



Majimoto Group Ranch & 10 others v Matunke & 14 others; Sankale & 4 others (Interested Parties) (Petition 268 of 2017) [2022] KEELC 3602 (KLR) (8 July 2022) (Judgment)

Neutral citation: [2022] KEELC 3602 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
PETITION 268 OF 2017**

MN KULLOW, J

JULY 8, 2022

**IN THE MATTER OF: ARTICLES 19, 20, 22, 23, 24, 40, 47, 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REPRESENTATIVES) ACT, CAP 287 (REPEALED)**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)

BETWEEN

**MAJIMOTO GROUP RANCH 1ST PETITIONER
TWALA MANKI 2ND PETITIONER
KILETIA SAYIALEL 3RD PETITIONER
SIMON MAISON TONGOYO 4TH PETITIONER
NAGIYO MEIKWAYA 5TH PETITIONER
PARMMOIS NASI 6TH PETITIONER
MEPUKORI NYAYIA 7TH PETITIONER
NCHAO SILOLO 8TH PETITIONER
TOPOIKA NTOKOIWUAN 9TH PETITIONER
TIMAYIO TIKANI 10TH PETITIONER
TIAPUKEL NANTEYA 11TH PETITIONER**

AND



MAYONE DAVID MATUNKE	1 ST RESPONDENT
JAMES PASHAMAI AHIRE	2 ND RESPONDENT
SENET RIAMIT	3 RD RESPONDENT
MAINKA MUNTET	4 TH RESPONDENT
TUMATE PARMUAT	5 TH RESPONDENT
SALANKAT MERKU	6 TH RESPONDENT
NGERE MOROMBA	7 TH RESPONDENT
ORKUNEE NKONG'ONI	8 TH RESPONDENT
PATRICK KIMURSOI	9 TH RESPONDENT
DAVID NANTEYA	10 TH RESPONDENT
DISTRICT LAND REGISTRAR	11 TH RESPONDENT
DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER	12 TH RESPONDENT
MINISTRY OF LANDS, URBAN AND PHYSICAL PLANNING	13 TH RESPONDENT
ATTORNEY GENERAL	14 TH RESPONDENT
NATIONAL LAND COMMISSION	15 TH RESPONDENT

AND

OLONANA OLE SANKALE	INTERESTED PARTY
REBECCA PEIYIAI KUDATE	INTERESTED PARTY
LEITA OLE YENKO	INTERESTED PARTY
EQUITY BANK (K) LIMITED	INTERESTED PARTY
OMNIVENTURES LIMITED	INTERESTED PARTY

JUDGMENT

A. PLEADINGS

1. The Petitioners filed on the 16th March 2017 a Petition and Amended Petition filed on the 11th July 2017. This was brought by the Petitioners on their own behalf as members of Majimoto Group Ranch as well as elected officials of Majimoto Group ranch vide certificate dated 14th December 2016.
2. Their claim revolves around NAROK/CIS-MARA/MAJIMOTO/8 and the subdivisions of the said ranch that gave rise to parcels being PLOT NUMBER 11-PLOT NUMBER 2751 measuring approximately 48929.0 Hectares in Narok South Constituency.
3. The Petitioner's plea is stated to have been based on obligations being bestowed on them by the community in electing them into office. The Petitioners as members of majimoto group ranch as well



as elected officials were aggrieved by the actions of the 1st – 10th Respondents stated in their pleadings as inter alia that:

- a. The 1st – 10th Respondents took advantage of the members of the Ranch noting that a great number of the members depict low formal literacy levels and made decisions that adversely affected the members:
 - b. Lack of accountability and transparency of the receipt and use of funds from the community's investment including Olarro Camp/Lodge;
 - c. Grabbing of public utilities which have been allocated to private individuals;
 - d. Dispossession of land from the rightful members who are in the primary/members and allocation of land to persons who are not members of the Ranch;
 - e. Altering and changing the adjudication register and the area list to benefit unknown persons at the expense of the Group Ranch members;
 - f. Causing discrimination of women whose husbands have since passed on by allocating their inheritance to other persons leaving such women landless.
4. To buttress their case, the Petitioners' stated that in addition to the illegal and irregular land allocations occasioned by the 1st to 10th Respondents being officials of the group ranch the said officials failed for over six (6) years to account how the funds received from the said investments had been utilized and where they derived the authority to transfer community investment to themselves.
 5. Citing several meetings that were held between the members of the Group Ranch and the officials from the said government offices and it was confirmed that the 1st – 10th Respondents had abused their offices and vide the letter dated 2nd June 2016 the Registrar of Group Representatives suspended the 1st to 10th Respondents from office.
 6. It is also the Petitioners' case that subsequently, the Cabinet Secretary Ministry of Lands, Planning and Urban Development directed that a team comprising of officers from the Ministry of Lands, Planning and Urban Development be formed to conduct investigations relating to the complaint that had been lodged by the concerned members of Majimoto Group Ranch.
 7. In addition to above, a team of four officers under the stewardship of the Registrar of Group Representatives was formed and the team conducted investigations on the management and issuance of titles in Majimoto Group Ranch which investigations were conducted as from 6th September to 9th September 2016 and to which the 1st Respondent attended on behalf of all other officials as evidenced in his testimony before the land officials.
 8. It is the Petitioners case that the Government's investigations confirm the Petitioners' worst fears that the Majimoto debacle was colossal. The team came up with its findings and recommendations which are comprehensively described in an undisputed report (PW1 Exhibit 7).
 9. The Petitioners then aver to Court that, the committee found that public utilities had been grabbed and recommended that the same be surrendered back. Further that there are numerous illegal and irregular land allocation and some members who were in the primary/members had not been allocated land and the committee found that the 1st to 10th Respondent is to blame for the anomalies and that through abuse of office had caused the current mess in the Group Ranch.
 10. It is equally the Petitioners case that the Specificities as evidenced by the investigation reports annexed hereto, that saw the 1st Respondent admit that land that had been set aside for public use had been



transferred to some of the Group Ranch officials and other individuals for no justifiable cause. The said report comprehensively describes the respective parcels of land that were set apart for public use but were transferred to private persons without the due procedure under the law being followed.

11. Further during the investigation, the Government land officials confirmed that there were discrepancies in the records held at the Land office, Narok; that is the Green Cards, Majimoto Primary/members and the Member's Area/allocation list. It was further confirmed that Plot Nos. 2752 to 2783 as subdivisions were carried out without due process being followed.
12. The Petitioners claim further that in an illegal, unprocedural manner, the 1st, 2nd and 3rd Respondents as officials of the Group Ranch bestowed to hold the community investments, for the collective benefit of the members of the Group Ranch leased out to the investor for collective gain was unilaterally and unprocedurally registered in their names against some part. This including but not limited to Olarro Camp, Olarro Conservancy and Leitan Water Factory.
13. Citing a meeting convened by the Registrar of Group Ranch on the 13th December 2016 for the members of the Majimoto Group Ranch where elections were held and it is the Petitioners case herein that they were duly elected in office and were subsequently issued with a Certificate of Incorporation date 14th December 2016.
14. In addition to the above, the Petitioners further avers that the 1st Respondent has continued to carry out actions and demand services both in public and in government offices as the chairman of Majimoto Group Ranch despite being aware that he had been suspended from office and subsequently elections had been held and new officials were elected,
15. The Petitioners are therefore aggrieved that the members of the Ranch stand to suffer irreparable loss and damage if a declaration is not made stopping the 1st – 10th Respondents from carrying out, presenting themselves, carrying out actions as the officials of the Majimoto Group Ranch and more particularly the 1st Respondents from carrying out any action whatsoever in the capacity of the chairman of the Ranch.
16. It is the Petitioner's case that anyone not in the primary/members could not legally own land on first allocation. Further, a company or an institution can also not own land on first allocation. The only way a company or institution can own land is through purchase to wit one must produce evidence of the same either through an Agreement for Sale and/or Transfer documents.
17. The Petitioner further avers that in breach of the Group Ranch Constitution, the agreement by all the members of the Group Ranch as well as in breach of their fiduciary duties to the members, the 1st to 10th Respondents allocated themselves and/or their proxies more than one share thus rendering members landless. That there are some members of the Group Ranch whose names appear on the Primary/members and consequently allocated parcels as per the Members area/allocation list, however their titles were illegally registered in favor of other persons.
18. The Petitioners then claim that the process of amending the register of members is contained in Section 13 of the Land (Group Representatives) Act CAP 287 and the Maji Moto Constitution requires that the application to amend the register shall be in writing and shall be signed by a majority of the group representatives and shall be supported by a copy of the minutes of the meeting at which the resolution to make the amendment was passed, and the application shall be delivered to the registrar within fourteen days after the day on which the resolution was passed. The said Section further provides that if consent is given, the name, constitution or rules shall stand amended accordingly, or as the case may be, either thereupon or at a future date specified by the registrar.



19. Then the Petitioner pleads that the amendment to the list of members is illegal, unprocedural and as such null and void and that the Respondents as officials had no authority to amend the register.
20. The Petitioner further cites persons who are not legitimate members of the Group Ranch and were neither in the Primary/members nor the Members' Area/allocation list but when titles were being issued such persons were issued with titles in respect of the various land parcels in Majimoto Group Ranch and were not entitled to be issued with titles thereof.
21. It is the Petitioners case that the 1st to 10th Respondents "privatized" Olarro Camp which was meant to be held for educational purposes for the collective benefit of the members of the Majimoto Group Ranch and that there are no minutes where the members of the ranch approved the transfer of Olarro to the eight individuals being officials of the ranch. Thus, the title issued for Olarro in the name of eight (8) individuals including the former Chairman, Secretary, Treasurer the 1st-3rd Respondents was issued illegally and unprocedurally.
22. The Petitioners claim that the, 1st to 10th Respondents illegally and unprocedurally allocated land to fictitious persons and non-entities who are not legitimate members of the Majimoto Group Ranch and their names do not appear in the Primary/members. This cause landlessness.
23. Further the Petitioners sought the following reliefs:
 - i. an Order requiring the 1st to 10th Respondents to render a full and true account of all the funds received by themselves since they assumed office and a full account of all the assets of Majimoto Group Ranch being a sum of Kshs. 13,014,288/= /- as pleaded under Paragraph –hereinabove.
 - ii. the Alternative to prayer 1 above judgment be entered against the 1st to 10th Respondents jointly and severally for the sum of Kshs.13,014,288/= together with interest from the date of filing suit until payment in full.
 - iii. This Honourable Court be pleased to order the 1st to 10th Respondents to hand over to the Petitioners such moneys as it appears to be due from them, and all proper books, papers and other property of the group in his custody or otherwise under his control.
 - iv. This Honourable Court be pleased to issue an order compelling the District Land Adjudication and Settlement Officer, the 12th Respondent herein to regularize the allocation of parcels in Majimoto Group Ranch to the entitled owners in accordance with the original Members List.
 - v. This Honourable Court be pleased to issue an order to the 15th Respondent for preparation of all title documents in respect of all the unregistered public utilities in Majimoto Group Ranch and the same be submitted to the 11th Respondent to register the public utilities in favour of the Majimoto Group Ranch.
 - vi. This Honourable Court be pleased to issue an order revoking the titles in respect of public utilities which have been issued in the name of the private individuals including CIS MARA/ MAJIMOTO/ 2171, 2078,2076, 2077, 2086, 461, 2165, 654, 2749 and 730 which are registered in favour of private individuals; this Honourable Court be pleased to order the 1st – 10th Respondents to surrender all title documents to the 11th Respondent in respect of all the parcels that were irregularly and illegally allocated to the 1st to 10th Respondents and/or their cronies.



- vii. This Honourable Court do issue a permanent injunction be issued against the 1st to 10th Respondents, their agents, assignees, representatives and/or any other acting on their behalf from representing themselves as the officials of Majimoto Group Ranch.
24. To buttress their case, the Petitioners' enumerated the particulars of breach of *the Constitution* at pages 2 to 3 as well as particulars of breach of statutory provisions in paragraph 33-43 of their amended Petition.
25. The Petitioners further have averred that this illegal and unprocedural dealings in Majimoto has occasioned economic hardship and mass landlessness as set out at paragraph 16 and 17 of their amended Petition.
26. While denying the claim of the Petitioners, the 1st, 2nd, 3rd, 4th, 5th, 7th and 10th Respondents avers that the 1st Petitioner Majimoto Group Ranch was dissolved thus not a legal entity that can sue or be sued. Thus, the suit should therefore be struck out or if it has gone through hearing it should be dismissed.
27. The 1st, 3rd, 4th, 5th, 7th and 10th Respondents posits that the Petitioners brought this suit as elected officials' of Majimoto and not in their own capacity therefore the suit should be dismissed as there were interim orders issued in a Judicial Review case number 36 of 2016. That those interim orders stayed and set aside the election of the Petitioners as Group ranch officials and thus they are committing the tort of passing themselves off as the group ranch representatives' of Majimoto Group Ranch. Therefore, the Petitioners locus standi collapses calling for this Petition to be dismissed.
28. It is the 1st, 3rd, 4th, 5th, 7th and 10th Respondent's case that the Petition before Court does not meet the Constitutional threshold of Petitions and such cases ought to have been brought by way of ordinary suits as provided for under the law and that avenue should have been exhausted by the Petitioners.
29. The 1st, 3rd, 4th, 5th, 7th and 10th Respondents in their pleadings denied the allegations that the land where ollaro conservancy and ollaro camp is situated belongs to the community and categorically says it was transferred by the officials to themselves. This was in the testimony of both the 1st Respondent the Chairman and corroborated by the 2nd Respondent the Secretary.
30. 1st, 2nd, 3rd, 4th, 5th, 7th and 10th Respondents further denies that the 1st Respondents hold titles of the town center referenced as Ngoswani A and Ngoswani B and he only holds such title in trust for the community.
31. 1st, 2nd, 3rd, 4th, 5th, 7th and 10th Respondents further denies any embezzlement of funds and it is their case that the funds held at Kenya Commercial Bank in Account Name Majimoto Group Ranch belong to them.
32. The 2nd Respondent the Secretary of the Group ranch echoes the defense of the 1st, 2nd, 3rd, 4th, 5th, 7th and 10th Respondents in part that Ollaro was community Investment and stated that the named individuals transferred this land to themselves on their own authority as officials.
33. It was his case that even though there were anomalies like fictitious allocations in majimoto, generally he did his best together with the other officials by carrying out a clean-up exercise in majimoto before issuing titles. That the titles issued were done by the officials of the group ranch and that he still remains an official of the group ranch.
34. The 6th, 8th and 9th Respondents supported the Petitioner's case and asserted that there we indeed problems in majimoto group ranch that needed to be addressed. They equally confirmed that Ollaro Conservancy and Ollaro camp sit on communal land owned by majimoto group ranch and that they



- never attended a meeting consenting that the said community investment be transferred to individuals including but not limited to the 1st, 2nd and 3rd Respondents' who were the officials of the Group ranch.
35. The 11th, 12th and 13th Respondent stated their case that through their investigations it was revealed that a section of ranch officials have grabbed parcels of land meant for public utilities. The Government team came up with a list of public utilities that have been grabbed and recommended appropriate action to be taken.
 36. It is also the 11th, 12th and 13th Respondent case that titles to the grabbed public utilities should be cancelled and the land surrendered to the Government.
 37. The 11th, 12th and 13th Respondent further asserts that the elected group representatives fraudulently registered the public utilities that had been surrendered for public use in their names. These titles were identified and recalled vide a notice for recall/surrender dated 26h May 2016 by the District Land Registrar.
 38. The 11th, 12th and 13th Respondent cited an indemnity letter and stated that the registrar was not in any way involved with the amendments of the member register and allocation list and that these amendments were done by the group representatives' of majimoto as admitted to by the 1st and 2nd Respondents.
 39. To support their case 11th, 12th and 13th Respondent sought from Court that parties holding titles to public utilities be given 30 days to surrender the same to the Land Registrar failure to which then the Land Registrar moves to cancel the said titles within 30days from the date of judgement.
 40. The 15th Respondent being the National Land Commission stated that indeed public land and land set aside for public utilities had been illegally allocated to individuals including officials of the Group ranch and those Parcels as referenced in the Government Report ought to be revoked and public interested protected. It was their case that they relied on the documents presented by the 11th -13th Respondents and seek cancellation of titles issued on public land.
 41. The 1st, 2nd and 3rd Interested party's case can be summarized as follows that they purchased their parcels of land from the rightful members of majimoto group ranch, who after being allocated the land rightfully then sold part of the land to this interested parties. Further that their parcels do neither forms part of the public utility nor is it included in the Government report thus not for cancellation.
 42. It is the 4th Interested party's case that as they charged ten (10) parcels of land in majimoto that emanated from the subdivision of the group ranch and that those ten (10) parcels after a search conducted by the 4th interested party showed that they belonged to persons seeking the loan facility. Further that the ten (10) parcels do neither forms part of the public utility nor is it included in the Government report thus not for cancellation.
 43. The 4th Interested party further alludes to Court that they have experienced defaults in loan payment that is affecting its finances.

B EVIDENCE

The Petitioners'

44. The Petitioners' called two (2) witnesses in support of their case. PW1- MWANIKI TWALA adopted his affidavits as sworn statement and his statement in examination in chief.



45. He stated that he is a member of Maji Moto group ranch and number 24 on the Primary Register. That the group was incorporated in 1978 and by 1995 the group had 2,300 members and that the group ranch has a constitution.
46. That on the 16/9/11, the members agreed to sub-divide and demarcate the group ranch and an area list was created. It was agreed that each member will have one share of about 19.4 hectares. Common community utility areas were also set out for investment including Olara Camp. On the 5th of April 2012, the mother title CIS/MARA/MAJIMOTO/8 to pave way for the issuance of individual titles.
47. He stated that members raised the following complains:
- a. Legitimate members were omitted from the area list, they are 21 in number and have been rendered homeless and he took the Court through the Member Register confirming that the members existed but their name was not trans posited to the area list.
 - b. He then demonstrated to Court titles issued to non-members not being members as listed in the Members Register.
 - c. He further took Court to fictitious persons in the area list whose names were not in the Member Register and who had been given titles.
 - d. He then averred and demonstrated to Court Public utilities including places where the schools are built, waterpoints, proposed hospital and proposed airstrip were grabbed- Inchaishi Primary School on Plot 461 was registered under the name of Simon Main, Kikurkur Primary School in the name of Leboso Lepores and Enkiu Primary registered in the name of Salankat Nchire
 - e. He then showed Court how two town centers being Ngoswani A and B in the green card where registered in the name of the 1st Respondent as the proprietor and not as a trustee.
 - f. The Olara camp was shown to have been registered in the name of 8 individuals, that the parcel no. 2171 which was set aside for common investments was registered in the name of eight individuals.
48. He further stated that the group ranch leased to Victoria Camp, Land Parcel No. 2085 and a lease for Letein Limited for parcel No. 2086 and the Lessor was Majimoto Group Ranch and not the 8 private registered owners of Ollaro. Further the Petitioner testified that the monies for the above investments is held in a bank account under the name of Majimoto group ranch and not the 8 private registered owners. The Petitioner further stated that the said investment was to collect monies to be used for collective educational purposes. The 1st, 2nd and 3rd Respondents have failed to render accounts in respect of the monies in respect of the proceeds from the said leases thus an abuse of the office they held.
49. He then narrated to Court the step they took upon discovery of the dealings of the officials over the properties, which included complaints to the National Land Commission and the District Land Registrar.
50. He then took the Court through each allegation of illegality making reference to the voluminous bundle of documents including certified copies of the green cards of Majimoto group ranch. This included parcels of land 2076, 22077 and 2748 referred to as Ngoswani town center A and B have been registered in the name of Matoke Mayone the 1st Defendant.
51. The witness testified that indeed the site visit and the Government Report show that the complaints of illegal and unprocedural land allocation in majimoto occurred and prayed for justice more so for



- widows whose parcels of land were taken by the officials and their displacement reversed. He also sought for the public utilities be reverted back to the public.
52. In cross-examination the witness informed the Court that any changes in the primary register required the approvals of the members of the group ranch.
 53. The witness further stated that each member was eligible to one share of 47 acres and one irrigation plot any additional land can be acquired only by way of allocation and not primary allocation. He then showed Court how he acquired his additional parcels through the sale agreements'. He equally told court he has no affidavit of complainants to represent them but he is suing in his own capacity as a member as well as a group ranch official duly elected.
 54. He further testified that his documents were certified unlike the 1st Defendants documents that were uncertified especially the allocation list.
 55. He further stated that companies and other legal institutions could not own property in Majimoto on first allocation thus such companies are not members in the primary register. He then asserted that Ollaro camp and Ollaro conservancy sit on communally owned land as per the allocation list and was set aside for community investment.
 56. On further cross-examination by the 15th Respondent the witness confirmed that public utilities were fraudulently transferred by the officials and that a technical team from the National land commission visited the suit land and made recommendation for revocations similar to the recommendations made by the 11th-14th Respondents.
 57. The witness was cross-examined by the 1st-3rd Interested Party and averred that the parcels sold to these interested parties were sold by the rightful members as per the primary register and allocation list.
 58. The witness was cross-examined by the 4th Interested Party and averred of the 10 parcels held only five were in the hands of the rightful owners and the other five are questionable as they belonged to persons not in the allocation list thus a cause of disenfranchisement to the rightful owners.
 59. He further stated that even though the widows whose land form's part of the parcels owned by the 4th Interested Party is not a Petitioner in this case as a representative suit this the witness was acting in his behalf and those who were affected. He then stated that Petitioner listed number 4 in the Petition is indeed displaced.
 60. The witness was then cross-examined by the 2nd Respondent that during the election previous officials were present but did not record their interest to vie and that there is a certificate to confirm the Petitioners election. That indeed there was a constitution of Majimoto. The Petitioner stated that he was not party to the suit challenging their election nor any orders served on them.
 61. Faulting the management of the group ranch by the respondents as officials Petitioner informed the Court that the officials had no right allocating themselves or their proxies more than one share in Majimoto, had no right to alter the allocation list, had no right in allocating non-members land or companies, had no right to grant themselves the land situate as Ollaro conservancy and Ollaro camp, had no right to amend the allocation list and remove members as the same can only be done by approval of to-third of members or pursuant to a court order and that the official had no right to use the proceeds emanating from the community investment as well as render any member landless.
 62. PW2-Eustance Njagi Githumbu the Registrar Group ranches and director of land adjudication and settlement adopted his statement as stated that he has two main duties one to keep the register of all



group ranches in the country and secondly to supervise the management and administration of the group ranches in Kenya including Majimoto.

63. The witness stated that he had a copy of the primary register in his custody and he received a complaint in 2016 about mismanagement of majimoto group ranch through a complaint to their offices. The complaint was about group ranch members in the primary register who were not allocated land and other persons not in the primary register allocated land, grabbed public land and transfers to various people of land without the knowledge of the original owners. Misappropriation of funds of the group ranch among other.
64. The witness then told Court they held a meeting and a team chaired by him were directed to Narok land Registry and carried out investigation with an aim of resolving the dispute the report was produced as his evidence.
65. During investigation the witness told Court that he suspended the group representatives until investigations were completed the officials suspended were the 1st -10th Respondents. He further ordered that the group ranch bank account be frozen to safeguard the funds during investigation. He equally then directed that those payments in the account could be made but no withdrawals could ensue.
66. The witness further stated that the investigation was carried out by 4 investigating officers from the Ministry of Lands, where parties were summoned to appear, and the team went through the list of members' register and compared with the one in Nairobi and the one at the and registry in Narok and compiled a report against the complaint.
67. The witness testified that they found mismanagement issues and called for an AGM to and the AGM proposed that elections be conducted to replace the officials and the same election notices were issued and an election conducted in full awareness of the 1st-10th Respondents. The Elections conducted were fair as 60% of the members in my register attended the meeting the elections held were proper and he was not aware of that election being suspended. That the minutes of the elections were recorded and they are public documents.
68. The witness then stated that the group ranch was never dissolved as his office did not sanction that dissolution and a dissolution certificate issued after the group ranch has subdivide the land and all members interests were addressed and that majimoto is far from dissolution.
69. The witness was emphatic that the intervention in Majimoto group ranch were necessary and the problem affecting group ranches are mainly dishonesty and exploitation of the ignorance of the members.

Evidence of The 1st,3rd,4th,5th,7th and 10th Respondents

70. In totality the 1st,3rd,4th,5th,7th and 10th Respondents called one witness in support of their defense.
71. DW1- Mayone David Matunke adopted his sworn statement and stated that he lived in majimoto and was elected the Chair in 2010 and upon election he was given a certificate of incorporation and that he is still in the office.
72. The witness then told Court that the elected officials exercised their duties and dissolved the group ranch and issued 2318 titles to the members and that no other election was conducted since the dissolution.



73. He further told Court that the Registrar of Group Ranches purported to conduct an election and appointed 10 members from a group that was dissolved and after the appointment he moved to Nakuru High Court in Judicial Reference 36 of 2016 to nullify the purported elections of December 2016. He told Court that orders were issued on the 22nd February 2017 against the Registrar Group Ranch suspending the elections.
74. It is the 1st, 3rd, 4th, 5th, 7th and 10th Respondents case that as officials they were allowed to find out if any member was left out of the register and include them. He further stated that in addition to the one share of 48 acres members were equally allocated an irrigation plot or a commercial plot or both. the irrigation plot was allocated to those living close to the river and each got an extra 2 acres over and above the already issued 48 acres.
75. Citing Majimoto insert B known as Ngoswani B Parcel 2077 the allocation of the commercial plots was on first come first serve basis on this parcel and this was determined by the officials of the group ranch.
76. The 1st, 3rd, 4th, 5th, 7th and 10th Respondents then testified to Court that there was another allocation in the conservatory area referenced as parcel 2177 and parcel 2171 and this was allocated to 8 members of the ranch three of whom are the officials of the group ranch including the witness. He avers that there was no discrimination in the said allocation.
77. It is the 1st, 3rd, 4th, 5th, 7th and 10th Respondents case that he is not aware of Mayone who has not gotten his land. On displacement no members lodged any complaint at his office and the DLASO office or Court of how they were displaced.
78. On the issue of public plots, he reiterated that it is not true that he allocated himself any public school, he said that the only public plot he knows is the airstrip Parcel 2248 where they did a transfer and the said transfer is in the custody of the surveyor and no title issued.
79. To buttress their case, the witness testified that on the commercial plots Ngoswani A he was advised and agreed that the title to the land be issued in his name as a trustee and he applied to the various government agencies to get this title of the town center issued on the 23rd January 2014 in the witness's name. he then prepared a list and issued members with titles but a restriction was placed by the Registrar.
80. He then moved to Court in Judicial reference 234 of 2016 against that restriction issued by the registrar, in this case no documents were filed by the registrar and thus the case was determined on the basis of the documents by the witness in his favour and the prayer to Court seeking a lifting of the Restriction granted.
81. 1st, 3rd, 4th, 5th, 7th and 10th Respondents case also is that Ngoswani center B parcel 2077 nothing was done on this parcel and there is a list members marked as DE1 to be allocated and the officials wrote to the registrar to issue these titles with a letter of indemnity marked as DE2.
82. On the allegation that I collected monies he same is only true that I collected money that was due for survey fees, legal fees, adjudication and typing fees and stamp duty that was payable and this were figured agreed upon by members. That there was no objection to these figures.
83. In is the 1st, 3rd, 4th, 5th, 7th and 10th Respondents case that during allocation members sold their parcels before titles were issued in their name and as such, we then produced the titles in the name of the purchaser instead and this is not irregular.
84. That members who have not received their titles are those who have not paid their fees and because of the existing court order that barred all transactions on the said land. He equally asserted that he has



- not seen any documents to show that he has received the sum of Kenya shillings 13,14288 claimed by the Petitioners. That the witness has not received any monies for the use of the group ranch.
85. It was the pleas of the 1st,3rd,4th,5th ,7th and 10th Respondents that no public plot is in his name or irregularly allocated, further no person was denied the use of the school and there was no intervention with commercial plots. That There is no trespass on public utilities.
 86. During cross-examination by 1st ,2nd and 3rd Interested party the witness confirmed that their parcels are not public utility land and that those in occupation of the parcels are members of Majimoto.
 87. During the cross-examination by 4th interested party the witness stated that he is aware that the property charged to the bank all of them are not public utility.
 88. Further it was the witness evidence during the cross-examination by the 11th-14th Respondent that all public utilities are safe and intact. And that there is no public utility registered in his name. He then stated the town center Parcel 2077 as a public utility is registered in his name but there is nothing to show that he holds the land as a trustee. He further stated that he does not have minutes authorizing the officials to take the title in their names as trustee.
 89. During the cross-examination by Petitioners the witness stated that the area list he has produced is not certified or stamped by the land adjudication officer. And that he was not aware that the area list before the DLASO was stamped, certified and is signed by the officials.
 90. He testified that he was involved partly in the preparation of the register before 2012. That he amended and edited the primary register as he remains the Chairman of the group ranch. He equally stated that he had no authority that allowed him to amend the register and he was aware he required 2/3 majority votes of the members and any amendment could not be done without the said authority.
 91. He stated in their amendment of the primary register they did clearing of names of members that they found did not exists and this was done without the 2/3 of members approval. Those members in the amendments have land.
 92. The witness then said that the last entry in the primary register was in 2011 and he has not produced the said evidence of this entry and that he is not aware that the last amendment to the primary register was done on the 9/11/95 by the DLASO.
 93. He further stated that anyone whose name is not in the primary register cannot be allocated land however after allocation they could sale or transfer land to anybody they wish. He holds that no new member was allocated land. He stated that he used cows to buy land and that he had no sale agreement to show purchase of extra parcels owned.
 94. The witness confirmed that pashamai ole matunke is a name that does not exist and the name was a conjoined of name of the witness and the 2nd Respondent as well as other conjoined names. And the said conjoined names owned parcels of land on first allocation. He further stated that D&E company owned land in first allocation and belonged to the witness and his brother.
 95. On the issue of public utility, it was his evidence that the ones registered in his name was as a trustee and even though he has no trust instrument that was the position. on the issue of community investment on the land referenced are ollaro 2171 the witness stated that the land where ollaro camp and ollaro conservancy sits has a title registered under 8 land owners three 3 ofwhich are officials including the witness and thus private land and not community land even though that land was previously in the name of majimoto. He equally stated that he had no minutes to show that this land 2171 is private property and have no minutes of the AGM.



96. The witness further states that he was aware of the existence of leases entered to by majimoto group ranch in 2007 with the investor for 55years and in the lease still reads majimoto as the lessor on the land where ollaro conservancy is. He further stated that the lease to Victoria in 2007 for 48 years for the ollaro camp land was not within his knowledge.
97. The witness also respondent on the monies at KCB account Majimoto Group ranch where the 1st, 2nd and 3rd Respondent are signatories are monies for them as they own the land where the lease fee comes from privately.
98. On the issue of the dissolution of the group ranch it was the witness testimony that he groups ranch was dissolved even though he does not have the certificate of dissolution. He further stated that the Petitioners were not party to all his Judicial Review Application in Nakuru. Being JR/13/17, JR12/17, JR14/17 AND JR11/17 RESPECTIVELY.
99. The witness cited the letter of indemnity was issued by the officials with approval of the community however he said he did not have a witness to attest to this approval and all amendments were done by his office and none of those amendments were taken for rectification.

The 2nd Respondent

100. DW2- James Parshamai Ashire made is sworn statement and stated that he wished to rely on the affidavit and the annexures. It was his evidence that the leadership question of the ranch ought to be determined.
101. During the cross-examination by Petitioners the witness stated that he confirms that the group ranch has a Consitution as produced in Court. That he was the secretary of the group ranch 2005-to date. That membership of the group ranch is acquired in 3 ways as per the constitution of the ranch and any member included outside this is unprocedural.
102. It was the witness testimony that that primary register was prepared by members of the group ranch the 1st registration was done in 1978 and the 2nd registration was in 1995 and the last entry was done in 1998 and any other corrections done thereafter are wrong. The allocation list was prepared by the officials of the ranch using the primary register and later it was authenticated by the DLASO and the registrar. That there is another allocation list produced by the 1st respondent but he did not sign it.
103. On the issue of fictious names for parcel 2086,1284 and 2172 the name refers to myself and the 1st Respondent and is a fictious name not in the primary register. That there were no companies who were allocated land on 1st allocation and hence they are illegal. He equally testified that he was aware of people who are in the allocation list but the titles were issued to other parties.
104. On the allocation of the extra land the said were allocated to me by the officials but I do not have minutes of this allocations or sale agreement. The Parcel 2171 ollaro camp is not owned by me I raised its complaint to the CID it is a private business owned by Victoria limited, however the lease is owned by the group ranch. However, the land on which ollaro camp sits is owned by 8 members and I am one of them thus my interest is on the land not the business.
105. It is the evidence of the 2nd Respondent that they were allocated the land by the group ranch officials of 25 officials and that there are no minutes of the officials who allocated the land to the 8 members. The land where ollaro camp sits belonged to the group ranch but was later transferred to the 8 owners in the absence of an AGM and /or a Court order.



106. It is the evidence of the 2nd Respondent that Ngoswani town center A and B were allocated to the 1st Respondent as the chairman to hold in trust and the same is registered in his name. He then stated that as officials they made administrative decision to move people from their allocated parcels without minutes to that effect.
107. During the cross-examination by 1st,3rd,5th,7th and 10th Respondents the witness stated that he did not act in any manner contrary to *the constitution* and did not abuse his office as the secretary. That the 1st -10th Respondents are the officials of the group ranch through an order of the Court.
108. In support of the 1st,3rd,5th,7th and 10th Respondent's case the witness stated that there are some allocations outside the primary register however this were done upon of discovery of anomalies in the register that the officials duly corrected and this people were then included in the allocation list. He then stated that ollaro camp as a business is owned by Victoria limited but the land upon allocation was registered in the names of 8 officials via an actual transfer that he did not produce though.
109. During the cross-examination by 11th-14th Respondents the witness stated that no public utility land was transferred to any individual.
110. During the cross-examination by the 4th Interested Party the witness stated that e was aware of the properties charged to the bank and that hey all belonged to members of majimoto group ranch.
Evidence of the 11th ,12th and 13th Respondent and the 15th Respondent
111. DW3- Tom Chepkwesi made is sworn statement and stated that he wished to rely on his affidavit filed on 22/2/2018. He is the District Land Registrar and stated that after complaints were received in their offices in Nairobi the Ministry convened a specialist team of officers to find out the ruth of the complaints. The Complaints were made in 2016 and the outcome was that a report was prepared with recommendation after the investigations of the complaints. That he would be relying on this report.
112. During the cross-examination by the Petitioners the witness stated that he has been a registrar since 1996 and that the has a copy of the primary register at his office and the last time this register was mended was on the 9/11/1995 and that no new members were added since then up to date.
113. The witness stated that the complaint raised in majimoto were founded and it was recommended that their land rights be addressed. He also stated that he was aware that there were members who have not been allocated titles and as such their rights ought to be addressed. That he recommended that titles of non-members be revoked if their issuance caused dispossession of the original land owners. That the petitioners request for revocation of titles on public utility is not unfounded.
114. On the issue of titles issued in 2018 the register the witness stated that he did not who issued those titles as the suit was still ongoing and titles delivered in2020 were not properly issued.
115. During the cross-examination by the1st,3rd,5th,7th and 10th Respondents the witness stated that he did not attend the meeting of the taskforce that prepared the report and that the then registrar Mr. Mutiso his predecessor did.
116. He then stated that Parcel 2077 Ngoswani center A was registered under the name of the 1st Respondent and is still restricted and that he was not aware of any court order removing the said restriction. He said further that he was not aware of any sub-division or transfer of Ngoswani Centre A. In regards to parcel 2076 Ngoswani town center B the status of the parcel and green card is intact and in safe custody. Land Reference 2085 is registered in the name of 1st Respondent but it is restricted until the issue of illegal allocation is addressed.



117. The witness then stated that where a title has been issued irregularly, he summons the person who issued for allocation and they go to court and that he has received a number of complaints' since he arrived but the major ones have been that which resulted into the investigations of majimoto.
118. Upon question the witness then stated that although there are other records, he was unable to know the exact number of names of members and would need to refer to the record to confirm how many titles have been issued. That in effecting a transfer parties go to the land control boards where they are situated and when registering the land, the Registrar looks at the area list, RIM and officials' communications as to the signing of the documents.
119. During the cross-examination by the 1st-3rd interested party the witness stated that he did know if their parcels were owned by the interested parties had been irregularly allocated.
120. During the cross-examination by 9th Respondent the witness stated he did not who had the custody of the titles found to have been issued wrongly by the taskforce.

Evidence of the 6th Respondent

121. DW4- Salankat Ole Merku made is sworn statement and stated that he wished to rely on his affidavit filed. He stated he lives in majimoto and a member of the group ranch as well as a former official. He stated that he owns one share of his duly allocated land and he has not taken any public utility or money from ollaro which is and belongs to the community.
122. During the cross-examination by the 1st, 3rd, 5th, 7th and 10th Respondents the witness stated that his brother had not recorded a statement that he had no land and also, he was unaware of who was allocated the plots in the town center at Ngoswani. That he is aware that they are propel who have not been allocated their respective parcels.
123. During the cross-examination by the Petitioners the witness stated he was one of the leaders of the group ranch and elected official on 2/6/2016. That his duties as officials were to subdivide the land and each member was to get 46 acres but that was not done. That his brother is in the area list and the register but has no land. That the land transfers were signed by the Chairman, Secretary and Treasurer.
124. The witness stated that the bank accounts were in the name of the group ranch and they never made any reference to the officials for such withdrawals. That ollaro was the property of the community and was never given to the officials for their own personal use. The public utilities were never given to the officials to hold for the community.
125. The witness the said that he knew that the officials were suspended after irregularities were reported and complaints raised by the members. After their suspension there were elections where he was not re-elected as an official. The 2nd Petition in the elections was elected as the Chairman.

Evidence of the 9th Respondents

126. DW5- Patrick Kimursoi made is sworn statement and stated that he wished to rely on his affidavit filed and adopted the same as his testimony, that he was an official of the Group Ranch and involved in the subdivision of the land. It was his evidence that he was not involved in the signing of title or transfer. He was not involved with ollaro camp or operated the bank accounts and he was also not involved in the allocation of public utility land. And that there were no meetings of the committee to discuss issues affecting the group.
127. During the cross-examination by the 2nd Respondent the witness stated that he was given the area list prepared by the officials but later there were amendments that were done by the officials.



128. During cross-examination by the the 1st, 3rd, 5th, 7th and 10th Respondents the witness stated that he cannot recall the number of parcels that were allocated but each member got equal shares. There are some members who sold their parcel and/or shares. He was involved in the subdivision of he plots in the shopping center but I cannot recall the exact number of plots. that there are 6 schools that are in operation currently. He then said that public utilities such as ollaro camp and water points are on the land. And that he has shown each of the members his parcel of land.
129. During the cross-examination by the 11th-14th Respondents the witness stated that there was no meeting and/or resolution to allocate the public utility land.
130. During the cross-examination by the Petitioners the witness stated that he was the current assistant chief in majimoto and was involved in the subdivision of the land. He is aware that the area list was changed but he was not involved in this change. He cannot recall any meeting that took place to change the area list. Each member was allocated 48 acres and their members bought extra land from other members that it is not true that members exchange their parcels for cows.
131. The witness then stated that ollaro camp land is the property of the community and he was not aware of any meeting changing this and that the money from the camp was to assist the community. He knew of members that were not allocated land but he did not know if they petitioned Court. However, there are disputes that some members were shown their land and live there but have no titles to the land. I know of an allocation of a school but the title was given to an individual.

Evidence of the 4th Interested party

132. IP 1- Kennedy Githui made is sworn statement and stated that he wished to rely on his affidavit filed 11/5/2020 and wish to adopt the same as my testimony. There were various parcels of land in Majimoto and they were charged against loans advanced by the bank after conducting due diligence on the parcels. To date the properties are still charged to the bank and are contained at page 7 of 279. The borrowers stopped servicing the loan when the Court case stated.
133. During the cross-examination by the Petitioners the witness stated that he did due diligence on all the parcels and rely only on searches as due diligence for amounts less than Kenya shilling twenty million ksh.20,000,000.00. That he was unaware that the parcel 893 was registered in the name of lekatau ole salantoi yet the green card is the name of molonko ole nkairuko. He was also not aware that there are any encumbrances on this title but agree that had they conducted due diligence they would have found this irregularity.
134. The witness further stated that parcel 1597 is registered in the name of karioi ole natea and that he is not aware that the parcel as per the area list is for nolosaike ole natea. That this could have been discovered during due diligence.
135. During the cross-examination by the 1st- 14th Respondent the witness stated that the charge was registered in 2014 and that he has never met molonke and never received a complaint from her
136. The witness concluded that the reason why enhanced due diligence is not conducted is because this cost is borne by the borrower and that the Government report made no mention on the properties of the bank.



C. Submission of the Parties

137. The Petitioner filed their submission on the 11th August 2021 together with a list of authority and case digest as well as a supplementary submission in response on the together with a list of authorities and case digest filed on the 26th October 2021.
138. The 1st, 3rd, 5th, 7th, 8th and 10th Respondent filed their submission dated the 21st September 2021
139. The 2nd, 6th and 9th Respondent filed no submission.
140. The 11th -14th Respondents filed their submission dated 21st September 2021.
141. The 15th respondent filed no submission.
142. The 1st, 2nd and 3rd Respondent filed no submission.
143. The 4th Interested Party filed submissions dated the 8th of September 2021 together with the list of authorities.

C. Determination

144. Having carefully read and considered the material placed before the court in the form of pleadings, the evidence of the parties, witness statements and exhibits produced and noting there was no consensus but the parties on the issues for determination the issues are framed herein as follows;
 - a. Whether the Petitioner have locus to file this suit and the Constitutional threshold.
 - b. Whether the Majimoto Group Ranch was dissolved and the subsequent elections held were proper.
 - c. Whether public utilities plots have been unlawfully allocated within the Majimoto Group Ranch.
 - d. Was there illegal and unprocedural land allocation in Majimoto Group Ranch.
 - e. were community funds misappropriated during the 1st – 10th Respondent’s term in office.
 - f. Has the communal investment been privatized illegally.
 - g. What orders should be granted by the Court.
 - h. Costs
 - a) Whether the Petitioner have locus to file this suit and the Constitutional threshold.
145. Locus Standi is a right a litigant has to move the Court seeking to be heard and seeking reliefs within the law. If a litigant has no locus that is a preliminary issue that ought to be determine because then the effect of no locus is that he has no right to appear. In Kenya the scope of determining locus was expanded by the 2010 Constitution as was expressed in Mumo Matemo –vs- Trusted Society of Human Rights Alliance & 5 others.
146. Article 22 of *the Constitution* of Kenya 2010 reads:
 - “...1. Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.



In addition to a person acting in their own interest, court proceedings under clause (1) may be instituted by—

- a. a person acting on behalf of another person who cannot act in their own name;
- b. a person acting as a member of, or in the interest of, a group or class of persons;
- c. a person acting in the public interest; or
- d. an association acting in the interest of one or more of its members.”

147. Article 258 of *the Constitution* of Kenya, 2010 states as follows:

“... Every person has the right to institute court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention”

148. What this therefore means is that *the Constitution* permits every person as having a right to institute proceedings in court claiming that *the Constitution* has been infringed, the above provision also allows a litigant to file a suit in his own or on behalf of another person who cannot act for themselves or as a member of or in the interest of a group of people as well as in bringing claims in public interest.

149. The petitioners submitted that The petitioners presented this case in their individual capacity as residents and members of Majimoto as their names appear in the primary register, which was undisputed during hearing as well as elected officials of the Majimoto Group Ranch which remains unresolved. That the amended Petition filed on the July 11, 2017 captures this.

150. The Petitioners Submitted that the 1st Petitioner as a body corporate can be sued in its own name as Majimoto Group Ranch That Majimoto Group Ranch is a body corporate that is duly registered under the Land (Group Representatives) Act, cap 287 Laws of Kenya. Therefore, the 1st Petitioner has all the rights to sue in its own name and through its duly elected representatives.

151. Further it was submitted that Majimoto Group Ranch was never dissolved and as such it remains to be a legal entity which can sue and be sued in its own capacity this was also confirmed by the Registrar of Group Ranches during cross-examination.

152. The Petitioner submitted further, that the Petitioners were elected on the 13th December 2016 procedurally as duly demonstrated by the Registrar of Group Ranches in his evidence and in total compliance with his statutory role of supervising and administrating the Group Ranches as per section 5 of the Land Group Representative Act caP 287. Together with the evidence of the Registrar Group Ranches that Majimoto group ranch has not reached the dissolution stage this election according to the registrar could ensue.

153. The Petitioners submitted that there is no evidence adduced by the 1st -10 the Respondent in the form of a dissolution certificate or an application for dissolution at the hearing to counteract this evidence of the registrar group ranches and that upon this obligation being bestowed on the Petitioners by the community in electing them into office that the Petitioners were aggrieved by the actions of the 1st – 10th Respondents and filed this suit.

154. The 1st -10th Respondents denied the locus of the Petitioner in this suit by stating in evidence that they had filed various Judicial Review applications to overturn the decision of the Registrar of Group Ranches to suspend officials and conduct elections, to replace the said suspended officials.

155. Further 1st -10th Respondents denied the locus of the Petitioner in this suit by stating the interim orders granted by in Judicial review 36 of 2016 still in force.



156. In challenging the Petitioner Locus, the 4th Interested party submitted that owners of the 10 properties charged had not given written authority to the Petitioner to lodge this case for them and that they did not swear affidavits or complained to the Court.
157. There was evidence placed before this Court in volumes including the testimony of the officials' in the Ministry of Land specifically the Registrar Group Ranches confirming the membership of the Petitioners as members of majimoto then they do have locus as members to institute this suit. Further no evidence was placed before this court by the 1st to 10th Respondent showing that the Petitioners were party to the JR Applications' files to demonstrate that those interim orders affected them. In addition to the above no evidence was placed before court by the 1st-10th Respondent to indicate that these interim orders issued in 2016 were either extended or confirmed by way of a final decree. Thus, interim orders are not issued in perpetuity they lapse either by effluxion of time or transitioning those orders into final orders.
158. The upshot of this is that the Petitioners have established their locus through the evidence placed before court and it is therefore the courts finding that the criteria under article 22 and article 258 of *the Constitution* of Kenya have been met.
159. Having found that the Petitioners have locus to institute this suit the manner in which the suit was instituted by of a Constitution Petition meets the threshold set out in the Mutunga rules in form and in principle as the right to property as a Constitutional right is enshrined in article 40 of *the Constitution* and a threat to that right in the calls for a Constitutional Intervention. Further article 162(2)(b) of *the Constitution* mandated this Court to determine disputes relating to the environment and the use and occupation of, and title to land, all areas in dispute in this matter.

b) Whether the Majimoto Group Ranch was dissolved and the subsequent elections proper.

160. On this issue the court noted that the 1st -10th respondents stated to court that the Group ranch was dissolved upon the subdivision of the parcels and thus there could be no elections at Maji moto as it was an entity whose functions had ceased. I will discuss the Elections subsequently.
161. Ironically on this issue the 1st -10th respondents submitted that even though they were officials of the group ranch the group ranch was non-existent legal entity as it had been dissolved and that dissolution was once the adjudication exercise begun. They equally did not present any evidence of this dissolution.
162. The Petitioners on the other hand submitted that the dissolution had not occurred as there was no dissolution certificate issued from the Government and brought the Group Ranch Register from the Ministry of Lands as a witness who explained in length that dissolution can only occur where all interest on the land had been rightfully determined and the adjudication exercise completed with every member in the register having acquired their parcel as per the allocation/area list.
163. Therefore, it was the Group Ranch Register evidence that Majimoto group ranch was never dissolved and his office has never issued the 1st-10th respondent with a dissolution corticate. This seem to be position of the 11th-13th respondent as Government as well.
164. Section 13(2) stipulates that in order for dissolution to ensue there must be an application to the registrar of group ranches. Further such application to be considered the Land Group Representative Act (herein referred to as the LGRA) in mandatory terms under section 13(2) of Land Group states that such application for dissolution of shall;be in writing and shall be signed by a majority of the Group Representativebe supported by a copy of the minutes of the meeting at which the resolution to make the amendment or effect the dissolution was passedbe delivered to the registrar within 14 days after the day on which the resolution was passed



165. Section 13(3) of the LGRA states that if consent is given the incorporated group representatives shall stand dissolved thereupon or at a future date specified by the registrar. Consequently, Section 13(4) of the LGRA states as a conclusion of this process the Registrar group ranches SHALL give to the land registrar such directions as the case may be necessary to reflect the dissolution.
166. The 1st -10th Respondent did not lead any evidence of compliance with Section 13 of the LGRA CAP 287. Therefore, and in addition to reviewing the evidence and testimonies of the witness this Court this Court concludes that the evidence of the Group Ranch registrar as the designated officer administering all the group ranches in Kenya as conclusive and that indeed dissolution of Majimoto Moto Group Ranch did not occur.
167. This then leads us to the second sub-issue as to whether elections could have ensued to change the officials, having affirmed the non-dissolution of the group ranch then I conclude members of the ranch were free to conduct elections as long as those elections were carried out within the law of the group ranch.
168. The Petitioner submitted that the Registrar of Group Representatives at Section 15 of the Land (Group Representatives) Act can call for an election in his supervisory and administrative role wherein the members of the Group Ranch by a Resolution of the majority elect new group representatives as provided under Section 9 of the Land (Group Representatives) Act, Cap 287.
169. This election must be conducted and sixty percent (60%) of the members in the primary/members must exercise their right to elect new officials as per the Land Group Representative Act.
170. This submission by the Petitioners were corroborated by the evidence of the registrar of group ranch PW 2 at pages 72, this was not challenged by the 1st -10th Respondent as they seem to agree on this issue.
171. The Petitioners whose assertions were supported from the 11th -13th Respondents as well the 15th Respondent then submitted that pursuant to the supervisory powers bestowed upon the Registrar of Group Ranches, the said officer, upon receiving and verifying complaint at the majimoto suspended the 1st -10th Respondents in a letter dated 2nd of June 2016 as evidenced at page 35 of the proceedings.
172. Upon investigation by the technical team headed by the Registrar Group ranches in which the 1st Respondents participated in illegalities and anomalies in the adjudication process were discovered that indeed had the effect among other displacing members of their land as well as illegal allocation of public utilities to individuals. It is against this backdrop that saw the Registrar of Group Ranch heed to the members of the group ranch request to conduct elections. This election was held on the 13th December 2016.
173. The result of the elections saw a certificate issued to the Petitioners dated the 14th December 2016 as the duly elected officials of the Group Ranch.
174. Disapproving of this election saw the 1st-10th Respondents file law-suits under Judicial Review Nakuru JR 35 of 2016 referenced as Narok ELC 13 of 2017 and Nakuru JR 36 OF 2016/Narok ELC 14 of 2017 to stop elections that had already been conducted as well as challenging the outcome of those elections respectively. JR 35 OF 2016/Narok ELC 13 of 2017 challenging the suspension and stopping the elections has since been dismissed.
175. Further the 1st-10th Respondent relied upon interim orders issued in Nakuru JR 36 OF 2016/Narok ELC 14 of 2017 to state to Court that that order reinstated the 1st-10th Respondents as the officials of the group ranch in the interim. No evidence was brought to Court to show that the either Petitioners were party to this suit or that these orders we extended during the hearing or had been issued as final



orders. The situation is that this matter case came up in 2019 for dismissal as the 1st Respondent had not prosecuted this matter from 2017 and that the orders in that case has never been extended.

176. Having reviewed the evidence and submissions of the parties on this issue, the 1st-10th Respondent had knowledge of the elections that were conducted in majimoto that saw their ouster. The 6th and 9th Respondents also confirmed that they participated in the elections and were aware of the outcome. The 1st, 3rd, and 2nd Respondents did not show that the elections were conducted outside the law and that the threshold of voting by sixty percent (60%) of the members in the primary/members as per the Land Group Representative Act was not met.
177. This Court therefore answers that the elections as conducted are legal and that the certificate issued after the elections of 13th December 2016 is proper thus the officials duly elected and ought to carry out their mandate within the law.

c) Whether public utilities have been grabbed in Majimoto Group Ranch.

178. Here the Court has extensively reviewed the investigative report by the ministry of land officials which is an undisputed document listing various public properties as having been acquired by private interests. The Report was also confirmed by the certified copies of the green cards produced in Court as well the original green cards that were presented by the Land Registrar.
179. The 11th, 12th, 13th, 14th Respondents being the Government agencies as well as the 15th Respondent as the National Land Commission confirmed these illegalities occasioned by privatizing public utility land. The investigations revealed that a section of ranch officials have grabbed parcels of land meant for public utilities. The team came up with a list of public utilities that have been grabbed and recommended appropriate action to be taken. The Government agencies main concern is to have titles to the grabbed public utilities cancelled and the land surrendered to the government.
180. Further the 11th-15th Respondents submitted that under Section 17 of the Land Group Representatives Act (now repealed) that every group is supposed to maintain its own register which is to be presented to the land registrar by the officials upon the registration of the land. That the elected group representatives fraudulently registered the public utilities that had been surrendered for public use in their names. These titles were identified and recalled vide a letter dated 26th May, 2016 of notice for recall/surrender of title deeds for the public utilities that was sent to officials of the group ranch by the District Land Registrar, Narok.
181. In addition to above the 11th-15th Respondent relied on Section 26 of the Land Registration Act, 2012 provides that the certificate of title issued by the Registrar upon registration, or to a purchaser of land upon a transfer or transmission by the proprietor shall be taken by all courts as prima facie evidence that the person named as proprietor of the land is the absolute and indefeasible owner, it also provides that such title can be impeached on the grounds of having been acquired fraudulently, through misrepresentation or illegally or un-procedurally.
182. Reliance was placed on the case of Republic vs Minister for Transport & Communication & 5 Others Ex Parte Waa Ship Garbage Collector & 15 Others Mombasa HCMCA No. 617 of 2003 [2006] 1 KLR (E&L) 563 Maraga, J (as he then was) expressed himself as follows:
183. “Courts should nullify titles by land grabbers who stare at your face and wave to you a title of the land grabbed and loudly plead the principle of the indefeasibility of title deed...It is quite evident that should a constitutional challenge succeed either under the trust land provisions of the Constitution or under section 1 and 1A of the Constitution or under the doctrine of public trust a title would have to be nullified because the Constitution is supreme law and a party cannot plead the principle of



indefeasibility which is a statutory concept. A democratic society holds public land and resources in trust for the needs of that society. Alienation of land that defeats the public interest goes against the letter and spirit of section 1 and 1A of *the Constitution*.”

184. The 11th-15th Respondent equally cited the cases of case of *Mureithi & 2 Others vs Attorney General and 5 Others* Nbi HCMA No 158 Of 2005 (2006)1KLR 443 and as case of *Chemey Investment Limited vs. Attorney General & 2 others* [2018] eKLR it is common ground that the Courts will not shield land grabbers who stare at your face and wave to you a title of the grabbed land and loudly plead the principles of indefeasibility of title" are the courts going to stay away and refuse to rise to the greater call of unravelling the indefeasibility of title by holding that such a title perhaps issued in order to grab public utility plot is illegal.
185. The Petitioners case was therefore supported by the 11th-15th Respondent on the issue of grabbed public utilities, the Petitioner placed before Court evidence of searches, certified copies of green cards and allocation list showing the status of this Public utilities and relied on the case of *Kenya Anti-Corruption Commission v Online Enterprises Limited & 4 others* [2019] eKLR(supra), it was stated that:
- “The acquisition of title cannot be construed only in the end result; the process of acquisition is material and important especially when there are doubts to the regarding the process.”The court further held that:“The court is also empowered under Section 80 (1) of the *Land Registration Act*, 2012 to order the rectification of the register by directing that any registration be cancelled or amended if it is satisfied that any registration was obtained, made or omitted by fraud or mistake. I find that the defendants irregularly, fraudulently and unprocedurally registered the suit land in their names and the same should not be allowed to stand”
186. The Petitioner then cited *Kenya Anti-Corruption Commission v Frann Investments Limited & 6 others* [2020] eKLR held as follows on developments over illegally acquired land:
- “I see a trend where some persons believe that if they can quickly develop a disputed plot then that will curry favour with the court. I am sorry that it does not, and indeed, any prudent investor in land, ought not to undertake developments on land that has a hanging dispute. The fact that the 1st defendant carried out developments on the land does not help its cause and neither does it sanitise the title. Indeed, in the case of Chemey Investment (supra), the appellant, upon being receiving title to the land, proceeded to partly develop it with shops, but this did not deter the Court from holding that its title is invalid. In the case of Gitwany Investment Limited vs Tajmal Limited & 2 Others (2006)eKLR, the court did not hesitate to hold that title held by the 1st defendant, who had proceeded to fully develop the land, was unlawful, and the court directed the 1st defendant to remove the structures therein. So it really doesn't help a party to rapidly develop a property that is in dispute in the hope that the fact of that development will sway the court. A title that is illegal is not sanitised by proceeding to make developments in it.”
187. With the evidence on record the Court is not persuaded by the 1st-11th Defendants assertion that they hold these titles to public utility in trust yet the same is registered in their names as sole properties.
188. Therefore, the Court's satisfied on the basis of the material on record that indeed public utility land was illegally and unprocedurally acquired with the help of the officials of the group ranch. Therefore, the second issue is answered in the affirmative.



d)Is there illegal and unprocedural land allocation in Majimoto Group Ranch.

189. The Petitioners submitted and tabulated that there are some members of the Group Ranch whose names appear on the Primary/members and consequently allocated parcels as per the Members area/ allocation list, however their titles were illegally registered in favor of other persons. This is an outright contravention of the Constitutive document of the Majimoto Group Ranch.
190. The 1st-10th Respondent with exception of the 6^h and 9th Respondent then defended this action by stipulating that they “cleaned up” the register of members as officials’ and this occasioned removal of some members from the primary register.
191. Section 13 of the Land (Group Representatives) Act cap 287 and the Maji Moto Constitution requires that the application to amend the register shall be in writing and shall be signed by a majority of the group representatives and shall be supported by a copy of the minutes of the meeting at which the resolution to make the amendment was passed, and the application shall be delivered to the registrar within fourteen days after the day on which the resolution was passed.
192. The said Section further provides that if consent is given, the name, constitution or rules shall stand amended accordingly, or as the case may be, either thereupon or at a future date specified by the registrar.
193. The Court notes that DW-1 confirmed at page 122 of the proceedings in cross examination that he had no authority to amend the register. He also confirmed that he knows that a two-thirds majority is required for the amendment of the register and the same was not done.
194. Any member not in the primary register cannot be allocated land on first allocation and can only acquire such land upon purchase. Companies cannot acquire land privately in majimoto on first allocation as they are not members in the primary list thus such allocations are illegal.
195. I therefore find that this amendment to the primary register is illegal, unprocedural and void. That members in the primary register must be allocated their legal share to the ranch as per the allocation list/area list.
196. The Petitioners submitted that as PW1, he owns one share through first allocation and another share in the irrigation plot and another extra share that he duly purchased, and went ahead to produce an Agreement for Sale. Exhibit 31.
197. The 1st Respondent DW 1 confirmed to owning eleven shares (11 parcels) yet he is only entitled to one share and a share in the irrigation plot. The 1st,2nd,3rd,4th ,5th ,7th and 10th Respondents failed to produce any evidence (either an Agreement for Sale or transfer documents) to demonstrate how he acquired the extra shares.
198. Instead, the 1st Respondent stated that he bought those lands with cows as consideration as bizarre as it sounds shouldn’t such sales be accompanied by the land owner executing transfer documents to this effect? No sale agreements with cows as consideration was presented in court nor were the transfers that occasioned these extra acquisitions of land parcels presented to Court as evidence.
199. Further it was the 9th Respondents evidence as DW-5 who is the chief Majimoto that it is not true that members exchanged their parcels of land for cows as evidenced at page 167 of the proceedings.
200. Therefore, I find it hard to believe that these purchases were actually done and therefore this extra parcels for the 1st,2nd,3rd,4th ,5th ,7th and 10th Respondents lacking proper transfer documents stand revoked.



201. The Petitioner then submitted on the 1st to 10th Respondents illegally and unprocedurally allocated land to fictitious persons and non-entities who are not legitimate members of the Majimoto Group Ranch and their names do not appear in the Primary/members.
202. Examples were given which were confirmed by DW-1 in Cross Examination that Land Parcel 2086 is registered in the name of Parshamai Ole Matunke. He further confirmed that the name does not exist in the primary/members but is a combination of his name and the former Secretary the 2nd Respondents name.
203. Then the 2nd Respondent confirmed DW-2 that indeed fictitious names were used to allocated extra land to the officials as referenced at 124 and 143 respectively.
204. On this issue the 1st-10th Respondent had no defense and admitted to this unscrupulous allocation meant to benefit the former officials to acquire extra parcels of land at the expense of their membership.
205. This Court finds that this allocation to fictitious persons as crafty, ill-intended and illegal and those parcels stand revoked forthwith.

e) were community funds misappropriated during the 1st – 10th Respondent’s term in office.

206. The Petitioners submitted that in respect of parcels communally owned by the members, some have been leased out to various investors where rent was paid through the 1st Petitioner’s bank account held at the Kenya Commercial Bank, Narok Branch Account name Majimoto Group Ranch Account, Account Number 1101921870, where the 1st, 2nd and 3rd Respondents were the signatories by virtue of their role as the Group Ranch Representatives this was undisputed during the hearing, no evidence was presented before this Court by 1st -10th Respondents to challenge this.
207. The Petitioners further stated that the revenue from the leases emanating from the following properties and amounts are captured in the lease documents being;
 - a. the Lease dated 13th July 2007 on Cis-Mara/Majimoto/8, the Group ranch has leased to Victtoria Limited a portion measuring 110 acres where the annual rent paid by the Lessee to the 1st to 10 Respondents since 2011 (when the said Respondents were elected into office until 2016 is the sum of Kshs. 9,675,000/=
 - b. a Lease between Majimoto Group Ranch and Olarro Conservancy Ltd, the Lessee therein lease a portion measuring approximately 1.01 hectares where the annual rent paid by the Lessee to the 1st to 10th Respondent during their tenure in office is the sum of Kshs. 1,548,000/=
 - c. the Certificate of Lease in favour of Vittoria Limited, the Lessee has leased another portion measuring approximately 0.483 of a Hectare where the annual rent paid by the Lessee to the 1st to 10th respondents is a total sum of Kshs. 351,288/=; and
 - d. the Certificate of Lease in favour of Letan Limited, the Lessee has leased from Majimoto Group Ranch a portion of land measuring 0.496 of a Hectare where the annual rent paid to the 1st to 10th Respondent during their tenure in office is the sum of Kshs. 1,440,000/=.
208. The Petitioner then averred in Court that the funds received from the said community investment were meant to benefit all the members and cater for expenses such school fees for needy children. However, since commencement of their term, the 1st to 10th Respondents have refused and/failed to account to the members how the funds received were spent and a sum of Kshs. 13,014,288/= is yet to be accounted to the members.



209. On this issue the 6th and 9th Respondents as former officials' supporting the Petitioners case informed Court that indeed the position as presented by the Petitioners was correct.
210. In response to this the 1st, 2nd, 3rd, 4th, 5th, 7th and 10th Respondents took a common position that this bank account under Majimoto Group Ranch belonged to them and that those funds emanating from this lease were private funds as they had privatized this land in their favor on which these leases were issued and therefore a non-issue.
211. The Court then noted that all these leases were entered between the majimoto group ranch as a legal entity and the investors way before the 1st Respondent became chair. Equally the privatization of the land on which these leases were issued was done during the tenure of the 1st-10th Respondents and for their benefit lacking the requisite consent of the membership of majimoto.
212. Therefore, the leases were never amended to reflect the "new" owners as such any monies emanating from this leases ought to be banked as has been done before in the Majimoto Group Ranch Account held at KCB bank Narok Branch and belong to the community.

f) Has the communal investment been privatized illegally

213. The Petitioner submitted that the, the 1st to 10th Respondents "privatized" Olarro Camp which was meant to be held for educational purposes for the collective benefit of the members of the Majimoto Group Ranch.
214. PW-1 affirmed to this Court that the Olarro Camp, parcel 2171 is a community investment and that the proceeds of the same are to be used for the education of children of Majimoto. Therefore, the said property is indeed a community property. This was confirmed by DW-1 and DW-2 in cross examination wherein they stated that the parcel indeed belonged to the community.
215. In response the 1st and 2nd Respondents despite confirming during cross examination that the said parcel belonged to the community initially they stated it is registered in the name of eight (8) individuals, three of whom are in the committee. That the officials' allocated themselves this community investment without evidence that this was sanctioned by the members of the Group ranch.
216. Further the 6th and 9th Respondents former officials confirmed to Court that the two Parcel ollaro camp and ollaro conservancy belong to the community and that its privatization was never sanctioned by the members of majimoto therefore an illegality. This was the evidence of DW4 and DW 5.
217. Section 8 of cap 287 provides that the Group Representatives are under a duty to hold any property and to exercise their powers as such, on behalf and for the collective benefit of all members of the group and fully and effectively consult the members of the group on such exercise. The Maji Moto Group Ranch Constitution states that:

“...the Group Representatives shall hold the land and other assets of the group on behalf of for the collective benefit of all members of the group...”

218. Having reviewed the evidence on record and the pleadings I find that the title issued for Olarro in the name of eight (8) individuals including the former Chairman, Secretary, Treasurer the 1st -3rd Respondents was issued illegally and unprocedurally and thus stand revoked and a title to issue in the name Majimoto Group Ranch.



g) Final Orders and Disposition

219. This case has seen numerous members of the Community fill this Courts, the case has equally is in regard to pertinent land issues emanating from the Majimoto Group Ranch in Majimoto. Having found that the process of subdividing the group ranch and allocating members their rightful share as per the group ranch Constitution and the LGRA was tainted with illegality and unprocedurality the Court therefore grants the following orders

- a. an Order requiring the 1st to 10th Respondents to render a full and true account of all the funds received by themselves since they assumed office and a full account of all the assets of Majimoto Group Ranch being a sum of Kshs. 13,014,288/= /- as pleaded under Paragraph – hereinabove.
- b. Failure to render accounts as to prayer 1 above within 60 days of this judgment then judgment is entered against the 1st to 10th Respondents jointly and severally for the sum of Kshs.13,014,288/= together with interest from the date of filing suit until payment in full.
- c. An order be and is hereby issued to the 1st to 10th Respondents to hand over to the Petitioners such moneys as it appears to be due from them, and all proper books, papers and other property of the group in his custody or otherwise under his control within 30 days.
- d. An order be and is hereby issued compelling the District Land Adjudication and Settlement Officer, the 12th Respondent herein to regularize the allocation of parcels in Majimoto Group Ranch to the entitled owners in accordance with the original Members List.
- e. An order be and is hereby issued to the 15th Respondent for preparation of all title documents in respect of all the unregistered public utilities in Majimoto Group Ranch and the same be submitted to the 11th Respondent to register the public utilities in favour of the Majimoto Group Ranch.
- f. An order be and is hereby issued to the District Land Registrar Narok the 11TH Respondent to revoke all the titles in respect of public and communal properties which have been issued in the name of the private individuals including but not limited to CIS Mara/majimoto/ 2171, 2078,2076, 2077, 2086, 461, 2165, 654, 2749 and 730 immediately. That upon the lapse of 14 days if this revocation is not effected this tiles stand revoked and the land reverts back to Majimoto Group Ranch.
- g. An order be and is hereby issued to the 1st – 10th Respondents to surrender all title documents to the 11th Respondent in respect of all the parcels that were irregularly and illegally allocated to the 1st to 10th Respondents and/or their cronies except the title in Ngoswani within 30 days from the date of this judgment. Upon the expiry of the 30 days as these titles shall stand revoked and the 11th Respondent is hereby order to effect this revocation in the green cards.

For avoidance of doubt any parcel marked as extra shares or in addition to the one share belonging to the 1st-10th Respondents and not accompanied by proper transfer instruments? having declared them illegal earlier in the judgement will stand revoked.
- h. A permanent injunction be and s hereby issued against the 1st to 10th Respondents, their agents, assignees, representatives and/or any other acting on their behalf from representing themselves as the officials of Majimoto Group Ranch as the Elections of 13th December 2016 is upheld further the certificate issued by the Registrar Group Ranches dated the 14th December 2016 be and is hereby upheld.



- i. The Transaction on the 1st, 2nd and 3rd Interested party's parcels are proper, legal and the titles are upheld.
- j. The Transaction on the 5th Interested party's parcel is proper, legal and the titles is upheld.
- k. The Transaction on the 4th Interested party's parcels being:-
 - CIS-Mara/majimoto/86,
 - CIS-Mara/majimoto/895,
 - CIS-Mara/majimoto/1105,
 - CIS-Mara/majimoto/1345,
 - CIS-Mara/majimoto/1349 and
 - CIS-Mara/majimoto/2257 are proper, legal and the titles are upheld.
- l. However the Transaction on the 4th Interested party's parcels CIS-Mara/majimoto/1597, CIS-Mara/majimoto/1227, CIS- Mara/majimoto/798, and CIS-Mara/majimoto/88 are illegal as this members allocation is not based on the primary register or the allocation/area list, therefore an order is hereby issued to the 11th Respondents to revoke this unprocedural titles and tiles issued to the rightful allottee as per the primary register and the allocation/area list.
- m. Since this case had some resemblance of a public interest litigation each party shall bear their own costs.

220. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI THIS 8TH DAY OF JULY, 2022.

MOHAMMED N. KULLOW

JUDGE

In Presence of :-

Amina Hashi for Petitioners

Mr. Kilele for 1st Respondent

Nonappearance for 2nd Respondent

Mwalozi h/b for Tatma for 11th to 15th Respondents

Nonappearance for 115th Respondent

Nonappearance for Interested parties

Tom Maurice – Court Assistant

