



THE JUDICIARY



REPUBLIC OF KENYA
IN THE ENVIRONMENT & LAND COURT AT NAROK
ELC LC CASE. NO. E034 OF 2024

NOONTINIAI OLE TORONKEN.....	1ST
PLAINTIFF/RESPONDENT	
TULUYIA OLE SI.....	2ND
PLAINTIFF/RESPONDENT	
JOHN LEKISHON OLE N.....	3RD
PLAINTIFF/RESPONDENT	
DANIEL SUNAATI OLE SILOMA	
(suing as the legal representative of the Estate of	
NOAH NCHORORA OLE SILOMA).....	4TH
PLAINTIFF/RESPONDENT	
(Suing as the legal representative of the Estate of	
PAUL KAYIAN OLE PATIAT)	5TH
PLAINTIFF/RESPONDENT	
VICTOR SAITOTI SADERA	
(Suing as the representative of the Estate of	
PETER L. K. OLE SADERA)	6TH
PLAINTIFF/RESPONDENT	
	VERSUS
NGURUMAN LIMITED.....	1ST
DEFENDANT/APPLICANT	
HERMANUS PHILLIPUS STEYN.....	2ND
DEFENDANT/APPLICANT	
HEDDA STEYN	3RD
DEFENDANT/APPLICANT	
MARTIN RICHARD STEYN	4TH
DEFENDANT/APPLICANT	
JOHN-BAPTIST MAURICHO VA.....	5TH
DEFENDANT/APPLICANT	
GROSS ANTHONY FREDERIC.....	6TH
DEFENDANT/APPLICANT	
KABIR DHANJI	7TH
DEFENDANT/APPLICANT	
THE REGISTRAR OF COMPANIES	8TH
DEFENDANT	

THE LAND REGISTRAR-NAROK COUNTY.....9TH
 DEFENDANT
 THE NATIONAL LAND COMMISSION.....10TH
 DEFENDANT
 THE NATIONAL LAND COMMISSION11TH
 DEFENDANT
 THE ATTORNEY GENERAL12TH
 DEFENDANT

AND

THE COUNTY GOVERNMENT OF
 NAROK.....1ST INTERESTED
 PARTY
 THE DIRECTOR OF CRIMINAL
 INVESTIGATION2ND INTERESTED
 PARTY

RULING

1. The Plaintiffs herein vide a Plaint dated **5th November 2024**, sought for Judgment against the Defendants herein jointly and severally for various Orders; among the prayers sought are; a declaration that the transfer of the suit property **Narok / Nguruman/ Kamorora/ 1**, from **Kamorora Group Ranch** to 1st Defendant (**Nguruman Ltd**) created a resulting and / or constructive / or implied trust in favour of the Plaintiffs; In the alternative, a declaration that the transfer of the suit property, **Narok/ Nguruman/ Kamorora/1**, from **Kamorora Group Ranch** to 1st Defendant(**Nguruman Ltd**), on or about **13th January 1986** was **illegal, null and void**.
2. The suit is opposed by the Defendants, who are represented by different advocates and or government agencies. The 1st to 7th Defendants through the Law Firm of **Busaidy, Mwaura & Ouma Co Advocates** filed their Statement of Defence dated **21st January 2025**, denied all the allegations made in the Plaint, and also disputed the jurisdiction of this court.

3. In response to the allegations made in the claim, the 1st to 7th Defendants averred that the Plaintiffs have no necessary ***locus standi*** to bring this suit, whether on their own behalf or on behalf of the other Plaintiffs, as ***Kamorora Group Ranch***, which the Plaintiffs aver were founder members had been incorporated on ***13th November 1974***, under ***CAP 287***, and was subsequently dissolved on ***19th August 1985***, and therefore does not exist.
4. In their para 7 of the Defence, the 1st to 7th Defendants averred that the Plaintiffs' suit discloses no reasonable cause of action, since as the former members of the dissolved ***Kamorora Group Ranch***, they never had any direct proprietary rights to the ***corporate property*** of the said Group Ranch, which was a legal entity distinct from its members.
5. Simultaneously, the 1st to 7th Defendants filed a ***Notice of Motion Applications*** dated ***21st January 2025***, which Application is brought under *Sections 1A, 1B and 3A* of the ***Civil Procedure Act, (Cap. 21 Laws of Kenya), Order 2 rules 15(1)(a),(b),(c) and (d)*** and ***Order 51 Rule 1 of the Civil Procedure Rules*** , and sought for Orders that : -

- 1. That the suit be struck out with costs to the 1st Defendant.***
- 2. That the Court do issue such or further and/ or any other relief that it might deem fit to grant.***

3. Costs of this application be provided for.

6. The 8th Defendant, **The Registrar of Companies** also filed its Statement of Defence; denied the allegations made by the Plaintiffs, averred that it is a stranger to contents of the Plaint, and also denied the jurisdiction of this court. The 8th Defendant prayed for the suit to be struck out with costs.
7. On **4th March 2025**, the 8th Defendant also filed a **Notice of Preliminary Objection** and averred that this Court has no jurisdiction to deal with the dispute herein, since the issues raised are governed by the provisions of the **Companies Act, 2015**.
8. The 8th Defendant further averred that the suit herein amounts to an **abuse of the court process** as it concerns a dispute regarding the legality of transfer of shares in the 1st Defendant, which dispute may only be brought before the High Court, and thus this court has no jurisdiction.
9. Further, the dispute is also an **abuse of the court process** as it concerns an alleged oppressive conduct and unfair prejudice, which can only be filed at the High Court. Therefore, the 8th Defendant contended that the Plaintiffs have failed to follow the due process as set out under **Section 780** of the **Companies Act, 2015**, and thus this suit should be struck out for being filed in a court without jurisdiction.

10. The court directed that the two matters, that is the **Notice of Motion Application** and the **Notice of Preliminary Objection**, be canvassed together through written submissions.

11. The **Notice of Motion Application** by the 1st to 7th Defendants/ Applicants is supported by the grounds set out on the it's face and on the Supporting Affidavit of **Martin Richard Steyn**, the 4th Defendant herein. Among the grounds in support of the Application are; the Plaintiffs do not have the necessary **Locus standi** to bring this suit whether on their own behalf or on behalf of **Moses Olowuaya, Noontiniai Ole Toronken, Raphael Kukutia Ole Loolpapit, Tuluyia Ole Simej, Peter Ole Sadera, Lekinana Ole Olokipai, Moses ole Nairoua, Noah Ole Silma, Charles Ole Sankori, Paul ole Patiat, James Kone, Paul Ole Churie, Orumoi Ole Kone and Kone Ole Senteu**, whether as the founding members of **Kamorora Group Ranch** or at all.

12. That **Kamorora Group Ranch** which is also referred to interchangeably from time to time as **Nguruman/ Kamorora Group Ranch**, was incorporated on **13th November 1974**, under **Section 7** of the **Land (Group Representative) Act, Cap 287**, of the Laws of Kenya (hereinafter the "LGRA") and was subsequently dissolved on **19th August 1985**.

13. That this suit discloses **no reasonable cause of action** in that the former members of the dissolved **Kamorora Group**

Ranch, never had any direct proprietary rights to the corporate property of the said Group Ranch, which upon incorporation became a legal entity distinct from its members. The former members of the defunct **Kamorora Group Ranch**, on whose behalf Plaintiffs are bringing this suit do not have any legally enforceable interest in the suit property because customary rights to the suit property were extinguished absolutely when this **Kamorora Group Ranch** was registered as the proprietor of the suit property after the adjudication process, which individualized the tenure of the suit property, and extinguished absolutely communal or such other form of land tenure in respect of the suit property.

14. That on **24th October 1986**, a lease over the suit property was granted by the 1st Defendant to the late **Hermanus Phillipus Steyn**, the 2nd Defendant herein for a period of twenty **(20) years** with effect from **1st August 1986**, such that any claim by the Plaintiffs concerning the said lease which lapsed more than **18 years ago** is also barred by **Section 7** of the **Limitations of Actions Act**.
15. It was also averred that the Plaintiffs had already brought a suit for recovery of the suit property before the **Ololulung'a Land Disputes Tribunal**, on behalf of the former members of **Kamorora Group Ranch**, resulting in an Award dated **2nd April 2009**, which Award was adopted as a decree of the court by **Narok SPM Court**, on **16th June 2009**. However,

the said Award was set aside by the High Court on **19th May 2010**.

16. In his Supporting Affidavit, **Martin Richard Steyn** reiterated the contents of the grounds in support of the Application, and also averred that he is a Director of the 1st Defendant, and their advocate has advised them that the Plaintiffs herein do not have **locus standi** to bring this suit, whether on their own behalf ,or on behalf of the parties as indicated in the Plaintiff.
17. Further, he deposed that he has been advised by their advocate on record that at law a body corporate has capacity to sue and be sued in its corporate name in an action to redress a wrong done to a body corporate. That where an action is brought to redress the wrong done to a corporate, the body corporate should be the proper Plaintiff. Further, that a person who brings an action otherwise than in a body corporate's name lacks **Locus standi**, and such a suit is liable to be struck out.
18. It was his contention that upon incorporation, **Kamorora Group Ranch** became the registered proprietor of the property known as Title No. **Narok/Nguruman/Kamorora/1**(hereinafter "the suit property") on **31st October 1978**, following the process of adjudication which started in **1969**, when the Land Adjudication Act was applied to the then Narok District in 1969. Further, that during an AGM of **Kamorora Group Ranch** more

than the required **60% majority** of the members approved transfer of the suit property to 1st Defendant, which was fully owned by the registered members of **Kamorora Group Ranch**, hence the transfer was effected on 13th January 1986, and thereafter dissolution of the said **Kamorora Group Ranch followed.**

19. He also averred that all members of **Kamorora Group Ranch** became the sole shareholders of the 1st Defendant on or about **11th October 1984.** This is confirmed by a letter from the Assistant Registrar of Companies dated **18th October 1984,** whereupon the said Group Ranch transferred the suit property to the 1st Defendant on **14th December 1984,** with the consent of the **Land Control Board granted** on the same date.
20. The Application is opposed by the Plaintiffs herein vide a Replying Affidavit of **John Lekishon Ole Nairoua 3rd Plaintiff,** who alleged that he was duly authorized by the other Plaintiffs to swear the said Affidavit. He deposed that their advocate has advised them that; the instant Applicant raises factual and legal issues which can only be tried upon in a full hearing and determination of the main suit;
21. Further, that the suit raises issues of ownership of the suit property including whether the Plaintiffs have legal and equitable rights over all that property known as **Narok/Nguruman/Kamorora/1,** measuring approximately **26,993 Hectares(which is 66,133 acres)** situated in Narok

County, which could require the court to interrogate evidence produced in court by the parties.

22. He further averred that making such a decision at this juncture means that the court would not have had an opportunity to ventilate on the issues that have been raised by the Plaintiffs. The deponent referred to various decided cases among them; ***Presbyterian Foundation & another vs East Africa partnership Ltd & another [2012]eklr, Viren D.M. Joshi vs Bags and Balers Manufacturers (K) Ltd & another [2021]eklr***, to support their contention that the suit should not be struck out at this stage.
23. In response to the allegation of lack of ***locus standi***, the Plaintiffs deposed that their advocate has also advised them that they have the ***locus standi*** to bring this suit on their own behalf, as they have raised various ***causes of action*** in their Plaint dated ***5th November 2024***, which include ***fraudulent misrepresentation*** in the incorporation of ***Nguruman Ltd***, the 1st Defendant herein, and the registration of the suit property in favour of the 1st Defendant, and subsequent dealings by the 1st Defendant regarding the suit property. Further, there has been a breach of trust between them and the 1st Defendant with respect to the suit property.
24. The 3rd Plaintiff also averred that ***Nguruman/Kamorora Group Ranch*** was the first registered owner of the suit

property since the year 1975. Further, that in their paragraphs 35 to 38 of the Plaint, they contended that the suit property was **illegally and fraudulently transferred** from **Nguruman/Kamorora Group Ranch** to the 1st Defendant (**Nguruman Ltd**), and thus they have a reasonable cause of action.

25. In response to paragraphs 7, 19 and 20 of the Affidavit of **Martin Steyn**, the Plaintiffs acknowledged that **Nguruman/Kamorora Group Ranch** does not exist, and therefore it cannot be the proper Plaintiff, and the court is called to determine whether the purported transfer of the suit land from **Nguruman/Kamorora Group Ranch** to the **1st Defendant** created a resulting and/or constructive and /or implied trust in favour of the Plaintiffs.
26. Further, he averred that the suit raises causes of action which include the Plaintiffs right to protection of property in respect of the suit property, and they have neither brought the current suit on behalf of the 1st Defendant nor the defunct **Nguruman/Kamorora Group Ranch**, and the court has a duty to determine whether the Plaintiffs are entitled to the orders sought.
27. On allegations that the suit herein is **Res judicata**, the 3rd Plaintiff averred that he has been advised by his advocate that though there are previous suits involving **Nguruman Ltd and/or Kamorora Group Ranch**, those cases do not meet

the criteria for res judicata, as those decisions did not determine the causes of action brought in this case, including **ownership**, and **illegal** transfer to the 1st Defendant.

28. He further averred those decisions were not between the Plaintiffs herein and the Defendants, and the issues raised by the Plaintiffs have not been exhaustively determined by any other court.
29. On whether the allegations on the cause of action on the registration of the 1st Defendant as the owner of the suit property and the lease are **time barred**, it was his contention that the same is not time barred, since after the expiry of the lease in **2006**, the Plaintiffs have attempted to evict the 2nd Defendant, and thereafter various suits have been filed over the suit land, and the filed cases stopped the time from running in respect of the Plaintiffs cause of action, and thus the suit is not time barred.
30. On allegation that the court lacks jurisdiction, he averred that his advocate has advised them that the suit raises the issues of **ownership and disposition of interest, and rights** in the suit property, and **illegal and fraudulent transfer** of the suit land to the 1st Defendant, leading to unlawful removal of the Plaintiffs as shareholders in the 1st Defendant, and thus this court has jurisdiction to hear and determine the matter.

31. On allegation of failure to exhaust the **ALTERNATIVE Disputes Resolutions Mechanisms**, with the **National Land Commission**, he averred that the suit is not entirely a historical injustice claim, and the Plaintiffs lodged a complaint with **NLC** in 2013 **and 2022**, but the said Commission has not heard nor determined the said complaint. Therefore, the Plaintiffs should not be impeded from having their day in court.
32. In conclusion, he contended that the issues raised in the instant Application need to be raised in the Defence, and tried in the main suit. Therefore, the Application has not met the threshold for striking out the instant suit, and since the said Application is **frivolous, vexatious, and lacks merit**, he urged the court to dismiss it with costs. The deponent urged the court to hear and determine the issues raised herein on merit.
33. The 11th Defendant, **The National Land Commission** filed its Replying Affidavit through **Edmond Gichuru**, the **Deputy Director Legal Affairs, and Disputes Resolutions** in support of the **Notice of Motion Application** and **Preliminary Objection**, and averred that under **Article 67 (2)(e)** of the Constitution and **Section 15** of the National Land Commission Act, the 11th Defendant is the body Corporate vested with mandate to initiate investigations on its own or on a complaint into present or historical land injustices in Kenya and recommend appropriate remedy.

34. That until **21st January 2021**, the 11th Defendant has been receiving **historical land injustices claims** from members of the Public on various parcels of land alleged to have been acquired by individuals or other entities in unclear and unlawful or irregular manner occasioning them an injustice and requested to have some looked into.
35. He also averred that in the instant suit, the 11th Defendant received a historical injustice claim from the Plaintiffs in 2013, over the suit property **Narok /Nguruman/ Kamorora/1**, which they alleged were deprived from them by one **Hermanus Phillipus Steyn**, the 2nd Defendant.
36. It was his contention that in **2014**, the 11th Defendant invited the parties for hearing, and later the matter was stood over to **2018**. That the 11th Defendant commenced investigations over the lodged claim. The said Historical claim is still ongoing.
37. The deponent also contended that the orders sought by the Plaintiffs are premature, as there is a complaint pending before the 11th Defendant, and the suit herein endeavors to oust the jurisdiction of the 11th Defendant.
38. Therefore, the Plaintiffs' suit amount to an abuse of the court process, and the said reliefs sought would prevent the constitutional commission from carrying out its mandate, and therefore the Plaintiffs have **no locus standi** to bring this suit.

39. He urged the court to allow the 11th Defendant to conclude its investigations, findings and make recommendations on the complaints lodged by the Plaintiffs for the interest of justice. Therefore, the court lacks jurisdiction to hear and determine this case, which is pending investigations before the 11th Defendant as a **HLI Claim**. He urged the court to strike out this suit and/ or dismiss it with costs.
40. The Notice of Motion Application, and the Preliminary objection were canvassed by way of written submissions.
41. The Law Firm of **Busaidy Mwaura & Ouma Advocates** filed their submissions in support of the **Notice of Motion and Preliminary** objection dated **12th May 2025**, set out the background of the case, and Identified two issues for determination being;
- i) Whether the court ought to exercise its jurisdiction under Order 2 rule 15(i) of the Civil Procedure Rules and strike out the Plaint dated 5th November 2024, with costs;**
 - ii) Whether the court ought to uphold the Notice of Preliminary Objection.**
42. On the striking out, the 1st to 7th Defendants/ Applicants urged the court to allow its application; The applicants relied on various decided cases; among them being **DT Dobie & Co (k) Ltd vs Muchina(1982) klr**, and averred that the suit

herein does not disclose any cause of action and as such ought to be struck out.

43. The Applicants also relied on various other decided cases being; ***Mbiu Makangu vs Gerald Mutwiri Mbuyi Civil Appeal No 281 of 2000***; which was cited in the case of ***Peter Ndungu Thiongo & Another vs Juvenalis Gitau Muchuga & 6 Others (2006) KEHC 2974(KLR)***, ***El-busaidy vs Commissioner of Lands & 2 Others (2002) 1klr***; ***John Mbogua Getao vs Simon Parkoyiet Mokare & 4 Others SC Petition No9 of 2020(2021) KESC 36 (KLR)***, ***Nkoirishi Ole Ntompoko Kereru & 4 Others vs The Chairman Longosua Group Ranch & 9 Others (2001) eklr***; ***kuya Ole Masikonde & 11 others vs The Attorney General (2007) eklr*** among the many other cases.
44. On whether the court should uphold the ***Notice of Preliminary Objection*** filed by the 8th Defendant, reliance was sought in the case of ***Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd (1969) EA 696***; ***Owners of Motor Vessel Lillian S (1989) KLR1***, ***Co-operative Bank of Kenya vs Patrick Kangethe Njuguna & 5 Others (2017) eklr*** and ***Christopher Happe vs Alessandro Torriani & 19 Others (2018) eklr***, among others.
45. In conclusion, the 1st to 7th Defendants/ Applicants submitted that the suit property belongs to the 1st Defendant following its

registration as a proprietor pursuant to the transfer in **1986**, which transfer was **legally, procedurally and regularly** done. Further, that various court decisions have upheld its proprietorship, and it would be manifestly unfair to subject it to another litigation on an already settled matter.

46. The Applicants urged the court to allow the instant Application, and uphold the Notice of Preliminary objection.
47. The 8th Defendant filed its written submissions dated **7th April 2025**, drawn by **K. Odhiambo Principal State Counsel**, and urged the court to uphold its Notice of Preliminary Objection. The 8th Defendant submitted that this court lacks jurisdiction to hear and determine this matter, which is a preserve of the High court.
48. The 8th Defendant relied on various decided cases among them; **Samuel Kamau Macharia & Another vs Kenya Commercial Bank & 2 others Civil Application No 2 of 2011 (2012) eklr; Republic vs Resident Magistrate's Court at Kiambu Ex parte Geoffrey Kariuki Njuguna & Another (2017) eklr; and Republic vs Registrar of Companies & 2 others ; Waterfront Outlet Ltd (c.147966) (Interested Party) ; Water Front Outlets Ltd (CPR/ 2015/ 214503) Ex parte (2023) KEHC 227(KLR).**
49. The court was urged to uphold the **Notice of Preliminary Objection** and proceed to strike out the entire suit with costs,

as this court has no jurisdiction to determine the matter concerning internal management of the affairs of; and transfer of shares of 1st Defendant.

50. The Attorney General for the 8th to 10th Defendants filed its written submissions in support of the Notice of Motion Application dated **26th June 2025**, through **Njoroge Allan Kamau; Deputy Chief State Counsel**; who raised one issue for determination; whether the instant suit amount to an abuse of the court process in light of the pendency of the subject matter before the 11th Defendant.
51. Reliance was sought in Article 67(2)(e) of the Constitution on the mandate of **National Land Commission**, and on various decided cases; **Waity vs Independent Electoral & Boundaries Commission & 3 Others (Petition No 33 of 2018)(2019) KESC 54 KLR (8TH February 2019) (Judgment); Justus Kariuki Mate & Another vs Martin Nyaga Wambora & Another (2017) eklr; Pevans East Africa Ltd & Another vs Chairman Betting Control and Licencing Board & 7 Others (2013) eklr; Communication Commission of Kenya & 5 Others vs Royal Media Services & 5 Others Pet. 14A ,14B, & 14C OF 2014(2014) EKLR; Krystalline Salt Ltd vs Kenya Revenue Authority (2019) eklr; Satya Bhama Gandhi vs Director of Public Prosecution & 3 Others (2018) eklr; among other cases.**

52. Further, the AG relied on **Sections 3A and 7** of the **Civil Procedure Act**, and submitted that since there is an abuse of the court process, the court should allow the instant Application to prevent abuse of the court process and for end of justice to be met.
53. The 11th Defendant, the **National Land Commission** also filed its written submissions dated **17th April 2025**, through **Caleb Osoro Advocate**, and supported the Notice of Motion Application by the Applicants. It set out the brief facts of the case, and admitted that it received a **Historical Land Injustice claim** from the Plaintiffs on **19th November 2013**, over the property known as **Narok/ Nguruman/Kamorora/1**, and the claim was procedurally admitted by the 11th Defendant.
54. It further submitted that in early **2022**, it received a Supplementary Memorandum dated **29th January 2022**, from the Plaintiffs. However, in **2024**, the 11th Defendant received Pleadings for this case from the Plaintiffs., but it is still inquiring into the Plaintiffs HLI Claim.
55. The 11th Defendant set out three issues for determination. On whether the 11th Defendant has jurisdiction to hear and determine the instant suit, the 11th Defendant relied on Article 67(1) of the Constitution on its mandate.

56. The 11th defendant relied on several cases being ***Safepak Ltd vs Henry Wambega & 11 Others (2019) eklr;*** on the jurisdiction of ELC over claims touching on historical land injustices; ***Ledidi Ole Tauta & Others vs Attorney General & 2 Others (2015) eklr;*** ***Sila & Others vs International Centre for insect Physiology and Ecology (icipe) & 2 Others (Petition 01 of 2021(2022) KEELC 15140(KLR) 6th December 2022) judgment.***
57. On whether the Plaintiffs have exhausted the available avenues expressly provided for under the law, the 11th Defendant relied on the cases of ***Benson Ambuti Adegwa & 2 Others vs Kibos Distillers Ltd & 5 others (2020) eklr;*** ***Petition No 3 of 2020; United Millers Ltd vs Kenya Bureau of Standards & 5 Others (2021) eklr and Albert Chaurembo Mumbo & 7 Others vs Maurice Munyao & 148 others; SC Petition No 3 of 2016(2019) eklr;***
58. The court was urged to strike out the suit limine as was held in the case of ***Geoffrey Muthinja & Another vs Samuel Muguna Henry & 1756 Others (2015) eklr;*** where the Court of Appeal stated that the provisions of ***Section 9(2) of Fair Administrative Action Act 2015,*** can be viewed as a codification of the doctrine of exhaustion of administrative remedies.
59. On the legal consequences for failure on the part of the Plaintiffs to exhaust the remedies expressly provided for under

the law; the 11th Defendant relied on the decision of the Court of Appeal to strike out a suit for failure to adhere to the doctrine of exhaustion in the case of ***Mutanga Tea 7 Coffee Company Ltd vs Shikara Ltd & Another (2015) eklr;*** Further reliance was sought in the case of ***Amugune vs Advocates Disciplinary Tribunal & Another ; Law Society of Kenya & 2 Others (Interested Parties) (Judicial Review Application EO24 of 2025)(2025) KEHC 4305 (KLR) Judicial Review) 2nd April 2025) Ruling.***

60. In conclusion, the 11th Defendant urged the court to uphold the doctrine of exhaustion and strike out the present suit since the Plaintiffs have presented their complaints before the 11th Defendant as the appropriate forum, but before the complaint could be determined, the Plaintiffs prematurely filed the instant suit. Therefore, this suit is an abuse of the court process, and should be struck out in limine with costs.
61. In opposition to the ***Notice of Motion Application*** and ***Preliminary Objection***, the Plaintiffs filed their extensive written submissions dated ***4th June 2025***, through ***Mathew Muoki Advocates*** and urged the court to dismiss both of them.
62. The Plaintiffs set out two issues for determination being;
- i) Whether the 1st to 7th Defendants Notice of Motion dated 21st January 2025. Is merited;***

ii) Whether the 8th Defendants Preliminary Objection dated 4th March 2025, has merit.

63. On whether the 1st to 7th Defendants' Notice of Motion Application dated **21st January 2025**, has merit, the Plaintiffs relied on **Order 2 rule 15(1) of the Civil Procedure Rules 2010**, and the principles governing exercises of jurisdiction to strike out as set out in various cases; **Viren D. M Joshi vs Bags and Balers Manufacturing (k) Ltd & Aother (2021) eklr; Madison Insurance Co ltd vs Augustine Kamanda Gitau (2020) eklr and B DT Dobie & Co (k) vs Joseph Mbaria Muchina & Another (1980) eklr**; where the court held that jurisdiction to strike out suits must be exercised sparingly and in clear and obvious cases.
64. On whether the Plaintiffs have **locus standi** to institute these proceedings, it was submitted that the Plaintiffs **locus standi** is anchored on their claim, as the original proprietors of the suit property, and on equitable ownership of the suit property founded upon constructive, resulted and implied trust arising under the law of equity.
65. Reliance was sought in the cases of **Daykio Plaintiation Ltd vs National Bank of Kenya Ltd & 2 Others (2019) eklr; Kiboko Water Resources Users Association vs Kenya Pipeline Co ltd & 3 others (2022) eklr**.
66. On whether the suit is **Resjudicata**, reliance was sought in **Section 7 of the Civil Procedure Act**, and the cases of

Rajwani vs SBM(K) Ltd Commercial Case No E023 OF 2023(2023) EKLR; John Florence Martime Services Ltd & Aother vs Cabinet Secretary Transport & Infrastructure & 3 Others (2021) KESC 39(KLR; and it was submitted though there are previous proceedings involving ***Kamorora Group Ranch*** and ***Nguruman Ltd***, the said matters do not satisfy the criteria necessary to sustain a plea of res judicata.

67. On whether the cause of action concerning the lease is time barred, it was submitted that the allegations that the lease over the suit property is statute barred lacks merit, and such allegations are factual and can only be determined during the full hearing and consideration of the available evidence; Reliance was sought in the cases of ***Joseph Njuguna Karugu vs Margaret Nduta Ngugi & 2 Others (2021) eklr;*** which relied on the decision in the case of ***Edward Moonge Lengusuranga vs James Lanaiyara & Others (2019) eklr.***
68. On whether the cause of action relating to the ***fraudulent and illegal transfer*** of the suit property to the 1st Defendant was time barred, it was submitted that the same lacks merit, and the question of limitation in relation to this allegation is a factual issue that can only be properly addressed and determined during the full hearing . Reliance was sought in the case of ***Mintina Ene Keton Koponi (Suing as Lagal Representative of the estate of Kenton Ole Koponi Parsena(Deceased) vs Francis Njakwe Gathiari 7 2***

others (2018) eklr; where the court held that time kicked upon discovery of fraud, and where there is an allegation of fraud, the suit should be set down for hearing.

69. On whether the suit is prematurely brought before this court, it was submitted that the suit is not entirely premised on **historical land injustice claim**, but encompasses broader legal and constitutional violations relating to suit property, including ownership, title, occupation and use of the land, which is a matter falling under the jurisdiction of this court. Reliance was sought in the case of **East Africa Wildlife Society & 3 Others vs Kenya National Highways Authority & Others;** where the court dismissed a Preliminary objection challenging jurisdiction of the court.
70. It was the Plaintiffs further submissions that the National Land Commission cannot adequately address the issues herein since the suit raises causes of action which include issues outside the jurisdiction of NLC. Plaintiffs relied on the case of **Charles Steven Mbindyo vs National Land Commission & 2 Others (2016) eklr;** and **Buya & 2 Others (Suing on behalf of Ndera Community ;Tana River County and themselves vs National Land Commission& 5 Others (2023) eklr;**
71. On whether the 8th Defendant is **Notice of Preliminary Objection** is merited, reliance was sought in the case of **Mukisa Biscuits Manufacturing Co. Ltd vs West End Distributors Ltd;** and the case of **Tasmac Ltd vs Roberto**

Marci & 2 Others (2013) ekr. The Plaintiffs submitted that the dominant issues in this case are about titles to the suit property, and this court has jurisdiction.

72. It was the Plaintiffs submissions that since the dominant issues herein is ownership of the suit property, then the suit falls squarely within the jurisdiction of this court and the 8th Defendant's Preliminary Objection dated 4th March is not merited and should be dismissed with costs, together with the 1st and 7th Defendants Notice of Motion Application dated 21st January 2025.

73. The 1st Interested Party filed its written submissions dated **28th April 2025**, through **MCKAY & CO Advocates**, and opposed the instant Notice of Motion. It set out three issues for determination being

- i) Whether the instant suit should be dismissed / struck out preliminarily;**
- ii) Whether the Preliminary Objection is merited and whether the same should be upheld;**
- iii) Whether the court is seized of jurisdiction to hear and determine the suit.**

74. On whether the suit should be dismissed or struck out summarily, the 1st Interested Party relied on the case of **Wilmot Mwadilo , Edwin Mwakaya, Amos Nyatta & Patrick Mbinga vs Eliud Timothy Mwamunga & Sagalla Ranchers Ltd (2017) ekr.**

75. On whether the suit is time barred, it was submitted that the suit herein falls under the exemptions of the limitation period and should be extended due to **fraud and mistake**. Reliance was sought in the case of **Justus Tureti Obara vs Peter Koipeti Nengisio (2014) eklr;** and submitted that as to when the plaintiffs discovered fraud against the Defendants, that is a matter to be ascertained by the Court.
76. On **locus standi**, it was submitted that the Plaintiffs are the original founders of **Nguruman/ Kamorora Group Ranch** that transferred the suit land to the 1st Defendant a company owned by the 2nd Defendant, which Group Ranch was later dissolved. Therefore, due to the nature of the case, striking out the suit at this juncture would be detrimental to the Plaintiffs. It relied on the case of **Leleti Kararei & 2 others vs Kilesi Ole Sayiaton & 17 Others (2021) eklr.**
77. On whether the suit is **res judicata**, it was submitted that only the case before the **Land Disputes Tribunal** dealt with ownership of the suit land, and which decision was later set aside by the High court, and therefore, this suit is not res judicata. Reliance was sought in the case of **Qayrat Foods Ltd vs Safiya Ahmed Mohamed & 6 others (2020) KEHC 9754(KLR).**
78. On whether the Preliminary Objection is merited, and should be upheld. Reliance was sought in the Case of **Aviation &**

Allied Workers Union Kenya vs Kenya Airways Ltd & 3 Others (2015) eklr and Lydia Nyambura Mbugua vs Diamond Trust Bank Kenya Ltd & Aother (2018) eklr, where the court held that jurisdiction of the court is determined by the dominant issues and/ or subject matter of the dispute, and in the instant matter, the dominant issue is the ownership of the suit property.

79. In conclusion, the 1st Interested Party submitted that this court has jurisdiction to hear and determines the current suit. further, that the jurisdiction of this court to hear and determines historical land injustices have never been ousted by NLC. Reliance was sought in the case of **Kipsiwo Community Self Help Group vs AttorneybGeneral & 6 Others (2013) elkr; and the Chief Registrar & 4 others vs Nathan Tirop Koech 7 4 Others (2018) eklr; Meru Cultural Centre & 17 Others vs Kisiwa Farm Ltd 7 24 others Const Petition E006 OF 2022(2023) KEELC (19863 KLR(20TH SEPTEMBER 2023) Ruling; Mkamenyi Farmers Cooperative Society Ltd vs Ministry of Lands and Physical Planning & 8 Others (2020) eklr.**
80. In conclusion, the 1st Interested Party submitted that this court is rightfully seized of jurisdiction to hear and determines the matter, and therefore the court should dismiss both the Notice of Motion Application and Preliminary Objection with costs to the Plaintiffs.

81. The 1st and 7th Defendants filed Supplementary written submissions dated **24th June 2025**, and relied on a litany of decided cases, and urged the court to allow its application and strike out the suit entirely with costs for reasons that the Plaintiffs lack **locus standi** to bring this suit; and since the said suit is statute barred, it amounts to an abuse of the court process.
82. The above are the grounds for and written submissions in support of the **Notice of Motion Application**, and the **Preliminary Objection**; and the Grounds and written submissions in opposition to the Notice of Motion and Preliminary Objection, which this court has carefully considered and it renders itself as follows;-
83. The 1st and 7th Defendants/Applicants have sought for striking out of the suit on the ground that the Plaintiffs have **no Locus standi**, to institute this suit. On the other hand, the 8th Defendant has sought for striking out of the suit, on the ground that the court lacks jurisdiction. The 1st and 7th Defendants have also not admitted the jurisdiction of this court.
84. Given that the two issues are being determined simultaneously, the court will first determine the **Notice of Motion Application** on striking out. Depending with the outcome, then the court will proceed to determine the Notice of Preliminary Objection.

85. The Plaintiffs herein have alleged that they were the founding members of **Kamorora Group** which Group Ranch was the first ever registered owner of the suit property **Nguruman/Kamorora/1**, which measures about **26,933 acres**. Further, that the Plaintiffs who are named in the Plaint formed a Group Known as **Nguruman/Kamorora Group Ranch**.
86. After the incorporation of the said **Group Ranch**, the suit land was registered in the name of the Group Ranch; **Nguruman/Kamorora Group Ranch**, as per the provisions of **Cap 287 Law of Kenya**. However, the suit land was later transferred to **Nguruman Ltd**, the 1st Defendant in **December 1984**, and the title was registered on **13th January 1986** and the Group Ranch was dissolved in **1986**.
87. It is the Plaintiffs claim that this transfer of the suit land from **Nguruman /Kamorora Group Ranch** to **Nguruman Ltd** was done **illegally**, through **fraud** and **without consideration**. Further, that the said transfer created a resulting / constructive or implied trust in favour of the Plaintiffs, and this court should declare so, or alternatively declare that the transfer of this suit property from **Kamorora Group Ranch**, to 1st Defendant on **13th January 1986**, was **illegal, null** and **void**.
88. Form the Pleadings herein, it is evident that there have been several litigations in relation to this suit property **Narok/ Nguruman/ Kamorora/1**, and the 1st Defendant **Nguruman**

Ltd, has been a central figure in the various litigations. It is evident that the 1st Defendant was registered as the proprietor of the suit land on **13th January 1986**. Several court determinations have affirmed the ownership of the suit land to 1st Defendant, to mention a few of them; **Narok Resident Magistrates Case No 15 of 1991**, which decision was later upheld by the Court of Appeal on **13th July 1994**, in **Nairobi Civil Appeal No 52 of 1993**; and on 2nd December 2009, in **Kericho HCCC NO 65/ 66 OF 2009**.

89. It is also evident that the Plaintiffs did re-incorporate **Kamorora Group Ranch, in 2009**, and a Certificate of Incorporation was issued to them on **3rd November 2009** bearing **No. 0041**. Thereafter, the Plaintiffs filed a suit for recovery of the suit property before **Ololulunga Land Disputes Tribunal**, which tribunal found in favour of the re-incorporated **Kamorora Group Ranch**. The said Award of the Land Disputes Tribunal was adopted as the Judgement of the **Narok SPM Court** on **16th June 2009**.
90. However, the said Award was later set aside by the High Court vide a **Judicial Review Application No 121 of 2009**. Vide a **Court of Appeal No 205 of 2010**, the Certificate of re-incorporation of **Kamorora Group Ranch** was quashed, and the said re-incorporation was declared a **nullity**, and thus the re-incorporated **Kamorora Group Ranch** is non-existent, and the suit property remains the property of **Nguruman Ltd**.

91. There is evidence that the Plaintiffs had also filed a **historical Land Injustices Claim** before the **National Land Commission** in **2013**, and the said Commission began its investigations. However, before determination of the said **HLI Claim**, Plaintiffs filed this suit.
92. With the above background in mind, the court proceeds to determine whether this Notice of Motion Application dated **21st January 2025** is merited.
93. The Application is anchored under **Sections 1A, 1B** and **3A** of the **Civil Procedure Act**, which sections deals with the Overriding Objective of the Act, and the unfettered powers of the court to issue orders that are necessary for the end of justice to be met.
94. Further, the Application is anchored under **Order 2 Rule 15(1) a, b, c** and **d** of the **Civil Procedure Rules**, which rules grants the Court discretion to strike out a suit at any stage of the proceedings if the said suit discloses **no reasonable cause of action**; is **scandalous, frivolous or vexatious**; if it prejudices, embarrass or delay the fair trial of action or if it is any abuse of the court process.
95. The 1st to 7th Defendants/Applicants have sought for striking out of this suit on various reasons; that the suit **discloses no reasonable cause of action**, that the Plaintiffs have no **Locus Standi**; the suit is **an abuse of the court process**; is

res judicata and has been caught by limitation period/ time barred, and thus it cannot stand.

96. The Application is opposed by the Plaintiffs and the 1st Interested party, but it is supported by the 8th to 11th Defendants. Detailed written submissions have been filed by the rival parties herein and various decided cases have been relied upon, which this court has carefully considered together with the respective pleadings and said written submissions.
97. The principles for striking out pleadings and/or suits are set out in **Order 2, rule 15 of the Civil Procedure Rules**. It is evident that a suit can be struck out if the said pleading/ suit is **frivolous, vexatious, or an abuse of the court process**. Further, if a suit **discloses no reasonable cause of action** or Defence, or being prejudicial to a fair trial, it can be struck out.
98. However, this is a drastic remedy that is exercised sparingly, and only in clear and hopeless cases, which cannot be cured through amendments. Such grounds for striking out are; where the suit is an abuse of the court process or goes against the law. There are plethora of decisions on this area. See the case of **D.T. Dobie & Company Kenya Limited versus Joseph Mbaria Muchina & Another [1980] eKLR**, where the court held;

“No suit ought to be summarily dismissed unless it appears so hopeless that it plainly

and obviously discloses no reasonable cause of action, and is so weak as to be beyond redemption and incurable by amendment. If a suit shows a mere semblance of a cause of action, provided it can be injected with real life by amendment, it ought to be allowed to go forward for a court of justice ought not to act in darkness without the full facts of a case before it.”

See also the case of ***Co-operative Merchant Bank Ltd v George Fredrick Wekesa [1997] eKLR.***

99. Though striking out of suit is drastic, and should be used sparingly, it is still an available remedy in clearest of cases, as it is the duty of the court to uphold the ***Overriding Objective*** of the Act, which is to facilitate ***just, expeditious, proportionate*** and ***affordable resolutions of disputes*** before it.

100. The 1st to 7th Defendants/Applicants have alleged that the Plaintiffs herein have no ***Locus standi*** to file this suit, on their behalf and on behalf the other Plaintiffs. It was the Applicants allegations that the Plaintiffs suit is for recovery of the suit property ***Narok /Nguruman/Kamorora/1***, which suit property was initially registered in the name of the ***Nguruman/ Kamorora Group Ranch***, as from before it was transferred to ***Nguruman Ltd***, the 1st Defendant herein on 13th January 1986. This transfer was done after the Annual

General Meeting of the Group Ranch, where 60% of the majority members agreed to this transfer.

101. Further, the Applicants contended that after the suit land was registered in the Group Ranch's name, the said property became a **corporate property**, since the Group Ranch was corporate entity, separate and distinct from its members. Further, the **Nguruman /Kamorora Group Ranch** was dissolved, in **1986**, and the Plaintiffs cannot purport to recover such land, which ceased being a **customary property** after it was registered in the name of the Group Ranch.

102. However, the Plaintiffs and 1st Interested Party have alleged that the Plaintiffs have **Locus Standi** to bring this suit, as they were the founder members of **Kamorora Group Ranch**, and the suit land was **illegally transferred** to 1st Defendant in **1986**, and /or the 1st Defendant is holding the suit land through a resulting/ constructive or implied trust on behalf of the Plaintiffs.

103. **Locus standi** or "standing," is the legal right to be heard in a court of law. A party is required to show that it has sufficient interest in the matter to sustain a case, which is a prerequisite for being formally admitted to court to obtain a decision. Without **Locus Standi**, a party cannot bring a case to court, regardless of its merit, because such party has no basis to claim anything before the court. See the case of **Law Society of Kenya v Commissioner of Lands & others**,

Nakuru High Court Civil Case No 464 of 2000; where the court held;

“locus standi signifies a right to be heard, a person must have sufficiency of interest to sustain his standing to sue in Court of Law”.

104. Further, in the case of ***Alfred Njau and Others vs City Council of Nairobi [1983] eKLR***, the court held;

“The term locus standi means a right to appear in Court and conversely to say that a person has no locus standi means that he has no right to appear or be heard in such and such proceedings.”

105. From the background of their claim, the Plaintiffs gave history of how the suit land was initially allocated to the ***Kamorora Group in 1974***, and which suit land was later registered in the name of ***Nguruman /Kamorora Group Ranch***, and after such Registration, the land became a corporate property of the Group Ranch. The Group Ranch later transferred the suit property to 1st Defendant, and the said Group Ranch was dissolved, in 1986. There is no evidence of any objection to dissolution of this Group Ranch by any of its founding members, the Plaintiffs included.

106. With the said dissolution, ***Nguruman/ Kamorora Group Ranch*** ceased to exist, and the suit land has since remained

registered in the name of the 1st Defendant. Though the Plaintiffs have alleged that they were the founder members of **Kamorora Group Ranch**, the said Group Ranch was dissolved in **1986**, and the Plaintiffs cannot purport to represent members of a dissolved Group Ranch.

107. The Plaintiffs further attempted to have **Kamorora Group Ranch re-incorporated**, and a Certificate of incorporation was issued in **2009**. However, the Court of Appeal quashed the said Certificate of incorporation, and the said re-incorporation was declared a nullity.

108. The Court of Appeal held as follows in **Civil Appeal No. 205 of 2010(Nyeri)**

“The purported reincorporation of Kamorora Group Ranch and the issuance of a certificate to its purported representatives with the intention of post-facto acquisition of the subject land through a series of illegal, unreasonable and ultra vires manouvres of the Registrar at the behest of the alleged leaders or representatives of the Group Ranch was an attempt to turn back the clock and subvert the due process of law. It was in every sense a nullity and the learned Judge, having quashed the very decision of the Land Disputes Tribunal as adopted by the Principal Magistrate’s Court, that the Registrar purported to act upon in effecting the reincorporation, should have had no hesitation in declaring the Registrars decision null

and void. He should have quashed the same and the certificate of reincorporation issued on 3rd November 2009. See MACFOY vs. UNITED AFRICA CO. LTD [1961] 3 ALL ER 1169.”

109. Therefore, the Plaintiffs cannot bring a suit to recover land which land was a ***corporate property*** before it was transferred to the 1st Defendant by the said Corporate body- ***Nguruman/ Kamorora Group Ranch***. With the attempted incorporation of ***Kamorora Group Ranch*** having been declared a nullity, this court finds and holds that the Plaintiffs herein have no ***Locus Standi*** to bring this suit on their behalf and on behalf of the other Plaintiffs.

110. Without ***Locus Standi*** (the legal right or capacity to bring an action in court), a suit cannot stand, and the most possible effect would be to strike it out or dismiss the said suit. A court cannot therefore hear the merits of the case if the person bringing the suit cannot demonstrate a sufficient interest or a real connection to the harm or issue complained of. See the case of ***Hussein v Gedi; Adan (Interested Party) (Environment & Land Case E009 of 2024) [2025] KEELC 931 (KLR) (26 February 2025) (Ruling);***

“Locus standi goes to the jurisdiction of the Court to entertain the suit as it relates to the capacity of a party to sustain a suit. If a party lacks capacity, any suit commenced by such a party and/or against such a party is

incompetent and null and void and cannot be sustained by the Court.”

111. Though the Plaintiffs submitted that their ***Locus Standi*** is anchored on their claim as original proprietors of the suit property, and equitable ownership of the suit property founded on constructive/ resulting trust, it is clear that the moment the suit land was registered in the name of the Group Ranch, it became a corporate property, and the alleged founder members cannot bring any suit for the Group Ranch in their individual names. See the case of ***Daniel Mamagul Kandeï & 2 Others vs. Kamanga Holdings Ltd & 44 others (2017) eKLR,***

“ Having read the provisions of Sections 5, 7 and 8 of the Act, and the cases of Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 others [2011] eKLR and Nkol Risha Ole Ntompō Kerery and 4 others v. Chairman Larngosua Group Ranch & 9 Others Nairobi HCCC No. 269 of 2001, I agree with the defendants that the plaintiff as not being the group representatives contemplated under the aforementioned sections of the law, have no capacity to sue on behalf of the group ranch, the members of the group ranch or on their own behalf.”

112. Having analyzed the issues as above, this court concurs with the 1st to 7th Defendants/ Applicants that the Plaintiffs herein have **no Locus Standi** to bring this suit on their behalf and on behalf of the other Plaintiffs.

113. The 1st to 7th Defendants/ Applicants have also averred that the suit herein **discloses no reasonable cause of action**. The Plaintiffs claim is hinged on the fact that they were the founder members of **Kamorora Group Ranch**, which they interchangeably refer to **Nguruman/ Kamorora Group Ranch**. They claimed that they were the initial owners of the suit land. However, as observed above, the suit Land was later registered in the name of the **Nguruman/ Kamorora Group Ranch**, but not in the individual names of the Plaintiffs herein. The Plaintiffs have no registrable interest in the suit property, which interest can be protected by this court, since the property became a corporate property, and the Plaintiffs cannot turn around and claim recovery of property of corporate entity.

114. The said **Kamorora Group Ranch** was later dissolved, and the Plaintiffs as former members of the dissolved Group Ranch did not have any direct proprietary rights to this corporate property of the Group Ranch, and thus the Plaintiffs cannot reverse gears and start claiming recovery of land which was registered in the name of a Group Ranch. See the case of **Marigat Group Ranch & 4 others v Kisenger & another (ELC 49 of 2022 & 49B of 2023) (Environment & Land**

Court at Iten, judgment 19 September 2023), where the court held;

“Land registered in the name of a Group Ranch is the corporate property of the Group Ranch. Individual members do not own specific portions thereof until the land is lawfully subdivided and titles issued. A former member cannot purport to claim or recover the same land as his personal property after dissolution or subdivision, unless through the recognized process under the Land (Group Representatives) Act.”

115. The Plaintiffs attempted to re- incorporate ***Kamorora Group Ranch*** in ***2009***, but which attempt was held by the Court of Appeal to be a nullity, and with that holding of the Court of Appeal, this court holds and finds that indeed the Plaintiffs have ***no reasonable cause of action***.

116. It was the Applicants allegations that the suit herein is ***time barred***, having been filed more than ***40 years*** after the suit land was registered in the name of the 1st Defendant. From the chronology of events, the Plaintiffs were much aware that the suit land was registered in the name of 1st Defendant on ***13th January 1986***. They alleged the said registration was ***illegal, fraudulent*** and was done without payment of any consideration.

117. The suit herein is for recovery of land, and as provided by **Section 7** of the **Limitation of Actions**, such a suit ought to have been filed within a period of **12 years**. See the case of **Sohanladurgadass Rajput and another vs Divisions Integrated Development Programmes Co Ltd (2021) eKLR** where the Court held;

“Section 7 of the [Limitation of Actions Act](#) provides that an action for recovery of land may not be brought after the lapse of 12 years from the date the right of action accrued to the Plaintiff. Therefore, in regard to the agreement of 8th December, 2007, the limitation period lapsed on 8th December 2019. On the second agreement of 25th January 2008, the limitation period lapsed on 25th January, 2020. Essentially therefore, the Plaintiffs’ suit having been filed on 7th July 2020, was filed out of time.”

118. However, the Plaintiffs alleged that the suit herein is hinged on **fraud**, and / or **misrepresentation**, and for such claim based on **fraudulent registration**, time start running from the time of discovery of fraud. It is very clear that the Plaintiffs were aware of registration of the suit property in favour of 1st Defendant in **1986**. Several suits have been filed against the 1st Defendant over the ownership of the suit property. The Plaintiffs, who were allegedly shareholders of

Nguruman/ Kamorora Group Ranch, which transferred the land to 1st Defendant, and was later dissolved, never filed their claim then, or joined any of the suits. They cannot now claim that the suit herein falls under the exceptions to the **Limitation of Actions Act** as provided by **Section 26** of the **Limitation of Actions Act, Cap 22**.

119. Indeed the suit herein being a claim for recovery of land has been caught by limitation of time, and is consequently **time barred** as provided by **Section 7** of the **Cap 22**. See the case of **Gathoni v Kenya Co-operative Creameries Ltd [1982] KLR 104**, where the court held;

“The law of limitation of actions is intended to protect defendants against unreasonable delay in bringing of suits against them. The plaintiff should pursue her claim with reasonable diligence and a person who sleeps on his rights for too long should not be allowed to enforce them.”

120. This court concurs with the Applicants that the suit herein is time barred having been filed after **40 years** from the time the suit land was registered in favour of the 1st Defendant. See the case of **Bosire Ogero v Royal Media Services [2015] KEHC 4728 (KLR) (R. E. Aburili, J.)**

“The law of limitation of actions is intended to bar the plaintiffs from instituting claims that are stale and aimed at protecting

defendants against unreasonable delay in the bringing of suits against them. The issue of limitation goes to the jurisdiction of court to entertain claims and therefore if a Matter is statute barred, the court has no jurisdiction to entertain the same.”

121. Although the Plaintiffs submitted that the **Limitation** period herein does not apply as the claim falls under the exceptions provided for by **Section 20** of **CAP 22**, it is evident that there were laches or delay in bringing up this suit or claim, and therefore, the Plaintiffs who have **no locus standi** to institute this suit cannot benefit from the exceptions provided under **Section 20** of the Limitation of Actions Act.

122. The Applicants have also urged the court to strike out the suit for being **res judicata**. Indeed, there are various other suits that have been filed and determined over the registration of the suit land in favour of the 1st Defendant. In the instant case, the Plaintiffs filed a Land Dispute claim before **Ololulunga Land Disputes Tribunal**, which issued an Award in favour of the Plaintiffs. This Award was adopted as the Order of the Court, but was later set aside by the High Court. Eventually the matter ended up at the Court of Appeal, which Court determined that the re- incorporation of **Kamorora Group Ranch** was a **nullity**, which was meant to undo what had been achieved by the **Nguruman/ Kamorora Group Ranch**, which was dissolved in **1986**.

123. The Certificate of re-incorporation was quashed by the Court of Appeal. However, the Plaintiffs later filed this suit, which suit is for recovery of the suit land **Narok/ Nguruman/ Kamorora/1**, and which parcel of land is registered in favour of the 1st Defendant, and which title has not been cancelled by any court, and which ownership has been confirmed severally by different courts.

124. Therefore, the issue of ownership of the suit land has been settled by various court decisions, and bringing up this suit once more is **re-litigating** the same issues that have been litigated in other suits. The Plaintiffs submitted that the issues herein have never been dealt with **exhaustively** by courts in the previous suits, but it is evident that a claim over the registration of the suit Land in favour of 1st Defendant has been central and has been determined severally.

125. **Section 7** of the **Civil Procedure Act** deals with the issue of **Res judicata**, and the principles to be considered have been set out in several court decisions. See the case of **Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] Eklr**; where the court held;

“The doctrine of res-judicata will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.**

- ii. That the former suit was between the same party or parties under whom they or any of them claim.**
- iii. That those parties were litigating under the same title.**
- iv. That the issue in question was heard and finally determined in the former suit.**
- v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”**

It is evident that all the other previous suits have been litigated over the suit land herein **Narok/Nguruman/Kamorora/1** and the 1st Defendant herein **Nguruman Limited** and therefore the doctrine of **re judicata** applies herein.

126. Courts have also held that there should be vigilance upon parties who file similar suits, but hide under additional parties to circumvent the doctrine of **Res judicata**. See the case of **ET v Attorney General & Another [2012] eKLR; where the court held;**

“Courts must always be vigilant to guard against litigants evading the doctrine of res judicata by introducing new causes of action so as to seek the same remedy before the court. The test is whether the plaintiff in the second suit is trying to bring before the court, in another way and in the form of a new cause of action, a transaction which

has already been presented before a court of competent jurisdiction.”

127. The issue of ownership of the suit land ***Narok/ Nguruman/ Kamorora/1***, has been determined in previous court decisions, and the court finds and holds this suit to be res judicata. See the case of ***John Florence Maritime Services Limited & Another v Cabinet Secretary for Transport and Infrastructure & 3 Others [2015] eKLR***

128. On whether the suit is an ***abuse of the court process***, the court finds that the Court of Appeal did determine that the re-incorporation of the ***Kamorora Group Ranch*** was a ***nullity***, but the Plaintiffs still filed this suit on behalf of the founder members of ***Kamorora Group Ranch***, which was dissolved, and its subsequent re-incorporation was quashed. The filing of this suit is indeed an abuse of the court process, and its impact on the limited judicial time.

129. In the case of ***Muchanga Investments Limited versus Safaris Unlimited (Africa) Ltd & 2 Others [2009] eKLR***, the court held this on abuse of the court process;

“Judicial time is the only resource the courts have at their disposal and its management does positively or adversely affect the entire system of the administration of justice.”

130. After a thorough consideration of the pleadings herein and the rival written submissions, this court finds and holds that this suit is an abuse of the court process, as the issues herein have been litigated before, but they have now been brought back to court, over the same Land Parcel **Narok/Nguruman /Kamorora/1**, and its ownership by the 1st Defendant. The Plaintiffs herein also have connection with the dissolved **Nguruman/Kamorora Group Ranch**, which transferred the suit land to 1st Defendant, and was dissolved.

131. On whether, the Plaintiffs failed to exhaust the **Alternative Disputes Resolutions** Mechanisms, as provided by the law; it is evident that in their own pleadings, the Plaintiffs did aver and submit that they had filed a claim before the **National Land Commission**, which is a Commission mandated to deal with HLI Claims.

132. While the said claim was still pending before National Land Commission, the Plaintiffs filed this instant suit. The **National Land Commission** has the mandate to investigate historical land injustices claims, as provided by **Article 67(2)** of the **Constitution**. See the case of **Ledidi Ole Tauta 7 Others vs AG & 2 Others (2015) ekr.**

133. Courts have consistently held that where **a dispute resolution mechanism**, exist outside court, the same should be exhausted before jurisdiction of the court is invoked. See the case of **Geoffrey Muthinja & Another vs Samuel**

Muguna Henry & 1756 others (2015), where the court held;

“It is imperative that where a dispute resolution mechanism exists outside courts, the same be exhausted before the jurisdiction of the court is invoked. Courts ought to be the for a of last resort and not the first port of call the moment a storm brews....as is bound to happen. The exhaustion doctrine is a sound one and serves the purposes of ensuring that there is a postponement of judicial consideration of matters to ensure that a party is first of all diligent in the protection of his own interest within the mechanism in place for resolution outside of courts.”

134. See also the **Speaker of National Assembly vs Karume (1992) ekr**, where the court held;

“where there is a clear procedure for redress of any particular grievance prescribed by the Constitution or an Act of Parliament, that procedure should be strictly followed. Accordingly, the special procedure provided by any law must be strictly adhered to since there are good reasons for such special procedures.”

135. Even though there are exceptional circumstances when a matter can be brought to court instead of being referred for

the **Alternative disputes resolution mechanism**, the Plaintiffs herein do not fall under that exception. See the case of **Abidha Nicholus vs The Attorney General & others Petition No. E007 of 2023**.

136. This court will concur with the decision of the court in the case of **Amugune vs Advocate Disciplinary Tribunal & another; Law Society of Kenya & 2 others (Interested Parties) (Judicial Review Application E024 of 2025) [2025] KEHC 4305 (KLR)(Judicial Review)(2 April 2025) (Ruling)** and proceeds to decline jurisdiction. In the above case, the court held;

“Accordingly, invoking the provision of section 9(3) of the Fair Administrative Action Act, and in view of the prohibition under section 9(2) of the Fair Administrative Action Act, I hereby direct that the applicant shall first exhaust such remedy before instituting any proceedings under subsection (1) of the Act.

In the end, I decline jurisdiction and merit determination of the application for enlargement of time.... The application as a whole is struck out with no orders as to costs.”

137. The court has considered the Plaintiffs and 1st Interested submissions on the fact that the issues raised herein could either be determined by the **Environment and Land Court** or **National Land Commission**, but finds that the Plaintiffs

did not give reasonable explanation as to why they did not await the determination of their complaint by the NLC before coming to court. This suit has been brought to court prematurely, and therefore, the court finds and holds that it has no jurisdiction to deal with the matter herein.

138. The Plaintiffs should first ***exhausted the Alternative Disputes Resolution Mechanism*** before the ***National Land Commission***, as filed by themselves before invoking the jurisdiction of this court. The court concurs with the submissions made by the Attorney General and 11th Defendant that this court has ***no jurisdiction*** to hear and determine this matter, which ought to have been referred to the available ADR. Therefore, the necessary orders as provided by **section 3A** of the ***Civil Procedure Act***, is to decline jurisdiction and strike out this suit entirely.

139. Having found that the Plaintiffs herein have ***no reasonable cause of action***; have ***no Locus Standi***; the suit is ***barred by limitation of action***; is ***an abuse of the court process***, is ***res judicata***; and failed to exhaust the ***Alternative Disputes Resolutions Mechanism***, then the court comes to an inescapable conclusion that the suit herein cannot stand. Consequently. This suit is ***struck out*** entirely with costs to the 1st to 7th Defendants/Applicants herein.

140. On the ***Notice of Preliminary Objection***, this court has ***struck out*** the entire suit with costs, and finds ***no reasons*** to

determine the Notice of Preliminary Objection, since there is no suit.

141. Ultimately, after a thorough consideration of the pleadings herein, the annexures attached to them, and the rival written submissions on the instant **Notice of Motion Application** dated **21st January 2025**, this court finds and holds the said Application is **merited**, and the same is allowed entirely in terms of **prayer No 2** with **costs** to the 1st to 7th Defendants/Applicants.

It is so ordered.

Dated, signed and Delivered Virtually at Narok this 6th Day of November 2025.

**L. Gacheru
Judge.**

Delivered online in the presence of.

Elijah Meyoki - Court Assistant

Mr. Mathew Muoki & Lesinko for Plaintiffs/Respondents

Mr. Busaidy for 1st to 7th Defendants/ Applicants

N/A for 8th to 10th Defendants/Respondents

N/A for 11th Defendant/ Respondent

Mr. Mwangi holding Kivuva for 1st interested Party

N/A for 2nd Interested Party.

Mr. Kinyua for the proposed 13th Defendant

**L. Gacheru
Judge.**