

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCC NO. 23 OF 2022

OLALUI GROUP RANCH PLAINTIFF

VERSUS

TAWARI KONCHELLAH & 608 OTHERS DEFENDANTS

CONSOLIDATED WITH

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KISII

ELCC NO. 24 OF 2022

JOHN KADY SOSIO & ANOTHER PLAINTIFFS

VERSUS

DISTRICT LAND REGISTRAR, TRANSMARA & OTHERS DEFENDANTS

RULING

1. What is before me is an application filed by the plaintiff dated 17 June 2025. It seeks the following orders :

(1) (Spent...certification of urgency).

(2) THAT this Honorable Court be pleased to grant the plaintiff leave to reinstate the cases against the following defendants:

i. Senke Kinangare Risa - 190th Defendant

ii. Nariku Nkera Twala - 56th Defendant

iii. Saitoti Sosio - 176th Defendant

iv. Moses Kosen Risa - 200th Defendant

V. Miriam Njiroine - 207th Defendant

vi. Samson Ole Tina - 210th Defendant

vii. Mwatha Nyagah - 5th Defendant

(3) THAT this Honorable Court be pleased to grant the Plaintiff leave to further amend their Amended Plaintiff dated 8th February, 2023 as set out in the draft Further Amended Plaintiff annexed hereto and/or on such terms as the court may direct.

(4) THAT the draft Further Amended Plaintiff be deemed as duly filed and served upon the Defendants.

(5) THAT upon the grant of prayer 2, 3 and 4, the Honourable be pleased and hereby grant leave to the Applicants to recall PW1 Michael Lekishon Ole Risa for further examination.

(6) THAT cost of this Application be in the cause.

2. The application is based on the following grounds :

(1) THAT on the 30th November, 2012 the Plaintiffs withdrew the suit against a number of Defendants who were deceased. And the name of Chairman and some committee members of the Plaintiff listed as Defendants number 182nd, 79th, 101st and 243rd were erroneously in the list.

(2) THAT by a honest and inadvertent mistake the notice of withdrawal included the names of following defendants who were and are still alive:

Senke Kinangare Risa - 190th Defendant

Nariku Nkera Twala - 56th Defendant

Saitoti Sosio - 176th Defendant

Micheal Ole Risa- 182nd Defendant

Moses Kosen Risa- 200th Defendant

Miriam Njiroine - 207th Defendant

Samson Ole tina - 210th Defendant

Mwatha Nyagah - 5th Defendant

(3) THAT the pleadings as previously drawn and filed do not accurately and clearly bring out the Plaintiff's claim.

(4) THAT it is now apparent that there is need to further amend the Amended Plaintiff so as to bring forth the true substantive merits of the case.

- (5) THAT on the 19th September, 2012, the Plaintiffs caused to be filed a suit against the Defendants herein claiming among other prayers, orders for cancellation of all titles arising from the fraudulent and illegal sub division of L.R NO. NAROK/TRANSMARA/OLALUI/13 into the names of 1st to 604th Defendants.
- (6) THAT consequently, in application filed on 4th February, 2022 .the Plaintiff sought leave to amend their Complaint dated 19th September, 2012 to remove the names of the Defendants whom the suit had been withdrawn against including removal of the names of Michael Lekishon Ole Risa, Mwaneki Ronko, Kotikash Ololtalam, Udula Magutian who were erroneously listed as the 182nd, 79th, 101st and 243rd Defendants.
- (7) THAT Michael Lekishon Ole Risa is the Chairman of Olalui Group Ranch (the Plaintiff herein) and the others are the committee members.
- (8) THAT additionally, Plaintiff's Counsel inadvertently failed and omitted to amend the prayers sought by the Plaintiff in their Amended Complaint as was in the Complaint to reflect this change
- (9) THAT the situation has now presented uncertainty and incertitude on the Plaintiff's claims as to against those defendants and the consequences of the grant of orders as sought in the Amended Complaint (sic).
- (10) THAT the effect of prosecuting and litigating this matter with the prayers as is, that in the event the Plaintiff's prayers are granted then the orders will be enforced against persons who are not parties to the suit thereby contravening the rules of fair trial .
- (11) THAT this issue is not a novelty and has been raised in the course of proceedings before.
- (12) THAT while perusing the complaint to address the preceding concerns, it came to the attention of the Plaintiff that in the notice of withdrawal dated 30th November, 2012, Defendants listed as 56th, 176th ,200th ,207th and 210th Defendants, have been fallaciously listed as deceased though still alive.
- (13) THAT based on this mistake on the notice of the withdrawal, the typist naturally relied on the names listed thereon in effecting changes on the complaint, and now amended complaint dated 8th February, 2023.

- (14) THAT proceeding with the suit without correcting these errors would create miscues in the proceedings.
- (15) THAT the amendment of the Plaint does not rephrase the Plaintiff's claim nor introduce new set of facts but merely whom the Plaintiff seek redress from.
- (16) THAT it is in the best interest of all parties to the suit that the plaint be amended to reflect this vital information to avoid any chance of misleading the court and thereby abusing the court process.
- (17) THAT the said amendment shall not prejudice the Defendants but will enable the court to determine the real issues in controversy between the parties with certainty and clarity.
- (18) THAT the time allowed under the Civil Procedure Act and Civil Procedure Rules amendment of pleadings has since expired.
- (19) THAT it is therefore in the interest of justice that the Plaintiffs be allowed leave to amend their Amended Plaint filed herein.

3. The application is opposed by the 280 defendants represented by the law firm of M/s Musalia Mwenesi & Company Advocates (though I observe that throughout Mr. Mwenesi has been mentioning that he represents 283 defendants) , and by the 72nd, 266th and 449th defendants represented by M/s G.M Nyambati & Company Advocates. It is not opposed by some 91 defendants represented by M/s B.O. Akang'o & Company Advocates, and it is also not opposed by the Attorney General on behalf of the 599th – 602th and 605th – 609th defendants who comprise of schools and state offices represented by the State Law Office.
4. Before I go to the gist of the application and the replies filed, I find it necessary at this juncture to give a brief background leading to this application.
5. The suit was commenced through a plaint dated 18 September 2012 by Olalui Group Ranch, the plaintiff/applicant herein. Olalui Group Ranch is a Group Ranch that was registered under the Land (Group Representatives) Act, Cap 287 (repealed). The original plaint had 609 defendants. The 1st – 593rd defendants were said to be adults of sound mind working in Narok County. The 594th – 598th defendants are Church institutions respectively, the Registered Trustees Maranatha Church, Registered Trustees, Methodist Church, Registered Trustees Word of Faith Church, Registered Trustees Seventh Day

Adventist Church, and Registered Trustees AGC Olesentu Church. The 599th – 602nd defendants are Schools and/or Educational Institutions being Olalui Secondary School, Olalui Primary School, and Mukuleta nursery/primary School. The 603rd defendant is a limited liability company by name Intumot Wildlife Management Limited. The 604th defendant was the now defunct County Council of Transmara. The 605th defendant was the Commissioner of Lands; the 606th defendant is the Director Land Adjudication and Settlement; the 607th defendant the Director Land Adjudication Officer, Transmara; the 608th defendant the District Land Registrar, Transmara; and the 609th defendant is the Attorney General. The plaintiff contended that on 29 July 2005, the land parcel Narok/Transmara/Olalui/13 measuring approximately 5769 Ha was illegally subdivided to create the land parcels No. Narok/Transmara/Olalui/15-607 which parcels were allocated to the 1st – 604th defendants by the 605th – 608th defendants. Inter alia it was pleaded that it was done prior to a lawful adjudication and demarcation process. In that original plaint the plaintiff asked for the following orders :

- (a) A declaration that Olalui Group Ranch is the registered owner of all that parcel of land known and fully described as Narok/Trans-Mara/Olalui/13.
- (b) A declaration that the demarcations, subdivision and registration of the resultant parcels No. 15-607 in the name of the illegal allottees is fraudulent, illegal, and hence null and void.
- (c) An order of cancellation of all titles No. Narok/Trans-Mara/Olalui/15-607 and restitution of the original title.
- (d) An order of temporary injunction restraining the 1st – 604th defendants either by themselves, agents or servants howsoever from taking possession, alienating, selling, leasing, transferring, developing or in any way dealing or interfering with the plaintiffs' ownership of plots LR No. Narok/Trans-Mara/Olalui/15-607 initially LR No. Narok/Trans-Mara/Olalui/13.
- (e) An order of permanent injunction restraining the 1st – 604th defendants either by themselves, agents or servants howsoever from taking possession, alienating, selling, leasing, transferring, developing or in any way dealing or interfering with the plaintiff's ownership of plots LR No. Narok/Trans-Mara/Olalui/15-607 initially LR No. Narok/Transmara/Olalui/13.
- (f) An order of vacant possession.

(g) Costs of the suit.

6. On 30 November 2012, the plaintiff filed a notice of withdrawal of suit against 82 defendants being the defendants No. 5, 6, 7, 10, 13, 19, 20, 24, 25, 30, 31, 32, 35, 36, 38, 41, 43, 45, 49, 56, 58, 60, 66, 67, 71, 76, 80, 81, 85, 90, 91, 93, 95, 97, 100, 102, 104, 105, 108, 110, 111, 119, 120, 123, 125, 126, 127, 129, 130, 138, 143, 145, 146, 147, 148, 149, 150, 153, 154, 155, 157, 158, 164, 165, 167, 170, 172, 173, 174, 176, 180, 182, 190, 193, 194, 198, 200, 205, 206, 207 and 210. That notice of withdrawal of suit mentioned that the parties were being withdrawn because they are deceased. Subsequently, through an amended plaint dated 8 February 2023, the original plaint underwent an amendment. The amendment was twofold. First, the plaintiff removed various defendants, specifically the defendants No. 5, 6, 7, 10, 13, 19, 20, 24, 25, 30, 31, 32, 35, 36, 38, 41, 43, 45, 49, 56, 58, 60, 66, 67, 71, 76, 79, 80, 81, 85, 90, 91, 93, 95, 97, 100, 101, 102, 104, 105, 108, 110, 111, 119, 120, 123, 125, 126, 127, 129, 130, 138, 143, 145, 146, 147, 148, 149, 150, 153, 154, 155, 157, 158, 164, 165, 167, 170, 172, 173, 174, 176, 180, 182, 190, 193, 194, 198, 200, 205, 206, 207, 210, and 243. It will be seen that the majority of these defendants (though not entirely all) were in the list of persons named in the notice of withdrawal of suit dated 30 November 2012. Secondly, the plaintiff made extra pleading on the particulars of fraud, to elaborate that the 28th and 54th defendants (Christopher Kirui Tampula and John Kady Sosio) represented themselves to be officials of the group ranch in order to demarcate the land of the Group Ranch. The other pleadings and prayers in the original plaint were not affected by the amended plaint.
7. Some 280 defendants appointed M/s Tobiko, Njoroge & Company Advocates who filed defence. Later a notice of change of advocates dated 7 October 2019 was filed by M/s Musalia Mwenesi & Company Advocates. In their defence, filed on 7 July 2014, they pleaded inter alia that the land parcel Narok/Transmara/Olalui/13 was regularly subdivided to create the parcels No. 15 – 607 which were then allocated to the 1st – 604th defendants. They contended that the plaintiff was aware as far back as 29 July 2005 about the subdivision and the suit is an after thought.
8. M/s B.O Akang'o & Company Advocates entered appearance for 91 defendants vide a Memorandum of Appearance dated 30 November 2012. One thing of note is that among those represented by Mr. Akang'o was the 182nd defendant, Michael Ole Risa. It is difficult to call it a defence because what I see pleaded is that they agree that the whole process should be nullified and due process followed so as to demarcate the land

equitably amongst members of the Group Ranch. They pleaded that land was allocated to them when the whole process of demarcation and adjudication had been stopped and the allocation is therefore illegal. It will thus be seen that they actually agree with the plaintiff.

9. The State Law Office in its defence dated 20 December 2021 on behalf of the 600-602, 605-609 defendants, also pleaded that the suit land was properly divided and alluded to a consent to subdivide issued on 22 November 2001. They asked that the suit be dismissed.
10. The 72nd , 266th and 449th defendants came into the suit much later in October 2024 after appointing M/s G.M Nyambati & Company Advocates and they filed a defence dated 22 October 2024. It is a lengthy defence going into several issues but I think it suffices for me to say that the claim is denied. They also filed a counterclaim wherein they asked for a declaration that the suit is null and void; that the suit is out of time; mesne profits arising out of prohibition placed over the subdivisions of the parcel No. 13; general and exemplary damages.
11. After some several hiccups, hearing eventually commenced before me on 12 February 2025 when the plaintiff/applicant presented Michael Lekishon Ole Risa (the withdrawn 182nd defendant) as her first witness. He testified in chief, was cross-examined, and he completed his evidence on 21 May 2025. He did assert that he was the Chairman of the plaintiff to date. Part of his evidence was that some of the parties listed in the suit are deceased and have not been substituted and also some owners of titles from the original land parcel No. 13 and who benefited from its subdivision have been removed in the suit. Indeed, as I have pointed out, when amending the plaint, the plaintiff removed defendants No. 5, 6, 7, 10, 13, 19, 20, 24, 25, 30, 31, 32 , 35, 36, 38, 41, 43, 45, 49, 56, 58, 60, 66, 67, 71, 76, 79, 80, 81, 85, 90, 91, 93, 95, 97, 100, 101, 102 , 104, 105, 108, 110, 111, 119, 120, 123, 125, 126, 127, 129, 130, 138, 143, 145, 146, 147, 148, 149, 150, 153, 154, 155, 157, 158, 164, 165, 167, 170, 172, 173, 174, 176, 180, 182, 190, 193, 194, 198, 200, 205, 206, 207, 210, and 243. These are 84 defendants in number and they all have titles from subdivision of the parcel No. 13 thus cumulatively at least 84 titles were removed from this litigation through that amendment. It will be observed that among those against whom the suit was withdrawn was defendant No. 182, Michael Lekishon Ole Risa, who is the one who testified as PW-1.
12. After Mr. Ole Risa had testified, I thought that it is a threshold point as to whether there would be any cause of action if at least 84 titles have been withdrawn from the suit, and the fact that some deceased parties had not been substituted. I indeed questioned whether

prayer (c) in the plaint, which I considered to be the main prayer, (the prayer seeking cancellation of all titles No. 15-607 being the titles emanating from subdivision of the parcel No. 13 and restitution of the original title) is capable of being granted without all titles emanating from the subdivision being in the case, and if it is not, whether there is any veracity in the suit. I thought that this was an issue going to the justiciability and competency of the suit and would impact on whether or not there is any substance in the suit capable of proceeding for hearing. I called upon counsel to make submissions on this issue.

13. Before I reserved my decision on the points raised, this application was filed, and it will be seen that it is an application seeking leave to further amend the plaint. When the application was brought to my attention, I opted not to make a decision on whether or not the amended plaint is competent and justiciable, so as to give a chance to the plaintiff to test whether the proposed further amendment to the plaint will ensure that any doubt on the veracity of the suit is cured.

14. In the supporting affidavit to this application, Mr. Ole Risa has deposed that the names of the 1st – 604th defendants were obtained from the area list used to issue titles from the subdivision of the land parcel No. 13. He has alluded to the notice of withdrawal of suit and listed 81 names as those against whom the suit was withdrawn. He deposes that by an honest and inadvertent mistake some defendants who are alive were included in that notice of withdrawal, including the defendants No. 5, 56, 176, 182, 190, 200, 207 and 210. He has mentioned that defendants No. 182, 79, 101 and 243 are officials of the plaintiff. He has further deposed that there was an honest mistake in failing to amend the prayers to reflect the change. He thus wishes to have the suit reinstated against the defendants No. 5, 56, 176, 182, 190, 200, 207 and 210. He also wants to amend so that cancellation of titles is sought for all titles except for the titles registered in the names of the deceased persons against whom the suit was withdrawn. He has annexed a draft amended plaint. That draft amended plaint seeks the following prayers :

- a. A declaration that Olalui Group Ranch was the registered owner of all that parcel of land known and fully described as NAROK/TRANSMARA/OLALUI/13.
- b. A declaration that the demarcations, subdivision and registration of the resultant parcels No.

NAROK/TRANSMARA/OLALUI/15,16,17,18,19,20,21,22,23,24,25,26,27,28,31,32,
34,35,36,37,38,39,41,42,44,45,46,47,48,49,50,51,52,54,55,56,57,58,60,61,62,63,64,6
5,66,67,69,71,72,73,74,75,76,77,78,79,80,81,83,84,87,88,89,89,92,94,95,96,97,98,99,

102,103,104,105,106,108,109,110,111,112,113,114,115,117,118,119,120,121,122,123,124,125,126,127,128,129,130,131,132,133,134,135,136,137,138,140,141,142,143,144,145,146,147,148,149,150,151,152,153,154,156,157,158,159,160,161,162,163,164,165,166,167,168,169,170,171,172,173,174,175,176,178,179,180,181,182,183,184,185,186,187,188,189,190,191,192,193,194,195,196,197,198,199,200,201,202,203,204,205,206,207,208,211,212,213,214,216,217,218,219,220,221,222,223,224,225,226,227,228,229,230,231,232,233,234,235,236,237,238,239,240,241,242,243,244,245,246,247,248,249,250,251,253,254,255,256,257,258,259,260,261,262,263,264,266,267,268,269,270,271,272,273,274,275,276,277,278,279,280,281,282,283,284,285,286,287,288,289,290,291,292,293,294,295,296,297,298,299,300,301,302,303,304,305,306,307,308,310,311,312,313,314,315,316,317,318,319,320,321,324,325,327,330,332,334,336,337,339,341,345,346,347,350,351,352,353,354,355,356,357,358,359,362,363,365,367,368,369,370,371,372,373,374,375,377,380,381,382,384,385,386,387,389,391,392,393,399,400,407,408,409,410,411,414,416,417,418,420,421,422,423,424,425,426,428,429,430,431,432,433,434,435,436,437,439,440,441,442,443,444,445,446,447,448,449,450,451,452,453,454,455,456,457,458,459,460,461,462,463,464,465,466,467,468,469,470,471,472,473,475,476,476,477,478,479,480,481,482,483,484,485,486,487,488,489,490,491,493,494,495,496,497,498,499,500,501,502,503,504,505,506,507,509,510,511,514,515,516,517,518,519,520,521,522,523,524,525,526,527,528,530,531,533,534,535,536,537,538,539,540,541,542,543,544,545,546,547,548,549,550,551,552,553,554,555,556,557,558,559,560,561,562,563,564,565,566,567,568,569,570,571,572,573,574,575,576,577,578,579,580,581,582,583,584,585,586,587,588,589,590,591,592,593,594,595,596,597,598,599,600. 601, 602, 203, 604, 605, 606, 607, in the name of the illegal allottees to wit 1-4, 8th, 9th,11th ,12th ,14th -18th, 21st -23rd, 26th -29th, 33rd, 34th 37th ,39th, 40th , 42nd, 44th , 46th -48th , 50th -55th ,57th ,59th ,61st -65th, 68th -70th ,72nd -75th, 77th -79th, 82nd 83rd, 86th -89th, 92nd 94th ,96th ,98th ,99th ,101st , 103rd 106th, 107th , 109th ,112th -118th, 121st 122nd, 124th,128th, 131st 137th ,139th -142nd ,144th, 151st ,152nd ,159th -163rd ,166th ,168th ,169th ,171st ,175th ,176th ,177th -179th ,181st, 182nd ,183rd -189th ,192nd ,195th -197th ,199th ,200th ,201st -204th, 207th, 208th ,209th, 210th -607th, defendants is fraudulent, illegal and hence null and void.

c. An order of cancellation of all titles No. NAROK/TRANS-MARA/OLALUI/15,16,17,18,19,20,21,22,23,24,25,26,27,28,31,32,34,35,36,37,38,39,41,42,44,45,46,47,48,49,50,51,52,54,55,56,57,58,60,61,62,63,64,65,66,67,69,71,72,73,74,75,76,77,78,

79,80,81,83,84,87,88,89,92,94,95,96,97,98,99,102,103,104,105,106,108,109,110,111,112,113,114,115,117,118,119,120,121,122,123,124,125,126,127,128,129,130,131,132,133,134,135,136,137,138,140,141,142,143,144,145,146,147,148,149,150,151,152,153,154,156,157,158,159,160,161,162,163,164,165,166,167,168,169,170,171,172,173,174,175,176,178,179,180,181,182,183,184,185,186,187,188,189,190,191,192,193,194,195,196,197,198,199,200,201,202,203,204,205,206,207,208,211,212,213,214,216,217,218,219,220,221,222,223,224,225,226,227,228,229,230,231,232,233,234,235,236,237,238,239,240,241,242,243,244,245,246,247,248,249,250,251,253,254,255,256,257,258,259,260,261,262,263,264,266,267,268,269,270,271,272,273,274,275,276,277,278,279,280,281,282,283,284,285,286,287,288,289,290,291,292,293,294,295,296,297,298,299,300,301,302,303,304,305,306,307,308,310,311,312,313,314,315,316,317,318,319,320,321,324,325,327,330,332,334,336,337,339,341,345,346,347,350,351,352,353,354,355,356,357,358,359,362,363,365,367,368,369,370,371,372,373,374,375,377,380,381,382,384,385,386,387,389,391,392,393,399,400,407,408,409,410,411,414,416,417,418,420,421,422,423,424,425,426,428,429,430,431,432,433,434,435,436,437,439,440,441,442,443,444,445,446,447,448,449,450,451,452,453,454,455,456,457,458,459,460,461,462,463,464,465,466,467,468,469,470,471,472,473,475,476,477,478,479,480,481,482,483,484,485,486,487,488,489,490,491,493,494,495,496,497,498,499,500,501,502,503,504,505,506,507,509,510,511,514,515,516,517,518,519,520,521,522,523,524,525,526,527,528,530,531,533,534,535,536,537,538,539,540,541,542,543,544,545,546,547,548,549,550,551,552,553,554,555,556,557,558,559,560,561,562,563,564,565,566,567,568,569,570,571,572,573,574,575,576,577,578,579,580,581,582,583,584,585,586,587,588,589,590,591,592,593,594,595,596,597,598,599,600,601,602,603,604,605,606,607 and restitution of the original title be consolidated into one parcel or block of parcels to be registered in the name of the plaintiff.

- d. An order of temporary injunction restraining the 1st -4th, 8th, 9th ,11th, 12th ,14th - 18th ,21st -23rd ,26th-29th,33rd, 34th,37th,39th, 40th, 42nd, 44th ,46th -48th,50th - 55th, 56th 57th, 59th ,61st -65th,68th -70th,72nd -75th ,77th -79th ,82nd ,83rd ,86th - 89th ,92nd ,94th ,96th ,98th ,99th,101st ,103,106, 107,109 ,112th - 118,121 ,122nd ,124h ,128th ,131st -137th ,139th -142nd rd 144 151 ,152 ,159 - 1639 ,166 ,168 ,169 ,1718,175 ,176 ,177 -1798h ,1818, 183d -189,192d,195 - 197,199 ,200th ,201st -204th 207th ,208th ,209th ,210th ,211th -607th defendants either by themselves, agent, servants howsoever from taking possession, alienating,

selling, leasing, transferring, developing or in any way dealing or interfering with the plaintiff's ownership of plots LR No.

NAROK/TRANSMARA/OLALUI/

15,16,17,18,19,20,21,22,23,24,25,26,27,28,31,32,34,35,36,37,38,39,41,42,44,45,46,47,48,49,50,51,52,54,55,56,57,58,60,61,62,63,64,65,66,67,69,71,72,
73,74,75,76,77,78,79,80,81,83,84,87,88,89,92,94,95,96,97,98,99,102,103,104,105,
106,108,109,110,111,112,113,114,115,117,118,119,120,121,122,123,124,125,126,127,128,129,130,131,132,133,134,135,136,137,138,140,141,142,143,144,145,146,147,148,149,150,151,152,153,154,156,157,158,159,160,161,162,163,164,165,166,167,168,
169,170,171,172,173,174,175,176,178,179,180,181,182,183,184,185,186,187,188,189,
190,191,192,193,194,195,196,197,198,199,200,201,202,203,204,205,206,207,208,211,212,213,214,216,217,218,219,220,221,222,223,224,225,226,227,228,229,230,231,232,233,234,235,236,237,238,239,240,241,242,243,244,245,246,247,248,249,250,251,
253,254,255,256,257,258,259,260,261,262,263,264,266,267,268,269,270,271,272,273,274,275,276,277,278,279,280,281,282,283,284,285,286,287,288,289,290,291,292,293,294,295,296,297,298,299,300,301,302,303,304,305,306,307,308,310,311,312,313,
314,315,316,317,318,319,320,321,324,325,327,330,332,334,336,337,339,341,345,346,347,350,351,352,353,354,355,356,357,358,359,362,363,365,367,368,369,370,371,372,373,374,375,377,380,381,382,384,385,386,387,389,391,392,393,399,400,407,408,
409,410,411,414,416,417,418,420,421,422,423,424,425,426,428,429,430,431,432,433,434,435,436,437,439,440,441,442,443,444,445,446,447,448,449,450,451,452,453,454,455,456,457,458,459,460,461,462,463,464,465,466,467,468,469,470,471,472,473,
475,476,477,478,479,480,481,482,483,484,485,486,487,488,489,490,491,493,494,495,496,497,498,499,500,501,502,503,504,505,506,507,509,510,511,514,515,516,517,518,519,520,521,522,523,524,525,526,527,528,530,531,533,534,535,536,537,538,
539,540,541,542,543,544,545,546,547,548,549,550,551,552,553,554,555,556,557,558,559,560,561,562,563,564,565,566,567,568,569,570,571,572,573,574,575,576,577,578,579,580,581,582,583,584,585,586,587,588,589,590,591,592,593,594,595,596,597,
598,599,600,601,602,603,604,605,606,607 initially LR No. NAROK/TRANSMARA/OLALUI/13.

- e. An order of permanent injunction restraining the 1st -4th, 8th, 9th ,11th, 12th ,14th - 18th ,21st -23rd ,26th-29th,33rd, 34th,37th,39th, 40th, 42nd, 44th ,46th -48th,50th - 55th, 56th 57th, 59th ,61st -65th,68th -70th,72nd -75th ,77th -79th ,82nd ,83rd ,86th - 89th ,92nd ,94th ,96th ,98th ,99th,101st ,103,106, 107,109 ,112th -

118,121 ,122nd ,124h ,128th ,131st -137th ,139th -142nd rd 144 151 ,152 ,159 -
1639 ,166 ,168 ,169 ,1718,175 ,176 ,177 -1798h ,1818, 183d -189,192d,195 -
197,199 ,200th ,201st -204th 207th ,208th ,209th ,210th ,211th -607th defendants
either by themselves, agents or servants howsoever from taking possession,
alienating, selling, leasing, transferring, developing or in any way dealing or
interfering with the plaintiffs ownership of plots

NAROK/TRANSMARA/OLALUI/15,16,17,18,19,20,21,22,23,24,25,26,27,28,31,32,
34,35,36,37,38,39,41,42,44,45,46,47,48,49,50,51,52,54,55,56,57,58,60,61,62,63,64,6
5,66,67,69,71,72,73,74,75,76,77,78,79,80,81,83,84,87,88,89,89,92,94,95,96,97,98,99,
102,103,104,105,106,108,109,110,111,112,113,114,115,117,118,119,120,121,122,123
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65,166,167,168,169,170,171,172,173,174,175,176,178,179,180,181,182,183,184,185,
186,187,188,189,190,191,192,193,194,195,196,197,198,199,200,201,202,203,204,20
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initially LR No. Narok/Transmara/Olalui/13.

f. An order of vacant possession of all that parcels of land No.

NAROK/TRANSMARA/OLALUI/15,16,17,18,19,20,21,22,23,24,25,26,27,28,31,32,
34,35,36,37,38,39,41,42,44,45,46,47,48,49,50,51,52,54,55,56,57,58,60,61,62,63,64,6
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00,601,602,603,604,605,606,607.

g. Costs of the suit.

15. In the replying affidavit sworn by John Kady Sosio on behalf of the group represented by Mr. Mwenesi, he has first alluded to the queries that the court brought up on the justiciability of the case and believes that the application is a reaction to that. He thinks that the proposed amendments would only create more problems. He has pointed to discrepancies in the names of those proposed to be added back into the case in the body

of the application, in the grounds in support of the application, and in the supporting affidavit of Mr. Ole Risa, and thinks that the plaintiff does not seem sure of what she wants to do hence the confusion. He has raised an argument that a suit once withdrawn cannot be reinstated. He has raised issue on the prayer to recall Mr. Ole Risa to testify which he thinks is to bridge gaps raised in the case. He has urged that there is law on substitution of deceased parties which the plaintiff has not followed so as to substitute the deceased defendants. He has also raised that some persons said to be deceased in the notice of withdrawal of suit are actually alive such as Moses Kosen Risa, the 200th defendant. Similarly, he has pointed out that defendant No. 210, Chief Samson Ole Tina, is alive and even filed a witness statement on 22 October 2019 and the plaintiff cannot claim to only have learnt of this after the question on the competency of the case was raised. He has deposed that he is aware that there are other parties who are deceased and he has named the following :

1. Kaila Nginaï Nawangas – defendant No. 211 (title No.16)
2. Elizabeth Naini – defendant No. 344 (title No. 80)
3. Kilimenti Kulala Nayioma – defendant No. 565 (title No.579)
- 4 Sarankei Muntet – defendant No. 23
- 5 Christopher Kirui Tampula – defendant No.28 (title No.77)
6. Joseph Nina Sosio – defendant No.29 (title No. 78)
7. Stephen Twala – defendant No.125 (title No. 366)
8. Job Sikawa – defendant No. 170 (title No.419)
9. Osuju Maseka Sosio – defendant No. 173 (title No.438)
10. Sitonik Sosio – defendant No.174 (title No. 474)
- 11 Simayia Sosio – defendant No. 175 (title No.475)
12. Tampula Kipkurui – defendant No.183 (title No.500)
13. Ole Kiu Sikawa – defendant No. 198 (title No.532)
14. James Laton – defendant No. 206 (title No.529)
15. Wilson Meingati Sosio – defendant No. 260 (title No. 128)
16. Murero Yiampoi – defendant No.377 (title No.175)
17. Saning Ole Keptanai – defendant No. 393 (title No. 205)
18. Rataine Tiyo – defendant No. 424 (title No. 268)
19. Ntinon Ngodia – defendant No. 426 (title No.271)

20. Kakuya Tukero Ololchaji – defendant No.440 (title No.285)
21. John Koropan Kasosi – defendant No. 468 (title No.320)
22. Tumka Kurau – defendant No. 476 (title No. 425)
23. Kanyaga Ole Kantai – defendant No. 477 (title No.426)
24. Letoo Sakaja – defendant No.487 (title No. 439)
25. Takak Ole Nayioma – defendant No.500 (title No.455)
26. Jackson ole Pore – defendant No.510 (title No. 478 shared parcel with Edward M. Lepore, Defendant No. 509)
27. Mengorokini Nkoisa – defendant No. 513 (title No.482)
28. Shilii Ole Nayioma – defendant No. 514 (title No.489)
29. Lekakeny Kipiko – defendant No. 519 (title No.496)
30. John Sawoyo – defendant No. 524 (title No.535)
31. Lekimenyi ole Parkolwa – defendant No.540 (title No.550)
32. Daniel Oletwati Tiamasi – defendant No.552 (title No.562)
33. Moses Ntukai – defendant No.554 (title No.564)
34. Ndalamia Kortom – defendant No. 564 (title No.578)

16. He has averred that the fears expressed by the court about deceased persons who may have their titles cancelled without their input is therefore real. He avers that he has studied the proposed amendment to the prayers in the plaint and finds the following titles omitted i.e titles No. 29, 30, 40, 53, 59, 68, 70, 82, 85, 86, 90, 91, 93, 100, 101, 116, 139, 155, 209, 210, 215, 252, 309, 322, 323, 326, 328, 329, 331, 333, 335, 340, 342, 343, 344, 348, 349, 360, 361, 364, 366, 376, 378, 379, 383, 388, 390, 394, 395, 396, 397, 398, 390, 394, 395, 396, 397, 398, 401, 402, 403, 404, 405, 406, 412, 413, 415, 427, 438, 492, 508, 512, 513, 529, 532. He avers that it is therefore not all titles that will be cancelled if prayer (c) in the proposed amendment is to be allowed and it is not therefore possible to reinstate the original title No. 13. He also wonders if reference to the original title may be reference to the first original title which was title No.1 from where the title No. 13 came from. He has raised an argument that the Community Land Act, 2015 has a process for converting private land into community land and that vide Section 26 of the Land Registration Act, a title is prima facie evidence of proprietorship. He has questioned why some titles resulting from subdivision would be spared scrutiny and alleges discrimination by the plaintiff. He deposes that if the plaintiff's claim is that the subdivision was fraudulent then the fraud affects all subdivisions and not only some. He is also concerned that prayer

(d), that of injunction, omits Mr. Ole Risa the registered proprietor of Narok/Transmara/Olalui/497. He has highlighted this to point at the inconsistencies in the proposed amendments. He asserts that the proposed amendments are confusing and do not cure the difficulties identified by the court. He has added that the prayer (f) in the proposed further amended plaint also omits some titles and he has identified the following titles i.e No. 29, 30, 40, 53, 59, 68, 70, 82, 85, 86, 90, 91, 93, 100, 101, 116, 139, 155, 209, 210, 215, 252, 309, 322, 323, 326, 328, 329, 331, 333, 335, 340, 342, 343, 344, 348, 349, 360, 361, 364, 366, 376, 378, 379, 383, 388, 390, 394, 395, 396, 397, 398, 390, 394, 395, 396, 397, 398, 401, 402, 403, 404, 405, 406, 412, 413, 415, 427, 438, 492, 508, 512, 513, 529, 532. He has wondered how the court will order restitution of the original title without these being in the case as these titles will not be subject to any order for vacant possession. He believes that the proposed amendment is insincere and unfair and should not be granted and will further delay the hearing of the case.

17. On his part, Mr. Julius L. Konchellah , represented by Mr. Nyambati, has deposed that when PW-1 testified, he denied instructing counsel to withdraw any claim from court, confirmed a consent to the suit property in 2001, and had no issue withdrawing the claims against the public utilities, Government installations and deceased persons. He deposes that PW-1 has closed his evidence and any intended amendment to bring on board parties whose cases had been withdrawn will not only be prejudicial but cause unnecessary delay. He deposes that no evidence has been placed before this court to address the issue of substitution of deceased persons and the court cannot determine matters affecting the estates of deceased persons. He avers that from the application and notice of withdrawal filed he remains a deceased person. He has deposed that there is no provision allowing a matter that has been withdrawn to be reinstated after witnesses have testified. He avers that once withdrawn a suit cannot be reinstated except for a fresh suit.
18. No supplementary affidavit was filed by the plaintiff to controvert the factual issues raised in the replying affidavits.
19. I have taken note of the depositions in the affidavits and the submissions filed by counsel. The contention of the plaintiff in this suit is that the subdivision of the land parcel Narok/Transmara/Olalui/ 13 was illegal and did not follow due process. In the original plaint, the plaintiff listed all parcels of land that emanated from the subdivision of this parcel No. 13 and asked for orders for their cancellation and restitution of the original parcel No. 13 so that the land can now be subdivided properly to those entitled to benefit in the Group Ranch. That would be a valid and justiciable cause of action, because if the

subdivision of the land was improper, then all titles emanating from the subdivision are liable for cancellation so that a fresh subdivision is undertaken according to law.

20. The original suit, which as I have said had a solid and justiciable cause of action, however underwent some metamorphosis. First there was the notice of withdrawal of suit dated 30 November 2012. That notice mentioned that the suit is withdrawn against the defendants No. 5, 6, 7, 10, 13, 19, 20, 24, 25, 30, 31, 32, 35, 36, 38, 41, 43, 45, 49, 56, 58, 60, 66, 67, 71, 76, 80, 81, 85, 90, 91, 93, 95, 97, 100, 102, 104, 105, 108, 110, 111, 119, 120, 123, 125, 126, 127, 129, 130, 138, 143, 145, 146, 147, 148, 149, 150, 153, 154, 155, 157, 158, 164, 165, 167, 170, 172, 173, 174, 176, 180, 182, 190, 193, 194, 198, 200, 205, 206, 207 and 210. These are 82 defendants being removed from the case and it means that at least 82 titles are not subject of the litigation yet they are still a product of the same subdivision that brought about the other titles left in the case.
21. The second mutation to the case was vide the amended plaint. That plaint was amended to specifically remove some parties from the case. The parties removed from the case by this amendment were the defendants No. 5, 6, 7, 10, 13, 19, 20, 24, 25, 30, 31, 32, 35, 36, 38, 41, 43, 45, 49, 56, 58, 60, 66, 67, 71, 76, 79, 80, 81, 85, 90, 91, 93, 95, 97, 100, 101, 102, 104, 105, 108, 110, 111, 119, 120, 123, 125, 126, 127, 129, 130, 138, 143, 145, 146, 147, 148, 149, 150, 153, 154, 155, 157, 158, 164, 165, 167, 170, 172, 173, 174, 176, 180, 182, 190, 193, 194, 198, 200, 205, 206, 207, 210, and 243. These were 85 defendants. It would mean that 85 titles were not going to be subject to the litigation.
22. This issue of some parties being removed from the litigation, yet their titles still emanated from the same subdivision that brought the other titles that remained under interrogation in the suit, and the concession by Mr. Ole Risa that there are other persons who are deceased and have not been substituted but remain in the case, is what triggered me to seek from the plaintiff a submission on whether there was still a justiciable cause of action. I indeed pointed out that the prayers in the plaint sought a cancellation of all titles emanating from subdivision of the parcel No. 13 but, not all titles were subject to the litigation. I questioned whether even if we proceed with the litigation these are prayers that the court is capable of giving, particularly because some titles are no longer in the case and some parties have died without substitution. It will be recalled that it is from that prompting that this application was made and I believe it was made on the realization that indeed the suit as drawn is incompetent thus the need to amend.
23. The question that I ask myself is whether the amendment, if allowed, will cure the suit. My answer is 'NO'. The amendment will still make the suit incompetent. It will be seen

firstly, that in the application to amend, the plaintiff acknowledges that when she first amended the plaint, she made a mistake by removing 7 persons who were actually not deceased but are alive. Those named in the body of the application (see prayer No.2) and against whom the plaintiff seeks reinstatement of suit are the defendants No. 5, 56, 176, 190, 200, 207, 210. Significantly, defendant No 182, Michael Kishon Ole Risa is not listed but he is alive. When you go to the grounds in support of the application, you now have 8 names and not 7, the name of Mr. Ole Risa now being added. In the supporting affidavit, it states that the plaintiff wishes to amend the plaint to reinstate suit against defendants No. 56, 176, 200, 207 and 2010. Now it is 5 names and not the 7 names in the body of the application and not the 8 in the grounds. There is already great confusion here. That is my first reason for finding this application incompetent. It is not clear on which parties it seeks reinstatement.

24. My second reason, which is the more significant reason for declining the amendment, is that as I have said, the case of the plaintiff is that the subdivision of the land parcel No. 13 was illegal. We need to remember that what we are dealing with is a Group Ranch, not any other demarcation of land. When a Group Ranch is divided, it is divided following a method that involves ALL persons entitled to benefit from land within the Group Ranch. What each member will get is impacted by the total acreage of the group ranch that is to be subdivided and the number of persons that are entitled to benefit. If you remove some land and say that it is not supposed to be factored in the subdivision, then you will certainly affect, negatively in fact, the share that the beneficiaries will eventually get. The end result will be that the subdivision will not be proportional or even rational.
25. In our case, the effect of the proposed amendment is that some titles still emanating from the alleged illegal subdivision will not be subjected to litigation and will remain intact, but if the suit succeeds, then some titles will be nullified and subjected to fresh distribution. But without including all titles, then this re-distribution cannot be fair or proportional, since some titles will be excluded. Is the plaintiff now saying that some titles can be excluded and only some be included despite urging that all titles emanating from the subdivision were illegal ? I am afraid that the plaintiff cannot speak from both sides of the mouth and cannot blow hot or cold. This is a situation where it is ALL OR NOTHING. Either it is all titles that arose from subdivision being cancelled or there is nothing to be cancelled because they all arose from one process. In essence, without seeking an order for cancellation of all titles that emanated from subdivision there cannot be a justiciable, and competent cause of action capable of proceeding for hearing.

26. I appreciate that this is litigation involving hundreds of people. Some are now deceased. It is indeed an extremely complex litigation. But there are some principles in litigation that we cannot run away from. Some of them are basic, such as capacity. If in a suit a person without capacity is sued, there is no point of hearing witnesses when it is apparent that the wrong party is before court. The material findings of fact will be completely irrelevant because the person sued cannot be made to answer for them. If a court, at whatever stage, finds that the party sued has no capacity, it is the duty of the court to point this out and if it remains that the defendant has no capacity to be sued, there would be no point in the court engaging any further with the litigation. The court in my view, is duty bound to terminate those proceedings and the plaintiff can proceed to now sue the party with capacity.
27. Another basic principle is that a suit against a deceased party cannot proceed without substitution. If a defendant is dead, the court cannot now proceed to take evidence; it is pointless. Unless and until the deceased defendant is substituted, the matter cannot proceed, and if substitution does not take place within the stipulated time, the suit must abate by operation of law. In our case, it has been mentioned in the replying affidavit of John Kady Sosio, that there are some other 34 parties in this litigation who are deceased and have not been mentioned by the plaintiff. The plaintiff has not filed a supplementary affidavit to controvert this deposition and thus the plaintiff cannot purport to still want to continue the case against them and proceed to ask for nullification of their titles.
28. There will be complexities and complications in a suit such as this. But we cannot run away from the basic principles. It is the duty of counsel dealing with such a matter to navigate round the minefield of issues that can either stall or torpedo the suit. We cannot also run away from interrogating the veracity of a suit and whether a suit still retains a cause of action. That is the duty of the court. Where it is apparent to a court that there is no cause of action, the court needs to proceed to strike out the suit, because it is pointless proceeding. Indeed, that power is given to court by Order 2 Rule 15 which provides as follows :

15. Striking out pleadings

(1) At any stage of the proceedings the court may order to be struck out or amended any pleading on the ground that—

(a) it discloses no reasonable cause of action or defence in law; or

(b) it is scandalous, frivolous or vexatious; or

(c) it may prejudice, embarrass or delay the fair trial of the action; or

*(d) it is otherwise an abuse of the process of the court,
and may order the suit to be stayed or dismissed or judgment to be entered accordingly,
as the case may be.*

29. It will be seen from the foregoing that a court is entitled to strike out pleadings at any stage of the suit inter alia if it appears to court that the pleadings do not disclose a reasonable cause of action. Where a pleading has no justiciable or competent cause of action, the wealth of evidence that will be presented will matter for nothing. Findings of fact will also count for nothing. If it is clear to court that the prayers being sought are prayers that are incapable of being granted, there is no point proceeding with the case; such case will be a mere academic exercise. That is why the court is empowered to strike out and/or dismiss a suit at any stage of the case if found that it discloses no cause of action.
30. In our case, the plaintiff cannot obtain a reinstatement of the title Narok/Transmara/Olalui/13 unless all fragments of it are put together so that the whole of the parcel No. 13 can be reconstructed. You cannot have the whole if you do not have the constitute pieces. It is like a jigsaw. If some pieces are lost and not available, then it is impossible to complete the jigsaw. You will never be able to put together the full picture. In our case the plaintiff in the original plaint, the amended plaint, and even in this proposed amendment to the plaint, wants orders to reinstate the original parcel which is the parcel No. 13. But you cannot reinstate the parcel No. 13 if not all subdivisions are not in the litigation. I reiterate that what the plaintiff faces is an all or nothing situation. Either all parcels emanating from the subdivision are on the table or there is nothing to litigate.
31. The only way that restitution of title, which is the prayer sought in the plaint, can be achieved is by having all titles subjected to litigation. Clearly, the plaintiff is unable, for one reason or another, to place all titles on the chopping board. Proceeding with the suit will be labouring in vain and an exercise in futility. The evidence to be tendered is immaterial if other titles are left out of the suit. So long as not all titles are subjected to litigation, then you cannot have a restitution of the parcel No. 13. You also cannot, in a suit such as this, choose what to pick and what to drop, because the allegation is that all titles are a product of an illegal process and the desired result is a restitution of the original title. If you leave out some titles then you prejudice unfairly those left in the litigation because they will have a disproportionately smaller cake to share which will be against public policy and against the whole idea of group ranch subdivision. If the

intention is to redistribute the Group Ranch, then you must redistribute everything so that nobody is prejudiced by some land being left untouched.

32. It is apparent that the plaintiff is unable to put all subdivisions in the suit. That being the case, he does not have all pieces of the jigsaw. She cannot therefore reconstruct the jigsaw irrespective of whatever evidence she will present. My finding is that without all parcels of land being in the litigation, there is no justiciable cause of action in the amended plaint capable of interrogation, and neither is this gap going to be cured by the proposed amendments. It will be pointless proceeding with this litigation in the manner drawn and in the manner now proposed. There is no purpose in dragging this litigation any further because, as I have said, and I know that am repeating for the umpteenth time, the plaintiff cannot get a reinstatement of the parcel Narok/Transmara/Olalui/13 without all subdivisions of it being in the litigation.
33. I am afraid that I have no option but to decline this application for amendment for the effect of it will still leave us without a competent cause of action. My finding of the existing amendment plaint also is that it has no cause of action. I have no choice but to proceed to strike out this suit in limine which I hereby do.
34. There is the other related suit being Kisii ELC No. 24 of 2022. With the striking out of this suit, that suit is also spent. It is similarly struck out. The chips remain where they fell. Any interim orders are hereby lifted.
35. The only issue left is costs. The parties before me are all members of one group ranch. They are either close relatives or close neighbours. They have come together this far; they still have a long way to go together. Bearing these factors in mind, each party will bear his/her own costs.
36. Orders accordingly.

DATED AND DELIVERED THIS 13 DAY OF NOVEMBER 2025

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in the presence of :

Mr. Ogola instructed by M/s Gordon Ogola & Associates Advocates

Mr. Mwenesi instructed by M/s S. Musalia Mwenesi Advocates for 280 defendants

Mr. Akang'o instructed by M/s B.O. Akang'o Advocates for 91 defendants

Mr. Nyambati instructed by M/s G.M Nyambati & Co. Advocates for defendants No. 72, 266 and 499

Mr. Wabwire, State Counsel, for the 599 – 602, 605-609 defendants.

Court Assistant – Michael Oyuko.