



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 59 OF 2019

IMANKE OLE LEKINCHA LOLOJIE & 105 OTHERS.....PLAINTIFFS

VERSUS

MAILUA GROUP RANCH.....1ST DEFENDANT

DISTRICT LANDS ADJUDICATION OFFICE.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

RULING

What is before Court for determination is the Plaintiffs' Notice of Motion application dated the 27th June, 2019 where they seek orders of a temporary injunction against the Defendants in respect to land parcel numbers Kajiado/ Mailua/ 967 which was subdivided into Kajiado/Mailua/ 971 to 1529; Kajiado/ Mailua/ 968 which was subdivided into Kajiado/ Mailua/ 4688 to 5029; Kajiado/ Mailua/ 969 subdivided into Kajiado/ Mailua/ 4441 to 4687; including Kajiado/ Mailua/ 970 and Kajiado/ Mailua/ 1114 hereinafter referred to as the ' Group Lands' until further orders of the court. They further seek prohibitory injunction against the officials of the 1st Defendant from displacement, dispossession and deprivation of people from their rightful ownership as well as illegal sale of the Group Lands pending the outcome of this application. Further, that an order be issued compelling the Defendants to hold an AGM as required by law and to immediately produce audited accounts including financial reports until further orders of the court.

The Application is premised on the grounds on the face of it and the supporting affidavit of one of the Plaintiffs' NINA OLE NTARRABUNYO TIRIKE where he explains that the Group Ranch was established in 1978 for the sole purpose of holding group land known as LR No. Kajiado/ Mailua/ 92 measuring 64,000 hectares on behalf of its members. Further, the Group Ranch was supposed to be divided into portions of equal measure and allocated to each registered member. He avers that subdivision and allocations of group land had already begun taking place. Further the group land was subdivided into Kajiado/ Mailua/ 967; 968; 969; 970 and 1114 respectively. He contends that the aforementioned parcels have been further subdivided into 271 parcels namely Kajiado/ Mailua/ 967 into 585 parcels namely Kajiado/ Mailua/ 971 upto 1529. While Kajiado/ Mailua/ 968 has been subdivided into 271 parcels namely Kajiado/ Mailua/ 4688 upto 5029. Further, Kajiado/ Mailua/ 969 has been subdivided into 270 parcels namely Kajiado/ Mailua/ 4441 upto 4687; while Kajiado/ Mailua/ 970 and Kajiado/ Mailua/ 1114 are yet to be subdivided. He contends that the Chairman, Vice Chairman, Secretary and Treasurer as well as the Committee must convene an Annual General Meeting every year which has to be attended by sixty (60%) of the registered members. He insists the officials of the 1st Defendant have never convened such a meeting since 2015 but have been making arbitrary decisions such as subdivision of land without approval of the members. He reiterates that officials are also mandated to keep proper books of account and conduct periodic audited accounts including financial report to its members but this has not been done. He avers that there has been displacement, deprivation and disposal of the registered members of the 1st Defendant, cases of double allocation of land as well as misallocation of Title Deeds hence displacing members from their land. He insists the Defendants are relying on illegally constituted area lists all with bad intentions to displace, deprive and dispose members from the land originally allocated to them. Further, they have failed to allocate Certificates of Title Deeds to members; displaced and deprived members from their rightful land while at the same time causing direct transfer including movement of people without their consent. He further insists that the decisions of the Defendant are arbitrary, have caused chaos including violence as people are being displaced and their land being subdivided as well as misallocated to other members.

The 1st Defendant opposed the application and filed a replying affidavit sworn by its serving Chairman DANIEL KOIKAI KIRONUA where he deposes that the application as framed and the issues sought are so general and diverse. He contends that the Applicants have failed to disclose and name a single member of the Ranch who has been dispossessed, deprived and/or displaced from his land. He avers that the prayer seeking for the dissolution of the Group Ranch and for fresh elections to be conducted is substantive and intrinsically the same prayer in the main suit. He confirms that the Mailua Group Ranch has been for management purposes subdivided into four blocks or phases being Kajiado/ Mailua/967; 968; 969; and 970 respectively. He explains that Mailua Group Ranch was inaugurated in 1978 when they were not officials. Further, successive offices have managed the affairs of the Group Ranch and continued to carry out its mandates of subdividing land as well as issuance of title deeds to the members well before they were elected in office in 2015. He contends that most of Mailua Group Ranch has already been subdivided and titles issued to members. Further that Kajiado/ Mailua/ 967 was long subdivided to completion and titles therein issued to members, wherein some members have already sold off their parcels to third parties. He insists when they took office in 2015, no single member has complained to them that he never got land in Block Kajiado/Mailua/ 967, 968 and 969 respectively. Further,

that the process in respect to Block Kajiado/ Mailua/ 967 was undertaken between 1995 to 2003, while processes in Block Kajiado/ Mailua/ 968 and 969 were undertaken from 2010 and completed in 2013. He admits that as current officials, they are working on Block Kajiado/ Mailua/ 970 which the former officials had commenced processing before being voted out. Further, that upon taking up office, they noticed certain misallocations as well as double allocations which required streamlining to avoid conflict. He avers that Block Kajiado/ Mailua/ 970 was identified as an agricultural potential area and members resolved to subdivide it into five (5) acres each, with some members already allocated their portions but the process is still ongoing. He confirms that Nina Ntarrabunyo Tirike who has sworn the affidavit on behalf of the Applicants is a beneficiary of both block Kajiado/ Mailua/ 967 and Kajiado/ Mailua/ 970 respectively. He further explains that after they were elected into office, the former Secretary with a group of his supporters sued them in court vide Kajiado High Court Judicial Review No. 1 of 2015 to stop them from carrying out their mandate but the said case was decided in their favour with clear directions on handing over including future conduct of the Group affairs. Further, the outgoing members were directed to handover all office materials and accounts to them but they totally declined to do so. He further contends that the said parties appealed to the Court of Appeal and sought a stay of the High Court Orders, which Court of Appeal case is still pending. Further, despite seeking to cite the previous office holders for contempt as they are yet to undertake complete handover of all office materials, they insist the Court of Appeal is yet to deliver its decision. He reiterates that they have not called an Annual General Meeting as they await the former officials to officially handover to them the requisite documents and the Court of Appeal to render itself on the application before it.

The 50th, 67th 72nd, 77th, 78th, 80th and 82nd Plaintiffs filed their respective affidavits wherein they confirmed not having a claim against Mailua Group Ranch (the 1st Defendant herein). They denied granting their consent to be included as parties in this suit. They insisted their fingerprints were forged. They contended that the 1st Defendant had allocated each of them their land.

The Plaintiffs filed a further affidavit sworn by Nina Ole Ntarrabunyo Tirike where he reiterates their claim above and insists Kajiado/ Mailua/ 967 was subdivided into Kajiado/ Mailua/ 1114 and not necessarily for public utility. He claims the following members: Topoti Lenkishon Saitabao; Leitiol Munyororo; Kipas Koitee; Lengete Munyapara; and Kapaito Nairimo have not been allocated land. He confirms that the map for the Group Ranch was prepared in 2004 but officials have never implemented it. He avers that there is a boundary dispute with Kenya Forest Service which has never been resolved. He listed the names of the displaced members who include: Kesiaya Olaisankai Mokolo; Sitonik Santetua; Kipapi Tamayian and Lenkai Marasua. Further that some members including Sunte Ole Nkare; Kasairo Nchalda and Sentev Nchoke have been allocated land but there are no records in that respect. He claims the 1st Defendant ought to convene an Annual General Meeting to address such issues. He contends that they are not privy to the alleged forfeiture of group ranch documents by Maraswa.

The application was canvassed by way of written submissions which was filed by the Plaintiffs and 1st Defendant.

Analysis and Determination

Upon consideration of the Notice of Motion application dated the 27th June, 2019 including the respective parties' affidavits and submissions, the issues for determination are:

- Whether the Plaintiffs are entitled to orders of temporary injunction pending the outcome of the suit.
- Whether the Court should Order the 1st Defendant to convene an Annual General Meeting.

As to whether the Plaintiffs are entitled to orders of temporary injunction pending the outcome of the suit. The Plaintiffs in their submissions reiterated their claim above and relied on the cases of **Giella Vs Cassman Brown Co. Ltd (1973) EA 358; Mrao Ltd Vs First American Bank of Kenya Ltd & 2 others (2003) KLR 125; Suleiman V Amboseli Resort Ltd (2004) KLR 589** to buttress their arguments. The 1st Defendant in its submissions disputed the legitimacy of the Applicants and insisted the Plaintiffs had not established a prima facie case to warrant the orders sought. Further, that the Applicants have not demonstrated the irreparable damage they will suffer, while the balance of convenience demands that all parties give evidence to enable the court make a full determination on the matter.

In line with the principles established in the case of **Giella Vs Cassman Brown Co. Ltd (1973) EA 358**, I will proceed to analyse whether the Plaintiffs' have established a prima facie case to warrant the granting of the orders sought. The Plaintiffs' confirm the Group Ranch land was subdivided into Kajiado/ Mailua/ 967; 968; 969 and 970 which were in turn subdivided as enumerated above. The Plaintiffs' claim some of the members of the group ranch have been displaced but none of the said persons have sworn an affidavit to that effect. Further, they have provided the names of persons who have not been allocated land but none of them has sworn an affidavit to confirm these averments. I note the 50th, 67th 72nd, 78th, 80th and 82nd Plaintiffs filed their respective affidavits wherein they confirmed not having a claim against the 1st Defendant, denied granting their consent to be made a party in this suit; insisted their fingerprints were forged and admitted having been allocated land. I note the rest of the Plaintiffs did not controvert these averments. Further, I note that except for Kajiado/ Mailua/ 1114, the rest of the parcels of land had already been subdivided to the members who were in turn issued with title deeds. The said members have not been made a party to this suit. From the Plaintiffs averments, it is not clear who among the members have been denied a share in Kajiado/Mailua/ 1114. It is not disputed that the current officials of the 1st Defendant took over office in 2015. They contend that there has been a law suit which is still pending in the Court of Appeal hence they have not been able to finalize the allocation process. From the averments of some of the Plaintiffs who deny granting their consent to be made a party to this suit and since injunctive reliefs are equitable remedies, to my mind it seems doubtful on which of the Plaintiffs' really has a claim against the 1st Defendant. On perusal of the area list annexed to the supporting affidavit, it dates back to 1978 before the current officials took office. In line with the principles enshrined in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** and based on the facts before me, at this juncture, I find that the Plaintiffs have not established a prima facie case as against the Defendants to warrant the injunctive orders sought. Further, in relying on the decision of **Nguruman Ltd v Jan Bonde Nelson & 2 others, Civil Appeal No.21 of 2014(UR)** where the Court held that if a prima facie case is not established, then irreparable injury and balance of convenience need no consideration, I will hence not consider the remaining two conditions as the Plaintiffs failed to meet the first condition set to warrant the grant of an injunction.

As to whether the Court should order the 1st Defendant to convene an Annual General Meeting. As evidenced by the proceedings in Kajiado

High Court JR No. 1 of 2015 which challenged the election of the current officials and further since the matter is still pending in the Court of Appeal, I opine that it is pertinent for the said case to be determined first. Further, since it has emerged that the previous office bearers did not properly hand over all the documents to the current officials, I find that these are matters that can only be dealt with once viva voce evidence has been adduced to confirm which documents were not handed over before an AGM can be scheduled.

In the circumstances, I find the Notice of Motion dated the 27th June 2019 unmerited and will proceed to dismiss it.

Costs will be in the cause.

Dated Signed and Delivered via email this 6th Day of May 2020.

CHRISTINE OCHIENG

JUDGE