

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KAJIADO
ELCC E043 OF 2022

KAPAITO OLE PAIKA & 27

OTHERS PLAINTIFF

VERSUS

JOHN SITELU NKIPAPAI 1ST

DEFENDANT

KOISINGIET OLE NJAMA 2ND

DEFENDANT

JAMES MUNDEI LENCHANGWA..... 3RD

DEFENDANT

JOSEPH LENGAKUAI OLOMUKO..... 4TH

DEFENDANT

SHADRACK NKIPAPAI..... 5TH

DEFENDANT

NKAAI NKIPAPAI..... 6TH

DEFENDANT

LEMARON	MUNYEPERA.....	7 TH
DEFENDANT		
LENGAI	NTASERWA.....	8 TH
DEFENDANT		
ALAISE	OLOSHURO.....	9 TH
DEFENDANT		
LALAMATISHO	LORUMA.....	10 TH
DEFENDANT		
SALASH	KETURAI.....	11 TH
DEFENDANT		
MOTONGA	KORIOKO.....	12 TH
DEFENDANT		
KITEKO	LAIRUMBE.....	13 TH
DEFENDANT		
NG'ELE	NKIPAPAI.....	14 TH
DEFENDANT		
DAVID	GICHUKI.....	15 TH
DEFENDANT		
ROMBO	GROUP RANCH.....	16 TH
DEFENDANT		

GEODEV {K} LIMITED17TH

DEFENDANT

COMMUNITY LAND REGISTRAR, KAJIADO.....18TH

DEFENDANT

NATIONAL LAND COMMISSIONINTERESTED

PARTY

THE COUNTY GOVERNMENT OF KAJIADO.....1ST INTERESTED

PARTY

THE COUNTY EXECUTIVE COMMITTEE MEMBER -

OF LANDS AND PHYSICAL PLANNING.....2ND INTERESTED

PARTY

THE COUNTY GOVERNMENT OF KAJIADO,

CHIEF OFFICER, LANDS AND -

PHYSICAL PLANNING 3RD INTERESTED

PARTY

ALEX KILOWUA, GOVERNOR'S ROMBO -

TASKFORCE, CHAIRMAN.....4TH INTERESTED

PARTY

ISAAC PAIYAI TIPAPE & 91 OTHERS.....5TH INTERESTED

PARTY

RULING

1. The 1st to 15th Defendants Notice of Motion dated 29th February, 2024 brought under Sections 1, 1A, 3 and 3A of the Civil Procedure Rules seeks for the following orders;

1) Spent.

2) Spent

3) That the County Government of Kajiado Governor's Rombo Taskforce Committee be permanently stopped from hearing, making a determination and or preparing a final report to the Rombo Group Ranch Subdivision Dispute that is already subject to the main suit herein.

4) That the costs of this Application be in the cause.

2. The Motion is supported by the Affidavit of John Sitelu Nkipapai sworn on 29th February, 2024 who deposes that he is the Chairperson of the Rombo Group Ranch, the 16th Defendant herein whose officials include the 1st to 4th Defendants. The Deponent castigates the County Government of Kajiado for forming the 'Governors Rombo Taskforce Committee' without proper public participation and consultation with the Group Ranch leadership and all key stakeholders. It is alleged that the quasi-judicial Taskforce was arbitrary, unilaterally and

unlawfully formed to hear disputes relating to Rombo Group Ranch which is the subject matter of this suit. It is further stated that the Taskforce was required to present a report to the Kajiado County Government specifying their determination of the group ranch subdivision after hearing disputing parties on land disputes.

3. The 1st to 15th Defendants avows that Alex Kilowua, CECM health services and Julius Marao, Chief Officer, Land and Physical Planning are the Chairperson and Secretary of the Taskforce. Further membership includes, Grace Saitoti, Naomi Parinkoi, Rosemary Turere, Jonathan Oseur and Joshua Lemaikai whose titles are Chief Officer, Water Services; Chief Officer, Administration; County Solicitor; County Land Registrar and County Surveyor in that order.
4. It is averred that the Taskforce proceedings were parallel to the proceedings of this court. The Taskforce is censured for coercing the 1st to 15th Defendants to appear before it on 13th February, 2023 and 8th February 2024.
5. The 1st to 15th Defendants claim that politicization of the subdivision of the Group Ranch has culminated into a security

threat in Rombo thus making it volatile due to the existence of two conflicting proceedings over the same subject matter.

6. According to the 1st to 15th Defendants, determination of the Group Ranch subdivision disputes by the Taskforce creates a conflict of interest. This is because the court might summon some of the Kajiado County Government key official as witnesses during the hearing so as to establish if they approved subdivisions plans for the group ranch.

1st to 4th Interested Party's Case

7. The 1st and 4th Interested Party's opposes the Motion through the Replying Affidavit of the 1st Interested Party's Chief Officer, Lands, Physical Planning and Urban Development, Julius Marao, sworn on 30th August, 2024. He pleads with the court to struck it out and dismiss it with costs because it is bad in law and an abuse of court process. It is claimed that the prayers sought are untenable and that the application is *sub judice* as the 1st to 15th Defendants have a similar application dated 29th February, 2024 filed in Kajiado High Court Judicial Review case No. E009 of 2023 which is pending determination.

8. The 1st and 4th Interested Parties are of the view that the orders sought can only be granted in a separate suit because the

application introduces a new cause of action which is not accompanied by a substantive suit.

9. It is avowed that what prompted the 1st Interested Party to constitute the Governor's Rombo Taskforce was the huge public outcry from Kajiado residents concerned that subdivision of group ranches had deprived them of their land. It is further claimed that the subdivision undermined environmental conservation and food production.

10. According to the 1st to 4th Interested Parties, the Taskforce which comprised of Alex Kilowua, Grace Saitoti, Naomi Parinkoi, Rosemary Turere, Jonathan Oseur and Joshua Lemaikai was mandated to;

(a) Identify the vulnerable in the society who are orphans, widows and people living with disability who are eligible and have been left out from allocation.

(b) Identity the members who were relocated unfairly from their ancestral land to a different place.

(c) Establish the conflict in the water canal and the beneficiaries in Rombo area.

(d) Establish the distribution and status of public utilities which include schools, water points, dispensaries and other amenities required for public use.

11. According to the Deponent, the Taskforce invited all stakeholders and general public for substantive comments and views following its appointment in accordance with the law. However, the Applicants failed, ignored and refused to appear before it on 8th February, 2023 notwithstanding that they were invited to give their views. It is alleged that when they appeared on 19th February, 2024 following a subsequent invitation, they declined to give their comments and views by asserting that the Taskforce proceedings conflicted with these court proceedings.

12. According to the 1st to 4th Interested Parties, appointment of the Taskforce by the 1st Interested Party was an executive role prescribed under **Article 186 of the Constitution** and **Sections 5 and 30 of the County Governments Act**. They further allege that this provision does not dictate that public participation ought to be conducted before any such decisions are made. It is alleged that if public participation should to be

done before performing any executive functions, then the constitutional functions of the office of the 1st Interested Party would be unnecessarily constrained.

13. The 1st to 15th Defendants are faulted for failure to support their assertions that the Taskforce has created tension in the County yet it was a noble, constitutional and statutory process seeking to remedy an existing problem. The 1st to 4th Interested Parties further reprove them for approaching the court with unclean hands. This is because they did not disclose that they filed a comparable application which is awaiting determination before the High Court. According to the 1st to 4th Interested Parties, the application has been overtaken by events because the Taskforce already submitted its report after conclusion of its operations on 15th April, 2024.

Court Directions

14. Subject to direction of the Court, the application was to be dispensed with through written submissions. Only the 1st - 91 Interested Parties and the 1st - 15th Defendants complied. The court has considered the submissions in the writing of this ruling.

Issues for determination

15. The singular issue for determination in the court's opinion is whether the Applicants are entitled to an order permanently stopping the Kajiado Governor's Rombo Task Force Committee from hearing, making a determination and or preparing a final report relating to the Rombo Group Ranch subdivision dispute as sought by the Applicants in the application under consideration. Of course the court will also have to determine the issue of costs either way.

Determination.

16. In considering this application, the truthfulness of the words of retired Indian Judge, J.R. Midha, hit me on the face like a hammer. In his farewell speech in the year 2021 after thirteen (13) years of service in the Delhi High Court, the Learned Judge stated that;

“In the court of justice both parties know the truth.

It is the judge who is on trial.”

17. The Applicants herein are the 1st - 16th Defendants. This is not their case yet in the application, which is an interlocutory application, they seek a permanent order, permanently stopping the Kajiado Governor's Task Force Committee from

hearing, making a determination and or preparing a final report relating to the Rombo Group Ranch subdivision dispute.

18. The Applicants have not disclosed that they have filed an identical application before the High Court at Kajiado in Judicial Review Application No. E009 of 2023 dated 29th February 2024. The Applicants in the juridical review application before the High Court are Koisinget Ole Nchama and John Sitelli Ole Nkipapai, the 2nd and 1st Defendants/Applicants in this case.
19. The lodging of the identical applications before two different courts of equal status potentially sets up the courts on a collision course at the risk of two contradictory decisions over the same subject matter. This in the court's view is forum shopping at its best.
20. Though the application before this court is expressed to have been brought under Sections 1, 1A, 3 and 3A of the Civil Procedure Act, it is for all intents and purposes an application for the Judicial Review Order of prohibition through the back door. It is only an order of prohibition that is directed to an inferior tribunal or body that forbids such tribunal or body from continuing proceedings in excess of its jurisdiction or in contravention of the laws of the land, or for departure from the

rules of natural justice as was discussed by the Court of Appeal in the case of **Cortec Mining (K) Limited -vs- Cabinet Secretary, Attorney General and 8 others, (2015) eKLR.**

21. The Applicants' application is premised on the grounds that the County Government of Kajiado acted arbitrarily, unilaterally and unlawfully forming a quasi-judicial organ in the name of the Governor's Rombo Taskforce Committee to hear disputes relating to the subdivision of the Rombo Group Ranch without consultation and proper public participation.

22. The proper and lawful way of challenging the Taskforce is by way of Judicial Review as the Applicants have already done before the High Court. Their application before this court is improper and without any legal basis. It is an affront on laid down rules and procedures. It amounts to an abuse of the process of court.

23. As Kiage JA succinctly cautioned in the case of **Nicholas Kiptoo Arap Korir Salat -versus- Independent Electoral and Boundaries Commission & 6 others (2013) eKLR,**

"...courts must never provide succor and cover to parties who exhibit scant respect for rules and timelines. Those rules and timelines serve to make

the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending and circumventing of rules and a shifting of goal posts, for while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by rules.

...it is in the even-handed and dispassionate application of rules that courts give assurance that there is a clear manner in which things are done so that outcome can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application is concerned.”

24. The application is an attempt by the Defendants to hijack the Plaintiffs’ suit seeking to enforce their property rights into a wrestling arena with the County Government of Kajiado who are not even principal parties in this suit and on a non-issue in this suit.

25. The upshot is that the 1st- 16th Defendants’ application is unmerited and is hereby dismissed with costs.

It is so ordered.

**Dated Signed and Delivered at Kajiado Virtually this 6th Day
of November 2025.**

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Kiprono for the Plaintiffs

Mr. Kirimi for Isaac Kipape and 91 others

Mr. Otieno for the 1st - 4th Interested Parties

Mr. Taliti for the 1st - 16th Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE