



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC PET NO. 18 OF 2019**

**IN THE MATTER OF: ARTICLES 19,20,22,23,24,40,48,60,61,63,64,165,258 and 259 OF THE CONSTITUTION OF KENYA, 2010**

**IN THE MATTER OF: THE LAND ACT, 2012**

**IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012**

**IN THE MATTER OF: THE LAND (GROUP REPRESENTATIVES) ACT, CAP 287 (REPEALED)**

**IN THE MATTER OF: THE COMMUNITY LAND ACT (2016)**

**IN THE MATTER OF: THE COMMUNITY LAND REGULATIONS (2017)**

**BETWEEN**

**LELETO KARAREI**

**JOSEPH NANCHI**

**MUSUURI NAIKU (suing on his behalf and on behalf**

**of 15 others).....PETITIONERS/APPLICANTS**

**AND**

**KILESI OLE SAYIATON & 17 OTHERS.....RESPONDENTS**

**RULING**

The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 10<sup>th</sup> Respondents had by a Notice of Preliminary Objection dated 19/6/2019 argued that the petitioner lacked the requisite locus standi to file and institute proceedings on behalf of a body known as Siana Group Ranch. That the Petitioner had sought reliefs against a non-existent land parcels following the sub-division and allocation of Group Land to its members, that the suit does not disclose any cause of action but makes allegations of fraud.

It is the Respondents submissions that the body known as Siana Group Ranch no longer exists as the same was incorporated on 12/7/2010 and was dissolved in 2012 following a resolution that was passed by the members of the Siana Group Ranch after the attainment of all the purpose that the said group was created and consequently he argued petitioners lacked the requisite capacity to institute the suit herein on behalf of the members.

On the 2<sup>nd</sup> issue of the Preliminary Objection the Respondents contended that the petitioners had sought reliefs against non-existent parcel of land following the sub division of the community land and hence no claim or relief can be sought where the said land ceased to exist and has become private land and that it will offend the ruling of Natural Justice if the court proceeds to hearing the petition without the participation of the individual law owner and further that the individual titles held by those individuals can only be revoked only in accordance with due process under the constitution on the Land Registration Act. The Respondents further contended that the petitioners have not with a degree of precision outlined the specific provision of the constitution that the respondents have infringed upon nor have they outlined their rights, duties or obligations that have been violated by the 1<sup>st</sup>-10<sup>th</sup> Respondents.

The 1<sup>st</sup> to 10<sup>th</sup> respondents further argued that following the sub-division of the Siana Group Ranch land. they cannot be sued on behalf of

the Group Ranch and furthermore they do not own land.

The petitioners in opposing the Preliminary Objection contend that the Petitioners have brought the petition on their individual capacity and on behalf of 15 others who have authorized them to do so and not on behalf of Siana Group Ranch as alluded by the 1<sup>st</sup> to 10<sup>th</sup> Respondents. They contended that they are members of the Group and that they were aggrieved by the manner in which the said Group Ranch was invaded by the 1<sup>st</sup> to the 10<sup>th</sup> respondents which actions led to illegal activities that culminated in the illegal and irregular allocation of land and the petitioners therefore have every right to bring the instant petition in their individual capacity as they have sufficient interest.

The petitioners also stated that pursuant to Article 22 of the Constitution of Kenya 2010 every individual has the right to institute court proceedings claim a right or fundamental freedom that has been denied, violated or infringed upon and further that the petition raised matters of public interest.

On whether the petition discloses a cause of action against the respondents the petitioners contend that the 1<sup>st</sup> to the 10<sup>th</sup> respondents are the Group Representatives of the Siana Group Ranch and the 11<sup>th</sup> to 18<sup>th</sup> Respondents are various Government Officials who are mandated with Land Administration. The Petitioners state that the 1<sup>st</sup> to 10<sup>th</sup> Respondents were under a duty to hold any property and execute their powers for the benefit of the members but they have acted contrary to the said trust by admitting new members irregularly, not holding Annual General meetings and allocating themselves various parcels of land to the detriment of the members and consequently they ought to be held accountable for their actions.

I have considered the Preliminary Objection raised by the 1<sup>st</sup> to 10<sup>th</sup> Respondents and their submissions thereon. I have considered the submissions made by the petitioners.

In the Preliminary Objection the 1<sup>st</sup> to 10<sup>th</sup> Respondents have argued that the petitioners herein lacked the requisite capacity and/or locus standi to amount the instant petition. They contend that the petition herein relates to parcels of land situated within the Siana Group Ranch and that following the dissolution of the group after the Group Ranch Land was demarcated and allocated to individuals and thus the petitioners lacked the capacity to institute the petition.

The petitioners on their part contend that they filed the petition on their behalf and on behalf of 15 other persons who are members of the Siana Group Ranch and by dint of the provisions of Article 22 of the Constitution of Kenya 2010 they have locus to institute the instant petition. Having read the petition in its entirety and the replying affidavit in opposing to the same it is not disputed that the petitioners and 1<sup>st</sup> to 10<sup>th</sup> respondents were members of the Siana Group Ranch it is not also disputed that the said Group Ranch was dissolved in 2012 after the members voluntarily by resolution deemed it to be resolved subsequent to the attainment of the objective of the said Group Ranch which primarily was to ensure that the members were allocated their individual parcels of land. the 1<sup>st</sup> to 10<sup>th</sup> respondents argued that upon dissolution of the Group the petitioners have no capacity to file their petition against the committee members. It is the petitioners' contention that the petition was filed against the 1<sup>st</sup> to 10<sup>th</sup> respondents for actions that took place during their reign as officials under which they were under a duty to safeguard the interests of the members of the group and from the above I am convinced that the petitioners having claimed that the 1<sup>st</sup> to 10<sup>th</sup> respondents have carried out illegal actions such as not calling for Annual General Meeting allocation of land to non-members they have demonstrated that only do they have the capacity to bring the petition but they have a defined and demonstrable interest and consequently a valid cause of action against the 1<sup>st</sup> to the 10<sup>th</sup> respondents.

The allegation of fraud and mismanagement of the Group Ranch by the petitioners are serious allegations that can only be proved at full hearing where evidence will be heard therefore and will not serve the interest of justice as envisaged under Article 159 of the constitution to dismiss the petition with regard to technicalities and in view of the above I find that the petitioners have demonstrated they have locus standi to mount the petition herein and I thus order that the petition do proceed for hearing on merit and I accordingly dismiss the Preliminary Objection.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAROK ON THIS 7<sup>TH</sup> DAY OF APRIL, 2021**

**MOHAMED N. KULLOW**

**JUDGE**

**7/4/2021**

In the presence of: -

Before me Hon. Justice Mohamed Kullow

CA:Chuma

Ms Thiongo for the Petitioners

N/A for the Respondents