



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC NO. 45 OF 2018**

**NTARIO OLE KETAO SHONKO & 6 OTHERS.....PLAINTIFFS**

**VERSUS**

**OLE KODONYO TEPELA & 7 OTHERS.....DEFENDANTS**

**RULING**

By an Application dated 19<sup>th</sup> June, 2018 and brought under order 40 Rules 1, 2 & 3 of the Civil Procedure Rules the Applicant sought for orders restraining the Respondents from effecting any sub-division and/or processing of titles in respect of Land parcel **CIS MARA/NAILOKLOK/7** belonging to Emurutoto Group Ranch No. 7. The Application is based on the grounds that there existed a consent agreement between the members of the group that each member of the group ranch shall get equal shares of the suit land but the planning, surveying and the intended issuance of the title deed is being done in breach of the aforesaid consents and further the group being members of the group ranch had legitimate expectation that the sub-division of the land will be done in accordance with the consent agreement and unless the court intervenes and stays the entire process the Applicants will be prejudiced.

The Application was supported further by the Affidavit of Lapanin Shonko who stated that he is the vice chairperson of the group which comprises of 17 members and averred that the group's affairs are conducted through consensus and by consent of the members to ensure fairness.

The Applicants in their affidavit deponed that on several occasions in 2013 several meetings were held by members rejecting the manner and the process of the demarcation and sub-division of the land was undertaken and later 13 of the 17 members of the group resolved that a fresh sub-division be done and this was because as late as 20<sup>th</sup> March, 2018 some members felt that there was a rush to acquire titles that the process was not fair.

The Applicants further contend that there are various discrepancies and errors contained in the documents submitted to the survey office among them being the names of members do not correspond with those of their identity cards, the acreage on the mutation are different and a resolution that members were satisfied which was not the case and there was no equal sharing of the land among the members and that if the titles are issued whilst such errors exist then the land that is available for sub-division will be diminished.

With the Supporting Affidavit the Applicants annexed a register of the members, minutes of meetings of the Group Ranch correspondence with the National Land Commission, application for consent of the Land Control Board.

The Application was opposed by the 1<sup>st</sup> to 5<sup>th</sup> Defendant/Respondent by way of a replying affidavit sworn by Tepela Kodonyo with the authority of the other respondents and he averred that the Applicant is not a member nor the vice chairperson of **EMURUTOTO GROUP RANCH** and thus lacks legal standi to litigate in the proceedings.

The Respondents further states that by a general meeting held on the 6<sup>th</sup> August, 2002 the group members decided to dissolve the Group Ranch and facilitate the registration and issuance of title deeds to the members and they subsequently obtained the consent of the Land Adjudication Officer and that contrary to the Applicants assertion the group conducts its affairs through resolutions at meetings and not by consent.

Having considered the application and submissions filed by counsel I will allow the application dated 19<sup>th</sup> June, 2018 in terms of prayer 2 of the Notice of Motion as am satisfied that the Plaintiff's/Applicants have satisfied the conditions for grant of orders of injunction as set out in the case of **GEILLA -VERSUS- CASSMAN BROWN**.

Cost of the Application be in the cause.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **10<sup>th</sup>** day of **July, 2019**

**Mohammed Kullow**

**Judge**

**10/7/19**

In the presence of:-

Mr Kambo for the plaintiff

Mr Meingati holding brief for Solonka for the 1<sup>st</sup> to 5<sup>th</sup> Defendants

N/A for the 6<sup>th</sup> to 8<sup>th</sup> Defendants

**Mohammed Kullow**

**Judge**

**10/7/19**