



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

PETITION NO. 2 OF 2018

IN THE MATTER OF ALLOCATION OF INDIVIDUAL LAND RIGHTS ON OLOIREN GROUP RANCH

JANE NAISIANOI MUNGE.....PETITIONER

-VERSUS-

OLOIREN GROUP RANCH(*suing thro its rep*).

NOIKO OLOIPUTAMIARON

JULIUS OLE MOKITA

LENKAI OLE METEKAI

SALATON OLELEKUMO NAIRITA

YIAKON OLE MERIAYU

TUMPES OLE KARIOKI

LENKANKA OLE NARASHA

NTOIKA OLE ROITEI

SAMUEL LEKISHON OLE SONURUA

KIRISWA TUNAI KUIYIAYIA.....RESPONDENTS

RULING

The Petitioner herein had by a Constitutional Petition dated 17th January, 2018 sought for the following orders:-

(a) A declaration that the provisions of the constitution of the respondent to the effect that the community land within the group ranch can only be given to the male members of the community or widows where the male member/father is deceased is discriminatory, unconstitutional and null and void.

(b) A declaration that the conduct of the representatives of the respondent of preparing a list of beneficiaries of the community land within Oloiren Group Ranch which excluded the petitioner (except the widows where the husband is deceased) contravenes article 27 of the constitution and section 30 of the Community Land Act and it is discriminatory to the Petitioner, unconstitutional, invalid, null and void.

(c) A declaration that the register, sheets or list of members prepared by the respondent for purposes of allocation of land within the Oloiren Group Ranch which excluded women is an invalid document to the extent that it contravenes article 2 and 27 of the Constitution and the letter and spirit of the Constitution and the Community Land Act.

(d) An order of certiorari to quash the register prepared by the respondent discriminating against the petitioner on the basis of her status as an unmarried woman.

(e) An order of mandamus directed at the representatives of the respondent to include the petitioner in the register of members of Oloirien Group Ranch and to allocate her a portion of land equivalent to all the other members of the Group Ranch.

And an application seeking orders of injunction to restrain the respondents from sub dividing, distributing land parcel No. Trans Mara/Olorein/1 and further conservatory orders to conserve and preserve the status quo in the aforesaid parcel of land.

The Respondents had opposed the aforesaid by way of a replying affidavit and together with the same they had raised a Preliminary Objection on point of law on the grounds that the court lacks the requisite jurisdiction to hear and determine the petition and the application pursuant to the provisions of sections 5,13,26 and 29 of the Land Adjudication Act and further that the Petition offends the provisions of the Community Land Act.

The Respondents in their submissions contended that the Land Adjudication Act had set out a detailed internal Dispute Resolution Mechanism in which the Petitioners rights and interests would have been ventilated. However, it is their position that the Adjudication process was undertaken and the petitioner did not raise any objection and consequently the suit land registered in the names of the respondents and thus the said process can only be challenged through the process under the Land Adjudication Act.

The Respondents further contend that the Petitioner's claim does not stand as a claim under the Community Land Act as the said Act Prohibits strangers who are deemed as non-members of a particular community within the land. it is the respondents' position thus that the Constitutional Jurisdiction of the court cannot be invoked where a separate statute provides for Alternative Dispute Resolution Mechanism.

The applicants in Response to the Preliminary Objection stated that the said Preliminary Objection seeks the court interpretation of the provisions of the Land Adjudication Act. It is their contention that the Register in respect of the said Adjudication section was closed and declared final and therefore the provisions of the Land Adjudication Act do not apply.

The Applicants further stated that under Article 22 of the Constitution of Kenya 2010 has vested in them the right to institute proceedings in relation to the breach of their fundamental rights and that their claim challenges the list of members which has been prepared as the same is discriminatory to the extent that it denies the petitioner her rights to own land within the Group Ranch on the ground of her gender, status as a single and unmarried woman and therefore the provisions of a statute cannot oust the jurisdiction of the court.

With regard to whether the petition offends the provision of section 27 of the Community Land Act, she submitted that the Respondent is a public body which was formed to administer and manage community land and they had no unfettered discretion available to it as it is required to act reasonably and in good faith and through lawful grounds and hence a public body has no unfettered discretion.

I have considered the Preliminary Objection raised by the Respondents and the petition the same seek to challenge and the issue for determination at this stage is whether this court lacks the requisite jurisdiction to hear and determine the petition herein and whether the petition offends the provisions of Section 27 of the Community Land Act.

The Petitioner stated that the suit land known as Trans Mara/Olorein/1 was Community Land that was held by the Respondents in trust for the other members of the Community and for their benefit and when the land was declared as an Adjudication Section the Objective of the same was to declare individual private rights and the issuance of title deeds.

The conduct of the affairs of the group was through the group constitution which among the provisions of the said constitution was a clause that stated land would only be allocated to male members of the community and where the male head of the family is deceased to the widow. It is the Petitioner's case that the above provisions is discriminatory as it makes women who are unmarried and single not to be granted land despite the said women being members of the local community and therefore the petitioner filed the instant petition to challenge the provisions of the said discriminatory constitution of the respondents and the said practice as a whole.

The respondent in their preliminary objection stated that the petition offends the provision of Section 27 of the Land Adjudication Act which provides for the manner in which the dispute arising out of an adjudication process can be challenged. They stated that they have no constitution which provides for the alleged discrimination.

I have considered the provisions of Section 27 of the Land Adjudication Act and I confirm that the same provides for an appeal process to the Land Adjudication Officer all the way to the Minister in respect of the Adjudication process. The said section relates to an individual who was a member of the group and is dissatisfied with the process of the Adjudication.

In the instant Petition, the petitioner has not even participated in the Adjudication process solely on grounds of her gender and being unmarried woman. This in my view is a serious constitutional issue that must be conclusively determined by this court and the provisions of Land Adjudication cannot supercede where an individual raise such serious constitutional issues as the constitution being the supreme law of land hence giving this court the jurisdiction to hear and determine constitution issues and therefore the provisions of the Land Adjudication Act cannot oust the jurisdiction of the court.

The upshot of the above is that this court has jurisdiction to hear and determine instant Petition and I therefore dismiss the Preliminary objection dated 14th May, 2018 with costs.

DATED, SIGNED and DELIVERED IN OPEN COURT AT NAROK on this 5TH day of MAY, 2020.

Mohammed Kullow

Judge

5/5/2020

In the presence of:

CA:Chuma

N/A for the parties and advocates