



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 503 OF 2017**

**(Formerly Nairobi ELC Case No. 503 of 2016)**

**DANIEL LOORMEORI LETOMIR (Suing as the administrator ad litem to the Estate of  
SAMUEL KERETO OLE NTETI SHAKAMAE – DECEASED) and NTETI OLE PARKEITO  
SHAKAMAE OISESO – DECEASED).....PLAINTIFF**

**VERSUS**

**LEITELA MUTENDE.....1<sup>ST</sup> DEFENDANT**

**KIMPEI OLE MUNEL.....2<sup>ND</sup> DEFENDANT**

**KILELUA KIRUSUA.....3<sup>RD</sup> DEFENDANT**

**JACKSON KARIO MUTENDE.....4<sup>TH</sup> DEFENDANT**

**EMARTI OLE NARAU GROUP RANCH.....5<sup>TH</sup> DEFENDANT**

**RULING**

The application before Court for determination is the Plaintiff's Notice of Motion dated the 12<sup>th</sup> May, 2016 brought pursuant to Order 40 Rule 1 of the Civil Procedure Rules as well as Section 3 and 3A of the Civil Procedure Act. The Plaintiff seeks for orders of temporary injunction against the Defendants whether by themselves, their agents, servants from subdividing, transferring, alienating, charging or interfering with land parcel number Kajiado/ Kaputiei Central/ 2 measuring 13211 hectares hereinafter referred to as the 'suit land', pending the outcome of the suit. Further, that the Defendants be compelled to reinstate the names of SAMUEL KERETO OLE NTETI SHAKAMAE (DECEASED) and NTETI OLE PARKEITO SHAKAMAE OISESOI(DECEASED) in the 5<sup>th</sup> Defendant's register as its members.

The application is premised on the grounds on the face of it and the affidavit of DANIEL LOORMEORI LETOMIR where he deposes that he is the administrator of the estates of SAMUEL KERETO OLE NTETI SHAKAMAE (deceased) and NTETI OLE PARKEITO SHAKAMAE OISESOI (deceased). He confirms that late NTETI OLE PARKEITO SHAKAMAE was his grandfather while the late SAMUEL KERETO OLE NTETI SHAKAME was his father. Further, that they were both members of the Emarti Ole Narau Group Ranch and each entitled to a share of land parcel number Kajiado/ Kaputiei Central/ 2. He claims the group representatives being the 1<sup>st</sup> to 4<sup>th</sup> Defendants struck out their names from the Group Register with ulterior motives of denying them their rightful share of Kajiado/ Kaputiei Central/ 2. He explains that some other members were also struck off the Group Register and proceeded to file a law suit namely *Civil Case No. 161 of 2010 Sewani Ole Nkushunarak & 4 others Vs Emarti Ole Narau Group Ranch* to get their names reinstated in the group which was successful and a Decree was issued reinstating the Plaintiffs into the 5<sup>th</sup> Defendant's register. He avers that the group representatives struck out his grandfather from the group register for the reason that he was deceased yet once a shareholder dies, their share goes to his estate which is clearly evident in the Group Minutes. Further, the Group representatives struck out his father from the Group Register alleging that he was transferred to another group which allegations were false. He reiterates that the Group representatives are in the process of subdividing land parcel number Kajiado/ Kaputiei Central/ 2 within its membership and if allowed to continue without the names of the deceased being reinstated in the group register, then they shall not be included in the subdivision. Further, if the Respondents are not restrained, the estates of SAMUEL KERETO OLE NTETI SHAKAMAE (deceased) and NTETI OLE PARKEITO SHAKAMAE OISESOI (deceased) are bound to suffer irreparable loss should they be left to continue subdividing the property without reinstating the deceased's names.

The application is opposed by the Defendants who filed Grounds of Opposition and replying affidavit sworn by LETELA NGESE SUYIANKA the Chairman of the 5<sup>th</sup> Defendant where he deposes that the beneficiaries of the estates of SAMUEL KERETO OLE NTETI SHAKAMAE (deceased) and NTETI OLE PARKEITO SHAKAMAE OISESOI (deceased) have denounced the Plaintiff as the family administrator or representative and the claims purportedly being pursued in this suit. He contends that the Plaintiff has not disclosed all relevant material facts to this Court and hence not entitled to the orders sought. He explains that SAMUEL KERETO OLE NTETI SHAKAMAE (deceased) and NTETI OLE PARKEITO SHAKAMAE OISESOI (deceased) were initially members of the 5<sup>th</sup> Defendant but ceased as they became bona fide members of Imaroro/ Mashuru Group Ranch. He insists that since March, 1970 to date, and prior to the Plaintiff filing the instant suit, no person had made any demand or laid claim against the 5<sup>th</sup> Defendant on allegations that the deceased persons were wrongfully or illegally denied their rights. He avers that from 11<sup>th</sup> June, 1991 when the Group Ranch passed resolutions to clean up its register to pave way for dissolution and subdivision of the Group land for distribution to bona fide members, which is a period of over 27 years and no alleged beneficiary of the deceased estates lodged any claim with the 1<sup>st</sup> Defendant. He reiterates that subdivision of the Group Ranch's land started in 2010 and has been completed. Further, what remains is the issuance of individual title deeds and the Plaintiff has always been well aware of the processes.

NKINYAIYIO OLE NTETI, KISEMEI LETOMIR and LILAH KERETO, filed their replying affidavits where they confirmed being the sons to LETOMIR KERETO OLE NTETI SHAKAMAE (deceased) and brothers to the Plaintiff. JASON KUTIAN OLE NTETI also confirmed being the son of NTETI OLE PARKEITO SHAKAMAE OISESO and an uncle to the Plaintiff. They confirmed that their father and grandfather respectively were duly registered as members of the Imaroro/ Mashuru Group Ranch where they had been allocated land most of which has been sold off. They explain that they have no legal claim against the 5<sup>th</sup> Defendant who had gratuitously agreed to accommodate them. They confirm that the registered representatives of the 5<sup>th</sup> Defendant have indeed allocated parcels of land to the deceased families which they were shown in March 2019 when the Plaintiff was present.

One MARY AYENI OLE NTETI LETOMIR swore a replying affidavit where she deposes that she is the widow of the LETOMIR KERETO OLE NTETI SHAKAMAE and step mother to the Plaintiff. She reiterated the claim of NKINYAIYIO OLE NTETI, JASON KUTIAN OLE NTETI, KISEMEI LETOMIR and LILAH KERETO respectively.

One DAVID TIPAPE LETOMIR and PETER KIRUTI KERETO filed their replying affidavits where they depose that the Plaintiff is their brother. They contend that the father and grandfather were members of the 5<sup>th</sup> Defendant. They insist the 5<sup>th</sup> Defendant removed them from the register illegally and were not compensated for loss of their shares and land. They claim the letter allegedly written to the Chairman of the 5<sup>th</sup> Defendant is a forgery and the family stands by the Plaintiff's claim.

KISEMEI LETOMIR filed a replying affidavit where he contends that the Plaintiff is the bona fide administrator of the deceased estates. He claims the Defendants forged and filed an affidavit allegedly sworn by him on 24<sup>th</sup> April, 2019. He denies swearing the said affidavit and insists his signature was forged in the letter dated the 6<sup>th</sup> November, 2019. He supports the family's claim as laid out by the Plaintiff.

The Plaintiff filed a further affidavit where he reiterated his claim above. He denied that his father and grandfather had been allocated other parcels of land. He further denied that no meeting was held in March 2019 relating to compensation of land to their family. He confirmed that the 5<sup>th</sup> Defendant through the 1<sup>st</sup> to 4<sup>th</sup> Defendant sought to give their family 50 acres of land in a swampy area. Further, they declined to address the issue of the 460 acres. He avers that his uncle JASON KUTIAN OLE NTETI has been allocated land by the 5<sup>th</sup> Defendant hence his bid to derail the claim.

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

### **Analysis and Determination**

Upon consideration of the Notice of Motion dated the 12<sup>th</sup> May, 2016 including the respective affidavits, annexures and submissions, the only issue for determination is whether the Plaintiff is entitled to orders of temporary injunction in respect to the suit land pending the outcome of the suit.

The Plaintiff in his submissions reiterated his claim above. While the Defendants in their submissions insisted that the Plaintiff had not established a prima facie case to warrant the orders sought. They contended that the Plaintiff is further not entitled to the orders sought on account of his laches and indolence. They relied on the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358** to support their averments.

In line with the principles established in the case of **Giella Vs. Cassman Brown & Co. Ltd (1973) EA 358**, I wish to analyse if the Plaintiff has indeed established a prima facie case to warrant the orders sought. The Plaintiff seeks to restrain the Defendants from subdividing and transferring the suit land to their respective members until the two deceased persons' estates he is representing are reinstated in the register. The Plaintiff claims the two deceased persons were removed from the Group Ranch register and not compensated for their land. Some of the family members of the Plaintiff support the Defendant's averments that the deceased were members of Imaroro Mashuru Group Ranch culminating in their removal from the register. The Defendants contend that the subdivision of the group ranch land was done prior to the institution of this suit and members await their title deeds. From the averments in the affidavits of some of the family members, they admit that the 5<sup>th</sup> Defendant through its officials gratuitously agreed to allocate them land hence they have no claim against it. I note the Plaintiff actually admitted that they were offered 50 acres of land which he declined. From the averments in the respective affidavits, it seems it is only the Plaintiff and two family members who want land from the 5<sup>th</sup> Defendant, as the rest of the family members are content. The Plaintiff has not provided a reason as to why from 1970 his father and grandfather did not lodge a claim against the Group Ranch when they were removed from the register but he seeks their share upon their demise. Majority of the Plaintiff's family members admit their father and grandfather were allocated land in the Imaroro Mashuru group ranch most of which has been sold. From a perusal of the Group Register which was annexed to one of the affidavits, I note there are very many members who would be affected by the injunctive orders the Plaintiff is seeking. Based on my analysis above as well as the facts as presented, and in line with the principles enshrined in the case of **Giella Vs.**

**Cassman Brown & Co. Ltd (1973) EA 358**, at this juncture, I find that the Plaintiff has not established a prima facie case as against the Defendants to warrant the injunctive orders sought. Further, in relying on the decision of **Nguruman Ltd v Jan Bonde Nelson & 2 others, Civil Appeal No.21 of 2014( UR)** where the Court held that if a prima facie case is not established, then irreparable injury and balance of convenience need no consideration, I will hence not consider the remaining two conditions as the Plaintiff has failed to meet the first condition set to warrant the grant of an injunction.

It is against the foregoing that I find the Plaintiff's application dated the 12<sup>th</sup> May, 2016 unmerited and will proceed to dismiss it.

Costs will be in the cause.

**Dated, signed and delivered via email this 18<sup>th</sup> Day of May, 2020.**

**CHRISTINE OCHIENG**

**JUDGE**