



**Oloirien Group Ranch v Director, Land Adjudication & Settlement & 6 others; Kenya Airports Authority (Interested Party) (Environment & Land Petition E001 of 2022) [2023] KEELC 16303 (KLR) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16303 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
ENVIRONMENT & LAND PETITION E001 OF 2022**

**EM WASHE, J  
MARCH 14, 2023**

**IN THE MATTER OF: PUBLIC INTEREST LITIGATION UNDER ARTICLES 3(1), 48, 22(1) & (2), 50(1), 258 AND 259 (1) OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**IN THE MATTER OF: THE ALLEGED THREATS UNDER ARTICLES 1 (1), 2, 3 (1), 10 (1) & (2), 23 ,33(1)(A), 35,40,232(E) & (F) AND 259(1) OF THE CONSTITUTION OF KENYA,2010**

**-AND-**

**IN THE MATTER OF: THE ALLEGED THREAT OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLES 35 AND 40 OF THE CONSTITUTION OF KENYA, 2010**

**-AND-**

**IN THE MATTER OF: THE ALLEGED BREACH OF PART III OF THE LAND ADJUDICATION ACT, CAP 284 OF THE LAWS OF KENYA AND SECTION 104 OF THE LAND REGISTRARION ACT, NO. 3 OF 2012.**

**BETWEEN**

**OLOIRIEN GROUP RANCH ..... PETITIONER**

**AND**

**THE DIRECTOR, LAND ADJUDICATION & SETTLEMENT .... 1<sup>ST</sup> RESPONDENT**

**THE DISTRICT LAND ADJUDICATION OFFICER TRANSMARA WEST ..... 2<sup>ND</sup> RESPONDENT**

**THE DISTRICT LAND REGISTRAR-TRANSMARA ..... 3<sup>RD</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**



**OLOOSURA COMPANY LIMITED ..... 6<sup>TH</sup> RESPONDENT**

**MANATI LIMITED ..... 7<sup>TH</sup> RESPONDENT**

**AND**

**KENYA AIRPORTS AUTHORITY ..... INTERESTED PARTY**

## **RULING**

1. The Petitioner (hereinafter referred to as “the Applicant”) filed the Notice of Motion Application dated 25<sup>th</sup> February 2022 (hereinafter referred to as “the present application”) seeking for the following Orders; -
  - a) That this Application be certified urgent and service thereof be dispensed with in the first instance. (Spent)
  - b) That pending the hearing and determination of this Application inter-partes and the Petition or any such time and duration as this Court will deem fit, this Honourable Court be pleased to restrain the Interested Party by themselves, their authorised agents and/or representatives and/or any other person or entity which is acting on its behalf from proceedings with the acquisition of the parcel of land comprised in Transmara/Oloirien Section No 15 (also known as Transmara/Oloirien “A” 1) situated in Transmara.
  - c) That pending the hearing and determination of this Application inter- partes and the Petition or any such time and duration as this Court will deem fit, Honourable Court be pleased to restrain the Interested Party by themselves, their authorised agents and/or representatives and/ or any other person or entity acting on its behalf from paying, granting and/or issuing any form of compensation , payment and/or any other token with regards to the acquisition of the portion of Section 15 ( also known as Oloirien “A”1) situated in Transmara to any of the parties herein or any other 3<sup>rd</sup> Party.
  - d) That pending the hearing and determination of this application inter-partes and the Petition or any such time and duration as this Court will deem fit, this Honourable Court be pleased to restrain the Interested Party by themselves,their authorised agents and/or representatives and/ or any other person or entity acting on their own behalf from commencing and/or continuing with any rehabilitation works, activities, operations and/or affairs of an alleged airstrip on the portion of land comprised in that parcel of land known as in Section No 15 ( also known as Oloirien “A” 1) situated in Transmara and/or dealing in any other manner with the said parcel of land.
  - e) That pending the hearing and determination of this application inter-partes and the Petition or any such time and duration as this Court will deem fit, this Honourable Court be pleased to direct and compel the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents to produce all documents in their possession pertaining and related to the declaration of the Adjudication Section known as Oloirien and copies of the title document(s) therein, including but not limited to the following; -
    - i) Declaration for Oloirien A Adjudication Section.
    - ii) Declaration for Oloirien A adjudication Section “A”/1
    - iii) Declaration for Oloirien A adjudication Section “A”/2



- iv) Certified Copy of the Adjudication Record for the Land Parcel No Transmara/Oloirien/15
  - v) Certified copy of the Adjudication Record for the land parcel No Transmara/Oloirien “A”/1
  - vi) Certified Copy of the Adjudication Record for the land parcel No Transmara/Oloirien “A”/2.
- f) That pending the hearing and determination of this application inter-partes and the Petition or any such time and duration as this Court will deem fit, this Honourable Court be pleased to issue an order of injunction restraining the Respondents and the Interested Party by themselves, their authorised agents and/or representatives and/or any other persons or entity from dealing in any way with either a portion of or the entire Section 15 (also known as Oloirien “A”/1) situated in Transmara.
- g) That this Honourable Court be pleased to grant leave to the Petitioner/Applicant to serve this Application and Petition to the 6<sup>th</sup> and 7<sup>th</sup> Respondents by way of substituted service by placing an advertisement of the same in either the Daily Nation or the Standard newspaper.
- h) That this Honourable Court be pleased to issue any such orders as it may deem just and expedient to ensure the ends of justice are met.
- i) That the costs of this Application be provided for.
2. The present application is supported by grounds outlined therein which are as follows; -
- i) The Oloirien Section in Transmara which is approximated to be 288.83 Hectares was declared an adjudication section in the year 1975 and identified as Oloirien A.
  - ii) Upon declaration of Oloirien Adjudication Section, a committee was formed to identify the members of the group ranch, sub-divide the Oloirien Adjudication Section and allocate the same to the identified members thereof.
  - iii) According to the Applicant, Oloirien Adjudication Section was sub-divided into Thirty-Six (36) sections marked as Sections A-2 to Section A-37.
  - iv) All the thirty-six (36) sub-divisions were allocated to their legitimate members save for Section A-15 which was not allocated.
  - v) According to the Applicant, Section A- 15 was reserved for the establishment of a camp site which would be an income generating activity for the benefit of the members of the group ranch.
  - vi) Section A- 15 was then leased out to a commercial entity in the hope of receiving lease premiums for the benefit of the general membership of the group ranch.
  - vii) However, in the year 1993, the commercial entity that had leased the property known as Oloirien Section A-15 stopped paying its lease premiums to the Applicants and instead started remitting the same to a third party.
  - viii) The Applicants herein demanded for their Lease premiums from the commercial entity but the same was not responded to.



- ix) In the year 1999, the Applicant learnt to their utter shock and surprise that the sub-division known as Oloirien Section A- 15 had been alienated to the Oloosura Ranch Company and a title deed issued accordingly.
  - x) In addition to the above, the said Oloosura Ranch Company had transferred the sub-division known as Oloirien Section A- 15 to Manati Limited on the 12<sup>th</sup> February 1999.
  - xi) During the investigations by the Applicants on the allocation and/or alienation of the sub-division known as Oloirien Section A- 15, it came to their knowledge that another adjudication Record had been created and the same sub-division renamed as Oloirien A/ 1.
  - xii) The Applicant complains that this changes in the sub-division known as Oloirien Section A-15 was done without the participation and approval of the members of Applicant.
  - xiii) After the Applicant's sub-division known as Oloirien Section A- 15 was renamed as Oloirien A/1, the same was further sub-divided into several sub-divisions known as Oloirien A/2 to Oloirien A/7.
  - xiv) The Applicant's submission is that all their efforts to have these illegal allocations of their property known as Oloirien Section A- 15 rectified has not been successful.
  - xv) In the year 2020, the Applicant came across a letter from the Interested Party indicating that it was in the process of compulsorily acquiring a portion of the property known as Oloirien Section A- 15 measuring approximately 44.7 Hectares for purposes of rehabilitating an airstrip on the said property.
  - xvi) The Applicant filed an objection to the Interested Party's intention of compulsorily acquiring a portion of the property known as Oloirien Section A- 15.
  - xvii) Nevertheless, the Interested Party responded to the Applicant stating that the property which was being acquired through compulsory acquisition belonged to the 7<sup>th</sup> Respondent and not them.
  - xviii) The Applicant states that the Gazette notice by the Interested Party to compulsory acquire a portion of their property known as Oloirien A- 15 means that the financial compensation would be paid to the 7<sup>th</sup> Respondent who is not the legitimate owner.
  - xix) The Applicant's submission is that the issue of proprietorship of the property known as Oloirien A-15 or Oloirien A/2 should be determined before the financial compensation is paid out by the Interested Party.
  - xx) Further to that, it would cause irreparable loss to the Applicant and the general membership thereof if the rehabilitation of the airstrip would continue without the issue of ownership being ascertained as it will lead to a breach of their constitutional right to own property.
3. The applicant then proceeded to effect service of the present application on the respondents as directed by the court.
  4. The 7<sup>th</sup> respondent filed a response to the present application.
  5. The 7<sup>th</sup> Respondent filed a replying affidavit through one Kuya Kijabe sworn on the 23<sup>rd</sup> of May 2022.
  6. The grounds advanced by the 7<sup>th</sup> respondent in their replying affidavit were as follows; -



- a) Indeed, the 7<sup>th</sup> Respondent was the duly registered owner of the property known as LR No Transmara/Oloirien A/1 measuring approximately 288.83 Hectares and therefore the Applicant herein had no interest whatsoever in the said property.
  - b) The Applicant's present application as well as the entire petition was incompetent and bad in law for the deponent Moiko Ole Moiron had no locus standi to institute these proceedings.
  - c) Similarly, the 7<sup>th</sup> Respondent alleged that deponent Moiko Ole Moirion purported to institute the present Application as well as the Petition herein on behalf of the actual members of the Applicant yet he did not include the list of the actual members as well as his position in the said entity or the resolution authorising him to commence and sustain this proceeding.
  - d) Further to that, the 7<sup>th</sup> Respondent pleaded that the time within which the Applicant would file any objection to the allocation of the suit property under Land Adjudication Act, Cap 284 has since lapsed.
  - e) Consequently therefore, any exercise challenging the ownership of the title deed of the property known as LR No Transmara/Oloirien A/1 was time-barred and offended the provisions of Sections 7, 9(1) and 26 of the Limitations of Actions Act, Cap 22 Laws of Kenya.
  - f) The last aspect of the 7<sup>th</sup> Respondent opposing the present Application was that even if the Applicant invoked a claim of historical injustice, then still, the present Petition had been catch up with the repealing of Section 15 of the National Land Commission done on the 2<sup>nd</sup> of May 2022.
  - g) In the end, the 7<sup>th</sup> Respondent's prayer is that both the present Application and the Petition should be dismissed with costs.
7. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents also filed their Grounds of Opposition although out of time dated 20<sup>th</sup> January 2023.
  8. The grounds advanced by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents in opposing the present application were as follows; -
    - a) The orders sought in the present application were not factually supported by evidence and the law.
    - b) The Orders sought were in contravention of the mandatory provisions of Order 29, Rule 2 (2) (d) of the Civil Procedure Rules, 2010 as read together with Section 16 of the Government Proceedings Act (Cap 40 Laws of Kenya).
    - c) The present Application and the entire Petition was premature as it is aimed at curtailing a lawful and procedural process of compulsory acquisition by the interested parties as provided under Part VIII of the Land Act, No 6 of 2012.
    - d) The Order in the present application seeking for production of documents against the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondent amounted to a final order at an interlocutory stage.
    - e) Similarly, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondent pleaded that the Applicant had not established a *prima facie* case to warrant granting of the orders.
    - f) Lastly, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondent sought the present application to be dismissed with costs.



9. The Court directed that the parties who were participating in the present Application to file submissions in support of their positions.
10. The Applicants filed their submissions on the 25<sup>th</sup> of August 2022 and the 7<sup>th</sup> Respondent filed their submissions on the 13<sup>th</sup> of December 2022.
11. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents did not file any submissions in support of their Ground of Opposition filed on the 20<sup>th</sup> of January 2023.
12. Indeed, the Court has gone through the present application, the Replying Affidavit by the 7<sup>th</sup> Respondent and the Grounds of Oppositions filed by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents as well as the submissions filed therein.
13. The issues for determination can be summarised as outlined herein below; -
  1. Does The Deponent Moiko Ole Miaron Have The Locus Standi To Commence This Petition On Behalf Of The Members Of Oloirien Group Ranch?
  2. If The Answer To Issue No 1 Is To The Positive, Are The Claims Filed By The Applicant Time-barred?
  3. If Both Issue No 2 Is To The Negative, Is The Applicant Entitled To The Orders Sought In The Present Applicant?
  4. Who Bears The Cost Of The Present Application?
14. The Court having identified the above issues for determination, it will now proceed to discuss the same as provided hereinabove.

**Issue No 1- Does The Deponent Moiko Ole Miaron Have The Locus Standi To Commence This Petition On Behalf Of The Members Of Oloirien Group Ranch?**

15. According to paragraph 1 of the Petition dated 25<sup>th</sup> February 2022, the Petitioner herein has been described as follows; -
 

“The Petitioner is a group ranch formed by the Maasai community who live within Oloirien area. The Petitioner group ranch was formed for purposes of collecting, managing and accounting for the resources that would be collected from the community’s reserved camping site(s)”
16. In the Supporting Affidavit to the present Application, the deponent Moiko Ole Miaron describes himself as follows; -
 

“That I am a male adult of sound mind and disposition, residing in Narok County and the Petitioner’s/Applicant’s Chairperson.”
17. The second paragraph in the Supporting Affidavit to the present Application further states as follows; -
 

“That I have the authority of the Petitioner/Applicant to swear this Application herein.”
18. The 7<sup>th</sup> Respondent on the other hand pleads that the entity known as Oloirien Group Ranch is not corporate duly registered under the [Land \(Group Representatives\) Act](#), Cap 287 and therefore cannot sue or be sued in its own name.



19. Secondly, even if Oloirien Group Ranch was duly registered under the *Land (Group Representatives) Act*, Cap 287, then the deponent herein is not duly authorised to institute this Petition as there was no list of the members of Oloirien Group Ranch, there are no minutes of any meeting by the registered members to institute this Petition and lastly, therefore is no resolution by the registered members of Oloirien Group Ranch for the deponent to institute and sustain this Petition and/or the present application in Court.
20. It is not disputed by any of the parties in the present Application that a Declaration dated 14/02/1975 was published by the Land Adjudication Officer creating Oloirien Adjudication Section under the provisions of the *Land Adjudication Act*, Cap 284.
21. According to Paragraph 25, 26 and 27 of the substantive Petition herein, the entire Oloirien Adjudication Section was administered by an adjudication committee who sub-divided it into thirty-six sections marked as Oloirien A-2 To Oloirien A-37.
22. According to the Applicant, all the sections within Oloirien Adjudication Section were allocated to members and title deeds issued save for Oloirien A-15 which was reserved for commercial purposes that would assist the community in creating cash flow.
23. It is at this point that it seems the entity known as Oloirien Group Ranch began its existence.
24. The deponent Moiko Ole Miaron has executed both the Petition and the present Application as the Chairman of Oloirien Group Ranch.
25. Section 107 of the *Evidence Act*, Cap 80 provides as follows; -
  - “ 107     Whoever desires any court to give judgement as to any legal right or liability
    - (1)     dependent on the existence of facts which he asserts must prove that those facts exist.
    - 107     when a person is bound to prove the existence of any fact it is said that the
      - (2)     burden of proof lies on that person.”
26. The Deponent herein being the Chairman of the Applicant upon being put on notice by the 7<sup>th</sup> Respondent’s Replying Affidavit that the Applicant’s entity was being contested had an obligation to proof that indeed the Applicant entity was lawful and legitimate.
27. The Deponent on behalf of the Applicant entity did not file any Further Affidavit to clarify the registration and/or legal standing of the organisation known as Oloirien Group Ranch by filing a Certificate of Incorporation as provided Section 7 (2) of the *Land (Group Registration) Act*, Cap 287.
28. So far in this file, there is no legal document placed by the deponent of behalf of the Applicant that this Court can rely upon as some form of legal existence of the organisation known as Oloirien Group Ranch.
29. In essence therefore, the Court makes a finding that there is no proof that Oloirien Group Ranch is a registered and/or lawful group ranch as envisaged in the *Land (Group Representative) Act*, Cap 287 Laws of Kenya.
30. Despite this finding hereinabove, there is a lot of correspondences adduced both in the Petition as well as the present Application which refers to Oloirien Group Ranch as though the same was lawfully registered.



31. For argument seek, even if Oloirien Group Ranch was duly registered as a Group Ranch under the *Land (Group Representatives) Act*, Cap 287, does the deponent have the locus standi to institute this Petition and by extension sustain this present application.
32. Section 8 (1) of the *Land (Group Representative) Act*, Cap 287 provides that the Group Representatives have powers to sue or be sued in their corporate name.
33. The interpretation of this provision by the Court is that although a suit can be filed on behalf of the Group Ranch in its own name, the entire team of Group Representatives must be aware of the same.
34. Section 8 (2) further provides that the Group Representatives are under a duty to hold any property and exercise their powers on behalf and for the collective benefit of all the members of the group as well as effectively consult the other members of the group on such an exercise.
35. Clearly therefore, even if the Group Representatives decide to institute legal proceedings on behalf of the Group Ranch, such an action must be in consultation with the other registered members and not a decision of the Group Representatives only.
36. Unfortunately, the deponent herein has not attached and/or placed any Certificate of Incorporation of the Group Ranch to confirm its existence and/or whether he is one of the recognised Group Representatives under Section 7 (3) of the *Land (Group Representative) Act*, Cap 287.
37. In addition to the above, there is no form of minutes and/or resolutions that confirm that the Group Representatives consulted the registered members who should be contained in the Register of Members provided under Section 17 of the *Land (Group Representative) Act*, Cap 287 about this litigation.
38. In the alternative, even if the duly registered Group Representatives decided to institute this Petition without consultation of its registered members, which in the court's view is unlawful and irregular, then the deponent should have at least attached a resolution by the registered Group Representatives approving the filing of the Petition and authority to swear, appear, testify and/or sustain the same in Court.
39. The impression created by the deponent herein is that Oloirien Group Ranch if it so exists operates on his personal decisions and/or opinions to the exclusion of the other registered members which is not the intention of establishing Group Ranches under the *Land (Group Representative) Act*, Cap 287.
40. The intention of the *Land (Group Representative) Act*, Cap 287 is to ensure an equitable, all-inclusive, consultative and collective management of the Group Ranch through the recognised Group Representatives.
41. In a nutshell, the deponent known as Moiko Ole Miaron has not demonstrated authority and/or capability to institute this Petition as well as this present application before this Court.
42. The Court having found that the deponent has not proved the existence of the Applicant entity and similar failed to provide the list of registered members, the minutes of the meeting authorising this proceeding and the authority to swear the pleadings filed in Court, does this Court still have jurisdiction to entertain the Petition as a whole.
43. In the case of *Kipsiwo Community Self Help Group v The Attorney General & 6 others* [2013] eKLR, the Court observed as follows; -

“the person bring action has to demonstrate that he has permission to bring the action on behalf of the members of the group, or on behalf of the people he seeks to represent, if it



is a representative suit. The importance of this, is so as to recognise the persons who seek redress, and so that orders are not issued in favour or against people who cannot be precisely identified. This may look minor, but it is extremely significant. In litigation, rights and duties will be imposed on the litigants. If the Court does not know who the litigants are, then it becomes impossible for the Court to enforce its own orders, for it will never be clear, who the beneficiary of the order was, or who had the obligation to obey or enforce such orders.”

44. The Court’s opinion is that the pleadings filed by the deponent Moiko Ole Miaron are irregular and without proper approval of either the Group Representatives or the registered members of the purported Group Ranch and cannot not invoke the jurisdiction of the Court to make any determination thereof.

45. In the case of *Owners of the Motor Vessel Lillian v Caltex Kenya* [1989] KLR, the Court stated as follows; -

“Jurisdiction is everything. Without it, a court has no power to make one more step. Where a Court has no jurisdiction, there would be no basis for a continuation of proceedings pending other evidence. A Court of law downs tools in respect of the matter before it the moment it holds the opinion that it is without jurisdiction.”

46. In essence therefore, the fact that the first issue in this application has been answered in the negative, then it would not be wise to discuss the subsequent issues as the same would be without jurisdiction and also prejudicial to other persons that may still have an interest in instituting other proceedings with similar issues.

47. In conclusion therefore, the Court makes the following Orders appertaining the Application dated 25<sup>th</sup> February 2023; -

- A. The Notice of Motion Application Dated 25<sup>th</sup> February 2022 together with the Petition Filed on The 25<sup>th</sup> of February 2022 be and is Hereby Struck Out.
- B. The Costs of The Notice of Motion Application Dated 25<sup>th</sup> February 2022 As well as The Petition Dated 25<sup>th</sup> February 2022 Shall Be Borne By Moiko Ole Miaron in Person.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON THE 14<sup>TH</sup> OF MARCH 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

In the presence of:

Court Assistant: Ngeno

Advocates For The Petitioner/Applicant: Ms Katana H/b Kithi

Advocates For The 7<sup>th</sup> Respondent: Mr.Kere

