

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
PETITION NO. E002 OF 2023

**IN THE MATTER OF: ARTICLE 22 AND ARTICLE
258(1)&(2)(c) OF THE CONSTITUTION OF
KENYA 2010**

**IN THE MATTER OF: THE ALLEGED THREAT OF
VIOLATION OF ARTICLES 3 AND 10 OF
THE CONSTITUTION OF KENYA 2010**

**IN THE MATTER OF: ALLEGED THREAT TO AND
CONTRAVENTION OF ARTICLES 19, 20,
21, 22, 23, 24, 25(c), 27, 35, 40, 47 50,
51, AND 63 OF THE CONSTITUTION OF
KENYA 2010**

**IN THE MATTER OF: THE COMMUNITY LANDS ACT, 2016
BETWEEN**

**LEMOKIN LOKIDIENYE.....1ST
PETITIONER**

**SIMION LEMEIDIMI.....2ND
PETITIONER**

**MALATO LEBENEIYO.....3RD
PETITIONER**

**LOPARAGOI LEKIPAIKA.....4TH
PETITIONER**

KARINO LEKARKAR.....5TH

PETITIONER

NTAINIE LEKASHIRA.....6TH

PETITIONER

LEKINO KORINGO.....7TH

PETITIONER

LEMULI KIRINGAI.....8TH

PETITIONER

LENTIRWA LOMONGINY.....9TH

PETITIONER

LEKASHIRA MEEI.....10TH

PETITIONER

VERSUS

**SAMUEL OLEMIRANIT (Sued as Chairperson of LONGEWAN
Group Ranch A).....1ST**

RESPONDENT

**SIMON KASISE LEMARIMBE (Sued as Treasurer of
LONGEWAN**

Group Ranch A).....2ND

RESPONDENT

**MAASAI LEKIPAICA (Sued as Secretary of LONGEWAN
Group Ranch A).....3RD**

RESPONDENT

**KANKET LETEROI (Sued as a Member of LONGEWAN
Group Ranch Committee).....4TH**

RESPONDENT

**LECHINA LEMOTI (Sued as a Member of LONGEWAN
Group Ranch Committee.....5TH**

RESPONDENT

**PHILIP L. OLEKIREU (Sued as a Member of LONGEWAN
Group Ranch.....6TH**

RESPONDENT

**DAVID LENAKULA (Sued as a Member of LONGEWAN
Group Ranch.....7TH**

RESPONDENT

**TOPARU LEMARIMBE (Sued as a member of LONGEWAN
Group Ranch.....8TH**

RESPONDENT

**SITONI LEDONYO (Sued as a Member of LONGEWAN
Group Ranch.....9TH**

RESPONDENT

**NJAO LENGOITEI (Sued as a Member of LONGEWAN
Group Ranch.....10TH**

RESPONDENT

**THE LAND REGISTRAR
(In Charge of Samburu County.....11TH**

RESPONDENT

**THE LAND ADJUDICATION & SETTLEMENT DEPARTMENT
SAMBURU COUNTY.....12TH**

RESPONDENT

SAMBURU COUNTY SURVEYOR (Being the National Office

in Charge of Samburu County.....13TH

RESPONDENT

**SAMBURU COUNTY PHYSICAL PLANNER (Being the
National Office**

In Charge of Samburu County).....14TH

RESPONDENT

SAMBURU COUNTY GOVERNMENT.....1ST

INTERESTED PARTY

NATIONAL LAND COMMISSION.....2ND

INTERESTED PARTY

JUDGMENT

1. The 10 Petitioners instituted this suit through a petition dated and filed on 16.1.2023. The petitioners are all members of the Samburu Community and Longewan Group Ranch (herein after, the group). The 1st, 2nd and 3rd respondents are the Chairperson, Treasurer and Secretary respectively of the Group Ranch, while the 4th - 10th respondents are members of the Committee of the aforementioned group. The 11th respondent is the Land Registrar, the 12th respondent is the Land Adjudication and

Settlement Officer while the 13th respondent is the Samburu County Surveyor from the National office, the three respondents are represented by the Attorney General (the AG) in these proceedings. The 14th respondent is the Samburu County Physical planner from the National office (who was not represented by the AG or anyone for that matter). The 1st and 2nd interested parties are the Samburu County Government and the National Land Commission respectively.

2. The Petition has been opposed by the 1st-10th respondents as well as the Attorney General through their respective Replying Affidavits. On 26.5.2025, counsel for the National Lan Commission informed the court that it was their first time to appear in court, they sought for more time to file their pleadings and submissions within 7 days, of which the court indulged them and granted them 22 days to file the necessary documents. They however did not file anything.
3. Way back on 29.11.2023, counsel for the petitioners had addressed the court as follows; *“We propose to proceed*

through written submissions”, of which, the proposal was supported by counsels for the 1st-10th respondents and 11th - 12th respondents. Thus, the court gave directions for the petition to be heard by way of written submissions.

Case for the Petitioners

4. The case for the petitioners is contained in their petition dated 16.1.2023 and the supporting affidavit of LEMOKIN LOLKIDIENYE, the 1st petitioner. They contend that Longewan Group Ranch was registered in the 1970s upon setting up of customary boundaries in the area. At the time of registration, 412 individuals were registered and they all acquired proprietary interest in the group ranch in equal shares. They further aver that when the land was demarcated in the year 1972, clear boundaries and beacons were placed establishing an area of 11,237.5 Ha. The land was thereafter lawfully transferred to the 412 individuals and Title no. Suguta/Marmar” A”/8 was issued in the name of Longewan Group Ranch.

5. The Petitioners aver that the process of demarcation, surveying and issuance of titles to individual members has been impeded by various challenges including:

- a) Discriminatory allocation of land parcels to members, allocation of land to non-members and deprivation of land to the rightful members;
- b) Allocation of parcels to officials and their kin who are not entitled to the land.
- c) Group Ranch representatives sub-dividing the land without the participation of members and the relevant government departments;
- d) Lack of public participation. That since the year 2014 after the current officials were elected no AGM has been convened as required by the Land (Group Representatives) Act.
- e) Survey and beaconing done in Nakuru County without a visit to the ground which occasioned public facilities such as Mpoori Water Pans, Kao Pre-School and Kao

Borehole to be allocated to private individuals whereby access by the general public was restricted.

f) Portions of Maralal-Longewan road and Lorukoti-Longewan road have been appropriated to private individuals to the detriment of the general public which amounts to a waste of public funds.

6. The Petitioners further aver that they registered numerous complaints with offices of both the National and County Governments which led to the Director of Land Adjudication & Settlement to conduct a meeting on 25.8.2020 which was attended by members of Longewan Group Ranch, County Commissioner Samburu County, County Executive Committee members (CECs) and the area MP. Various challenges were confirmed, including:

a) Group Ranch Officials allocated themselves land illegally, and 8 members of the Group Ranch Committee were found to be in possession of more than 3 shares of land for their own and their relatives' benefit.

- b) At the time of the election of the officials, none of them had a share of land in Longewan Group Ranch.
- c) A number of officials were not members of the Group Ranch and were unlawfully allocated shares therein.
- d) Longewan Group Ranch had encroached into Logorate Group Ranch by 500 Ha. The 500 Ha was resurveyed and recovered. The 21 beneficiaries thereof lost their shares and were never compensated with alternative land, leaving them landless and destitute.
- e) Public utilities such as a police station, Anti-Stock Theft Unit, a secondary school and health care facility were not surveyed since they are in individual's share of land;
- f) Inequalities in acreage whereby some members were allocated 36 acres while others got less than 10 acres.

7. The petitioners further pleaded that on 10.3.2021, the Ministry of Land & Physical Planning - Land Adjudication & Settlement tabled its report and made several recommendations as follows;

- “i. The group representatives be dissolved, and a new committee elected.**
- ii. The survey work already done to remain but adjustments to be done.**
- iii. The incoming committee to complete this work by end of June 2021.**
- iv. Failure to meet this deadline, the group ranch transits to community land as per the provisions of the Community Land Act, 2016”.**

8. The Petitioners aver that none of those recommendations were implemented and the respondents have proceeded to initiate the issuance of title deeds which goes against their legitimate expectation.

9. They further aver that that there are two conflicting registers for Longewan Group Ranch which have not been reconciled and it is unclear which one is being used for adjudication and issuance of the titles.

10. They also contend that the Samburu County Government, the 1st Interested Party herein has lamented that the illegal and unlawful survey and demarcation has not considered public utilities such as public roads, boreholes and public dams and the said public utilities have been allocated to private individuals resulting in disastrous situation and attendant conflicts associated with access to such public utilities by members of the public. That unlawful survey and demarcation has hindered and indeed breached the functions of the County Government of Samburu under Article 174 of the Constitution of Kenya as read with Part II of schedule four of the Kenyan Constitution.

11. The Petitioners state that their rights under various articles of the Constitution have been contravened and/or

threatened with contravention as set out at Articles 10, 19, 20(1), 20(2), 22, 23, 24, 25, 26, 27, 28, 35, 40, 47, 61, 63, 174 and 259.

12. The Petitioners therefore pray for the following orders:

“i. A declaration do issue that the sub-division, survey, demarcation, beaconing, mapping and allocation of and/or the process leading to allocation of title deeds to the members of Longewan Group Ranch is unlawful, illegal and unconstitutional for want of public participation as required by Article 10 of the Constitution of Kenya, 2010 and further for failing to comply with the Director of Land Adjudication & Settlement - Ministry of Land & Physical Planning dated 10.3.2021.

ii. A declaration do issue that the sub-division, survey, demarcation, beaconing, mapping and allocation of land without

consideration for public utilities such as roads, a public markets, schools, hospitals and water pans and/or boreholes in the Longewan Group Ranch in Samburu County within the Republic of Kenya is unconstitutional and amounts to infringement of Article 174 of the Constitution of Kenya as read with Part 2 of Schedule 4 to the Constitution of Kenya 2010.

iii. A declaration do issue that the Respondents failure and/or refusal to furnish the Petitioners with Longewan Group Ranch formal registers despite numerous requests amounts to contravention of the Petitioners right of access to information as guaranteed by Article 35 of the Constitution of Kenya, 2010.

- iv. That an order or permanent injunction do issue restraining the Respondents either by themselves, their employees, servants, agents, representative and/or any person acting under their instructions from continuing with the surveying, beaconing or re-beaconing, allocation, registration and issuing of title deeds and/or further issuance of title deeds relating to all that land known as Longewan Group Ranch in Samburu County within the Republic of Kenya.**
- v. The Court do find that the Petitioners are entitled to damages and/or compensation for violation of constitutional rights.**
- vi. Costs of the Petition be borne by the Respondents”.**

13. Lemokin Lolkidienye, the 1st Petitioner has sworn a supporting affidavit to the petition dated 16.1.2023 on

behalf of himself and the other petitioners. The same mirrors the contents of the Petition and thus there is no need to rehash the same, save to add that there are annexures thereof, the same being; The authority to plead dated 13.1.2023, Certificate of incorporation of the Group Ranch dated 8.8.2016, The title of the Group Ranch dated 8.12.1981, the complaint letters dated 8.4.2019, 10.4.2019, 30.7.2020, the report dated 10.3.2021 from the Land Adjudication officer, and copies of the two conflicting registers.

14. The submissions of the petitioners are dated 15.12.2023 where they argue that the challenges faced in the surveying and issuance of titles to individual members including discriminatory allocation was confirmed by the Director Land Adjudication and Settlement whose recommendations were not adhered to. They aver that it would be unlawful if the issuance of title deeds proceeds without compliance with the aforementioned recommendations.

15. The petitioners further contend that unless the issue of conflicting registers is resolved, the genuine members of Longewan Group Ranch will be deprived of their lawful shares in the Group Ranch. The Petitioners submitted that the court is empowered by Article 23 (3) of the Constitution and Section 13 of the Environment and Land Court Act to grant injunctive orders as prayed for.

16. They aver that in order to obtain a permanent injunction, a party is required to establish its legal rights and that an injunction is an appropriate remedy. They contend that they have demonstrated their constitutional rights to proprietary interests in the suit land. This far, they referred the court to the cases; **1711811 Ontario Ltd v Buckley Insurance Brokers Ltd 2014 ONCA 125** and **Cambie Surgeries Corp. v British Columbia (Medical Services Commission) 2010 BCCA 396.**

17. They argued that their right to the suit property is protected by both the Community Land Act and the Constitution. They state that their rights under Articles 35,

40 and 47 of the Constitution were infringed upon and specifically when they requested for information pertaining to the Longewan Group Registers, where their names were deleted. They relied on the case of **Family Care Ltd v Public Procurement Administrative Review Board & another petition no. 43 of 2012 [2012] eKLR.**

18. The petitioners stated that notwithstanding the ruling by this Court delivered on 15.6.2023, the respondents have not, to date responded to the serious allegations raised in both the petition and by the Director of Land Adjudication & Settlement's report on Longewan Group Representatives Committee dated 10.3.2021. They argued that under the circumstances, an order of permanent injunction will suffice. They contend that since the recommendations in the report were not implemented, the group transited into a community ranch pursuant to the provisions of the Community Land Act, 2016, thus further buttressing the need for a permanent injunction against the respondents to protect the rights of the petitioners. They relied on the

case of **County Government of Tana River v Dakane Shake Bocha & 10 others [2021] eKLR.**

19. The petitioners contend that the grant of a permanent injunction is also justified by the unrebutted evidence of the existing two conflicting registers, which further threatens their proprietary rights. They relied on the cases of **Mustano Rocco v Aniello Sterelli (2019) eKLR** and **Kitelo & 2 others v County Government of Bungoma & another (ELC case 10 of 2020) [2022] KEELC 4901 (KLR) (26 September 2022)(Judgment).**

20. The Petitioners argued that they should be awarded costs of the petition, and to this end, they relied on the cases of; **Republic v Rosemary Wairimu Munene, ex-parte Applicant v Ihururu Dairy Farmers Co-operative Society Ltd (Judicial Review application no. 6 of 2014)** and **Orix (K) Limited v Paul Kabeu & 2 others (2014) eKLR.**

Case for the 1st - 10th Respondents

21. The pleading of the 1st-10th respondents is a response to the petition dated 9.10.2023. They admit the description of the parties, the number of members of the group as well as the group land acreage, the same being 11 237.5 acres.

22. They contend that due process was followed in the distribution of the group land to its members of which, there was assistance from the Land Adjudication Office, there was consent from the Land Control Board in the year 2008 before demarcation was done, that the committee mobilized all 412 members when the land was ready for distribution and sought views from them. That the members agreed that they would each be given their parcel of land at their home ground and anywhere else they chose. Further, it was pleaded that the members agreed to have the land divided into two blocks whereby each member would get two equal parcels in both blocks. These became known as the upper block (perennial land) and the lower block (grazing field). Each member was

entitled to 35 acres of land on the upper block and 25 acres on the lower block.

23. The 1st-10th respondents aver that the subdivision was conducted fairly and transparently by a Licenced Land Surveyor. They stated that the actual process of subdivision started in the year 2015 when the group received money from KETRACO who had passed through their land. To this end, they paid survey fees of Kenya Shillings 7,274,600/- on 12.10.2015 to Gatome & Associates.

24. They further aver that an AGM attended by members, land adjudication officers in collaboration with the county government and other stakeholders was conducted and the members accepted to sub-divide the group ranch land. Thus, the land allocation was done lawfully and with public participation. They stated that a year after the subdivision, a few self- interested people emerged claiming that the demarcation was not done correctly.

25. It was further stated that all 412 members have settled in their parcels and developments are ongoing. Further, several parcels of land have been sold through willing buyer willing seller basis and valid agreements have been submitted to the committee for authentication, been handed over and approved by Samburu County Lands Office and submitted for onward transmission to the Registrar of Nyandarua and Samburu for issuance of title deeds. They stated that the new members have settled well into their parcels. It was stated that after the demarcation process was completed, another meeting was convened for verification of the names and sizes of the allocated parcels, and all the 412 members were satisfied, each getting 35.5 acres.

26. The 1st-10th respondents further aver that they were advised by the Adjudication and Settlement Office vide a letter dated 19.4.2005 that the group would only be dissolved after all the members have signed the necessary

documents transferring the new sub-divisions to individual members which process is underway.

27. These respondents urge the court to find that:

a)The sub-division, survey, demarcation, beaconing and allocation of land and/or process leading to allocation of titles to the members of Longewan Group Ranch was conducted lawfully and legally in accordance with Land (Group Ranch Representatives) Act and all other relevant statutes.

b)The members of Longewan Group Ranch together with other stakeholders actively participated through meetings hence sub-division of the ranch was done with their consent and as such their decision should be respected.

c)The petition lacks merit and the same should be dismissed.

d)Any other relief that the court deems fit and just.

e)The Petitioners to bear the costs of the petition.

28. In their submissions dated 14.6.2024, the 1st to 10th respondents argue that public participation was conducted and the process of land distribution and allocation was done with the approval of all members of the group ranch and the assistance from the Land Adjudication office. There was consent from the Land Control Board acquired in the year 2008. Further, that they held an AGM attended by members, land adjudication officers in collaboration with the County Government and other designated stakeholders where it was agreed to subdivide the group ranch. They argued that the lists of the invitees and attendants confirmed that there was inclusivity. To this end, they cited the case of **Constitutional petition No. 4 of 2019 Mugo T 14 Others v Matiang’l & another, Independent**

Electoral and Boundary Commission of Kenya & 19 others (Interested Party) [2022] KEHC 158 (KLR).

29. On whether the petitioners' constitutional rights were breached, it was argued that the petitioners have failed to demonstrate how their rights have been violated. They reiterated that after the subdivision was done, a few self-interested persons emerged and intoxicated some members that the demarcation was not done correctly, thus raising complaints a year later. They contended that documentation has been handed over and duly approved by the Samburu County Lands office and submitted for onward transmission to the Registrar Nyandarua Samburu for issuance of title deeds. Further, that the prayers sought are prejudicial as they will affect non-parties to this suit as well as members who have been issued with title deeds, adding that the prayers sought in the petition have all been overtaken by events.

30. They submitted that the petitioners have failed to demonstrate and clearly identify those whose rights have

allegedly been violated as well as specifically demonstrate which rights have been violated and stand to be or continue to be violated by the respondents. They further submitted that the petition is unmerited, misconceived, misplaced as well as an abuse of the court process. They also pray for costs of the suit.

Case for the 11th Respondents

31. Although the state counsel appearing before this court indicated that they were representing the 11th - 13th respondents, the memorandum of appearance as well as the pleading (a Replying Affidavit) were filed by the Attorney General on behalf of the 11th respondent. The aforementioned Replying Affidavit was sworn on 18.7.2023 by **S.G. Githinji**, the Land Registrar, Nyandarua and Samburu Counties. He deponed that on 19.11.2020, land reference Suguta Marmar "A"/8 was presented to him for subdivision. The documents presented in support of the exercise were; a mutation form, Land Control Board

consent, certificate of compliance, notice of approval of development permission, area list, title deed for L.R. SUGUTA MARMAR "A"/8 and minutes of Longewan Group Ranch meeting held on 12.8.2020. He averred that the aforementioned documents met all the necessary requirements for subdivision. He deponed that the 11th respondent then proceeded to close the title for L.R. SUGUTA MARMAR "A"/8. He produced copies of the documents as well as a copy of the certified green card for the group ranch land.

32. The submissions from the Attorney General's office were filed on behalf of the 11th and 12 respondents and are dated 21.5.2024. They invited the court to adopt the quote by Sir William Blackstone that *"...it is better that ten guilty persons go free than one innocent person be convicted"* in considering whether the Land Registrar's action to subdivide the suit land was unlawful. They submitted that the Land Registrar acted according to the law and followed all the legal processes involved,

specifically as laid out under **Regulation 16** of the **Land Regulations, 2017**.

33. They contended that the burden of proof lies on the petitioner who must demonstrate that the 11th and 12th respondents conduct amounts to an infringement of fundamental rights and freedoms in terms of the provisions of **Sections 107 (1), 109** and **112** of the **Evidence Act**. They also relied on the cases of **Communications Commission of Kenya & 5 Others V Royal Media Services Limited & 5 others [2014] eKLR** and **Leonard Otieno v Airtel Kenya Limited [2018]**.

34. They further contended that the petitioners have not tendered any evidence on the allegations in the petition on how the 11th and 12th respondents are in breach of their constitutional rights. They argued that instead of speaking on the infringement of their rights, the petitioners have focused on the leadership dispute and wrangles of the members of the committee of Longewan Group Ranch. They quoted Justice Nyamu (as he then was) in **Lt. Col.**

Peter Ngari Kagume & others v Attorney General

Constitutional Petition no. 128 of 2006 who stated

that;

“... it is incumbent upon the Petitioners to avail tangible evidence of violation of their rights and freedoms. I have gone through the Petitioner’s affidavit which have horrifying allegations. The Respondent has denied all those allegations...the Court is enjoined by law to go by the evidence on record. The Petitioner’s allegations ought to have been supported by further tangible evidence such as medical records, witness or rather oral evidence capable of being subjected to cross-examination to test its veracity. The Petitioners did not provide such evidence except the averments of what transpired to them...the Court is deaf to

speculations and imaginations and must be guided by evidence of probative value...”

35. It was submitted that having been presented with the requisite documents for the exercise of subdivision and the said documents having been approved and cleared by the relevant persons and entities, had the 11th respondent refused to subdivide the suit land, he would have been in breach of a statutory duty and thus susceptible to legal action against him. The 11th and 12th respondents concluded that their conduct regarding SUGUTA MARMAR “A”/8 land was legal and in accordance with the law.

DETERMINATION

36. There seems to be no controversy that Longewan Group Ranch was the registered owner of the expansive parcel of land known as **SUGUTA/MARMAR “A”/8** measuring **11237.5 hectares** as per a title issued on **8.12.1981**. There is also no dispute that the petitioners are members of the Group Ranch. At the heart of the dispute is the

subdivision of the ranch land to pave way for individual title ownership.

37. I have carefully considered all the material presented before this court, particularly the pleadings, the documents attached thereto as well as the rival submissions. In determination of the dispute at hand, the court will consider the following issues; **“What is the applicable law, what is the nature of the land tenure in the ranch land, Are the grievances of the petitioners valid and what reliefs are available in the circumstances”**.

Applicable law;

38. As already stated herein, the Group Ranch was issued with a title way back in 1981 under the now repealed **“Registered Land Act Cap 300 Laws of Kenya”**. A Certificate of Incorporation was issued to the group on 8.8.2016 pursuant to the provisions of Section 7 of **“The Land (Group Representatives Act) Cap 287 Laws of Kenya”**.

It follows that the primary statute governing the administration and management of the group is the Land (Group Representatives) Act which was repealed upon the coming into force of the Community Land Act. The preamble of the aforementioned primary statute provides that it is;

“An Act of Parliament to provide for the incorporation of representatives of groups who have been recorded as owners of land under the Land Adjudication Act, and for purposes connected therewith and proposes incidental thereto”

39. The **Community Land Act** commenced on **21.9.2016** and contains transitional provisions, where by Section 47 (4) provides that;

“Title documents issued to group representatives under the Land (Group Representatives) Act (Repealed) shall continue to be in force until new titles are

issued in the names of the respective communities or other institutions in accordance with this Act”.

40. While the provisions of Section 46 (3) thereof provides that;

“Any instrument executed before the commencement of this Act whereby any disposition permitted under this Act is completed may be presented for registration in the prescribed register and— (a) the question whether any instrument so presented is to be registered shall be determined by the Registrar by reference to the law in force at the time of its execution; and (b) subject to the provisions of paragraph (a), the provisions of this Act shall apply to that instrument as if it had been executed after the commencement of this Act”.

41. The court will interrogate the material presented before this court to determine whether the statutory frame work governing the administration and management of the group has been violated taking into account that the group was incorporated before the coming into force of the Community Land Act.

The land tenure status;

42. It is important to define/identify the nature of the land tenure holding in the group. Pursuant to the provisions of Article 62, 63 and 64 of the Constitution of Kenya, land within the Republic of Kenya falls under three categories, that is; Public, Community and Private Land, See **Parkire Stephen Munkasio & 14 others v Kedong Ranch Limited & 8 others [2015] KEHC 6239 (KLR)**. The pre 2010 Kenya Constitution did not have an elaborate definition of land as the one cited above. However, it is clear that the title issued to the group in 1981 under the repealed Registered Land Act conferred upon the group

members the absolute ownership of that land to the exclusion of others, only subject to the limitations that were set out under Section 30 of the aforementioned statute.

43. Further, the incorporation of the group gave it a distinct legal persona and a formal governance structure, enabling it to hold, manage and even subdivide the land.

44. In the Supreme court of Kenya case of **Getao v Mokare & 4 others (Petition 9 of 2020) [2021] KESC 36 (KLR) (16 July 2021) (Judgment) John Mbogua Getao v Simon Parkoyiet Mokare & 4 others [2021] eKLR**, the court gave the definition of land holding in a group ranch as follows;

“The repealed Land (Group Representatives) Act was introduced to enable the inhabitants of large swathes of land in largely semi-arid pastoralist areas, to hold such land as a group, under one title. The title would be issued to and held by elected representatives

on behalf of the group. Through that instrumentality, the group ranch not only acquired a corporate character, but became legally insulated from the tragedy of the commons. The group ranch was therefore owned by members of the group, in equal but undivided shares, until such time that each member acquired their individual titles. In the law of property in land, that was what could be characterized as a community of ownership (or co ownership) as opposed to community or communal ownership.

In community of ownership (or co-ownership), each member had an equal share, though undivided, while in community or communal ownership, there was no equality of shares. The members derived their security of tenure qua members of that community. The nature of that tenure would also differ depending on

the status of the members. The type of tenure operative in a group ranch under the Land (Group Representatives) Act, was a tenancy in common, as opposed to a joint tenancy. Members of the group ranch were tenants in common as opposed to joint tenants.

At common law, each co-owner was as much entitled to possession of any part of the land as the others. He could not point to any part of the land as his own to the exclusion of the others; if he could, there would be separate ownership and not co-ownership. No one co-owner had a better right to the property than another. Tenants in common held property in undivided shares. Each tenant in common had a distinct share in property which had not yet been divided among the co-tenants. The only fact which brought them into co-ownership was that they both had shares in a single

property which had not yet been divided among them. Therefore, while the tenancy in common lasted, no one could say which of them owned any particular parcel of land”.

45. This far, it is clear that the members of the Longewan Group Ranch owned (*note the past tense*) the **Suguta/Marmar “A” /8** parcel under the Community of Ownership (Co-ownership) system. Is this the current status of the land? Not really. The 11th respondent has availed the green card detailing the historical registration of the suit property, which confirms that the title was issued to the group ranch on 8/12/1981. The last entry, **No. 5** is dated **16/12/2020** of which the title was closed on subdivision to give rise to parcels **2750-3169**. No evidence has been adduced to challenge the aforementioned land registration status. It follows that the 1981 title no longer exists, and the transition from co- ownership to individual ownership has taken effect. The land in question is therefore private land under individual ownership system,

even though the formalities of issuance of those individual titles are under way.

The Grievances of the Petitioners;

46. The grievances of the Petitioners have been set out at paragraph 15 and 16 of the petitions and are summarized elsewhere in the body of this judgment. It is trite law that he who alleges must prove as stipulated under Section 107 of the Evidence Act that...

“Whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist”.

47. In **Samson S. Maitai & another V. African Safari Club Limited & Another [2010] eKLR**, the court had this to say in relation to proof.

“Proof refers to evidence which satisfies the court as to the truth or falsity of a fact. Generally, as we well know, the burden of

proof lies on the party who asserts the truth of the issue in dispute.”

48. In the case cited by the 11th and 12th respondents: **Constitutional Petition No. 128 of 2006 Lt. Col Peter Ngari Kagume & Other v Attorney General**, (Supra) it was stated that:

“it is incumbent upon the petitioners to avail tangible evidence of violation of their rights and freedoms.....

the court is deaf to speculations and imagination and must be guided by evidence of probative value...”.

49. Similarly, in the case at hand, the petitioners bore the burden of proving the allegations made in their pleadings. It is worthy to note that on 29/11/2023, the petitioners advocate is the one who made the proposal to canvass the matter through written submissions knowing very well that they had raised factual issues in the petition that needed proof through production of evidence.

50. On the question of leadership of the group ranch, allegations have been made by the petitioners that the group representatives had stayed in their positions for too long, and that some were not members of the group ranch. The fall back on these issues is the primary statute, the Land (Group representative) Act. In the case of **Simon Tapai Santento Kimnyak Ole Sale (Suing on behalf of 78 Olepols Village Members) v Ita Ole Bulati & 8 other [2011] eKLR**, cited in *Bowen v Kwonyike (Environment and Land Appeal E006 of 2022) [2023] KEELC 17626 (KLR) (26 April 2023) (Judgment) Neutral citation: [2023] KEELC 17626 (KLR)*, it was observed that;

“It does not seem to be in dispute that the land in issue generally belongs to Naroosura Group Ranch. It has not yet been subdivided. The land is therefore governed by the Land Group (Representative) Act Cap. 287, Laws of Kenya. The question is therefore whether the

applicants are properly before the court. Under Section 5 of the Act, a meeting of the Group, convened by the Registrar after due notice, elects its representatives. Under Section 7, the said representatives who then apply for incorporation and under Section 8, the certificate of incorporation confers on the representatives power to sue and be sued in the corporate name, acquire, hold or charge and dispose of property of any kind and borrow money with or without security. Section 9 then provides for change in the Group representatives. In the event of disputes, Section 10 allows the Registrar to intervene or the same be adjudicated upon by the District Magistrate's Court. It seems that there are disputes in the Group Ranch over leadership and ownership or use of land as admitted by the applicants in the further

affidavit at paragraphs 9 to 14. That being the case, the applicants should first exhaust the dispute resolution mechanism under the Act (Section 10) before they can venture to come to this court”.

51. It is worthy to note that the provisions of Section 4 (2) of the aforementioned statute empower the Registrars of the group representative to be responsible for the supervision of the administration of the group which has group representatives. There is no evidence that the petitioners ever raised the issue of leadership of the group with the Registrar nor did they institute any case before the Magistrates court as provided in the primary statute.

52. On the question of unlawful allocation of the ranch land, the petitioners contend that though members were supposed to share the land equally, this did not happen. That there was discrimination where there was no reference to the membership register, that there was allocation of more than one parcel of land to the officials of

the group and their kinsmen, deliberate allocation of parcels to non members and that bonafide members were deprived of their rights to the land.

53. It was incumbent upon the petitioners to adduce evidence to proof these allegations, of which no tangible evidence was proffered to that effect.

54. On the issue of the registers, I find that at paragraph 14 of the supporting affidavit to the petition, the deponent avers that there are two conflicting registers for Longewan Group Ranch which have not been reconciled or consolidated and it is not clear which one is being used for adjudication and issuance of the titles. To this end, the petitioners have availed the two registers in question. The provisions of Section 17 of the Land (Group Representatives Act) obligates the group to maintain a register of its members. In **Kararei & 2 others (Suing on His own Behalf and on Behalf of 15 others) v Sayiaton & 17 others (Environment & Land Petition 18 of 2019)** [2025] KEELC 804 (KLR)

(25 February 2025) (Judgment) Neutral citation:
[2025] KEELC 804 (KLR), the court had this to say in relation to the register of a group ranch;

“The register was open for inspection at any time at the group ranch’s office, and none of the petitioners stated that at any time they inspected the same”.

55. I find that the petitioners have not given any evidence as to how they inspected the register of the group. To make matters worse, they have not given any clarification as to where they got the two registers from!

56. Secondly, there is no evidence to indicate that the petitioners sought clarification from the officials of the group or the Registrar of the group as to which was the bonafide list. Thirdly, the petitioners have not given particulars as to which member of the group was omitted from the registers and which non-member of the group was included in those registers.

57. Fourthly, the court has perused the registers; the two availed by the petitioners and the one availed by the 11th respondent. One of the registers availed by the petitioners contains typed content while the other one has hand written data. The one with typed content bears the heading *Samburu/Suguta Marma "A"/8 Area* and though not fully legible, the court was able to trace the 1st petitioner at member No. 216, 2nd Petitioner at No. 175, 3rd Petitioner at No. 409, 4th Petitioner at No. 337, 5th petitioner at no 94, and 9th Petitioner at No. 177. In respect of the hand written register also availed by the petitioners, the numberings are not clear, but the names of the 1st, 2nd, 3rd, 4th, 5th and 8th petitioners are in the said register.

58. On the other hand the register availed by the 11th respondent and which was used to close the mother title geared towards issuance of new titles bears the heading *SAMBURU/SUGUTA MARMAR "A"/8 Longewan Group Ranch Area list*. It is noted that all the petitioners are in the said list as follows;

1st petitioner is member no. 216,

2nd petitioner at No. 175,

3rd Petitioner at No. 409,

4th petitioner at No. 337,

5th petitioner is at No. 5,

6th petitioner is at No. 208,

7th petitioner is at No. 66,

8th petitioner at No. 155

9th petitioner is at No. 177.

59. What resonates from the above mentioned registers, particularly the one availed by the 11th respondent, which is the one used to generate titles is that the petitioners have not been omitted from a share of the group ranch land. It was therefore dishonest for the petitioners to advance a claim that bonafide members of the group were deprived of their right to the ranch land without giving any credible evidence to that effect.

60. It is noted that the provisions of Section 17 of the Land (Group Representatives) Act envisage situations where a

member **MAY** become and or cease to be a member of the group based on circumstances including disability. I would add that such circumstances would include death of a member, inheritance, as well as sale/ purchase or transfer of a member's interest in the ranch land. To this end, any cancellations in the register are also envisaged. Thus it behoves the petitioners to give a tangible account of which member was irregularly removed from or added to the group, of which no such evidence was tabled before this court.

61. On unlawful and irregular alienation of public land, allegations have been made by the petitioners that public utilities were not provided for and that even the County Government of Samburu lamented at the illegal and unlawful survey and demarcation of the land without considering public utilities such as public roads, boreholes and dams. Again, no evidence has been adduced to that effect. Further it is noted that in the area list availed by the 11th respondent, public utilities have been provided for

as from Nos. 413 where there is Longewan Trading Centre, Lentarakwai Dam, Ntim-Naruwuo Nursery School, Ntim-Nariwuo Dam, Mpoori Dam, Kao and Wua Mara Nursery Schools.

62. It is noted that the Samburu County Government which apparently lamented on the alleged illegal and irregular allocations of public land was brought on board unto these proceedings, but they were missing in action throughout the lifespan of the suit.

63. Further, no tangible evidence has been proffered detailing which specific public utilities have been given to which individuals as alleged by the petitioners (See paragraph 10 (e) of the supporting affidavit of the petitioners). The members of the group are 412 and their names are the ones running from no.1 to 412 in the area list. Thus, it is rather outrageous for the petitioners to state that public facilities parcels have been taken by the officials of the group and their relatives without tendering any evidence to support that claim.

64. On the letter/report dated 10/3/2021 from the Director Land Adjudication and Settlement, the petitioners appear to give a lot of weight to this document stating that non-compliance with the recommendations made therein will mean that the genuine members of the group ranch will be deprived of their rightful proprietary interest and the entire group ranch will be in chaos.

65. Firstly, it is worthy to note that this letter emanated from the Director Land Adjudication and Settlement Office in the ministry of lands. The author is therefore deemed to have knowledge in matters of ascertainment of land rights, including the status of the suit land as at 10.3.2021 the date the letter was authored. He recommends that the survey work done to remain with adjustments and the incoming committee to complete the work by end of June 2021, of which, failure to meet the deadline the group land would transition to community. However, and as noted earlier, the survey work had already been done and the title of the group ranch had been closed way back on

16/12/2020 giving rise to the subdivisions of the 419 parcels running from numbers 2750-3169. Thus, the ranch land had transitioned from the communal co-ownership tenure system to individual ownership as at the time the letter of 10.3.2021 was authored. An ordinary simple search would have revealed that the groups title no longer existed. It follows that the recommendation for the work to be completed by June 2021 had not only been overtaken by events, but was also devoid of any logic. See- **Kelvin & 5 others v Ng'aari Group Ranch & 7 others (Environment & Land Case E005 of 2020) [2025] KEELC 3051 (KLR) (12 March 2025) (Judgment) Neutral citation: [2025] KEELC 3051 (KLR).**

66. Secondly, the recommendation for the group representatives to be dissolved is unfounded as matters for the dissolution of the group were governed by the primary statute, the Land (Group Representatives) Act, the Constitution and the rules of the group as well as the

transitional provisions of the Community Land Act. To this end, the provisions of Section 13 of the Land (Group Representatives) Act stipulates that;

“Group Representatives may apply to the registrar for his consent for

- a) the amendment of the name, constitution or rules of the group;**
- b) the dissolution of the incorporated group representatives.”**

This far, it is clear that it is the Registrar of the group who had the responsibility for the supervision and administration of the group’s affairs including its dissolution.

67.Thirdly, it is noted that the office which authored the report of 10.3.2021 was sued as the 12th respondent in this matter. However, the Attorney General who was representing this party in these proceedings does not agree with that report.

68. On public participation, again I find no tangible evidence to indicate that the subdivision of the group land was done without public participation. The complaint by the petitioners to be found at paragraph 15 (d) of the petition is that *“Since 2014, after elections of the current officials no annual general meeting has ever been convened to discuss the issues of the group ranch..”* However, there is no evidence to indicate that the petitioners raised this issue with the Registrar of the group who under Section 4 of the Land Group (Representatives) Act had the mandate and responsibility to supervise the administration of groups which had group representatives.

69. As it were, the 1st -10th respondents have given an account of how the members were mobilised to give their views on the matters touching on the subdivision of the land, of which the process took long because of lack of funds. Further, one of the documents which guided the 11th respondent in carrying out the titling process was the

minutes of the group dated 12.8.2020. No rebuttal evidence has been proffered in relation to the said minutes.

70. On Loss of land to another ranch, the petitioners contend that their ranch lost 500 hectares to Logorate group ranch during the process of re-survey of which 21 members lost their land without compensation. The petitioners have not given particulars of the 21 members, nor have they tabled any evidence to indicate that they were given the mandate by the 21 members to sue on their behalf in respect of this particular claim. There is also no tangible evidence of “lost land”.

71. On the enjoyment of Constitutional rights of the petitioners as tabulated at paragraph 30 -44 of the Petition, I find that consideration must be made in respect of enjoyment of other members rights. To this end, the provisions of Article 24 (1) of the Constitution stipulates that;

“ A right or fundamental freedom in the Bill of Rights shall not be limited except by law, and then only to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equity and freedom, taking into account all relevant factors, including-

- a) The nature of the right or fundamental freedom;**
- b) The importance of the purpose of the limitation;**
- c) The nature and extent of the limitation;**
- d) The need to ensure that the enjoyment of rights and fundamental freedoms by any individual does not prejudice the rights and fundamental freedoms of others”.**

72. It is noted that the group ranch has about **412** members of which only **9** have filed this petition. The 3 complaint letters dated 8.4.2019, 10.4.2019 and 30.7.2020 were all

authored by the 1st petitioner. The ones of 2019 were allegedly signed by 23 other persons, but there are no signatures to that effect only names. Thus, there is nothing to indicate that the interest of the petitioners are geared towards protecting the rights and interest of the majority members of the group ranch. It follows that the interest of the petitioners may adversely affect those other majority members who are non-parties to this suit.

73. In *Sile & another v Oloirien Group Ranch (Environment and Land Petition 6 of 2017) [2025] KEELC 5615 (KLR) (25 July 2025) (Judgment)* Neutral citation: [2025] KEELC 5615 (KLR), the court had this to say in respect of a dispute touching on membership and land rights in a group ranch;

“In addition, the reliefs sought would, if granted, affect existing registered members many of whom are not parties to this suit. That would offend the principles of fair

**hearing and due process under Article 50(1)
of the Constitution”**

74.On passage of time, there is no controversy that Longewan Group Ranch came to be decades ago in the 1970's in which demarcation took place in 1972. It appears that the desire to subdivide the land was also born several years ago of which the consent to subdivide the expansive 11237.5 hectares of land was obtained way back on 19/6/2008. The respondents have given an account of how the subdivision of the land hit a snag because of lack of funds and the process only commenced in 2015 when the group received some money from KETRACO after the latter passed through their land. The 11th respondent has also availed documents of the subdivision including mutation forms, land control consent, certificate of compliance, notice of approval of development permission, the area list and the minutes of the group filed on 12/8/2020 which formed the foundation for the closure of the mother title.

75. This far, it is clear that the process of subdivision of the group land geared towards ascertainment of individual ownership of the land was rigorous and was undertaken over a long period of time. **In Kararei & 2 others (Suing on His own Behalf and on Behalf of 15 others) v Sayiaton & 17 others (Supra)**, the court stated that;

“In my view, the petitioners ought to have engaged the Registrar of the Group Representatives to address their claims at the earliest and not nine years later when they woke up from slumber and realized that their interests in land have not been addressed”.

76. Unlike the above cited case, this is a situation whereby the petitioners have been included in the area list, the one being used to generate titles. It would therefore fly against the National Values and Principles of Governance on equality, equity and social justice set out under Article 10 of the Constitution if this court was to disregard the

intricate process undertaken to subdivide the expansive parcel of land, so as to accommodate the unvalidated claims of a few members of the group.

The Reliefs

77. In Taireni Association of Mijikenda v North Witu Ranching Limited & 9 others; Kipini Wildlife and Botanical Conservatory Trust & 3 others (Interested Parties) (Petition E13 of 2020) [2023] KEELC 18778 (KLR) (10 July 2023) (Judgment) Neutral citation: [2023] KEELC 18778 (KLR), the court stated that;

“The Petitioner mentioned Articles which they claimed to have been infringed as 1, 2, 3, 10, 19, 20, 21, 22, 23, 25, 27, 28, 29, 40, 43, 47, 52, 56, 60, 61, 63, 64, 67, 68, 69 and 258 of the Constitution of Kenya, 2010.

.....

Save for laying out these provisions, the Petitioner did not give any evidence as to how each of the Respondents violated these rights.”

78. Similarly, in the case at hand, the petitioners have only laid out the provisions of Articles 10, 19, 20-28, 35, 40, 47, 61, 63 and 259 of the Constitution, but have failed to tender evidence on how the aforementioned Constitutional provisions were violated. In the case of **Matemu v Trusted Society of Human rights Alliances & 50 Others (Civil Appeal 290 of 2012) (2013) KECA 445 (KLR) (26th July 2013) Judgment**, the Court of Appeal stated that;

“It is a fundamental tenet of the rule of law that evidence, whether real, documentary, circumstantial or presumptive is the basis of any judicial decision”.

79. Further and as noted earlier in the body of this judgment, the group ranch no longer has a title to the land, the

same having been closed on **16.12.2020** which means that the process of subdivision of the land was complete by the time the petition was filed. The resultant parcels belong to individual members of the group ranch as envisaged under Section 46 (3) (a) of the Community Land Act. The law in force relating to registration as at 16.12.2020 when the mother title was closed is the Land Registration Act which confers upon individual members the absolute ownership of their respective parcels unless their titles are impeached under Section 26 of the said Act.

80. In essence, the transition from Co-ownership to Individual Ownership of land in the group ranch has taken effect. Thus the legal rights within the group ranch have shifted with the crystallization of individual land ownership and therefore the challenges outlined by the petitioners are moot. It follows that no reliefs are available to the petitioners.

81.On costs, generally costs follow the event, though the Court also has the discretion on how to award costs as set out under **Section 27** of the **Civil Procedure Act**. See **Jasbir Singh Rai & Others v Tarlochan Singt Rai& 4 Others S.C. Petition 4 of 2012; (2014) eKLR**. In the case at hand, no material evidence was availed, enabling the court to exercise its discretion in favour of the petitioners on matters costs. There is also nothing to indicate that the petitioners had the interests of the group members at heart when they filed this suit. As such, they will pay costs.

82.In the end, this petition is found to be unmerited, the same is hereby dismissed with costs to the 1st- 11th respondents.

**DATED, SIGNED AND DELIVERED AT NYAHURURU THIS
3RD DAY OF DECEMBER 2025 THROUGH MICROSOFT
TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:

Vanessa - Court Assistant

Lesaigor for Petitioners and holding brief for Khiso for the 1st
Interested Party

Nguame holding brief for Miruka for 1st to 10th Respondents

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