



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NO. 877 OF 2017

(Formerly Nairobi HCCC No. 317 of 2014 and ELC Case No. 1080 of 2015)

- 1. MELTON LENKARURRO**
- 2. PETER MERIN SESEI**
- 3. TUNGUNGUA OLE NTEETE**
- 4. SIRINKET RISIE**
- 5. SAMUEL KAYIOR LOLKINYIE**
- 6. LELUAI LOOWKARARA**
- 7. TEKETI OLE LEKISUMA**

(All suing as representatives of

ENTARARA GROUP RANCH.....PLAINTIFFS

VERSUS

- 1. TAIKO MORIAT**
- 2. SEELA OLE MORIATI**
- 3. PARSANCA LENKNYI**
- 4. ROL.....DEFENDANTS**

RULING

What is before Court for determination is the Plaintiffs' application dated the 31st January, 2018 seeking eviction orders against all tenants and non-members of Entarara Group Ranch from land parcel number LTK/ ENTARARA/145 hereinafter referred to 'as the suit land'. Further, the Court to direct the Officer Commanding Loitoktok Sub County Police together with Loitoktok Sub County Commissioner to ensure removal of all tenants and non-members of the Entarara Group Ranch to enable the members of the said Group Ranch take possession as well as use the suit land as tenants in common pursuant to the Court Order dated the 24th July, 2009 including the Decree dated the 24th September, 2008.

The Application is opposed by the Respondents through the affidavit of their advocate John Musyoka Annan where he deposes that the Application is incompetent and bad in law. He contends that the 1st, 2nd and 3rd Respondents are deceased and the Plaintiffs seek to enforce orders against deceased parties. Further, that the 4th Defendant is mentally incapacitated and hence the application as it is cannot stand.

The Plaintiffs through their Advocate Maina Wachira filed a supplementary affidavit where he deposes that the Defendants have all along actively participated in the instant suit before the alleged demise of the 1st, 2nd and 3rd Defendants as well as the incapacity of the 4th Defendant. He explains that judgement in this suit was delivered on 31st July, 2008 in favour of the Plaintiffs with a Decree issued on 24th September, 2008. He claims the Defendants and other persons have persisted in denying and blocking the Plaintiffs from returning to and occupying the suit land which they had been evicted from. He contends that the Plaintiffs application dated 2nd March, 2009 seeking to have

the OCS Loitoktok Police Station in liaison with the District Commissioner Loitoktok to supervise peaceful execution of the Decree was allowed and an Order issued on 24th July, 2009. Further, the said application was filed before disclosure of the death of the 1st, 2nd and 3rd Defendants. He insists the Defendants' Advocates withheld this information from the court and interfered with the proper administration of justice to the detriment of the Plaintiffs. He reiterates that the Orders sought in the instant application seeks to clarify the orders issued on 10th July, 2009 such that the illegal tenants and non-members of the aforementioned Group Ranch are removed and evicted from the suit land with all members including the Plaintiffs as well as the Defendants (now their estates) are allowed to take possession, occupy and use the said suit land as tenants in common. Further, the orders sought are not specifically against the Defendants and indeed if granted will benefit the estates of the said Defendants.

The Plaintiffs and Defendants filed their respective submissions to canvass the instant application.

Analysis and Determination

Upon consideration of the application dated 31st January, 2018 including the respective affidavits and submissions, the only issue for determination is whether eviction orders should issue against the tenants including non-members of Entarara Group Ranch from the suit land.

As to whether eviction orders should issue against the tenants including non-members of Entarara Group Ranch from the suit land and the Officer Commanding Loitoktok Sub County Police together with Loitoktok Sub County Commissioner ensure compliance. The Applicants in their submissions have reiterated their claim. They have relied on the decisions of **Hon. Basil Criticos V Attorney General & 2 others (20160 eKLR; Alfred Nderitu & Another V Wilson Waitthaka Gitau & Another (2014) eKLR; Scottish Case of Steward Robertson V Her Majesty's Advocate 2007 Hcac63; and Jane Chemweno V Paul Chemweno (2016) eKLR** to buttress their arguments. They further submitted that the application is made in good faith and the Applicants will suffer irreparable harm if the orders sought are not granted. To buttress this point, they relied on the decision of **Allen V Alfred McAlphine, Birkey V James & Agip (Kenya) Ltd.** Further, that the application is plausible, valid, raises triable issues and relied on the decision of **Uganda Commercial Bank V Mukoome Agencies (1982) HCB 22** to support this argument. The Respondents in their submissions reiterated their claim and insist the Defendants have not illegally subdivided suit land, farmed it without consulting Plaintiffs, threatened as well as denied the Plaintiffs the right to occupy it as the 1st to 3rd Defendants are deceased while the 4th Defendant is ailing. They contend that the Plaintiffs ought to amend their application to substitute the 1st, 2nd and 3rd Defendants. They relied on Order 24 Rule 4 of the Civil Procedure Rules to buttress their arguments.

I note this application merely seeks to implement the Judgement and Decree of this Court dated the 24th September, 2008. The Applicants claim the Officer Commanding Loitoktok Sub County Police and the Sub County Commissioner have declined to assist in the implementation of the said Decree. The Respondents contend that the 1st to 3rd Respondents are since deceased and need to be substituted.

On perusal of the Court Records, I note on 27th February, 2014, vide an application dated the 4th November, 2013 filed by messrs Musyoka Annan & Company Advocates who are Advocates for the Respondents herein, Justice Onyancha allowed the said Applicants: JULIUS MEMUSI TAIKO, MUSA TAIKO MAPESHI, ANTHONY MUTUNGEI SEELA, LEMENCHU PARSANKA and LAZARO NENGIRA PARSANKA to be made party to these proceedings substituting TAIKO MORIATI, SEELA MORIATI and PARSANKA LENKINYI who were the 1st – 3rd Defendants that were deceased. It is my considered view that the Defendants' advocates averments that the orders sought are against deceased persons hence bad in law cannot stand as they already obtained substituted them more than seven (7) years ago. Further, I find that the medical records annexed to the replying affidavit in respect to the 4th Defendant is not conclusive.

From the Court records, I note the Judgement was delivered on 31st July, 2008 and to date the same has not been implemented. Further, vide an Order granted by the Court on 24th July, 2009, which emanated from the Plaintiffs' application dated the 2nd March, 2009, the Court directed the OCPD Loitoktok to supervise the peaceful execution of the Decree issued on 23rd September, 2008 but Applicants contend that this has been in vain.

In the case of **Hon Basil Criticos V AG & 2 Others (2016) eKLR**, the Judge stated that: ' **The court can only give orders to protect and enforce the Applicant's rights and fundamental freedoms so long as they do not impinge on those of others and in particular without the opportunity to be heard being given. Any orders given by this court must be appropriately worded and carefully and delicately enforced so that they affect only the intended persons and do not adversely affect the law-abiding persons and the innocent on the lands.**'

In associating myself with the decision cited above, I find the instant application merited as the Respondents have not demonstrated what harm they stand to suffer if the existing Decree is implemented. I further direct that the Applicants do liaise with the Loitoktok Sub County Commissioner and Officer Commanding Loitoktok Sub County Police to confirm the number of tenants including non-members of Entarara Group Ranch, who are on the suit land, after which they should be issued with 90 days notices of eviction from the said land to enable the members of the said Group Ranch take possession.

The costs of this instant application is awarded to the Applicants.

Dated Signed and Delivered via email this 28th Day of May, 20220.

CHRISTINE OCHIENG

JUDGE