



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KAJIADO

ELC CASE NO. 31 OF 2020

POKA RANCH GROUP COMMUNITY

BASED ORGANIZATION1ST PLAINTIFF/1ST RESPONDENT

POKA GROUP RANCH.....2ND PLAINTIFF/2ND RESPONDENT

-VERSUS-

COUNTY GOVERNMENT OF KAJIADO.....1st DEFENDANT/3rd RESPONDENT

HON. DAVID SANKORI.....2nd DEFENDANT/4th RESPONDENT

GIKENA INVESTMENT LIMITED.....3rd DEFENDANT/5th RESPONDENT

ESTHER NDARU MUKURIA

(sued in her personal Capacity and on behalf of the Estate of the late

WALTER BERNARD MUKUNDI MUKURIA (deceased)...4th DEFENDANT/APPLICANT

SAMUEL MWANGI.....5th DEFENDANT/6th RESPONDENT

BOUYANCY HOLDINGS LIMITED.....6th DEFENDANT /7TH RESPONDENT

LAND REGISTRAR (KAJIADO)7th DEFENDANT/8th RESPONDENT

THE HON. ATTORNEY GENERAL.....8th DEFENDANT/9th RESPONDENT

RULING

This ruling is on the Preliminary Objection dated 30th June, 2020 and filed by the second Defendant on the same date.

It states as follows;

“The Plaintiffs are unincorporated bodies that do not exist as legal entities and as such lack capacity to sue or be sued in their own names. The suit is thus incompetent, frivolous and mala fides for the aforesated reason”

Counsel for the second Defendant filed written submissions incorporating five (5) authorities whose ratio decidendi is that “an incorporated entity has no legal personality with capacity to sue or be sued in its own name,” as was held in **Football Kenya Federation –vs- Kenya Premier League Limited and 4 others (2015) eKLR.**

In the meantime on 6th July, 2020, Jeremiah Lemako and Harrison Tago filed an application dated 5/7/2020 seeking leave to join the suit as plaintiffs on the grounds that their inclusion in the suit will assist the court in arriving at a just conclusion.

I have considered the Preliminary Objection vis -a- vis the application to join and I find that it would be a draconian move to strike out the suit when it can be salvaged.

Article 50 (i) of the constitution of Kenya provides;

Every person has the right to have any dispute that can be resolved by application of law decided in a fair and public hearing before a Court or, if appropriate, another independent and impartial tribunal or body”

There exists in this case a dispute as to whether the suit land belonged to the Plaintiffs and whether it was acquired by some of the Defendants lawfully or not.

Unless and until both sides are given a fair hearing in the resolution of the said dispute, the right guaranteed under **Article 50(1)** of the constitution will have been denied to one of the parties.

For the above reasons, I disallow the Preliminary Objection and allow the application dated 5th July, 2020 thereby allowing the two applicants therein to join as plaintiffs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 15TH DAY OF NOVEMBER, 2021.

M.N. GICHERU

JUDGE