



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

MISC APPLICATION NO. 51 OF 2018

**IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI
AND PROHIBITION**

AND

IN THE MATTER OF THE COMMUNITY LAND ACT, 2016 LAWS OF KENYA

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF ELECTIONS OF COMMITTEE FOR OLKIRIMATIAN GROUP RANCH

BETWEEN

JAMES MELITA.....1ST APPLICANT

KIRRINKOL OLE KITESHO.....2ND APPLICANT

JOHN MPESI.....3RD APPLICANT

DANIEL PARTARI.....4TH APPLICANT

KINYANJUI KANUNGA.....5TH APPLICANT

KIPASI OLE LELMINCHOR.....6TH APPLICANT

OLKIRIMARIAN GROUP RANCH.....7TH APPLICANT

VS

EZEKIEL K. KIANA, THE COUNTY ADJUDICATION

AND SETTLEMENT OFFICER, KAJIADO.....1ST RESPONDENT

THE COMMUNITY LAND REGISTRAR.....2ND RESPONDENT

MINISTRY OF LANDS.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

What is before Court for determination is the Applicant's Chamber Summons dated the 10th September, 2018 brought pursuant to section 8(2), (3), (4) of the Law Reform Act, Order 53 Rule 1 of the Civil Procedure Rules and all the other enabling provisions of the law.

The Applicant seeks leave to apply for orders of certiorari and prohibition to quash the decision of the County Land Adjudication and Settlement Officer made on the 30th July, 2018 notifying as well as calling for the Annual General Meeting of the 7th Applicant and the result of the subsequent elections held on 21st August, 2018. Further, that the 1st and 2nd Respondents be restrained from acting on the results of the elections held on 21st August, 2018 and leave operate as a stay of the said decision.

The application is premised on the grounds that the 1st Respondent acted ultra vires in light of the provisions of the Community Land Act as the Annual General Meeting was in express violation of the said Act as well as the Public Holidays Act since it was conducted on 21st August, 2018 which was a gazetted public holiday. Further, the preparation as well as the elections were conducted contrary to the provisions of the Community Land Act and in express violation of the Constitution of Olkirimatian Group Ranch. The 1st and 2nd Respondents decision is unlawful, illegal and made in bad faith as they acted irresponsibly, unprocedurally and their conduct was aimed at frustrating the Applicants as they exhibited bias. Further, if stay is not granted, there is a grave danger that the decision will be enforced and results of the elections endorsed as valid.

The application is supported by the Statutory Statement and Verifying Affidavit of JAMES MELITA the 1st Applicant herein where he deposes that some members of the Olkirimatian Group Ranch were denied a right to vote as their names omitted from the register while other members were presumed dead. He claims the elections were done on the same date the Chairman resigned contrary to the Constitution of the 7th Respondent which required elections to be carried within 120 days or 90 days in respect to the position of Chairperson. He contends that the voting register of members that was used during the elections was inaccurate.

The Application is opposed by the Respondents who filed a replying affidavit sworn by J.K. LESAN the Kajiado County Land Adjudication and Settlement Officer where he confirms that on 21st August, 2018 the Olkirimatian Group Ranch members held an AGM at Olkirimatian Shopping Centre. Further, that the meeting was attended by the Assistant Director of Land Adjudication and Settlement, Kajiado; Principal Land Adjudication and Settlement Officer; Assistant County Commissioner; OCS Magadi; Administrative Police Inspector, Magadi; Area Chief and Area Assistant Chief. He avers that there were 991 members of the Olkirimatian Group Ranch in attendance who unanimously agreed to hold elections and once a new Chairman was elected his entire team was expected to take all the positions and subcommittees. He explains that there were only two contestants for the position of chairman who were Joshua Salaash Sereu and Nairaba Ole Kitesho that signed the rules of engagement in the presence of the members where it was unanimously agreed that the queueing method was to be used during the exercise. Further, that Joshua Salaash Sereu obtained 581 votes while Nairaba Ole Kitesho got 409 votes and the new Chairman including his team took the committee positions. He insists elections were done in accordance with the Community Land Regulations and the Constitution of the 7th Applicant, all members present were satisfied with the process of the election and no one raised the issue of 21st August, 2018 being a public holiday. Further, that there is no restriction on the Constitution of the Group Ranch as to which days elections can or cannot be conducted. He disputes that some members were not allowed to vote and denies having acted with malice or bias towards the Applicants as they were merely playing a supervisory role. Further, that the allegations that the elections were held the same day the Chairman resigned was not a violation of the 7th Applicant's Constitution as the said Constitution provides for elections to be held within 90 days and not after 90 days as interpreted by the Applicants. He reiterates that the Applicants have not stated the provisions of the Community Land Act as well as the Group Ranch Constitution, which the Respondents violated. Further, that the Application violates section 4(3) of the Government Proceedings Act as Government Officers cannot be sued in their individual capacities.

The Applicants filed their submissions but the Respondents failed to do so.

Analysis and Determination

Upon consideration of the materials presented in respect of the Chamber Summons dated the 10th September, 2018, the only issue for determination is whether the Applicants should be granted leave to institute judicial review proceedings against the decision of the County Land Adjudication and Settlement Officer made on 30th July, 2018 which culminated in the elections being held on 21st August, 2018.

I note the Applicants are seeking orders of certiorari and prohibition to review the decision of the Land Adjudication Officer after the elections were held. The Applicants claim the elections were a sham and biased. Further, that they were not held in accordance to the Community Land Act. The Applicants have however not indicated the provisions of the Community Land Act that the Land Adjudication officer failed to adhere to. From the minutes annexed to the Respondents' replying affidavit, the register that was relied upon is not provided. I have had a chance to peruse the 7th Applicant's Constitution which is annexure 'JM4' especially on provisions relating to elections. Based on my analysis of the materials before me, I am of the view that the Applicants averments raise a prima facie case and will proceed to grant them leave to lodge a substantive motion seeking for orders of certiorari and prohibition within 21 days from the date hereof. Since the Applicants lodged this application after the decision of the Land Adjudication Officer as well as the 7th applicant's elections, I will decline to grant a stay of the said decision at this juncture.

Costs will be in the cause.

Date signed and delivered in open court at Kajiado this 2nd day of July, 2019

CHRISTINE OCHIENG

JUDGE