



Dima v Nasuulu Community Wildlife Conservancy Organization (Sued through its officials) John Eule - Chairman) & Andrew Phitisa – Secretary) & another (Civil Case E001 of 2024) [2025] KEHC 18203 (KLR) (Civ) (3 December 2025) (Ruling)

Neutral citation: [2025] KEHC 18203 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CIVIL
CIVIL CASE E001 OF 2024
SC CHIRCHIR, J
DECEMBER 3, 2025**

BETWEEN

NURIA HASSAN DIMA PLAINTIFF

AND

**NASUULU COMMUNITY WILDLIFE CONSERVANCY ORGANIZATION
(SUED THROUGH ITS OFFICIALS) JOHN EULE - CHAIRMAN) & ANDREW
PHITISA – SECRETARY) 1ST DEFENDANT**

ASHA SORA GUYO 2ND DEFENDANT

RULING

1. The plaintiff's Notice Motion dated 11/11/2024 seeks orders as follows :
 1. Spent
 2. Spent
 3. That this Honorable Court be pleased to issue an order of temporary injunction barring the 2nd Respondent as a committee and/or board member representative of the Borana Community residing in Olla Bulle Area, Odha Location, Kambi Garba sub location pending the hearing and determination of the suit.
 4. Any other relief this court deems fit to grant.
 5. The costs of this application to be provided for.
2. The Applicant states that she is a member of the 1st Respondent and a resident of Odha location within Nasuulu Conservancy situated in Isiolo County. She states that on 2016/2024 the 1st Respondent



purported to hold election for a Committee/Board Member of Borana Community of her Area. She states that in breach of the 1st Respondent's Constitution, the meeting for such an election was never advertised, that instead the purported Election verbally announced by the Deputy County Commissioner on 19/06/2024, just one day before the due date; that notwithstanding the irregular announcement, she participated in the election.

3. She further states that she got support from majority of the members, but nevertheless, there was a consensus that she was to be appointed as the elected representative. She further states that the respondents later renege on the agreement. It is further stated that due to the shambolic elections, the 2nd respondent declared herself the elected member.
4. The Applicant further states that attempts to resolve the dispute through the local Administration and stakeholders has not borne fruits. She states that the impugned election was held in a manner which denied her and other members of the Respondent, the right to effectively participate in a transparent election. That the denial will cause them an irreparable harm.

The 1st Respondent's case

5. Through the affidavit of the Andrew Phitisa who describes himself as the secretary of the 1st defendant / respondent, states that there is no evidence that the Applicant is a member of the 1st Respondent. That her claims to membership, and her alleged participation in the impugned election are misleading. He further states that the Applicant lied under oath, and therefore she is not entitled to the equitable relief, that she is seeking.

The 2nd Respondent's case

6. The 2nd respondent states that the election's held on 20/06/2024 were free and verifiable and were conducted under the watchful eyes of the County Commissioner, Six (6) Area Chiefs and Independent observers. That the election was in compliance with 1st respondent's constitution. She has attached an affidavit by one Omar Godana, testifying in support of her testimony. She further states that all candidates were given ample time to campaign, and the applicant never raised any complaint, until 5 months later when she decided to file this suit.
7. She denies that she participated in any meeting aimed at arriving at any consensus; That pursuant to the elections of 20/06/2024 where she was validly elected, she has been serving the 1st respondent since then as one of the Board members.
8. The application was canvassed by way of written submissions.

The Applicant's submissions

9. The Applicant's submissions dated 14.2.2025 largely address the issue of Preliminary Objection which has already been determined. Save to reaffirm that the injunction should be granted, the Applicant has not submitted on the issues raised in the application.

The 1st respondent's submissions

10. The 1st respondent has reiterated that the Applicant has not demonstrated that she is a member of the 1st Respondent, and consequently she should not be allowed to hold the entire operations of the 1st Respondent at ransom. That consequently, she has not demonstrated that she has a right which faces the risk of infringement. On a prima facie case, the respondent has relied on the case of *Mrao Ltd Vs First American Bank of Kenya & 2 Others (2003) eKRL*, where the Court of Appeal explained the



nature of the principle as follows: “a case in which on the material presented to the Court a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation or rebuttal from the latter.”

11. It is argued that pursuant to Section 107 of the *Evidence Act* the onus was on the Applicant to prove that she was a member of the 1st Respondent.
12. On the question of irreparable harm and balance of convenience, it is the 1st Respondent submissions that once the Applicant fails to establish a prima facie case, the subsequent conditions automatically collapse. In this regard the decision in the case of *Nguruman Limited Vs Jane Bonde Neilsan and 2 Others (2014) eKLR* has been relied on.

2nd respondent’s submissions

13. On the question of prima facie case, it is submitted that the applicant has filed to demonstrate how the election of 20/06/2024 violated the 1st Respondent’s Constitution. Further it is submitted that the suit was filed 5 months after the election, and the 2nd Defendant had taken up of office. It is submitted that the suit was therefore merely an afterthought.
14. On irreparable loss, it is the 2nd Respondent submission that no irreparable loss was, or has been demonstrated, and which loss cannot be compensated by costs. It is finally submitted that the balance of convenience tilts in her favor as she was legally elected to office and has been performing the duties of that office.

Analysis and determination

15. I have considered the parties pleadings and submissions and in my view the only issue for determination is whether the Applicant has established a prima facie case and consequently entitled to the orders sought?
16. The principles governing the granting a temporary injunction were long settled in the case of *Geilla Vs Cassman Brown & Co. Ltd (1973) E. A 358* and numerous subsequent decisions of the Courts.
17. The principles set out were that:
 1. “An applicant must show a prima facie case with a probability of success.
 2. That the Applicant might otherwise suffer an irreparable harm which would not adequately be compensated with costs, and finally;
 3. where the court is in doubt, it will decide on a balance of convenience.”

Prima facie case

18. The 1st Respondent has argued that there is no evidence, that the Applicant is a member of the 1st Respondent or that she is participated in the Board Election of 20/06/2024, and as such , she has not demonstrated any right that has been infringed. However, annexed to 2nd respondent’s affidavit is a letter dated 24/06/24, written by the chairperson of 2024 Election Task Force in respect to the election held on 20/06/2024. The letter is an advice to Chairman of the Board Election Task Force, on person who had been elected. It has a list of three candidates and the final vote tally, in respect of each candidate. It shows that the Applicant herein came 2nd with 327 votes. If the applicant was not a member of the 1st respondent and had not participated in the election, as alleged by the 1st respondent, then how did her name appeared on said list? The letter is the 1st respondent’s own document which it



- has produced in support of its case. The 1st Respondent could not have allowed a non-member to vie. This defence is not only simplistic, but also evasive on the part of the 1st respondent.
19. The Applicant's key complaint was that there was no sufficient notice and the elections were shambolic and / or were mismanaged. The Applicant has stated that according to the 1st respondent's constitution, if election was to be by way of a General Meeting, a 21 days' notice ought to have been issued, and a 14 days' notice would have been required if the elections were to be held during a special meeting.
 20. I have perused *the Constitution* of the 1st Respondent (Applicant's annexure 1). Paragraph 4 (VII) provides that all office bearers shall be elected at an annual General Meeting or Special Community Sittings; Further election of office bearers is a standing agenda in the Annual General Meeting. Under paragraph (8b) a Notice of 21 days must precede the meeting. Under paragraph 8(f) a special meeting must be preceded by a 7- days' Notice.
 21. It is the Applicant's case that no notice was given for the meeting of 20/06/2024. The duty was on the 1st Respondent to issue the notice and it follows that once the Applicant contested the issuance of the notice, the evidential burden fell on the 1st respondent to disapprove the Applicant's claim by demonstrating that such a notice was issued. Not only as such a notice not been submitted in evidence, but the 1st respondent's response was silent on this issue of the Notice Thus as whether the elections were held pursuant to a General or special meeting there is nothing showing that either of the prerequisite notices was issued.
 22. Consequently, as a member of the 1st respondent and one of the aspirants to the office, the Applicant has demonstrated that her right as well as other members of the 1st respondent were infringed.
 23. I am satisfied therefore that a prima facie case has been established.

Irreparable loss

24. The requirement under the above stated principle is that the loss must be such a nature that damages cannot compensate it. The Applicant has argued that, unless the orders sought are granted, she and other members would have been denied a chance to have a say on the management of their organization. Am in agreement that nature of the loss is such that it cannot be compensated by costs

Is the Applicant entitled to the orders sought ?

25. In paragraph 15 of here Affidavit, the 2nd respondent has stated that following the election, she assumed office and had already served for 5 months by the time the suit was filed. The order sought is to stop the 2nd Respondent from serving as a board member, following the alleged Election. The assertion that the 2nd Respondent assumed office was not controverted by the Applicant, and her silence is tantamount to an admission.
26. It is evident therefore that the orders being sought have been overtaken by events. Any order issued by the Court will only be for academic purposes. Further it is trite law that Courts do not issue orders in vain.
27. In the end, the application fails. It is hereby dismissed, with no orders as to costs.

DATED , SIGNED AND DELIVERED AT ISIOLO, THIS 3RD DAY OF DECEMBER 2025

S. CHIRCHIR

JUDGE .



In the presence of:

Roba Katelo- court Assistan

Mr. Ligare for Mr. Issa for the 2nd Respondent.

