



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 85 OF 2014**

**APUO LOMETET**

**(Suing on behalf of the Estate of the late**

**LOMETET LOMIT.....PLAINTIFF**

**VERSUS**

**JULIUS K. LONGOROKWANG.....1<sup>ST</sup> DEFENDANT**

**LIMAKORI MERII.....2<sup>ND</sup> DEFENDANT**

**LEMOKORU MERII.....3<sup>RD</sup> DEFENDANT**

**KORKOU MERII.....4<sup>TH</sup> DEFENDANT**

**DIRECTIONS**

1. The application dated **19/9/2019** and filed in court on the same date has been brought by the plaintiff/applicant. It seeks the following orders:-

**(1) That this application be certified urgent and be heard on priority basis.**

**(2) That this court be pleased to direct that the Land Adjudication Officer West Pokot County, in the company of the Area Chief Kanyarkwat Location, the Assistant Area Chief Katikomor Sub-location, the Chairman Kanyarkwat Group Ranch and the Local Village Elders to visit the disputed land occupied by membership No. 125 and 232 and establish the following:-**

**(A) (i) Who are the occupants of land on Membership No. 125 and who are the occupants of land under Membership No. 232.**

**(ii) Are there homesteads on land under Membership No. 125 and if so whose homesteads are they?**

**(iii) Are there homesteads on land on Membership No. 232 and if so whose homesteads are they?**

**(iv) The exact place or village where the defendants' homesteads and those of the plaintiffs are located.**

**(v) Whether there is any physical feature/boundary separating the land occupied by the plaintiff from the land under the occupation of the defendants.**

**(B) That the Area Chief to provide security during the visit and that the Land Adjudication Officer to file a report in court within the next 30 days.**

2. The plaintiff/applicant through Kaosa & Co. Advocates has brought the application under **Sections 3, 3A, 1A, 1B and 63(e) of the Civil Procedure Act and Order 51 (1) of the Civil Procedure Rules.**

3. The grounds on which the said application is made are that the defendants' evidence attempts to indicate that they are not in occupation of the disputed portion and that the plaintiff's family chased them away. Further, it suggests that they do not have

homesteads on the portion alleged to be under their occupation and there is no physical boundary or demarcation between land held under Membership No. 125 and 232.

4. The application is supported an affidavit of the applicant sworn on **19/9/2019** which reiterates the above grounds.
5. The 1<sup>st</sup> defendant filed a replying affidavit on **14/10/2019** in which he opposed to application and stated as follows: that no survey has been carried out on Kanyarkwat Group Ranch; that Numbers **125** and **232** are not parcel numbers but membership numbers; that the Assistant Chief Peter Lowasikou is an interested party and is related to the plaintiff herein; that there are no boundaries on the parcels of land; that the time within which the site visit was to be done lapsed according to the court order that the court should proceed to write its judgment based on the material on record.
6. The applicant filed submissions on **22/10/2019**. The respondents did not file any submissions. I have considered the application, the response and the applicant's submissions.
7. The evidence of the parties has been fully heard. Upon the close of the defence case Mr. Kaosa for the plaintiff applied that the Deputy Registrar be directed to visit the site and ascertain where the parties reside with regard to the lands in question. The court ordered that the directions on site visit would be made on **19/6/2019**. Directions were finally issued on **18/7/2019** to the effect that the plaintiff should facilitate the officers involved in the site visit which would be conducted within **14 days**, under the leadership of the District Land Adjudication and Settlement Officer, failure to which the court would proceed to judgment in the matter. The report on the site visit was to be filed by **30/8/2019**.
8. On **16/9/2019** this court allowed the plaintiff to file a formal application **7 days**. That order led to the filing of the instant application.
9. I have examined the application and the response thereto. It appears that there is a dispute in this case as to whether the land in Kanyarkwat Group Ranch has been demarcated, whether there are boundaries to the subject parcels alleged to belong to the parties, and whether numbers **125** and **232** refer to membership number plot number.
10. All the information relating to that group ranch must be in the possession or custody of the District Land Adjudication and Settlement Officer West Pokot. He has not testified in this case. His evidence is likely to settle a greater part of the present dispute and probably cause the court and the parties to dispense with the site visit.
11. For the foregoing reasons, I will defer a substantive ruling on the application dated **19/9/2019**. In lieu of that ruling, I hereby issue an order that witness summons shall issue compelling the District Land Adjudication and Settlement Officer West Pokot to attend court on the **29/1/2020** to shed light on the above issues. The officer shall carry with him all the relevant Land Adjudication records relating to the above issues, namely, whether the group ranch land is demarcated, whether boundaries exist in relation to the parcels the parties herein claim and whether **Nos. 125** and **232** refer to plot numbers or group membership numbers. The documents shall include any maps and demarcation records if available.
12. Further directions regarding the application dated **19/9/2019** shall be issued after the evidence of the District Land Adjudication and Settlement Officer West Pokot is taken.

It is so ordered.

**Dated, signed and delivered at Kitale on this 4<sup>th</sup> day of December, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**4/12/2019**

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Ngeywa holding brief for Kaosa for Applicant

Mr. Wanyama for Arunga for the Respondent

**COURT**

Directions issued in open court.

**MWANGI NJOROGE**

**JUDGE**

**4/12/2019.**