



REPUBLIC OF KENYA



**Seme & 10 others v County Government of Narok & 3 others; National Land Commission (Proposed Interested Party) (Environment & Land Petition E002 of 2023) [2023] KEELC 21883 (KLR) (7 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21883 (KLR)

**REPUBLIC OF KENYA**

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

**ENVIRONMENT & LAND PETITION E002 OF 2023**

**EM WASHE, J**

**NOVEMBER 7, 2023**

**IN THE MATTER OF ENFORCEMENT OF HUMAN RIGHTS  
AND PROTECTION OF FUNDAMENTAL FREEDOMS  
UNDER ARTICLES 2,3,10,19,21,22,23,27,40,47,60,62,67,162(B),  
258 &259 OF THE CONSTITUTION OF KENYA,2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO OWN PROPERTY IN FLAGRANT  
CONTRAVENTION OF ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO FAIR ADMINISTRATIVE  
ACTION GUARANTEED BY ARTICLE 47 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF UNCONSTITUTIONAL AND ILLEGAL DEPRIVATION  
LIMITATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS OF A  
PERSON CONTRARY TO THE VALUES AND OPEN DISREGARD TO THE SPIRIT  
AND OBJECT OF THE BILL OF RIGHTS AND CONSTITUTIONAL PRINCIPLES**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS  
AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURES RULES, 2013**

**AND**

**IN THE MATTER OF INTERFERENCE WITH THE OPERATIONAL INSTITUTION  
AND FUNCTIONAL INDEPENDENCE OF THE NATIONAL LANDS COMMISSION IN  
CONTRAVENTION OF ARTICLES 249 (1) OF THE CONSTITUTION OF KENYA, 2010**

**AND**



IN THE MATTER OF ARTICLES 62(2),62(3) AND 67(1)  
67 (2) (A) OF THE CONSTITUTION OF KENYA ,2010

AND

IN THE MATTER OF SECTIONS 3, 5(2)( E) & 18 OF THE  
NATIONAL LANDS COMMISSION ACT NO.5 OF 2012

AND

IN THE MATTER OF CONTRAVENTION OF SECTIONS  
6,8,10,12,15,19,20 & 23 OF THE LAND ACT BO.6 OF 2012

AND

IN THE MATTER OF SECTION 6 OF THE LAND REGISTRATION ACT NO.3 OF 2012

AND

IN THE MATTER OF FLOUTING THE PRINCIPLES AND VALUES OF PHYSICAL  
PLANNING AND LAND USE AND PROCEDURE FOR THE REVISION/  
MODIFICATION OF THE PHYSICAL AND LAND USE DEVELOPMENT  
PLAN FOR LOLGORIAN TOWN IN VIOLATION OD SECTIONS 3,4,5,42 &  
43 OF THE PHYSICAL AND LAND USE PLANNING ACT NO.13 OF 2019

AND

IN THE MATTER OF FAILING TO ADHERE TO THE EDICTS OF  
THE LAND (ALLOCATION OF PUBLIC LAND) REGULATIONS,2017

AND

IN THE MATTER OF THE PLANNING OF  
LOLGORIAN TOWN TRADING MARKET CENTRE.

BETWEEN

LEONARD OLE SEME ..... 1<sup>ST</sup> PETITIONER  
ABEL MORANGA ONGWACHO ..... 2<sup>ND</sup> PETITIONER  
NOORMIRISHI OLOILDIKIR ..... 3<sup>RD</sup> PETITIONER  
PATRICK SAKAJA ..... 4<sup>TH</sup> PETITIONER  
PATOMIR OLE SEME ..... 5<sup>TH</sup> PETITIONER  
KONCHORY SAMWEL ..... 6<sup>TH</sup> PETITIONER  
JULIUS TOME ..... 7<sup>TH</sup> PETITIONER  
MASETO ODUPOI DANIEL ..... 8<sup>TH</sup> PETITIONER  
NARAMAT KATAKA ..... 9<sup>TH</sup> PETITIONER  
KIPANGAS SERENY KONCHORI ..... 10<sup>TH</sup> PETITIONER  
DAVID SAKAJA ..... 11<sup>TH</sup> PETITIONER

AND



**THE COUNTY GOVERNMENT OF NAROK ..... 1<sup>ST</sup> RESPONDENT**  
**COUNTY EXECUTIVE COMMITTEE MEMBER FOR LAND, URBAN**  
**DEVELOPMENT AND PHYSICAL PLANNING ..... 2<sup>ND</sup> RESPONDENT**  
**COUNTY DIRECTOR OF PHYSICAL PLANNING & LAND USE, NAROK**  
**COUNTY GOVERNMENT ..... 3<sup>RD</sup> RESPONDENT**  
**THE COUNTY PHYSICAL AND LAND USE PLANNING CONSULTATIVE**  
**FORUM, NAROK COUNTY ..... 4<sup>TH</sup> RESPONDENT**

**AND**

**THE NATIONAL LAND COMMISSION ..... PROPOSED INTERESTED PARTY**

### **RULING**

1. The 1<sup>st</sup> – 4<sup>th</sup> Respondents (hereinafter referred to as “the Applicants”) filed a Preliminary Objection dated 5<sup>th</sup> April 2023 (hereinafter referred to as “the Preliminary Objection”) seeking for the Notice of Motion Application dated 24<sup>th</sup> March 2023 (hereinafter referred to as “the Petitioner’s application”) to be struck out for the following grounds;-
  - a. The Petitioner’s application herein and subsequently the entire Petition is incurably defective and filed in contravention of the mandatory provisions of Order 1 Rule 13 Rule 1 and 2 of the *Civil Procedure Rules* in that the deponent of the supporting Affidavit dated 24<sup>th</sup> March 2023 had not duly authorised by the other applicants/petitioners to sue and depone on their behalf.
2. The Preliminary Objection was indeed served on the Respondents who confirmed receipt of the same on 27.07.2023 and sought leave to file their submissions in opposition of the same.
3. The Honourable Court granted the Respondents a period of 30 days to prepare, file and serve their submissions in opposition of the Preliminary Objection and directed the file to be mentioned on the 20/09/2023 to confirm compliance.
4. Unfortunately, on the 20/09/2023, the submissions by the Respondents as regards the Preliminary Objection had not been filed and their Counsel was also not present in Court despite the mention date being fixed by consent.
5. The Applicants in support of their Preliminary Objection have filed their submissions dated 12<sup>th</sup> May 2023.
6. The Preliminary Objection filed by the Applicants relate to the provisions of Order 1 Rule 13 (2) of the *Civil Procedure Rules*, 2010 which provides as follows; -
  - “(1) Where there are more Plaintiffs than one, any one or more of them may be authorised by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one of them may be authorised by any other of them to appear, plead or act for such other in any proceeding.
  - (2) The authority shall be in writing signed by the party giving it and shall be filed in the case.”



7. The Applicants in the Preliminary Objection submit that the Respondents are more than one and therefore, the deponent should attach an Authority to Swear on his own behalf and on behalf of the other Respondents both in the substantive Petition dated 24<sup>th</sup> March 2023 as well as the Petitioners' Application.
8. The Applicants submit that the provisions of Order 1 Rule 13 (2) of the *Civil procedure Rules*, 2010 are couched in a mandatory manner and any non-compliance would render both the Petition and the Petitioner's application fatally defective.
9. The Applicants then presented before the Honourable Court various authorities in determining the legality of proceedings that do not comply with the provisions of Order 1 Rule 13(2) of the *Civil Procedure Rules*, 2010.
10. The Respondents have not filed any submissions in opposition to the Preliminary Objection before this Honourable Court despite being aware of it and/or granted sufficient time to do the needful.
11. In essence, the Respondents have not opposed the Preliminary Objection before the Honourable Court.
12. Be as it may, the Honourable Court has still taken time to evaluate the legal position relating to the Preliminary Objection filed by the Applicants.
13. Indeed, the Petition herein has been instituted by 11 Plaintiffs who are all Respondents in the Preliminary Objection.
14. Clearly therefore, the Petition as well as the Petitioners' Application have been filed by more than one Petitioner.
15. The provisions of Order 1 Rule 13 of the *Civil Procedure Rules*, 2010 provide through the use of the word "Shall" the filing of an Authority to Swear on behalf of one's self as well as the other Plaintiffs and/or Defendants.
16. In the Petition and the Petitioner's Application before this Honourable Court, the 1<sup>st</sup> Petitioner/ Respondent did not attach the required Authority to Swear in compliance to Order 1 Rule 13 of the *Civil Procedure Rules*, 2010.
17. It is strange that even after the Respondents were served with the Preliminary Objection before the Honourable Court, no action was taken to salvage the proceeding by seeking to comply with the said provision of the law.
18. Be as it may, the significance of the provisions of Order 1 Rule 13 were discussed in the case of *Kipsiwo Community Self Help Group -versus- The Attorney General & 6 Others* (2013) eKLR where the Court made the following observation.

“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.”



19. In essence therefore, in the absence of the Authority to Swear provided under Order 1 Sub Rule 13 of the *Civil Procedure Rules*, 2010, this Honourable Court is not in a position to ascertain if indeed the Petitioners outlined hereinabove are aware of this suit and/or ready to be held accountable for the possible outcome of the Petition or the Petitioner's application.
20. In conclusion therefore, both the Petition and the Petitioners' Application are hereby fatally defective and both are hereby struck out.
21. The costs of this Preliminary Objection shall be borne by the Petitioners/Respondents in favour of the Respondents only.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 7<sup>TH</sup> NOVEMBER 2023.**

**EMMANUEL.M.WASHE**

**JUDGE**

In the presence of:

Court Assistant: Mr.ngeno

Advocate For The Plaintiff: N/a

Advocate For The Respondent: Mr.kere For 5<sup>TH</sup>-20<sup>TH</sup> Respondent.

