



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

JR APPLICATION NO. 4 OF 2019

IN THE MATTER OF: APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW BY LEMARON MUNYEPERA, ISAAC PAIYAI TIPAPE AND JACOB

AND

IN THE MATTER OF: THE LAND (GROUP REPRESENTATIVES ACT) CAP 287, LAWS OF KENYA)

AND

IN THE MATTER OF: DECISION OF THE REGISTRAR OF GROUP REPRESENTATIVES DATED AND THE PROCEEDINGS AND RESOLUTION PASSED PURSUANT THERETO ON AND CERTIFICATE OF INCORPORATION ISSUED IN RESPECT OF ROMBO GROUP RANCH

AND

IN THE MATTER OF: AN APPLICATION BY LEMARON MUNYEPERA, ISAAC PAIYAI TIPAPE AND JACOB LEMARON LEGELO FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDER OF CERTIORARI, MANDAMUS AND PROHIBITION

BETWEEN

LEMARON MUNYEPERA.....1ST APPLICANT

ISAAC PAIYAI TIPAPE.....2ND APPLICANT

JACOB LEMARON LOGELA.....3RD APPLICANT

AND

THE LAND ADJUDICATION OFFICER (KAJIADO COUNTY).....1ST RESPONDENT

THE REGISTRAR OF GROUP REPRESENTATIVES.....2ND RESPONDENT

JOHN SITELU NKIPAPAI.....3RD RESPONDENT

JOSEPH LENGAKUAI OLOMUKO.....4TH RESPONDENT

JAMES MUNDEI LENCHANGWA.....5TH RESPONDENT

RULING

What is before Court for determination is the Applicants’ Chamber Summons application dated the 29th January, 2019, seeking leave to institute judicial review for orders of certiorari, prohibition and mandamus. That leave granted operates as a stay of the 1st Respondent’s decision dated the 6th December, 2018. Further, that an order of temporary injunction be granted pending the hearing and determination of the suit herein.

The application is premised on the summarized grounds that the Applicants took part in the elections of officials to Rombo Group Ranch on the 6th December, 2018 which were marred with massive irregularities, intimidation, violence and not conducted in a transparent manner.

They contend that it was not humanly possible to physically count 11, 762 people in under four hours. Further, that the number of votes cast was 11, 762 which surpassed the number of registered voters that was 3,382. They insist the results were a sham with the elections done devoid of a register of members. Further, that the elections were not impartial as the 1st Respondent who was the returning officer was intimidated, threatened and possibly bribed. They are apprehensive that the 2nd Respondent will publish the names of the persons purportedly elected.

The application is supported by the Applicants' Statement of facts and verifying affidavits of LEMARON MUNYEPERA, ISAAC PAIYAI TIPAPE AND JACOB LEMARON LEGELO where they reiterate their claim above.

The 1st and 2nd Respondents opposed the application and filed a replying affidavit sworn by JOSIAH K. LESSAN who is the Kajiado County Land Adjudication and Settlement Officer. He confirms that Rombo Group Ranch representatives wrote to him on 12th November, 2018 which letter he responded to on 14th November, 2018 inviting them for a meeting on 21st November, 2018 to discuss modalities of conducting the requested general elections. He confirms issuing a date for the annual general meeting, which was to be held on 6th December, 2018. He contends that parties agreed on the following modalities to conduct elections to wit: use of queueing method; voting was to commence at 1pm; the two contestants were to each nominate 5 agents for the exercise; contestant with the simple majority to be declared the winner; all members present in the meeting will queue and he was to announce the results. He denies allegations of violence. He insists the mlolongo system was used and 11, 762 members voted. Further, the duly elected officials were declared on the spot and not in a thicket. He denies the allegations of bribery and insists the application does not meet the threshold for grant of orders sought.

The application is opposed by the 3rd and 4th Respondents who filed a replying affidavit sworn by the 3rd Respondent JOHN SITELU NKIPAPAI who insists the elections were properly conducted. They explain that on 12th November, 2018 the officials of Rombo Group Ranch wrote to the Registrar of Group Ranches requesting for a date for election of new office bearers who upon receipt of their letter invited the parties to a meeting. Further, they all attended the meeting where they agreed to use the mlolongo system of voting; any person aged 10years and above was to participate and each was to have 5 agents. They contend that the results of the elections were announced on 8th December, 2018, after which the 1st Respondent communicated the outcome of elections, with the 2nd Respondent issuing a Certificate of incorporation in respect of the Group Ranch. They reiterate that the orders sought have been overtaken by events as the applicants waited for a period of 53 days to realize elections held was a sham.

The Applicants together with the 3rd, 4th and 5th Respondents filed their respective submissions that I have considered.

Analysis and Determination

Upon consideration of the application dated the 29th January, 2019 together with the statement of facts as well as supporting affidavit and the replying affidavits including submissions, the only issue for determination is whether the Applicants are entitled to leave to institute judicial review proceedings of Mandamus, Certiorari and Prohibition.

I note the 2nd Applicant ISAAC PAIYAI TIPAPE filed a Notice of Withdrawal of suit. Order 53 Rule 1 stipulates that parties seeking leave to institute judicial review have to seek leave of court. I have highlighted the provisions of Order 53 Rule 1 of the Civil Procedure Rules hereunder: **' (1) No application for an order of mandamus, prohibition or certiorari shall be made unless leave therefor has been granted in accordance with this rule. (2) An application for such leave as aforesaid shall be made ex parte to a judge in chambers, and shall be accompanied by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by affidavits verifying the facts relied on. (3) The judge may, in granting leave, impose such terms as to costs and as to giving security as he thinks fit including cash deposit, bank guarantee or insurance bond from a reputable institution.(4) The grant of leave under this rule to apply for an order of prohibition or an order of certiorari shall, if the judge so directs, operate as a stay of the proceedings in question until the determination of the application, or until the judge orders otherwise: Provided that where the circumstances so require, the judge may direct that the application be served for hearing inter partes before grant of leave. Provided further that where the circumstances so require the judge may direct that the question of leave and whether grant of leave shall operate as stay may be heard and determined separately within seven days.'**

Judicial review is not concerned about the merits of the decisions but the process, which was adhered to. It challenges the administrative action of a person in position of authority. I note the 1st and 3rd Applicants are merely seeking leave to challenge the process adhered to when elections were held on 8th December, 2018 to elect officials of Rombo Group Ranch which elections were overseen by the 1st Respondent. The Respondents have opposed the same and insist the Applicants are not entitled to the leave sought since elections were properly held.

However at this juncture, as a Court I will not analyze the merits or demerits of how the elections were held but whether the Applicants have raised pertinent issues to be granted leave to institute judicial review of certiorari, mandamus and prohibition. In associating myself with the decision of Justice Aburili where she held in the case of **Direction of Public Prosecutions & 2 Others Vs Pius Ngugi Mbugua & Another ex parte Muktar Saman Olow (2017) eKLR**, that a fundamental principle in judicial review cases is that the concern of courts has nothing to do with the merits of the decision but the process in arriving at that decision; and in relying on the facts as presented above including the legal provisions I have cited, I will grant leave of 21 days to the 1st and 3rd Applicants to file and serve a substantive motion for certiorari, mandamus and prohibition. Since this matter is touching on a community with many members as demonstrated in the Register which was annexed to one of the affidavits and I note the application having been filed after 53 days as stated by the 3rd Respondent, I will decline to grant an order that leave granted operates as a stay of the 1st Respondent's decision dated the 6th December, 2018. I will further decline to grant an order for temporary injunction, pending the hearing and determination of the suit herein.

Costs will be in the cause.

Dated and delivered at Loitoktok this 7th Day of October, 2019

CHRISTINE OCHIENG

JUDGE