



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 application dated 7/5/2020. The application which is under **Sections 1A, 1B, 3 3A and 63(c) and (e)** of the **Civil Procedure Act, Order 40 Rules 1 and 2** and **Order 51 Rule 1 Civil Procedure Rules** seeks the following orders;

- (a) The first Defendant, its agent, servants and representatives be restrained from alienating, subdividing, transferring, interfering or in any way dealing with L.R. KAJIADO/KAPUTIEI SOUTH/46 pending the hearing of this suit.
- (b) The first Defendant be restrained from developing the said land.
- (c) The third and fourth defendants be restrained from alienating, subdividing or transferring L.R. KAJIADO/KAPUTIEI SOUTH/888 pending the hearing and determination of this suit.
- (d) The second defendant and anybody claiming through him be restrained from alienating, subdividing, to any third party L.R. NO. KAJIADO/KAPUTIEI-SOUTH/889, L.R. NO. KAJIADO KAPUTIEI-SOUTH/6237, KAJIADO KAPUTIEI-SOUTH/8023 and KAJIADO KAPUTIEI-SOUTH/8024 pending the hearing and determination of this suit.
- (e) The fifth Defendant and those claiming through him be restrained from subdividing or transferring to any third party KAJIADO KAPUTIEI-SOUTH/8021 and KAJIADO KAPUTIEI-SOUTH/6234 pending the hearing and determination of this suit.

(f) The 6th Defendant be restrained from alienating, subdividing or transferring to any third party KAJIADO KAPUTIEI-SOUTH/6235 and KAJIADO KAPUTIEI-SOUTH/8022 pending the hearing and determination of this suit.

The application is supported by an affidavit sworn by Jeremiah Lemako who is the executive chairman of the first Defendant.

In summary, the deponent says that in 1964, Poka Group Ranch was formed. It comprised of 30 members who were all from the Masai Ethnic Group. Most of the founding members have passed away but they have been succeeded by their descendants and the current membership is 261 members.

The ranch measured approximately 9,000 acres of land. The members shared out most of the land but 2148 acres was set aside to be used as community holding ground for purposes of trade of livestock. This land is KAJIADO KAPUTIEI-SOUTH/ 23.

In 1987, the first Defendant and the Ministry of Agriculture leased the land to TARDA i.e Tana & Athi River Development Authority for thirty years.

The lease to Tana & Athi River Development Authority (TARDA) expired in 2017. In the meantime KAJIADO KAPUTIEI-SOUTH/23 was subdivided as follows;

8th November, 1993:

(a) Parcel L.R. NO. KAJIADO/KAPUTIEI-SOUTH /46 and KAJIADO KAPUTIEI-SOUTH/47.

23rd AUGUST, 1995

(b) Parcel L.R. NO. KAJIADO KAPUTIEI-SOUTH/47 subdivided into parcels KAJIADO KAPUTIEI –SOUTH/887, KAJIADO KAPUTIEI –SOUTH/888 and KAJIADO KAPUTIEI –SOUTH/889 being unlawfully transferred to the second Defendant.

Parcel KAJIADO KAPUTIEI –SOUTH/888 was on the same date transferred to the second Defendant and one Walter Bernard Makundi Mukuria and later on 13/8/2015 to the third and fourth Defendants.

(c) Parcel No. KAJIADO KAPUTIEI –SOUTH/887, subdivided into four parcels namely

(i) KAJIADO KAPUTIEI –SOUTH/6234 transferred to the 5th Defendant.

(ii) KAJIADO KAPUTIEI –SOUTH/6235 transferred to the 6th Defendant

(iii) KAJIADO KAPUTIEI –SOUTH/6236 subdivided into KAJIADO KAPUTIEI –SOUTH/8221 and transferred to the 5th Defendant, KAJIADO KAPUTIEI –SOUTH/8022 transferred to the 6th Defendant, KAJIADO KAPUTIEI –SOUTH/8023 transferred to the second Defendant together with KAJIADO KAPUTIEI –SOUTH/8024.

(d) KAJIADO KAPUTIEI –SOUTH/6237 surrendered for public utility. L.R. NO. KAJIADO KAPUTIEI –SOUTH/46 remained in the name of Olekejuado County Council until it was taken over by the first Defendant.

Later on it was compulsorily acquired by the National Land Commission for construction of the Standard Gauge Railway (SGR) and attracted compensation of Ksh. Forty Million (Ksh. 40,000,000/-) which was paid to the 1st, 2nd, 3rd and 4th Defendants.

None of the Plaintiffs' members received any compensation.

It is for the above reasons that the Plaintiff's pray for the orders enumerated before. Annexed to the affidavit are the following documents;

- (i) Resolutions by the Plaintiff's to sue
- (ii) An illegible document
- (iii) List of Group Ranch Members
- (iv) Certificate of Registration of Poka Group Ranch Community Based Organization.
- (v) Members list
- (vi) Copies of register for the suit parcel and Certificate of Official Search.
- (vii) Minutes of meetings held by the Plaintiffs
- (viii) Other documents

The application is opposed by the first Defendant whose County Surveyor, Joshua Lemaikai has sworn a replying affidavit dated 2/10/ 2020. In the affidavit, the deponent says that the suit parcels do not belong to the plaintiffs who were dissolved in the year 1986 and that L.R. NO. KAJIADO KAPUTIEI –SOUTH/46, is lawfully under the first Defendant.

The fourth Defendant also opposed the application dated 7/5/2020 and filed an affidavit dated 18/8/2020 in which she deposes that the plaintiffs have failed to prove that she is the registered proprietor of L.R. No. KAJIADO KAPUTIEI –SOUTH/888.

The 5th and 6th Defendants filed grounds of opposition dated 23/9/2021 urging that the Plaintiffs are not legal persons and have no capacity to sue, that there is no proof that there was any illegality in the acquisition of parcels KAJIADO KAPUTIEI –SOUTH/6234, KAJIADO KAPUTIEI –SOUTH/6235, KAJIADO KAPUTIEI –SOUTH/8021 and KAJIADO KAPUTIEI –SOUTH/8022, that irreparable loss has not been proved and that the balance of convenience tilts in favour of the two Defendants who have been in possession since 2016.

Finally, the second Defendant filed a replying affidavit dated 23/9/2021 in which he challenges the capacity of the Plaintiffs to sue. He adds that they have not established a prima facie case with a probability of success and that all the land in his name was lawfully allocated to him.

In addition to the above the second Defendant denies that the Plaintiffs were entitled to any compensation by the National Land Commission as they had no land that was compulsorily acquired.

I have carefully considered the application in its entirety including the affidavits, the annexures and the entire record.

Although counsel had on 16th September, 2021 promised to file written submissions, I have not seen any at the time of writing this ruling.

This file has become voluminous due to filing of many applications even before the pending ones have been resolved. I find that the application dated 7/5/2020 has merit for two (2) reasons;

Firstly, the plaintiffs have demonstrated prima facie, that the suit land may originally have been part of their ancestral land. This means that the application dated 7/5/2020 is not frivolous.

Secondly, if the suit land is alienated this suit will be rendered nugatory.

Finally, I find that the Defendants have nothing to lose because the land is being preserved for the benefit of the party who will eventually be found to be the lawful owner.

Accordingly, prayers 8, 9, 10, 11, 12 and 13 of the Notice of Motion dated 7th May, 2020 are allowed.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 11TH DAY OF NOVEMBER, 2021.

M.N. GICHERU

JUDGE