

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
JUDICIAL REVIEW APPLICATION NO. E008 OF 2025

BETWEEN

1. LEYIASEK OLE LEKAN
2. RANKAU OLE KAREKU
3. JOSEPH OLUBI MUNKE
4. NOAH KERIKA NDERE
5. DANIEL NTAWUASA WUANTAI
6. SHADRACK SHAPASHINA TONKEI
7. SENTUI KAKURO NKOIRISHISHE
8. JOSEPH SANANKA KORES
9. SOLITEI OLE SELEON
10. MEELI PARMUAT

(Suing as the Representatives of

Osilalei Group Ranch) EX PARTE
APPLICANTS

AND

THE KAJIADO LAND ADJUDICATION &
SETTLEMENT OFFICER..... 1ST RESPONDENT
THE DIRECTOR LAND ADJUDICATION
AND SETTLEMENT 2ND RESPONDENT
THE REGISTRAR OF GROUP REPRESENTATIVES 3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL 4TH RESPONDENT

JUDGMENT

Introduction

1. Before this Court is a Notice of Motion dated 25th February 2025, brought by the Ex Parte Applicants pursuant to leave granted by this Court on 10th March 2025. The application is a substantive application for judicial review orders brought under the provisions of Order 53 Rule 3 of the Civil Procedure Rules, Sections 8 and 9 of the Fair

Administrative Actions Act, 2015, and Articles 22, 23, and 47 of the Constitution of Kenya, 2010.

2. The Applicants describe themselves as the duly elected representatives and officials of the Osilalei Group Ranch, having been elected to office during an election held on 18th November 2024. Their election was subsequently ratified by the Registrar of Group Representatives through a Certificate of Incorporation issued on the same date.
3. The genesis of this dispute lies in a letter and directive dated 17th February 2025, issued by E.N. Wekesa, the County Land Adjudication & Settlement Officer for Kajiado County. This directive purportedly called for a Special Annual General Meeting of the Osilalei Group Ranch on 18th March 2025 for the sole purpose of conducting a fresh election of the ranch's officials and committee.
4. The Applicants contend that this directive is illegal, irrational, and procedurally improper. They assert that the decision to call for fresh elections barely three months after a valid election was held has no legal basis under the Land (Group Representatives) Act or the Constitution of the Osilalei Group Ranch, which provides for a five-years' term for elected officials. Furthermore, the Applicants allege that the 1st Respondent acted under external political pressure rather than within the confines of the law.
5. Consequently, the Applicants seek the following substantive orders from this Court:
 - a. **An Order of Certiorari** to remove into this Court and quash the letter and directive dated 17th February 2025 issued by the 1st Respondent.
 - b. **An Order of Prohibition** to restrain the Respondents from interfering with the operations of the Osilalei Group Ranch or the Applicants' mandate by arbitrarily calling for meetings or elections outside the established legal framework.

c. **Costs** of the application.

6. The 1st, 2nd, 3rd, and 4th Respondents oppose the application in its entirety, contending that it is incompetent, premature, and constitutes an abuse of the court process. The Respondents argue that the application fails to meet the legal threshold for urgency under Order 51 Rule 3 of the Civil Procedure Rules, as no exceptional circumstances have been demonstrated. Furthermore, they assert that the Applicants have not shown they would suffer irreparable harm that cannot be remedied through damages or other lawful means.
7. A primary ground for opposition is the "Doctrine of Exhaustion". The Respondents maintain that the suit is premature as the Applicants have failed to utilize mandatory statutory dispute resolution mechanisms provided under the Land Adjudication Act. Specifically, they point to Section 26 of the Act, which requires an aggrieved party to first lodge an objection with the Land Adjudication Officer, and Section 29, which provides for an appeal to the Cabinet Secretary. The Respondents argue that these administrative remedies must be exhausted before the Court's jurisdiction is invoked.

Analysis of Submissions

8. The Application was canvassed by way of affidavit evidence and written submissions filed by the respective parties. At the time of this Judgment, only the Ex-Parte Applicants have complied with the directions to file and serve their written submissions.
9. The Ex-Parte Applicants' submissions are anchored on the primary contention that the directive issued by the 1st Respondent on 17th February 2025, calling for a Special Annual General Meeting and fresh elections, is a nullity in law. They categorize their arguments under the traditional heads of judicial review: illegality, irrationality, and procedural impropriety.

11. The Applicants submit that every administrative action must be justified by a specific law, a principle they identify as the doctrine of legality. They rely on **Section 15 of the Community Land Act, 2016**, and the **Osilalei Group Ranch Constitution**, which stipulates that elected representatives serve a five-years' term.
12. They further argue that under **Section 15(2) of the Community Land Act**, the quorum for decision-making within the Ranch is two-thirds of the members, and that the election held on 18th November 2024, where 603 out of 897 members participated, satisfied this legal threshold.
13. It is the Applicants' position that the 1st Respondent's role, as defined under **Sections 10 and 11 of the Land Adjudication Act**, is limited to the demarcation and adjudication of land interests. They contend that the management of community land is vested in the Community Assembly, and the 1st Respondent acted *ultra vires* by usurping the powers of the assembly to call for elections. In support of this, they cite **AAA Investments (Pty) Ltd vs Micro Finance Regulatory Council and Another**, as referenced in **Republic v Betting Control and Licensing Board & Another; Outdoor Advertising Association of Kenya (Ex-parte Applicant) [2023] KEHC 23792 (KLR)**, for the proposition that public power must have a clear source in law.
14. The Applicants invoke the *Wednesbury* test of unreasonableness, arguing that the directive is "objectively so devoid of any plausible justification that no reasonable body of persons could have reached it". They rely on the locus classicus case **of Pastoli vs Kabale District Local Government Council & Others (2008) 2 EA 300** to define the standard of irrationality.

15. They submit that it is "absurd" and "callous" for the 1st Respondent to issue a Certificate of Incorporation in November 2024 and then, barely three months later, call for fresh elections without any petition or resolution from the members. They suggest the directive was influenced by the former officials who failed to conduct a proper hand-over, thereby tainting the decision with improper motives.
16. On the limb of procedural impropriety, the Applicants argue that the Respondents failed to adhere to the principles of fair administrative action enshrined in **Article 47 of the Constitution** and **Sections 4, 5, and 6 of the Fair Administrative Actions Act, 2015**.
17. They contend that the 1st Respondent failed to engage the community assembly or provide any reasons for the directive, thereby violating the rules of natural justice, specifically *audi alteram partem* (the right to be heard) and the duty to consult parties whose rights are affected. They cite **Kenya National Examination Council vs Republic Ex parte Geoffrey Gathenji & 9 Others and Republic vs Ethics and Anti-corruption Commission Ex-parte Nairobi City County Assembly & 13 others (2019) eKLR** to emphasize that a failure to comply with fair procedures renders an administrative decision challengeable.
18. The Applicants pray for costs of the suit, citing **Section 27(1) of the Civil Procedure Act**, on the basis that the Respondents' illegal and unprocedural actions necessitated the institution of these proceedings.

Issues for determination

19. Having carefully read the Motion by the Ex parte Applicants and the supporting statement of facts, the issue of jurisdiction prominently glares at me. The jurisdiction of this court is provided for under the provisions of Article 162(2)(b) of the Constitution and

Section 13(5) of the ELC Act. Section 13(5)(b) empowers the court to issue prerogative orders (otherwise known as judicial review orders). This provision must be read in the context of the jurisdiction of the court; **in respect of matters falling within the jurisdiction of the Court.**

Analysis and determination

20. The question of jurisdiction is foundational and must be determined at the earliest opportunity. This principle was firmly settled in *Owners of the Motor Vessel 'Lillian S' v Caltex Oil (Kenya) Ltd (1989) KLR 1*, where Nyarangi JA authoritatively stated:

“Jurisdiction is everything. Without it, a court has no power to make one more step...”

21. Likewise, the Supreme Court of Kenya in *Samuel Kamau Macharia & Another v Kenya Commercial Bank Limited & 2 Others (2012) eKLR* emphasized that:

“A Court’s jurisdiction flows from either the Constitution or legislation or both...”

22. Guided by these binding pronouncements, this Court must interrogate whether the dispute before it falls within the ambit of Article 162(2)(b) of the Constitution and Section 13(5) of the Environment and Land Court Act.

23. Article 162(2)(b) limits the jurisdiction of this Court to disputes relating to,

“the environment and the use and occupation of, and title to, land.”

24. Section 13(5) of the Environment and Land Court Act elaborates this mandate but does not expand it beyond those constitutional confines. Indeed, as was emphasized by the Supreme Court in *Republic v Karisa Chengo & 2 Others (2017) eKLR*:

“The jurisdiction of the specialized courts is limited to the matters provided for in Article 162(2)... and cannot be expanded by judicial craft.”

25. In the present matter, the dispute does not concern title to land, nor the use or occupation of land. Rather, the dispute concerns the legality of a directive issued by the Land Adjudication and Settlement Officer calling for fresh elections of officials of the Osilalei Group Ranch. The core issue, therefore, is one of **governance, leadership, and administrative propriety within a community land entity**, and not a dispute over land rights.

26. This distinction is critical. The Court of Appeal in *Co-operative Bank of Kenya Limited v Patrick Kangethe Njuguna & 5 Others (2017) eKLR* clarified the scope of the Environment and Land Court’s jurisdiction as follows:

“The Environment and Land Court has jurisdiction to hear and determine disputes relating to the environment and the use and occupation of, and title to land...”

27. The Court further emphasized that the ELC’s jurisdiction is confined to disputes directly related to the **use of land**, and not matters merely incidental or collateral to land. By parity of reasoning, a dispute relating to **internal elections and management of a group ranch**, even though the ranch presumably owns or manages land on behalf of its members, does not amount to a dispute on the use, occupation of, or title to land.

28. The present Application is therefore a classic example of a dispute that has been **mischaracterized as a land dispute**, when in fact it is a civil dispute. In *Suzanne Butler*

& 4 Others v Redhill Heights Investments Ltd & Another (2016) eKLR, the Court rightly held that:

“The mere fact that land is involved does not automatically confer jurisdiction upon the Environment and Land Court.”

29. This Court therefore finds that it has been invited to exercise jurisdiction where none exists. To do so would be to contravene the Constitution and statute.

30. Accordingly, and for the foregoing reasons, this Court finds and holds that it lacks jurisdiction to entertain the Notice of Motion dated 25th February 2025. The same is hereby struck out. The court will refrain from going into the merits of the matter in order not to prejudice the position of either party should the Applicants decide to do move to the appropriate court (as they are entitled to in any case.)

31. Given the nature of the dispute, the unique circumstances of this matter and the relationship between the parties, each party shall bear its own costs.

It is so ordered.

Dated Signed and Delivered at Kajiado Virtually this 16th Day of April 2026.

**M.D. MWANGI
JUDGE**

In the virtual presence of:

Mr. Namada for the ex parte Applicants

Mr. Oyugi for the Respondents

Court Assistant: Alex

**M.D. MWANGI
JUDGE**