



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**ELC CASE NO. 926 OF 2017**

**GEORGE MERITEI & KOINE ENE MERITEI** (*Suing as the Administrators of the Estate of MERITEI OLE*

**TINKOI.....PLAINTIFFS**

**VERSUS**

**KESIAYA OLAISNKAI MOKOLO.....1<sup>ST</sup>**

**DEFENDANT**

**MAILWA GROUP RANCH.....2<sup>ND</sup>**

**DEFENDANT**

**RULING**

1. The Plaintiff instituted this suit in 2006 contending that he is a lawful member of the 2nd Defendant Group Ranch and, by virtue of membership under the Land **(Group Representatives) Act (Cap 287)** (repealed), was entitled to occupation and allocation of land within the ranch. He

avers that following subdivision allegedly sanctioned pursuant to **section 13 of Cap 287**, he was allocated a parcel upon which he resides, but that subsequently the 2nd Defendant unlawfully transferred the same land to the 1st Defendant. He seeks, inter alia, declarations nullifying the 1st Defendant's title.

2. The Defendants raise a **Preliminary Objection** on grounds that **Section 10 (2) of the Land Group Ranch Representative Act Chapter 287** vests jurisdiction on the District Magistrate's Court to settle disputes and make declarations for purposes of proceedings instituted under sub **section 1 (b)** of the Act.
3. The Defendants further submit that **Section 26 of the Land Adjudication Act** provides the mechanism of raising the objection to the adjudication register within 60 days of the date which the notice of publication of completion of the adjudication register is published. It is thus the case of the Defendants that any dispute under this section can only be brought to this court as an appeal against the decision of the minister.

4. The Defendants contend that the Plaintiff has failed to comply with exhaustion of dispute resolution mechanisms as required by **Section 27 of the Land Adjudication Act**. In any event the 1<sup>st</sup> Defendant contends that he has been improperly sued in a representative capacity while it is alleged the 2<sup>nd</sup> Defendant ceased to exist upon enactment of the Community Land Act, thus proceedings ought to lie against the Attorney General or another legal successor.
5. The Plaintiff opposes the Preliminary Objection on the grounds that this court is clothed with jurisdiction to hear this matter under **Article 162 of the Constitution and Section 4 and 13 of the Environment and Land Court**. On the argument that the claim against the 2<sup>nd</sup> Defendant ceased on 21<sup>st</sup> September 2016 counsel submits that the transitional provisions of the Community land Act preserved all rights, obligations and liabilities before the commencement of the Act. Regarding the claim that Mailwa Group Ranch is not a *de facto* organization counsel submits that the transitional provisions expressly provide that groups were to retain their legal capacity so as to resolve

outstanding disputes and liabilities. In any event counsel argues that the question of legal status is a factual issue that cannot be determined in a preliminary objection.

6. Having considered the submissions by both counsel the court distills the following issues for Determination;

- **Whether the Preliminary Objection is on a pure point of law.**
- **Whether this Court has jurisdiction to determine this matter.**
- **Whether the suit is fatally defective for misjoinder, improper parties, or legal extinction of the 2nd Defendant.**

7. The celebrated case of **Mukisa Biscuits** defines a preliminary objection as; -

***“...a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the Court or a plea of limitation or a submission that the parties are***

***bound by the contract giving rise to the suit to refer the dispute to arbitration ... a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or if what is sought is the exercise of judicial discretion.”***

8. In the instant case there are several factual issues that the court would need to resolve such as whether sub division was resolved and whether title vested in the Plaintiff or any other party are evidentiary matters which the court cannot make a conclusive determination on at this stage. Similarly, the question whether the dispute was adjudication related, whether statutory remedies were available, or whether title had crystallized beyond adjudication are factual matters requiring evidence.

9. In the same vein the question whether the 2nd Defendant was dissolved, transformed, or succeeded by another entity is itself a factual and legal question requiring evidence of

registration status, succession, or vesting. Ultimately the court finds that the issues raised in the Preliminary Objection cannot be determined without factual inquiry. The court will not therefore make a finding on them at this stage. The Defendant shall be at liberty to raise the issues after the hearing of the matter. The Preliminary Objection is dismissed with costs to abide the outcome of the main suit.

**Dated, Signed and Delivered virtually at Kajiado this 30<sup>th</sup> day of April 2026.**

**JUDY OMANGE**

**JUDGE**

**IN THE PRESENCE OF:**

Mr. Pareno for Plaintiffs.

Mr. Nairi for the Respondents.

Peter - Court Assistant.