No. 252 OF 1998 and confirmed in the ruling delivered on the 24<sup>th</sup> of June 2009 in Kakamega Misc Application No. 103 OF 2003.
238. In addition to the above, the meaning of the word title under this principle can also be evaluated from the aspect of where the rights of the litigants arise from.
239. As earlier discussed, both the Plaintiffs in the previous suit known as Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No.252 OF 1998 as well as the Petitioners in the present Petition instituted these proceedings as bona fide members of Shartuka Group Ranch who were aggrieved with



the Members Register as well as the sub-division and issuance of the titles mentioned hereinabove to persons alleged to be non-members.

240. Effectively therefore, the Plaintiffs in the previous suit known as Kisumu HCC No. 149 of 1998 and subsequently Nakuru HCC No.252 OF 1998 are litigating under the same title of being bona fide members of Shartuka Group Ranch who are aggrieved with the Members Register and/or the sub-division and issuance of certain titles to persons alleged to be non-members.

**Principle No. 4- That the issue in question was heard & determined in the former suit.**

241. In this principle, the Court seeks to determine whether the issues which first existed in the previous suit and could be similar in the present Petition were heard and determined in the previous suit.

According to Page 3 of the said Judgement, the Court of Appeal outlined the prayers sought in the previous suit as follows; -

- “ a) A declaration that the purported meeting of the 10<sup>th</sup> Respondent (Shartuka Group Ranch) on the 13<sup>th</sup> of February 1996 and the subsequent election of new Group Ranch Representatives thereof was and is null and void and of no consequence.
- b) A declaration that the sub-division of the 10<sup>th</sup> Respondent (Shartuka Group Ranch) pursuant to the purported exercise of powers by the purported Group Ranch Representatives elected on the 13<sup>th</sup> of February 1996 was and is null and void.
- c) An order to the 10<sup>th</sup> Defendant (Shartuka Group Ranch) that its subdivision be carried out in accordance with the 1991 resolution and the approval thereof by the registrar.”

242. The Plaintiffs in the previous suit known as Kisumu HCC No. 149 OF 1998 and subsequently Nakuru 252 OF 1998 were not successful in prosecuting the interlocutory Application and the same was subsequently dismissed by the trial Court.

243. Based on the dismissal of the interlocutory Application by the trial Court in the previous suit known as Kisumu HCC No.149 OF 1998 and subsequently Nakuru HCC No.252 OF 1998, the Plaintiffs therein filed an application in the Court of Appeal to wit Civil Application No.195 OF 1998 of which on the 15<sup>th</sup> of September 1998, the Court made the following Orders in determination on the issue of the Members Register as follows; -

“The 1992 register is the only register for the purpose of determining the bona fide members of Shartuka Group Ranch.

The Second register of new members of the Group Ranch is fraudulent and void and is not to be used.

The Chief Land Registrar to continue with reconciliation of membership.”

244. The substantive Appeal emanating from the Ruling pronounced on the 15<sup>th</sup> of July 1998 by the Trial Court in the previous suit known as Kisumu HCC No. 149 OF 1998 and subsequently known as Nakuru HCC No.252 OF 1998 known as Civil Appeal No. 237 OF 1998 was struck out on the 11<sup>th</sup> July 2000 for being incompetent thereof.



245. The legal implication of the striking out Orders issued in Civil Application No.237 OF 1998 on the 11<sup>th</sup> of July 2000 were interpreted by the Court of the Appeal in their ruling emanating from Court of Appeal Civil Application No. 243 of 2002 filed by the Appellants thereof as follows; -

“Once the Appeal was struck out all orders made under Rule 5 (2)(b) of the Rules of this Court pending the hearing and determination of the appeal automatically lapse.”

246. The legal understanding of the orders issued on the 11<sup>th</sup> of July 2000 and the subsequent ruling of the Court of Appeal in Civil Application No.243 OF 2002 was a determination that the prohibition Orders issued against Shartuka Group Ranch to use the Resolutions of 13<sup>th</sup> February 1996 had been vacated and/or lifted on the 11<sup>th</sup> of July 2000.

247. The determination of the Court of Appeal made in Civil Application No.237 OF 1998 was further expounded on by the Kakamega HCC Misc Application No.103 OF 2003.

248. In its detailed Ruling pronounced on the 4<sup>th</sup> of June 2004, the Judge in KAKAMEGA HCC MISC.APPLICATION.NO. 103 OF 2003 held as follows on the issue of the title deeds affected by the Gazette Notice No. 4984 dated 25<sup>th</sup> July 2003; -

“In the result, an Order of Certiorari shall issue to remove into this Court for quashing the decision of the Chief Land Registrar dated 14.07.2003 contained in the Kenya Gazette of 25.07.2003 purporting to expunge from the Land Register as null and void title deeds relating the parcels referred to in the said Gazette Notice and the application.”

249. For avoidance of doubt, the titles referred in the Kenya Gazette No. 4984 dated 25<sup>th</sup> July 2003 by the Chief Land Registrar were clearly outlined on Page 2 of the Ruling regarding the Contempt of Court Orders application filed on the 21<sup>st</sup> of May 2009 and delivered on the 24<sup>th</sup> of June 2009 as follows; -

“Shartuka	Parcel	Numbers
		512-514,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,743-7

250. Lastly, this Court has again thoroughly perused the Judgement pronounced by the Court of Appeal in Civil Appeal No. 5 OF 2004 on the 17<sup>th</sup> December 2010.

251. In the Ruling pronounced on the 17<sup>th</sup> of December 2010 in Civil Appeal No. 5 OF 2004, the Court of Appeal did not restrict itself only on the Ruling pronounced on the 15<sup>th</sup> of July 1998 in Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No. 252 OF 1998 but further decided on the issue of Res Judicata raised by the Defendants herein.

252. The Court of Appeal confirmed that the issue of Res Judicata had been submitted upon before the Ruling of Trial Court on the 15<sup>th</sup> of July 1998 and Plaintiffs therein had not offered any defence thereof.

253. In conclusion therefore, the Court of Appeal in their Ruling determining Civil Appeal No. 5 OF 2004 began by declaring that the previous proceedings known as Kisumu HCC No. 149 OF 1998 and subsequently Nakuru HCC No.252 of 1998 as well as the Civil Appeal No. 5 OF 2004 were all an abuse of the Court process in totality.

254. In essence therefore, this Court is of the considered opinion that the two main issues of the Shartuka Members Register and the legality of the properties outlined in this Petition as illegal and should be revoked and/or cancelled have been heard and determined in previous proceedings including the Appellate Court.



**Principle No. 5- That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.**

255. In this last principle, the Court should decide on whether or not the issues raised in both suits were placed before a Court of competent jurisdiction to make the necessary determinations.
256. In the previous Constitution that operated before the 2010 new Constitution, all land matters were handled by the High Court of Kenya.
257. Appeals would then be handled by the Court of Appeal as the Appellant Court.
258. According to the Rulings and Judgements referred hereinabove regarding the previous suit and the present suit, the Courts that handled the matters were the High Courts and the Court of Appeal in instances of Appeals.
259. This particular Petition having been filed in the year 2013 was also filed in the High Court of Kenya and subsequently transferred to this Court upon establishment of the Environment & Land Court of the Kenyan 2010 Constitution.
260. In effect therefore, the previous cases and well as this present Petition have been heard and determined by Courts of Competent jurisdiction.
261. In conclusion therefore, the Court do hereby make the following Orders as appertains the Petition dated 24<sup>th</sup> September 2013; -
- A. The petition dated September 24, 2013 be & is hereby dismissed for being res judicata in view of the previous proceedings known as KSM HCC No. 149 of 1998 and subsequently Nakuru 252 of 1998, the Court of Appeal Civil Application No.159 of 1998, the Court of Appeal Civil Appeal No.237 of 1998, Kakamega Misc Application No. 103 of 2003, Kakamega Civil Misc Application.No. 103 Of 2003 & Court Of Appeal Civil Appeal No. 5 Of 2004.
  - B. The stay orders issued on the 19<sup>th</sup> of May 2020 prohibiting the hearing and/or determination of cases touching the Shartuka Adjudication Section Formerly Known As Shartuka Group Ranch be and are hereby lifted, vacated and/or discharged.
  - C. The Injunctive orders issued on the 19<sup>th</sup> of May 2020 to the respondents jointly and severally prohibiting the alienation, selling and/or issuance of title deeds within Shartuka Adjudication Section be and are hereby lifted, vacated and/or discharged forthwith.
  - D. The costs of this petition shall be borne by the petitioners herein.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 2<sup>ND</sup> FEBRUARY 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

**IN THE PRESENCE OF:**

**COURT ASSISTANT: NGENO**

**ADVOCATES FOR THE PETITIONER: OCHIENG**

**ADVOCATES FOR THE RESPONDENTS: NO APPEARANCE**

**ADVOCATES FOR THE INTERESTED PARTIES: WAFULA**

