



REPUBLIC OF KENYA



**Semera & 3 others v Ranch & 18 others (Environment & Land Case
247 of 2017) [2022] KEELC 14499 (KLR) (1 November 2022) (Judgment)**

Neutral citation: [2022] KEELC 14499 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 247 OF 2017
MN GICHERU, J
NOVEMBER 1, 2022
(FORMERLY NAIROBI HCCC NO. 2367 OF 1996)**

BETWEEN

**NJANGOTET OLE MPAIMPAI SEMERA 1ST APPLICANT
NKONEE OLE PAIMPAI 2ND APPLICANT
SAYIORE OLE PAIMPAI 3RD APPLICANT
SILANTOI ENE PAIMPAI 4TH APPLICANT**

AND

**OSILALEI GROUP RANCH 1ST RESPONDENT
MAKILANI OLE NKOBEI 2ND RESPONDENT
KELAI OLE KIKUA 3RD RESPONDENT
RANA OLE KIKUA 4TH RESPONDENT
SITTOYA OLE KAUMPAU 5TH RESPONDENT
SALIM OLE NKORROYE 6TH RESPONDENT
LESALE OLE MUTUKAA 7TH RESPONDENT
NAALOPO OLE KAMAU 8TH RESPONDENT
MUNTONYO OLE PANAI 9TH RESPONDENT
POSE OLE KARAYIA 10TH RESPONDENT
NKOLLONIK OLE KAKURO 11TH RESPONDENT
NCHEENGA WAN GANGA 12TH RESPONDENT
EMILLY KIJOOLU TUTUI 13TH RESPONDENT**



PAIN NAKAPESI NGURRUNA	14TH RESPONDENT
KELEA OLE NAVULISH	15TH RESPONDENT
NASIEKU TAIT KAMAU	16TH RESPONDENT
PARMUAT OLE PAIMPAI SIMERA	17TH RESPONDENT
SUYIAN ENE LERIONKA	18TH RESPONDENT
NKORI ENE LERIONKA	19TH RESPONDENT

JUDGMENT

1. The Plaintiffs seek the following reliefs against the Defendants.
 - a. A temporary injunction restraining the Defendants, the group representatives by themselves, their agents and/or servants from allocating, transferring or in any way disposing of the parcel of group land or any part or parts thereof and from evicting the Plaintiffs from or interfering with their use, occupation and enjoyment of portions of the aforesaid parcels of land which have been and still are occupied used possessed and inhabited by the first and second Plaintiffs respectively.
 - b. A declaration that the first and second Plaintiffs are respectively entitled to be allocated and registered as owners of the aforementioned portions of group land which have been and are still occupied, used possessed and or inhabited by them and an order that the Group Representatives do forthwith allocate the aforesaid portions of land to and register them in favour of the 1st and 2nd Plaintiffs respectively and that the Group Ranch and Group Representatives remain duly constituted unless and until it has done so.
 - c. A declaration that allocation of land to non members and particularly the 12th, 13th, 14th, 15th and 16th Defendants is illegal and null and void.
 - d. An order that the process of subdivision and allocation should be repeated and/or rectified to let every member equal share in the Group Land.
 - e. Costs of this suit.
 - f. Further or other relief.

This is as per the further amended plaint filed on October 17, 2017.
2. The Plaintiffs' case is as follows. They are the members of Osilalei Group Ranch which measures 38, 629.5 Hectares. Every members of the group ranch is entitled to equal undivided shares.
3. On or about February 19, 1992, the Group Ranch Representatives were given consent by the Registrar of Group Ranches to dissolve the Group Ranch. This paved way for subdivision of the ranch among its registered members. This did not happen as the officials allocated themselves large shares as follows;
 - a. Koloi Ole Kikua -----190 hectares
 - b. Sitoya Ole Kaumpau.....140 hectares.
 - c. Lesale Ole Mutaka.....190 hectares.



d. Muntoyo Ole Panai- 124 hectares

The first Plaintiff Njangotet Ole Paimpai Semera was allocated approximately 30 hectares which is extremely disproportional to the land allocated to the representatives of the group ranch.

4. The subdivision was also arbitrary and contrary to the provisions of the *Land (Group Representatives) Act* and the resolution of the Group members.
5. The allocation of land to non-members reduced the size of the land that the genuine members would have been allocated had the non-members not been included.

Further, the group representatives failed to take into account the existing settlements of members and their developments and relocated members from their original settlements.

As a result the first Plaintiff's settlement was taken over by Kelo Ole Kikua who was the vice chairman of the Group Ranch.

6. The Plaintiffs therefore pray for a declaration that they are entitled to be allocated land which they occupy and for the other orders in paragraph 20 of the further amended plaint.
7. In support of their case, the Plaintiffs filed the following evidence.
 - i. Witness statements by the first, second and third Plaintiffs.
 - ii. Copy of minutes of Osilalei Group Ranch AGM held on May 26, 1991 at Osilalei.
 - iii. Copy of consent for dissolution of the Group Ranch dated February 19, 1992.
 - iv. Copy of register of members of the group ranch.
 - v. Copy of list of beneficiaries.
 - vi. Copy of map of the ranch.
 - vii. Copy of title deed for LR 318 measuring 196.982 hectares issued to Kelo Ole Kikua Ngointala.
 - viii. Copy of group certificate of ownership issued to five individuals.

8. The Defendants in an amended defence and counterclaim amended on January 30, 2012 deny the Plaintiffs' claim against them and aver as follows.

Firstly, the group ranch was dissolved and titles have been issued to individual members according to their lawful entitlements.

Secondly, the 17th Defendant was a committee member of the first Defendant.

Thirdly, the 18th and 19th Defendants are widows of Lerionka Ole Seki (deceased) who was a member of the first Defendant.

Fourthly, the suit property ceased to exist in January 2007 and was subdivided into many portions and transferred to former members of the first Defendant.

Fifthly, the 12th to 16th Defendants inherited shares of deceased relatives who were lawful members of the first Defendant as follows.

- a. The 12th Defendant Nchenga Wa Nganga died on March 26, 1994, having inherited share No 817 of original group ranch member Muntel Munke who was also deceased.



- b. The 13th Defendant Emily Kijoole Tutui died in 1997. She was the widow of Lenkai Tutui who was an original member no 233 now registered in the name of her son Lenkei Ole Tutui.
- c. The 14th Defendant is the widow of Sai Bulu Ole Siutilo (deceased) who was an original member of first Defendant as number 267.
- d. The 15th Defendant is member no 168.
- e. The 16th Defendant is the beneficiary of Narimu Ene Kamau (deceased) who was member no. 469.

Sixthly, the land was not divided into equal shares. However, there was fairness and the size of each parcel depended on topography and productivity.

Seventhly, it is denied that any member owned any particular portion since the entire land belonged to the group ranch until the group ranch was dissolved.

The Plaintiffs are bound by the Constitution and they cannot be heard to say that they owned any particular portion before the dissolution of the group ranch.

Eighthly, it is the Plaintiffs who left the land allocated to them and moved to the land belonging to the 3rd, 17th, 18th and 19th Defendants.

Finally, the Defendants aver that the group ranch no longer exists as a body corporate and the suit has no merit and should be dismissed.

9. In the counterclaim dated January 30, 2012, the Defendants seek the following reliefs against the Plaintiffs;
 - a. A permanent injunction restraining the Plaintiffs either by themselves, their agents and or servants from encroaching into and trespassing onto the Defendants' lawfully acquired land.
 - b. Damages for trespass.
 - c. Special damages in respect of hay consumed by the Plaintiffs' livestock.
 - d. Costs of the suit.
 - e. Interest on (a) to (d) above.
10. In support of their defence and counterclaim, the Plaintiffs filed the following evidence.
 - i. Witness statements by Moses Rana Kelempu, Parmuat Ole Kauma, Suyian Ene Lerionka, Fred Nkaroyia Pertet, Pose Ole Karayia and Kekoi Ole Kikua Ngointela.
 - ii. Copy of title deed for the group ranch.
 - iii. Copy of letter dated February 19, 1992 authorizing the dissolution of the Group Ranch and allocation of land to the members.
 - iv. Copy of letters of consent dated March 10, 1992 by the Purko Land Control Board allowing the subdivision of the group ranch land.
 - v. List of beneficiaries of the group ranch.
 - vi. Copies of title deeds for the land belonging to the third, seventeenth and nineteenth Defendants.
 - vii. Copy of an undated report filed by Sane and Company Advocates.



- viii. Copy of consent dated April 16, 2013.
 - ix. Osilalei Group Ranch survey map.
 - x. Copy of minutes of group ranch AGM held on May 26, 1991 at Osilalei.
 - xi. Copy of consent to dissolve the group ranch dated February 19, 1992.
 - xii. Copy of the register of members of the group ranch.
 - xiii. Copy of the list of beneficiaries of the group ranch.
 - xiv. Other documents.
11. At the trial on November 10, 2021, only the Plaintiffs’ witnesses testified. The Defendants and counsel were absent.
12. The Plaintiffs’ counsel filed written submissions dated March 15, 2022, and identified the following issues for determination.
- i. Whether the first Defendant group ranch is in existence as a corporate body and whether it has been dissolved and whether the 2nd to 11th Defendants are still representatives of the first Defendant.
 - ii. Whether the 12th to 16th Defendants are entitled to any share of the land of the first Defendant.
 - iii. Whether the Group Representatives are in breach of the law by allocating land to the 12th to 16th Defendants.
 - iv. Whether the group ranch land was subdivided equally among all the members.
 - v. Whether the Group Representatives relocated members from their original settlements and allocated themselves bigger and better pieces of land.
 - vi. Whether the Plaintiffs are entitled to the prayers sought in the further amended plaint.
 - vii. Who should bear the costs.
13. I am in agreement with the Plaintiffs’ counsel that the issues as identified above will determine the dispute.
- I have carefully considered all the evidence on record including the witness statements by both sides, the pleadings even though the Defendants did not testify.
- I have also borne in mind the burdens of proof on the Plaintiffs and the Defendants to prove the claim and the counterclaim respectively on a balance of probabilities.
- Finally, I have considered the submissions by learned counsel for the Plaintiffs. I make the following findings on the seven issues raised above.
14. On the first issue, I find that the group ranch exists in law by dint of Section 22 (c) of the *Land (Group Representatives) Act* (now repealed) which provides as follows;
- “Notwithstanding the dissolution or purported dissolution of a group, the persons who immediately before ...shall be deemed to continue in office until after completion of the prosecution, proceedings or investigation”.



The fact that there proceedings are not over means that the group exists for the purposes of prosecuting this case.

Secondly, there is evidence to prove that the group ranch is still active.

15. On the second issue, I find that the Plaintiffs have not been able to prove that the 12th – 16th Defendants were not included as replacements of deceased members. No evidence was adduced to counter the strong and credible evidence filed by the Defendants that each one of them replaced a deceased member. The name of the deceased member and the parcel numbers were given.

I do not find it fair or reasonable to hold that if a member dies, then his or land should be taken up by other members. Such land should be inherited by the member's heirs because land is group ranch is not joint tenancy but tenancy in common.

16. On the third issue, I find that the same as in the second issue for the same reasons, namely the tenancy was not joint but common tenancy.

17. On the fourth issue, I find that the Plaintiffs have not proved that the land was equal in quality in the entire ranch. Without this proof, it is not right to say that each person should have got an equal share in size.

I am satisfied by the averment that the land was not equal or uniform in topography and productivity hence the variations in size. Even the register of members shows different sizes for different members. The burden was on the Plaintiffs to prove this was not the case and they did not do it.

18. On the fifth issue, I find that it has not been proved that the group representatives relocated members from their original settlements and allocated themselves bigger and better parcels. The burden was always on the Plaintiffs to prove this.

No evidence was adduced by the Plaintiffs to show the topography and productivity of the land that they occupied vis-à-vis the land occupied by the group representatives.

Similarly, no evidence has been adduced on the topography and productivity of the land allocated to the Plaintiffs vis – a vis the land occupied by the group representatives.

Without that kind of evidence being filed, the court is unable to find fault on the way the land was subdivided.

In any event, the land was owned by all the members equally and there is no evidence adduced by the Plaintiffs that they ever raised the issues at the Annual General Meeting or any other meeting of the group ranch.

In the subdivision, I find that members could not remain in their original settlements and some had to move. There is no allegation by the Plaintiffs that the method of allocation was faulty or missing.

The particulars of the relocation should have been pleaded as required by Order 10, Rule 2 of the *Civil Procedure Rules*. Again, they should have been proved. I find that they were neither pleaded nor proved.

19. On the sixth issue, I find that the Plaintiffs are not entitled to the orders sought because as found above, they did not prove the case in the key areas of topography and productivity of the entire ranch, that the 12th to 16th Defendants did not replace deceased members and that the tenancy was joint as opposed to common tenancy.

I will deal with the final issue of costs after I deal with the Defendants counterclaim.

20. I find the Defendants' counterclaim not proved for the following reasons.



Firstly, no evidence was filed on the period of trespass on the land of the third, seventh and nineteenth Defendants. Such evidence would have taken the form of the size of the land, whether it was fenced, whether it is only the Plaintiffs' livestock that grazed on it, the output of the farm supported by credible farm records etcetera.

All this is missing.

Secondly, and not as important, the Defendants did not testify in this case. Even if they had testified, I do not think the counterclaim would have been proved.

21. For the above reasons, I find no merit either in the plaintiffs' suit or in the defendants' counterclaim.

Consequently, I dismiss both of them with no order as to costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 1ST DAY OF NOVEMBER, 2022.

M.N. GICHERU

JUDGE

