



**Birika & 3 others v Seme & another (Miscellaneous Application  
E008 of 2022) [2023] KEELC 20288 (KLR) (3 October 2023) (Judgment)**

Neutral citation: [2023] KEELC 20288 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS  
MISCELLANEOUS APPLICATION E008 OF 2022  
EM WASHE, J  
OCTOBER 3, 2023**

**BETWEEN**

**SARUNI MOKITA OLE BIRIKA ..... 1<sup>ST</sup> APPLICANT  
SAMSON MORONGO ..... 2<sup>ND</sup> APPLICANT  
KATETO KEKO JOHN ..... 3<sup>RD</sup> APPLICANT  
MOYOI DEVELOPMENT COMMITTEE ..... 4<sup>TH</sup> APPLICANT**

**AND**

**MICHAEL O. SEME ..... 1<sup>ST</sup> RESPONDENT  
THE DEPUTY COUNTY COMMISSIONER TRANSMARA WEST SUB-  
COUNTY ..... 2<sup>ND</sup> RESPONDENT**

**JUDGMENT**

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Applicants (hereinafter referred to as “the Applicants”) through a Miscellaneous Application dated 21<sup>st</sup> of November 2022 (hereinafter referred to as “the present Application”) have sought for the following Orders against the Respondents herein;-
  - i. For the reasons stated in the Certificate of Urgency filed herewith, this Application be certified urgent, service thereof be dispensed with in the first instance and the orders sought be granted *ex-parte*.(Spent)
  - ii. Pending the inter-parte hearing and determination of this Application, this Honourable Court be pleased to issue an injunction:(Spent)
    - a. Directed at the 1<sup>st</sup> and 2<sup>nd</sup> Respondents restraining them from removing or purporting to remove the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as officials of the 4<sup>th</sup> Applicant and/or changing or



- interfering in any manner whatsoever with the current membership and management of the 4<sup>th</sup> Applicant.
- b. Directed at the 1<sup>st</sup> Respondent and any other person or official purporting to have authority other than the 1<sup>st</sup> to 3<sup>rd</sup> Applicants restraining any transaction or business related to the Lease over the Moyoi Group Ranch of the affairs of the 4<sup>th</sup> Applicant.
  - iii. Pending the hearing and determination of the underlying suit, this Honourable Court be pleased to issue an injunction;
    - a. Directed at the 1<sup>st</sup> and 2<sup>nd</sup> Respondents restraining them from removing or purporting to remove the 1<sup>st</sup> to 3<sup>rd</sup> Respondents as officials of the 4<sup>th</sup> Applicant and/or changing or interfering in any manner whatsoever with the current membership and management of the 4<sup>th</sup> Applicant.
    - b. Directed at the 1<sup>st</sup> Respondent and any other person or official purporting to have authority other than the 1<sup>st</sup> to 3<sup>rd</sup> Applicants restraining any transaction or business related to the Lease over the Moyoi Group Ranch of the affairs of the 4<sup>th</sup> Applicant.
  - iv. The costs of this Application be awarded to the Applicants.
  - v. Any other orders this Court deems just in the circumstances.
2. The prayers sought hereinabove were supported by the grounds adduced on the body of the present Application as well as the supporting affidavit sworn by the 1<sup>st</sup> Applicant on the 21<sup>st</sup> of November 2022.
3. In a summary, the Applicants grounds in support of the present application are as follows:-
- a. The 1<sup>st</sup> to 3<sup>rd</sup> Applicants are the office holders of the 4<sup>th</sup> Applicant known as Moyoi Development Committee.
  - b. The 4<sup>th</sup> Applicant is a Community Land Management Committee overseeing and/or managing the property known as L.R.No.transmara/Moyoi/1742 (hereinafter referred to as “the Leased Land”) on behalf of the members of Moyoi Group Ranch.
  - c. However, the 1<sup>st</sup> Respondent being the local Member of County Assembly for Lolgorian Ward which the leased land is situated purported to orchestrate a change of the office holders of the 4<sup>th</sup> Applicant unprocedurally.
  - d. The Applicants state that the purported meeting and/or election of new office holders by the 1<sup>st</sup> Respondent was unlawful, illegal and without proper authority under the law.
  - e. The Applicants further state that the 1<sup>st</sup> Respondent has purported to interfere with various contracts with third parties in an effort to control and/or manage the affairs of the 4<sup>th</sup> Respondent without proper and full authority thereby interfering with the management of the leased land for the benefit of the members of Moyoi Group Ranch.
  - f. In essence therefore, the Applicants seek this Honourable Court to grant prohibitory orders against the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent from interfering and/or tempering with the list of official officer holders of the 4<sup>th</sup> Applicant or the community land in general.



4. The present Application was duly served on the 1<sup>st</sup> Respondent who opposed the same by filing a Replying Affidavit sworn on the 9<sup>th</sup> December 2022 (hereinafter referred to as “the 1<sup>st</sup> Respondent’s Replying Affidavit”)
5. According to the 1<sup>st</sup> Respondent’s Replying Affidavit, the grounds of opposing the Applicant’s prayers were as follows;-
  - a. The 1<sup>st</sup> Respondent was the County Member of the Assembly within Narok County representing Lolgorian Ward within which the Leased Land in issue is situated.
  - b. Similarly, the 1<sup>st</sup> Respondent was a member of Moyoi Group Ranch which is the registered owner of the Leased Land in issue.
  - c. The 1<sup>st</sup> Respondent confirmed that the 4<sup>th</sup> Applicant was a self help group registered on the 12<sup>th</sup> of January 2011 and its license renewed on the 4<sup>th</sup> of November 2022 under Certificate No. xxxx.
  - d. The 1<sup>st</sup> Respondent stated that the 1<sup>st</sup> to 3<sup>rd</sup> Applicants were the founding members of the 4<sup>th</sup> Applicant in the year 2011 and continued to act until 14<sup>th</sup> November 2022 when an Annual General Meeting of the 4<sup>th</sup> Applicant was convened.
  - e. According to the 1<sup>st</sup> Respondent, the meeting of Moyoi Group Ranch passed a Resolution that new committee members be elected to replace the 1<sup>st</sup> to 3<sup>rd</sup> Applicants to act on behalf of the 4<sup>th</sup> Applicant.
  - f. Once this Resolution was approved by the majority of the members of the 4<sup>th</sup> Applicant, the said Resolution was communicated to the Department of Social Development and a letter dated 24<sup>th</sup> of November 2022 was issued with new Office Bearers for the 4<sup>th</sup> Applicant.
  - g. Based on the letter dated 24<sup>th</sup> of November 2022 issued by the Department of Social Development, the new office holders in execution of their lawful mandate communicated the changes in the management of the 4<sup>th</sup> Applicant to the general public and/or other third parties but the Applicants herein have refused and/or rejected to accept the new office holders as the bona fide officials thereof.
  - h. As a result of this refusal and/or rejection of the new office holders by the Applicants herein, the management and/or functions of the 4<sup>th</sup> Applicant stand to suffer irreparable loss and harm as the new officials cannot access the bank accounts which are still managed by the 1<sup>st</sup> to 3<sup>rd</sup> Applicants.
  - i. The 1<sup>st</sup> Respondent’s prayer therefore is that the prayers sought by the Applicants be dismissed and the new officials of the 4<sup>th</sup> Applicants be allowed to execute their mandate in accordance to the Resolution passed on the 14<sup>th</sup> of November 2022.
6. The 2<sup>nd</sup> Respondent also responded to the present Application by filing a Replying Affidavit dated 5<sup>th</sup> December 2022 (hereinafter referred to as “the 2<sup>nd</sup> Respondent’s Replying Affidavit”) on the following grounds;-
  - a. The 2<sup>nd</sup> Respondent introduced himself as the Deputy County Commissioner of Transmara South in Narok County whose responsibility included Government co-ordination, organising peace initiatives and overseeing the implementation of the national government projects.



- b. The 2<sup>nd</sup> Respondent began by stating the 1<sup>st</sup> to 3<sup>rd</sup> Applicants visited his office with a complaint that the 1<sup>st</sup> Respondent was without following proper procedure appointed new committee members of the 4<sup>th</sup> Applicant.
  - c. The 2<sup>nd</sup> Respondent upon being notified of these allegations convened a meeting with the sub-County Social Services offices to mediate the dispute relating to the new office bearers of the 4<sup>th</sup> Applicant.
  - d. This meeting convened by the 2<sup>nd</sup> Respondent was then scheduled on the 24<sup>th</sup> of November 2022 but on the material date, the 1<sup>st</sup> to 3<sup>rd</sup> Applicants walked out and his efforts to call them back did not succeed.
  - e. The 2<sup>nd</sup> Respondent denied ever participating in the election of the officials of the 4<sup>th</sup> Applicant or being pressured to alter the documents of the 4<sup>th</sup> Applicant to reflect the new office bearers.
  - f. The 2<sup>nd</sup> Respondent then sought to have the present application against him be dismissed as it lacked merit.
7. In response to the two Replying Affidavits, the Applicants filed a Further Affidavit dated 16<sup>th</sup> December 2022 (hereinafter referred to as “the Applicant’s Further Affidavit”) which stated as follows;-
- a. The 2<sup>nd</sup> Respondent’s Replying Affidavit confirmed that indeed the 1<sup>st</sup> Respondent had through a purported meeting held on the 14<sup>th</sup> of November 2022 illegally and unlawfully elected new office bearers of the 4<sup>th</sup> Applicant.
  - b. The 2<sup>nd</sup> Respondent had misrepresented the true facts of the proceedings which took place on the 14<sup>th</sup> November 2022 because upon being notified of the illegal meeting by the 1<sup>st</sup> Respondent, the 2<sup>nd</sup> Respondent actually went to the venue of the meeting and engaged with the group convened by the 1<sup>st</sup> Respondent.
  - c. The Applicant stated that the 2<sup>nd</sup> Respondent is a person of influence both in the community and the government offices and therefore his involvement in the affairs of the 4<sup>th</sup> Applicant is biased towards assisting the new office bearers purportedly elected on the 14<sup>th</sup> of November 2022 at the instigation of the 1<sup>st</sup> Respondent to take over the management from the 1<sup>st</sup> to 3<sup>rd</sup> Applicants.
8. In addition to the Applicants Further Affidavit dated 16<sup>th</sup> December 2023, the Applicants filed a 2<sup>nd</sup> Further Affidavit sworn on the 14<sup>th</sup> June 2023 without leave of the Honourable Court and therefore its contents will not be considered during the determination of the present suit.
9. Once pleadings were closed, the Honourable Court directed parties to file their written submissions before the present application would be considered or determined.
10. The Applicants filed their submissions on the 17<sup>th</sup> of January 2023 while the 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed their submissions on 4<sup>th</sup> July 2023 and 13<sup>th</sup> July 2023 respectively.
11. Be as it may, this Honourable Court has gone through the pleadings filed herein by the Applicants, the Responses thereof as well as the submissions and the issues for determination can be summarised as follows;-

Issue No. 1 - Who Should Be The Legitimate Office Bearers Of The 4<sup>th</sup> Applicant?

Issue No. 2 - Are The Applicants Entitled to The Prayers Sought In The Present Application?



### Issue No.3 - Who Bears The Cost Of The Present Application?

12. This Honourable Court having duly identified the above issues for determination, then the same are discussed hereinbelow as follows:-

### **Issue No. 1- Who Should Be The Legitimate Office Bearers Of The 4<sup>th</sup> Applicant?**

13. The core issue in the present Application before this Honourable Court is the determination of who should be the legitimate office bearer of the 4<sup>th</sup> Applicant.
14. To be able to answer this question, the legal status of the 4<sup>th</sup> Applicant need to be exhaustively discussed to understand the nexus between the leased land it manages and the true owner of the leased land that is being managed.
15. According to the pleadings by both the Applicants and the Respondent, the Leased Land in issue is the property of Moyoi Group Ranch as contained in the Lease Agreement dated 1<sup>st</sup> June 2017 between Kilimapesa Gold (pty) Limited and itself.
16. According to the pleadings, the Group Representatives of Moyoi Group Ranch together with the general membership decided to elect 3 persons and register a separate entity to manage the Leased property for the benefit of the members.
17. These persons elected to manage the Leased property were the 1<sup>st</sup> to 3<sup>rd</sup> Applicants who then incorporated the 4<sup>th</sup> Applicant.
18. In essence therefore, the 1<sup>st</sup> to 3<sup>rd</sup> Defendants were exercising delegated powers on behalf of the general membership of Moyoi Group Ranch in the management of the Leased property.
19. This being the case, it goes without saying that the legitimate members of the 4<sup>th</sup> Applicant are the registered members of Moyoi Group Ranch with the 1<sup>st</sup> to 3<sup>rd</sup> Applicants being their elected representatives in the 4<sup>th</sup> Applicant entity.
20. The second aspect for determination under this issue is the manner in which the officials of the 4<sup>th</sup> Applicant should be elected.
21. As earlier stated, the owner of the Leased property is Moyoi Group Ranch which owns the proprietary rights.
22. Moyoi Group Ranch is a duly registered entity under the [Land \(Group Representatives\) Act](#), Cap 287 with the duly registered Group Representatives who are mandated with the running of the said Group Ranch.
23. Any meeting convened on behalf a Group Ranch for any discussions about the affairs of such a Group Ranch can only be legally done through Section 15 of the [Land \(Group Representatives\) Act](#), Cap 287.
24. The persons who in law who are allowed to attend a meeting of a Group Ranch are those entered in the Register of Members provided for under Section 17 of the [Land \(Group Representatives\) Act](#), Cap 287.
25. Section 17 (6) of the [Land \(Group Representatives\) Act](#), Cap 287 requires that the Quorum should be not less that sixty per cent of the members of the Group were present at the said meeting.
26. In the present Application, the 1<sup>st</sup> Respondent has placed before this Honourable Court Minutes of a meeting held on the 14<sup>th</sup> of November 2022 at the District Officers Office relating to Moyoi Group Ranch and a List of the Members that attended the said meeting.



27. The Honourable Court has had time to go through the Minutes of Moyoi Group Ranch for the meeting dated 14<sup>th</sup> November 2022 together with the List of Members attached thereto.
28. First and For the 1<sup>st</sup> Respondent has introduced himself as the area Member of County Assembly of Lolgorian ward who is a member of Moyoi Group Ranch and a leader of the area within which the Leased property is situated.
29. While both his leadership within the Ward and his membership in Moyoi Group Ranch is not disputed, the unfortunate aspect is that he is not one of the Group Representatives of Moyoi Group Ranch as provided for under Section 8 of the *Land (Group Representatives) Act*, Cap 287.
30. Secondly, the 1<sup>st</sup> Respondent did not provide any notice of a meeting for the membership of Moyoi Group Ranch as is required under Section 15 of the *Land (Group Representatives) Act*, Cap 287.
31. Section 15 (3) (a), (b) and (c) provides that the Group Representatives can only convene a meeting of the Group Ranch based on the following requests;-
  - a. The Group Representatives
  - b. A number of members of a group who together own assets registered in the group's register whose value exceeds one-half of the value of the assets registered in respect of all the group's members.
  - c. The District Agricultural committee.
32. Looking at this Section, it is clear in the mind of this Honourable Court that the 1<sup>st</sup> Respondent did not have any locus to call and/or convene any lawful meeting of Moyoi Group Ranch as contained in the Minutes presented to this Honourable Court through the 1<sup>st</sup> Respondent's Replying Affidavit.
33. In the Minutes dated 14<sup>th</sup> November 2022, there is no where that the Group Representatives of Moyoi Group Ranch have been identified and/or confirmed to be present during the said meeting.
34. Thirdly, as earlier indicated, the mandatory Quorum for any Group Ranch to hold a lawful and valid meeting is provided for under Section 15 (6) of the *Land (Group Representatives) Act*, Cap 287.
35. To be able to confirm that indeed a meeting raised the required Quorum, one is required to present the certified copy of the registered members of the Group Ranch as provided under Section 17 of the *Land (Group Representatives) Act*, Cap 287.
36. Once this certified Register is provided in Court, then a list of the members who attended the said meeting will also be presented to verify that the correct and valid members attended the said meeting and attained the threshold of Sixty per cent to be present at the said meeting.
37. The identification of the members should be based on their membership number and their Identification Card which they used to register as members of the group ranch.
38. Unfortunately, in this present Application, the 1<sup>st</sup> Respondent did not present any certified Register of the members of Moyoi Group Ranch as provided under Section 17 of the *Land (Group Representatives) Act*, Cap 287 to establish the actual number of members in the said Group Ranch.
39. In addition to the above, the 1<sup>st</sup> Respondent's List of the members belonging to Moyoi Group Ranch did not disclose the Membership numbers of the persons who attended the said meeting on 14<sup>th</sup> November 2022.



40. It is important and significant that when a meeting of a Group Ranch including Moyoi Group Ranch is convened, the participants should be persons who are *bona-fide* and legitimate members of the said Group Ranch.
41. This omission in the Honourable Court's considered view is fundamental to the legitimacy of the people who were present in the meeting of 14<sup>th</sup> November 2022.
42. In the absence of their Registration number as members of Moyoi Group Ranch, this Honourable Court would be doing a great injustice to approve the said Minutes and/or Resolutions while the legitimacy of the persons who attended the meeting of 14<sup>th</sup> November 2022 can not be verified and/or confirmed.
43. Fourthly, the Minutes produced by the 1<sup>st</sup> Respondent reflecting the deliberations of the meeting dated 14<sup>th</sup> November 2022 are signed by the Assistant Chief and another person whose name is not provided at the point of the signature.
44. The exercise of the Assistant Chief signing the Minutes of a Group Ranch meeting is to say the least, an abuse of the powers bestowed on such a government officer.
45. A group ranch is not a government entity but a private body created under the [Land \(Group Representatives\) Act](#), Cap 287.
46. The provisions of the Land (Representatives) Act do not have any provision for the Assistant Chief and/or any other person who is not a recognised Group Representative to prepare, sign and/or present any purported minutes on behalf of the members of a Group Ranch.
47. In other words, the minutes of the meeting done on the 14<sup>th</sup> of November 2022 cannot pass the test of legitimacy on the execution part on behalf of Moyoi Group Ranch as alleged by the 1<sup>st</sup> Respondent.
48. In conclusion therefore, this Honourable Court is of the considered that the meeting held on the 14<sup>th</sup> of November 2022 was illegal and unlawful and could not produce any legitimate Resolutions capable of changing and/or altering the registration of the 1<sup>st</sup> to 3<sup>rd</sup> Applicants as the legitimate office bearers of the 4<sup>th</sup> Applicant herein.

### **Issue No. 2 - Are The Applicants Entitled To The Prayers Sought In The Present Application?**

49. The Honourable Court having made a finding that the meeting and/or resolutions of the Meeting dated 14<sup>th</sup> November 2022 were illegal and unlawful, it is clear that the removal of the 1<sup>st</sup> to 3<sup>rd</sup> Applicants as the *bona-fide* officials of the 4<sup>th</sup> Applicant by the 1<sup>st</sup> Respondent and the 2<sup>nd</sup> Respondent is illegitimate and unlawful and the Applicants are entitled to the prayers sought in the present Application.

### **Issue No. 3 - Who Bears The Cost Of The Present Application?**

50. The simple rule regarding costs in litigation is that costs follow the events.
51. In the present Application, the 1<sup>st</sup> Respondent has been found at fault and therefore will bear the costs of the present Application.

### **Conclusion**

In conclusion therefore, this Honourable Court hereby makes the following Orders in regards to the Notice Of Motion Application dated 21<sup>st</sup> November 2022;-



- a. The 1<sup>st</sup> & 2<sup>nd</sup> Respondents be and are hereby restrained from removing or purporting to remove the 1<sup>st</sup> to 3<sup>rd</sup> applicants as officials of the 4<sup>th</sup> Applicant and/or changing or interfering in any manner whatsoever with the current membership and management of the 4<sup>th</sup> applicant.
- b. The 1<sup>st</sup> Respondent and any other party or official purporting to have authority other than the 1<sup>st</sup> to 3<sup>rd</sup> applicants be and is hereby restrained from transacting any business related to the leased over the Moyoi Group Ranch or the affairs of the 4<sup>th</sup> applicant.
- c. The records of the Social Development Officer - Transmara West/South Sub-Counties removing the names of the 1<sup>st</sup> to 3<sup>rd</sup> applicants as the bonafide and legitimate office bearers of the 4<sup>th</sup> applicant be cancelled and reinstated to the position they were before the meeting of 14<sup>th</sup> November 2022.
- d. Costs of this application be borne by the 1<sup>st</sup> Respondent.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 3RD OCTOBER 2023.**

**EMMANUEL. M. WASHE**

**JUDGE**

**In The Presence Of :**

Court Assistant: Mr.ngeno/mr. Brian

Advocates For The Applicants: Mr. Marete (N/A)

Advocates For The Respondent: M/s Bosibori

