



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT
AT KILGORIS
ELC PETITION NUMBER 7 OF 2021
(FORMERLY NAROK ELC NO.3 OF 2017)

1. TOMITO TANKOI
2. MULUNTA SENTU
3. OLE KIRIONKI NTUU
4. JOHN MOMPOSHI TALALA
5. SAMSON OLOKEYAI TIEPOON
6. KURUU OLE SOIT
7. KONTI TASUR
8. OLORINKA KIMAYIO
9. MANYATTA KAPASARR
10. OLEAMPANI LEKAKENY.....PETITIONERS/RESPONDENTS

-VERSUS-

- THE CHIEF LAND REGISTRAR.....1ST RESPONDENT
- THE DIRECTOR OF LAND ADJUDICATION.....2ND RESPONDENT
- THE DISTRICT LAND REGISTRAR, TRANS-MARA.....3RD RESPONDENT
- THE ATTORNEY GENERAL.....4TH RESPONDENT

-AND-

- MOSES LEMSAHON KORINKO.....PROPOSED 1ST INTERESTED PARTY/APPLICANT
- OLESOPIA MASIBAL.....PROPOSED 2ND INTERESTED PARTY/APPLICANT
- SAMWEL MEITOI NAIDUYIA.....PROPOSED 3RD INTERESTED PARTY/APPLICANT

RULING

The Application before this Honourable court is the Notice of Motion dated 14th June 2021 and filed in court on the 17th June 2021 by the Proposed 1st, 2nd, 3rd Interested Parties/Applicants (hereinafter referred to as “the present application.”)

The present application has been brought through Order 1 Rules 10(2) , Order 51 Rules 1,2,3 & 4 of the Civil Procedure Rules, Section 1A,B,3A & 63 (e) of the Civil Procedure Act, Cap 21, Section 7,13 (7) , 19 & 26 of the Environment & Land Court Act,2011 & Articles 20 (1) , 22 (2) (a) & (d) ,27 (1), 47,48,50 (1),159 (2) (d) & 162 (2) of the Constitution 2010.

However, the present Application is a simple application seeking for joinder of the Proposed 1st, 2nd, & 3rd Interested Parties/Applicants.

The present Application has been supported by the Affidavit of the Proposed 1st Interested Party/Applicant sworn on the 14th June 2021 on his own behalf and also on behalf of the Proposed 2nd and 3rd Interested Parties/Applicants pursuant to the Consent/Authority to Swear on behalf of the Proposed Co-Interested Parties/Applicants executed on the 14th June 2021.

The grounds seeking for the Order of joinder as Proposed Interested Parties were as follows;

1. The Proposed 1st , 2nd and 3rd Interested Parties herein are former members of the defunct Shartuka Group Ranch.
2. The defunct Shartuka Group Ranch was the registered owner of the property known as Trans-Mara/Shartuka/1 .
3. The property known as Trans-Mara/Shartuka/1 was subsequently sub-divided amongst its registered members and individual titles issued thereof.
4. As a result of the sub-division to the original property known as Trans-Mara/Shartuka/1, the Proposed 1st , 2nd and 3rd Interested Parties/Applicants were registered as the legal owners of parcels number LR.NO.TRANS-MARA/SHARTUKA/774, L.R.NO.TRANS-MARA/SHARTUKA/405 & TRANS-MARA/SHARTUKA/209 respectively.
5. Pursuant to an Order issued by Honourable Mr. Justice Mohamed Kullow on the 19th of May 2020, the Honourable Judge made various Orders inter-alia;-
 - a) All matters touching on the Shartuka Group Ranch currently pending before any court be and are hereby stayed pending the hearing and determination of the instant petition.
 - b) An Order of injunction against the Respondents from alienating, selling, issuing of title deeds within the Shartuka Group Ranch pending the hearing and determination of the petition be and is hereby issued.
 - c) The Petitioners to advertise the Petition within 45 days of this ruling in two daily national newspapers with wide circulation and further that the said advertisement be placed within the offices of the Assistant County Commissioner and chief under whose area of jurisdiction Shartuka Group Ranch falls.
6. The Proposed 1st ,2nd and 3rd Intended Interested Parties are litigants in the following proceedings namely; -
 - a) NAROK ELC NO.348 OF 2017 (FORMERLY KISII ELC NO.43 OF 2012) MOSES LEMASHON KORINKO (1ST PROPOSED INTERESTED PARTY)-VS-DANIEL LEKILABU OLKEDIENYE
 - b) NAROK ELC NO.509 OF 2017(FORMERLY KISII ELC NO.289 OF 2013) SAMWEL NAIDUYA MEITOI (3RD PROPOSED INTERESTED PARTY) -VS- OLE NKARIE SIMON.
 - c) NAROK ELC NO.493 OF 2017 (FORMERLY KISII ELC NO.171 OF 2013) OLESOPIA MASIBAI (2ND PROPOSED INTERESTED PARTY) & 4 OTHERS -VS- DANIEL ESEPERWA KAMPA & 3 OTHERS.
7. As a result of the Orders issued on the 19th May 2020 by Honourable Mr.Justice Mohammed Kullow, the proposed 1st , 2nd and 3rd Interested Parties aver that their right to a fair and expeditious hearing before a Court of Law has been prejudiced.
8. Similarly, the Orders issued on the 19th of May 2020 by Honourable Mr.Justice Mohammed Kullow would directly affect their ownership as beneficiaries of the sub-division emanating from the property known as L.R.TRANS-MARA/SHARTUKA/1.
9. The Proposed 1st ,2nd and 3rdInterested Parties therefore would like to participate in this present Petition as persons affected by the outcome of this Petition.

ANALYSIS OF THE FACTS & LAW.

The Honourable Court having clearly outlined the present Application, it also notes that the Petitioners and the Respondents were served on the 25th of June 2021 and an Affidavit of Service duly filed on the 26th of July 2021.

No response was filed by the Petitioners to this present application.

Consequently, the present Application is technicality unopposed before the court.

Nevertheless, it is imperative that the Honourable Court before it exercises its discretion does confirm whether or not the Proposed Interested Parties have indeed satisfied the requirements of joinder as an Interested Parties to the Suit.

It is on this aspect that this Honourable Court shall make the appropriate Orders.

ISSUE OF JOINDER AS AN INTERESTED PARTY.

As correctly submitted by Counsel for the Proposed Interested Parties, the principles on joinder of interested parties to a suit were outlined by the Supreme Court in the case **Francis Kariuki Muruatetu & Another -Versus Republic & 5 Others (Petition 15 & consolidated with 16 of 2013) 2016 eKLR.**

In the above case, the Court made the following observations; -

“One must move the court by way of a formal application. Enjoinment is not as of right, but is at the discretion of the Court; hence, sufficient grounds must be laid before the Court, on the basis of the following elements;

- a) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.***
- b) The prejudice to be suffered by the intended interested party in the case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.***
- c) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.***

On the basis of the above laid down principles, this Honourable Court shall proceed to analyses the Proposed 1st, 2nd and 3rd Interested Parties Application.

a) The personal interest or stake that the party has in the matter must be set out in the application. The interest must be clearly identifiable and must be proximate enough, to stand apart from anything that is merely peripheral.

On this Aspect, it is clear from the Affidavit of the Applicants that the 1st, 2nd and 3rd proposed Interested Parties are the registered owners on the properties known as LR.NO.TRANS-MARA/SHARTUKA/774, L.R.NO.TRANS-MARA/SHARTUKA/405 & TRANS-MARA/SHARTUKA/209 respectively.

The 1st, 2nd and 3rd proposed Interested Parties ownership creates a personal interest on any issue and/or proceedings that may be initiated by another person and whose determination in one way or another would affect the rights and proprietary interests of their property.

In other words, the 1st, 2nd and 3rd Proposed Interested Parties have a clear identifiable interest in the properties known as LR.NO.TRANS-MARA/SHARTUKA/774, L.R.NO.TRANS-MARA/SHARTUKA/405 & TRANS-MARA/SHARTUKA/209 respectively which has a close proximity with the rights and proprietary interests acquired by the 1st, 2nd and 3rd Proposed Interested Parties in this Petition.

Consequently therefore, this Honourable Court makes a finding that the 1st, 2nd and 3rd Proposed Interested Parties have properly discharged this burden.

b) The prejudice to be suffered by the intended interested party in the case of non-joinder must also be demonstrated to the satisfaction of the court. It must also be clearly outlined and not something remote.

On this aspect of prejudice, the Honourable Court has perused the substantive Petition and the prayers sought therein in an effort to establish any prejudice that may be suffered by the 1st, 2nd and 3rd Proposed Interested Parties if not enjoined in these proceedings.

According to Paragraph 35 on Page 9 under the Relief Sought, the said Paragraph reads as follows;-

“ A permanent injunction do issue directed against the 1st, 2nd, 3rd, 4th & 5th Respondents their agents, servants, employers or any person acting under the directions and/with their cooperation RESTRAINING them from issuing any illegal title deeds based on the purported new register for Shartuka Group Ranch , alienating , wasting, disposing off and/or selling any of the following parcels of land known as

No.512-514,516,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,743-744,746,748,753-759,762-771,774-787,789,791,792,794,818-821,823,824,826,835,852-854,857,858,859,17,18,26,29,36,45,63,85,92,103,111,112,117,126,127,130,147,149,155,180,182,206,213,221,223,240,251,254,258,297,319,332,320,370,369,356,362,350,388-400,386,385,372-382,401-406,411-416, 418-511 respectively and have the status quo maintained thereafter.”

Paragraph 6 on Page 10 under the Relief Sought in the Petition, the said Paragraph reads as follows;-

“ An Order of this Honourable Court invoking the provisions of Section 143 of the Registered Land Act, Cap 300 cancelling and/or revoking all the title deeds nos.

No.512-514,516,518-524,545-569,570,571,573-593,595-611,620-639,641-674,676-693,695,700-714,717,719-739,743-744,746,748,753-759,762-771,774-787,789,791,792,794,818-821,823,824,826,835,852-854,857,858,859,17,18,26,29,36,45,63,85,92,103,111,112,117,126,127,130,147,149,155,180,182,206,213,221,223,240,251,254,258,297,319 ,332,320,370,369,356,362,350,388-400,386,385,372-382,401-406,411-416, 418-511 which are all illegal having been issued on fraudulent null and void register of the ranch.”

A quick glance of the Title Deeds provided in the above prayer confirms that the 1st Proposed Interested Party parcel of land known as L.R.NO.TRANS-MARA/SHARTUKA/774 and the 2nd Proposed Interested Party's parcel number L.R.NO.TRANS-MARA/SHARTUKA/405 are among those titles which are being challenged in the main Petition.

The 3rd Intended Interested Party's title L.R No.TRANS-MARA/SHARTUKA/209 is not provided for in the list of the challenged titles in the main Petition herein.

It is therefore clear to this Honourable Court that the rights and/or proprietary interests of the 1st Proposed Interested Party and the Proposed 2nd Interested Party will be prejudiced if the hearing of the main Petition will proceed without being given an opportunity to heard and make out their case in court appertaining how their acquired their registration and/proprietary interest thereof.

Similarly, the Prayers sought in the main Petition as outlined hereinabove have dire consequences on the existence of the 1st and 2nd Proposed Intended Parties and their lack of participation would deny them the right to a fair hearing hence prejudicing their right to be heard on merit.

In conclusion therefore, this Honourable Court holds and/or makes a finding that the 1st and 2nd Proposed Interested Parties have properly discharged the burden on this principle.

On the remaining 3rd Proposed Interested Party, this Honourable Court is alive to the fact that the Orders issued by Honourable Mr.Justice Mohammed N.Kullow on the 19th of May 2020 have stayed the proceedings namely NAROK ELC NO.509 OF 2017(FORMERLY KISII ELC NO.289 OF 2013) SAMWEL NAIDUYA MEITOI (3RD PROPOSED INTERESTED PARTY) -VS- OLE NKARIE SIMON.

Nevertheless, it is important to point out that the Title Deed of the parcel of land known as TRANS-MARA/SHARTUKA/209 has not been challenged in the main Petition currently before this court and therefore the Proposed 3rd Interested Party stands no prejudice for not being enjoined in this proceeding.

The fact that the suit known as NAROK ELC NO.509 OF 2017 (FORMERLY KISII ELC NO.289 OF 2013) SAMUEL NAIDUYA MEITOI (PROPOSED 3RD INTERESTED PARTY) -VS= OLE NKARIE SIMON has been stayed is purely to avoid conflicting decisions being issued by courts of concurrent jurisdiction over the same subject area.

However, once this Stay of Proceedings Orders issued on the 19th May 2020 are lifted, the proceedings involving the Proposed 3rd Interested Party will continue on their merit and there will be no prejudice suffered by the Proposed 3rd Interested Party once the same is heard and concluded on merit.

To this end, this Honourable Court holds that the Proposed 3rd Interested Party has not discharged this second principle as required by law.

c) Lastly, a party must, in its application, set out the case and/or submissions it intends to make before the court, and demonstrate the relevance of those submissions. It should demonstrate that these submissions are not merely a replication of what the other parties will be making before the Court.

On this last aspect, the Proposed 1st and 2nd Interested Parties have clearly outlined their case and submissions which have been captured in their grounds of the present application as well as the supporting affidavit sworn on the 14th June 2021.

In the opinion of the Court, the Proposed 1st and 2nd Interested Parties have clearly outlined their personal interests in this proceeding as well as the prejudice they stand to suffer if the prayers in the main Petition are granted without their participation and/or being given an opportunity to be heard thereof.

The Proposed 1st and 2nd Interested Parties submissions can not be a replica of any other party because each title deed issued to a person is singular in nature and an owner cannot reply of the submissions of another owner to advance their personal and/or proprietary rights.

Each party affected by the proceedings must be accordance a chance to state its own case.

This Honourable Court therefore holds that the Proposed 1st and 2nd Interested Parties have again fully discharged the last principle of law in this present Application.

In conclusion therefore, the Honourable Court makes the following orders;-

1. The Proposed 1st and 2nd Interested Parties are hereby enjoined in this proceeding.
2. The Proposed 3rd Interested Party Application for enjoinder is dismissed.
3. The 1st and 2nd Interested Parties to file and serve their documents and/or pleadings within Twenty-One (21) Days from the date of this ruling.
4. Costs be in the course.

DATED AND DELIVERED IN KILGORIS ELC COURT ON THIS 7TH DAY OF OCTOBER, 2021.

HON.EMMANUEL.M.WASHE

JUDGE

In the Presence of:-

1. Court Assistant – Matiko
2. Kipngetich for the Proposed Interest parties - Present
3. N/A for the Plaintiff
4. N/A for the Respondent