



**REPUBLIC OF KENYA**

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

**ELC PET NO. 3 OF 2017**

**TOMITO TANKOI.....1<sup>ST</sup> PETITIONER**  
**MULUNTA SENTU.....2<sup>ND</sup> PETITIONER**  
**OLE KIRIONKI NTUU.....3<sup>RD</sup> PETITIONER**  
**JOHN MOMPOSHI TALALA.....4<sup>TH</sup> PETITIONER**  
**SAMSON OLEKEYAI TIEPOON.....5<sup>TH</sup> PETITIONER**  
**KURUU OLE SOIT.....6<sup>TH</sup> PETITIONER**  
**KONTI TASUR.....7<sup>TH</sup> PETITIONER**  
**OLORINKA KIMAYIO.....8<sup>TH</sup> PETITIONER**  
**MANYATTA KAPASARR.....9<sup>TH</sup> PETITIONER**  
**OLE AMPANI LEKAKENY.....10<sup>TH</sup> PETITIONER**

**-VERSUS-**

**CHIEF LAND REGISTRAR.....1<sup>ST</sup> RESPONDENT**  
**THE DIRECTOR OF LAND ADJUDICATION.....2<sup>ND</sup> RESPONDENT**  
**THE DISTRICT LAND REGISTRAR,TRANS MARA.....3<sup>RD</sup> RESPONDENT**  
**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**  
**SHARTUKA GROUP RANCH.....5<sup>TH</sup> RESPONDENT**

**RULING**

The Petitioners had vide a petition dated 24<sup>th</sup> September, 2013 sought for various reliefs inter alia that a declaration do issue that the Shartuka Group Ranch was duly dissolved on 7<sup>th</sup> November, 1992 and an order of injunction do issue restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents against the issuance of title deeds to the members of the group ranch, on the 29<sup>th</sup> April, 2019 the petitioners also filed an application seeking an order for stay of proceedings of all suit relating to the subject group ranch pending the hearing and determination of the petition. The Applicants also sought for an order of injunction restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents from alienating, wasting disposing off and/or selling any parcels of land pending the hearing and determination of the petition.

The application was based on the grounds that the respondents were forcefully evicting people from there homesteads leading to wanton destruction of property and that their lives are at great risks. The applicants further contended that the actions aforesaid that is the evictions and destruction of properties has come as a result of various orders that were issued by the Kilgoris Senior Principal Magistrate Court handling matters relating to the suit land while the instant petition has been pending before court. The grounds upon which the application was based were deponed to by the 1<sup>st</sup> petitioner in an affidavit that was in support of the application in which he attached to the said

affidavit, various photographs depicting the alleged evictions taking place.

The application was opposed by the 5<sup>th</sup> respondent vide a replying affidavit. The 1<sup>st</sup> to the 4<sup>th</sup> respondent did not file any affidavit in opposition to the application despite the court having granted them various opportunities to do so. The 5<sup>th</sup> respondent in a replying affidavit filed on its behalf by Moses Lemashon Ole Korinko who was the chairman and representative of the 5<sup>th</sup> respondent contended that the instant application was mischievous, vexatious and/or an abuse of the court process. He stated that he was conversant with the demarcation exercise of the ranch and recalled that the petitioners were granted an order of injunction on 11<sup>th</sup> December, 2013 and that the said orders had lapsed. He further stated that the 5<sup>th</sup> respondent does not exist as the same was duly dissolved and hence its joinder to the petition is not proper. On the prayers of stay of all proceedings the 5<sup>th</sup> respondent contends that the same is misleading as they have not demonstrated the existence of other suits in Kilgoris SPMCC. He further stated that the proceedings to be stayed will affect various individuals who are not a party to the instant application and hence they could be condemned unheard.

By a direction issued by the court on 17/7/2019 the parties were directed to file their submissions in disposing the application. However, for apparent reason none of the parties had hitherto filed their submissions and because of the length of time the petition had been in court and having been given parties the chance to file their submissions, I will proceed to make the ruling on the application dated 29/4/2019 the absence of the submissions notwithstanding.

Having carefully read the substantive petition, the application dated 29/4/2019 and the 5<sup>th</sup> respondents replying affidavit in opposition to the aforesaid Notice of Motion the issue for determination at this stage is whether the applicants have satisfied the grounds for the grant of an order of injunction, whether the various suits pending before various courts will be prejudicial to the petitioner if the same are not stayed.

The Applicants have contended that they are apprehensive about the eviction and displacement taking place within the Shartuka area while the instant application and the substantive petition have been pending in court. The petitioners have in the affidavit in support of the application attached photographs showing the destruction of properties that they have attributed to the respondents. This allegation as much as they are serious and should not be happening in a constitutional democracy like ours, the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents have with utter lack of tact decided to not even respond to the said allegations. The 5<sup>th</sup> respondents have not even attempted to controvert the said allegations and the facts having not been disputed I am convinced that the petitioners apprehensive of further evictions are well founded and can't be just disregarded as such. Moreover I take Judicial Notice of the fact that I have personally ordered for the transfer of several suits touching on the group ranch to the Kilgoris Law Courts and one being Kilgoris SPMCC NO. 117 of 2018 and thus if the petition herein is pending and the suit pending in the lower courts are determined that the petition shall become redundant and in view of the above I make a finding that all matters touching on the Shartuka Group Ranch currently pending before any court are hereby stayed pending the hearing and determination of the instant petition.

On whether the petitioners' applicants have satisfied the conditions for grant of orders of injunction the grounds upon which one must satisfy to benefit from the discretionary orders of injunction is now well settled. Since the substantive petition before the court is one touching on fundamental rights I will exercise my discretion and issue 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.

Since I have noted that the orders I made herein and the petition shall touch on a number of people who are not parties to the instant application and petition I consequently order 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.

I do order that the costs of the application be in the cause.

**DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 19<sup>th</sup> day of MAY, 2020.**

**Mohamed Kullow**

**Judge**

**19/5/2020**

in the presence of:-

CA:Chuma

Mr.Obare holding brief for Mr. Naikuni for the petitioners

N/A for the respondents

**Mohamed Kullow**

**Judge**

**19/5/2020**