



**Ranch & 10 others v Matunke & 13 others; D&E Holdings Limited & 3 others (Applicant)
(Environment & Land Petition 268 of 2017) [2024] KEELC 87 (KLR) (24 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 87 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND PETITION 268 OF 2017
CG MBOGO, J
JANUARY 24, 2024
IN THE MATTER OF ARTICLES
19,29,22,23,24,40,47,60,61,63,64,165,258 & 259 OF THE
CONSTITUTION
IN THE MATTER OF THE LAND ACT, 2012
IN THE MATTER OF THE LAND GROUP REPRESENTATIVES
ACT (REPEALED)
IN THE MATTER OF COMMUNITY LAND ACT, 2016**

BETWEEN

**MAJI MOTO GROUP RANCH 1ST PETITIONER
TWALA MANKI 2ND PETITIONER
KILETIA SAYIALEL 3RD PETITIONER
SIMON MAISON TONGOYO 4TH PETITIONER
NAGIYO MEIKWAYA 5TH PETITIONER
PARMMOIS NASI 6TH PETITIONER
MEPUKORI NYAYIA 7TH PETITIONER
NCHAO SIOLOLO 8TH PETITIONER
TOPOIKA NTOKOIWUAN 9TH PETITIONER
TIMAYIO TIKANI 10TH PETITIONER
TIAPUKEL NANTEYA 11TH PETITIONER**

AND



MAYONE DAVID MATUNKE	1 ST RESPONDENT
JAMES PASHAMAI AHIRE	2 ND RESPONDENT
SENET RIAMIT	3 RD RESPONDENT
MAINKA MUNTET	4 TH RESPONDENT
TUMATE PARMUAT	5 TH RESPONDENT
SALANKAT MERKU	6 TH RESPONDENT
NGERE MOROMBA	7 TH RESPONDENT
ORKUNEE NKONG'ONI	8 TH RESPONDENT
PATRICK KIMURSOI	9 TH RESPONDENT
DAVID NANTEYA	10 TH RESPONDENT
THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER	11 TH RESPONDENT
THE MINISTRY OF LANDS, URBAN & PHYSICAL PLANNING	12 TH RESPONDENT
THE ATTORNEY GENERAL	13 TH RESPONDENT
THE NATIONAL LAND COMMISSION	14 TH RESPONDENT

AND

D&E HOLDINGS LIMITED	APPLICANT
SAMUYAN ASHIRE	APPLICANT
OYIANOI MAYONE	APPLICANT
MARK ADEMBA OKUMU	APPLICANT

RULING

1. Before this court for determination are four applications dated 8th August, 2023, 31st August, 2023, 8th September, 2023 and 15th September, 2023 respectively.
2. The notice of motion dated 8th August, 2023 was filed by the applicant (D&E Holdings Limited) and is expressed to be brought under Articles 40 (1) (a) (b), 159 (2) (d) and 50 (1) of *the Constitution* seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to issue an order of stay of implementation and execution of this honourable court's judgment delivered on 8th July, 2022 and the decree issued hereafter pending interpartes hearing and determination of this application.
 3. That this honourable court be pleased to set aside its judgment delivered on 8th July, 2022 and subsequent decree and all the proceedings in this petition.



4. That the costs of this motion be borne by the respondents.
3. The application is premised on the grounds inter alia that the entire proceedings leading to the judgment and decree of this matter, were conducted in violation of the rules of natural justice and the provisions of Article 40 of *the Constitution* bearing in mind that the applicant was neither a party to the proceedings nor was it made aware that its title deed was under challenge.
4. The application was supported by the affidavit of Edward Oyiano Mayone sworn on even date. He deposed that he is a director of D& E Holdings Limited, the applicant, a private company duly incorporated as such on 5th March, 2014 under CPR/2014/133448 and which is the holder of Title Deed No. Cis-Mara/Maji Moto/2078. The applicant deposed that on 28th July, 2023, he came across an advert on Daily Nation which touched on land parcel no. Cis Mara/Maji Moto/2078 which is a subdivision of the original title deed Narok/Cis-Mara/8.
5. He further deposed that he went to court to enquire what had taken place, and he was shocked to learn that judgment was delivered, and orders issued cancelling the title deeds. Further, that as a legal entity, it was not sued, nor was it joined as a party and informed about these proceedings. That as such, it was condemned unheard, and the rules of natural justice and the provisions of *the Constitution* were violated.
6. The 2nd notice of motion application is dated 31st August, 2023, filed by the applicants (Samuyan Ashire and Oyiano Mayone) and is expressed to be brought under Articles 40 (1) (a) (b), 159 (2) (a) and 50 (1) of *the Constitution* seeking the following orders: -
 1. Spent.
 2. Spent.
 3. Spent.
 4. That this honourable court be pleased to set aside its judgment delivered on 8th July, 2022 and subsequent decree and all proceedings in this petition.
 5. That the costs of this motion be borne by the respondents.
7. The application is premised on the grounds inter alia that the petitioners are pushing for an immediate cancellation of the applicants' title deeds of parcels no. Cis-Mara/Maji Moto/2220 and Cis-Mara/Maji Moto/1963 notwithstanding the fact that they were neither parties to the proceedings nor were they made aware that their title deeds were under challenge.
8. The application was supported by the affidavit of Samuyan Ashire sworn on even date on his behalf and on behalf of Oyiano Mayone. I do note that the depositions of Samuyan Ashire in the supporting affidavit, are similar to the depositions of Edward Oyiano Mayone, contained in the notice of motion dated 8th August, 2023, save to add that the parcels of land mentioned herein are with respect to parcels no. Cis-Mara/Maji Moto/2220 and Cis-Mara/Maji Moto/1963. Therefore, I see no need of rehashing the said averments.
9. The 3rd application is the notice of motion dated 8th September, 2023 filed by the 1st to 11th petitioners and is expressed to be brought under Order 51 Rule 1 of the Civil Procedure Rules, Sections 1A, 1B, 3A and 75 of the *Civil Procedure Act* seeking the following orders: -
 1. Spent.
 2. Spent.



3. That this honourable court be pleased to set aside the orders staying the execution issued on the 5th of September, 2023 by Justice J. Mugo.
 4. That this honourable court be pleased to make any such further order(s) and issue any other relief it may deem just to grant in the interest of justice.
10. The application is premised on the grounds inter alia that the ex parte order issued on 5th September, 2023 was issued as a result of deceitful material non-disclosure of legal facts and crucial materials.
 11. The application was supported by the affidavit of Twala Manki, the 2nd petitioner and the Chairperson of the 1st petitioner sworn on even date. The 2nd petitioner deposed that an ex parte order was issued by this court on 5th September, 2023 temporarily staying the execution of the judgment delivered on 8th July, 2022. That the said orders were issued based on material non-disclosure of relevant legal facts to wit, the 3rd intended respondent (Oyiano Mayune), being a Director of the 1st intended respondent (D&E Holdings Limited), filed an application dated 8th August, 2023 seeking similar orders but the same was not granted. Further, that the 1st, 2nd and 3rd intended respondents/applicants were not parties to the suit and ought to have sought joinder if at all in the year 2017 to benefit from these proceedings.
 12. The petitioners further deposed that the 2nd and 3rd intended respondents/applicants (Samuyan Ashire & Oyiano Mayune) are members of MajiMoto group ranch and have been duly allocated their respective shares in the area list. In addition, that the 2nd intended respondent/applicant-Samuyan Ashire is a brother to the former Secretary of the 2nd respondent, James Ashire, and was allocated parcel no. 1960 and not 1963 as he has indicated to this court. Further, it was deposed that the 1st intended respondent/applicant (D& E Holdings Limited), being an artificial person cannot be a member of the 1st petitioner. Further, that the 3rd intended respondent/applicant (Oyiano Mayune) is a brother to the former chairman and a Director of D& E Holdings Limited which they own together.
 13. The petitioners further deposed that order (f) of the judgment revoked Cis-Mara/Maji Moto/2078 in the name of D& E Holdings Limited and if at all the same was not effected by the Registrar, the same stood revoked within fourteen days of judgment, as there were timelines given in the impugned judgment. It was further deposed that the ex-parte order is prejudicial for the reason that it has been over a year since the judgment was delivered, that this court has pronounced itself as functus officio on the issue of stay of implementation and execution of the judgment, and this court cannot sit on an appeal of its own decision.
 14. The petitioners further deposed that this is the case for the orders obtained during the vacation period dated 3rd August, 2022 which was vacated as a result of material non-disclosure of information.
 15. The 4th application is a notice of motion dated 15th September, 2023 filed by Mark Ademba Okumu, applicant/ interested party. The application is expressed to be brought under Articles 40 (1) (a) (b), 159 (2) (a) and 50 (1) of *the Constitution*, seeking the following orders: -
 1. Spent.
 2. That this honourable court be pleased to issue an order of stay of execution of this honourable court's judgment delivered on 8th July, 2022 and the decree issued thereafter pending inter partes hearing and determination of this application.
 3. That this honourable court be pleased to review, vary and/or set aside its judgment delivered on 8th July, 2022 and subsequent decree and all the proceedings in this petition.
 4. That this honourable court be pleased to enjoin the applicant in this suit as an interested party.



5. That the honourable court be pleased to issue such further orders as befit the circumstances of this case.
6. That the cost of this motion be borne by the respondents.
16. The application is premised on the grounds inter alia that the successful litigants herein, the petitioners, are pushing for an immediate cancellation and revocation of his title deeds for parcels no. Cis-Mara/Maji Moto/681, Cis-Mara/ Maji Moto/ 682, Cis-Mara/ Maji Moto/ 683 and Cis-Mara/ Maji Moto/ 721 notwithstanding the fact that he was neither a party to the proceedings nor was he made aware that his title deeds were under challenge.
17. The application was supported by the affidavit of Mark Ademba Okumu sworn on even date. The applicant's depositions contained in his supporting affidavit, are similar to those contained in the notice of motion applications dated 8th August, 2023 and 31st August, 2023 and I need not rehash the same save to add that this application is with respect to parcels of land known as Cis-Mara/Maji Moto/ 681, Cis-Mara/Maji Moto/682, Cis-Mara/Maji Moto/683 and Cis-Mara/Maji Moto/721 which are a subdivision of the original title deed (Narok/Cis-Mara/8).
18. The petitioners filed a notice of preliminary objection dated 26th September, 2023 seeking that the notice of motion applications dated 8th August, 2023, 31st August, 2023 and 15th September, 2023 be struck out on the following grounds: -
 1. That this honourable court lacks the requisite jurisdiction to hear and determine the applications for stay of execution as this court is functus officio.
 2. That the orders to set aside the judgment dated 8th July, 2022 sought by the applicants is akin to this honourable court sitting on an appeal of the judgment. This court lacks the jurisdiction to sit on an appeal of its own decision.
 3. 3. That the applications are bad in law, non-starters and thus an abuse of the court process for reasons that a final judgment can only be set aside on review or on appeal.
19. The applicants (D&E Holdings Limited, Samuyan Ashire & Oyiano Mayune) filed grounds of opposition to the application dated 8th September, 2023 on the following grounds: -
 1. That the application is frivolous, vexatious and an abuse of the court process.
 2. That the application is functus officio for the reason that upon the learned judge pronouncing himself on the issue of stay vide the orders dated 5th September, 2023, the court became functus officio and the only recourse to any party aggrieved was by way of an appeal.
 3. That the applicants therein lack jurisdiction to present the said application as alleged members of Majimoto group ranch for the reasons that: -
 - a. The applicants were not members of Majimoto group ranch 1978 which was dissolved on 1st December, 1995;
 - b. That the applicants did not become members of the subsequent entity Majimoto Group Ranch incorporated on 14th December, 2016 vide incorporation certificate number 0264 issued by the Registrar, Group Representatives; and
 - c. The applicant's lack subject matter locus to present any application, petition or suit regarding Narok/ Cis/ Mara/ Majimoto/ 8 measuring 48,929 or its subdivisions.



4. That the impugned judgment was issued without jurisdiction and the same should not only be stayed but set aside *ex debito iustitiae*.
 5. That the application is a backdoor attempt to have the applications dated 31st August, 2023 resolved at an interlocutory stage without hearing the parties substantively.
 6. That the application neither meets the legal threshold for the grant of the orders sought.
 7. That against the foregoing backdrop, the application dated 8th September, 2023 should be dismissed with costs.
20. The notice of motion dated 8th August, 2023 was opposed by the replying affidavit of Twala Manki, the 2nd petitioner, sworn on 26th September, 2023. The 2nd petitioner deposed that D& E Holdings Limited, being an artificial person cannot be a member of the 1st petitioner to hold title deed for Cis-Mara/Maji Moto/2078. Further, that the parcel claimed to be owned by the 1st intended applicant (D&E Holdings Limited) is a public land which the trial court in its judgment revoked. Further, that Edward Oyiano Mayone is a member of the group ranch and has been allocated land and also, he is a brother to David Mayone Matunke, the former Chairman of the 1st petitioner and they co-own D& E Holdings Limited.
 21. The 2nd petitioner further deposed that the applicant (D&E Holdings Limited) herein is a mere outfit of the 1st respondent crying foul to frustrate the implementation of the judgment and the firm of Karanja Mbugua & Company Advocates has filed numerous applications for stay which the court has pronounced itself being *functus officio*. Further, that a party aggrieved by a final judgment can only move the court for a review by lodging an appeal because it is not amendable to the provisions of Order 10,12 or 36 of the Civil Procedure Rules. It was also deposed that it would be a travesty of justice to hold all other members of the 1st petitioner at ransom over one parcel of land.
 22. The notice of motion dated 31st August, 2023 was opposed by the replying affidavit of Twala Manki, the 2nd petitioner, sworn on 26th September, 2023. In his replying affidavit, the depositions contained therein are similar to the deposition contained in the replying affidavit of the notice of motion dated 8th August, 2023 and I see no need to reproduce the same save to include what is distinct to the instant application.
 23. The 2nd petitioner deposed that during the proceedings, persons who had such interests were enjoined as interested parties and their interests were determined by the court subject to the original member list. Further, that the 1st applicant (D&E Holdings Limited), being an artificial person in law, cannot be a member of the 1st petitioner and that the 2nd director of the said company, is the 1st respondent in the petition who is David Mayone Matunke, the former Chairperson of Majimoto Group Ranch.
 24. The 2nd petitioner further deposed that the applicant (Samuyan Ashire) is a brother of the former Secretary of the group ranch and the 2nd respondent, James Ashire, who is a member of the group ranch was allocated parcel no. 1960 and does not own 1963. Further, that the said applicant does not own parcel no. 1963 as it is owned by a different member who is Lekishon Soyiantet. Further, that the applicant (Oiyanoi Mayone) is a director of D&E Holdings Limited, and a brother of the 1st respondent and the parcel of land claiming to be owned by them being Cis-Mara/Maji Moto/2078 is a public land which stood revoked upon the lapse of 14 days from the date of judgment.
 25. He further deposed that Samuyan Ashire and Oyiano Mayone, being members of the group ranch, they were aware of the proceedings at all material times.



26. The notice of motion dated 15th September, 2023 was opposed by the replying affidavit of the 2nd petitioner herein sworn on 26th September, 2023. The 2nd petitioner deposed that during the pendency of the suit, an order was issued preventing any transaction, transfer, alienation and further subdivision of CisMara/Majimoto/ 8 and the said parcel of land no. Cis/ Mara/ MajiMoto/721 was issued in contravention of a court order. Further, that as per the annexure MA-5, the original members list, the applicant is not a member of the group ranch and the 2nd petitioner is at a loss of how he would have knowledge of the membership of the group ranch and not know of the case before court spanning over seven years.
27. The 2nd petitioner further deposed that the member allocation list is in tandem with the original member list and no single member of the group ranch has lost their parcel of land or moved from the areas they have developed. In addition, that the revocation of titles known as Cis/Mara/ MajiMoto/ 681, Cis/Mara/ MajiMoto/ 682, Cis/Mara/ MajiMoto/ 683 and Cis/Mara/ MajiMoto/ 721 has since crystallized by operation of the law and the orders sought herein are untenable. Further, that the applicant cannot own parcels of land from subdivision of the original title on first allocation, but through purchase from a member of the group ranch.
28. The 2nd petitioner further deposed that at paragraph 194 of the judgment, the court pronounced itself with finality on the allocation to members not in the primary register. Further, that from the uncontroverted evidence adduced in court, the transfer to the applicants were occasioned by David Tobiko Kiok who is not a member of the group ranch and cannot own any parcel of land on primary allocation. Further, that the applicants' recourse lies in a separate suit with a claim against David Tobiko and Matunke David for his purchase price and not in this petition. He further deposed that this court has been faced with numerous applications for stay of execution which it has since pronounced itself as being functus officio. Further, that it is not permissible for parties to file new applications similar to the ones that have been determined by conjuring up parties with a view to giving the application a complexion different from the one that was given in the former application.
29. Mark Ademba Okumu, the applicant/interested party in the notice of motion dated 15th September, 2023 filed his supplementary affidavit sworn on 17th October, 2023 in response to the replying affidavit dated 26th September, 2023. He deposed that the group ranch that was incorporated in the year 1978 was to administer the original parcel of land known as Narok/Cis-Mara/MajiMoto/8. Further, that from the information he obtained from the elected members including the 1st respondent, was that, by the year 1995, the group ranch was dissolved and as at the year 2012, the subdivisions had already been done to its bona fide members. Further, that the current petition was brought as a backdoor attempt to circumvent the clearly laid down procedures under the [Land Adjudication Act](#).
30. The applicant/intended interested party further deposed that upon completion of the subdivisions, each member was at liberty to deal with the property as they so wished. That contrary to the insinuations that the court is functus officio, he deposed that for an application to be functus, the body must have adjudicative powers over the subject matter and the person or body must exercise adjudicative powers over the subject matter with finality. Further, that he was not present to adjudicate over his parcels of land and the doctrine of functus officio cannot apply. He further deposed that the court has not decided on the stay of execution application, hence it cannot be alluded that just because numerous applications have been made and dismissed, that he should suffer the same fate without being heard.
31. The applicant, D&E Holdings Limited, (with regard to the notice of motion dated 8th August, 2023) through its Director Edward Oyiano Mayone, filed a supplementary affidavit sworn on 17th October, 2023 in response to the replying affidavit dated 26th September, 2023. The depositions contained herein



are similar to the depositions contained in the supplementary affidavit of Mark Ademba Okumu sworn on 17th October, 2023 and there would be no need of rehashing the same.

32. The applicant, Samuyan Ashire, (with respect to the notice of motion dated 31st August, 2023) filed his supplementary affidavit in response to the replying affidavit of the 2nd petitioner sworn on 26th September, 2023. The supplementary affidavit is sworn on 17th October, 2023. The supplementary affidavit contains depositions similar to the depositions contained in the supplementary affidavits of Mark Ademba Okumu and Edward Oyiano Mayone sworn on 17th October, 2023 and there would be no need of reproducing the same here.
33. The applications were canvassed by way of written submissions. The applicants (D&E Holdings Limited, Samuyan Ashire and Oyiano Mayone) filed their written submissions dated 23rd October, 2023 in support of the applications dated 8th August, 2023, 31st August, 2023, the petitioners' application dated 8th September, 2023 and the petitioner's preliminary objection dated 26th September, 2023 where they raised the following issues for determination: -
 1. What was the procedure, effects and consequences of incorporating a group representative under the Land (Group Representatives) Act.
 2. Whether MajiMoto-1978 was dissolved on 1st December 1995 and what were the consequential effects.
 3. Whether MajiMoto group ranch-2016 was completely formed and whether its officials were validly elected.
 4. Whether in any case, the outfit known as MajiMoto group ranch-2016 would have been separate, distinct and different from the MajiMoto group ranch-1978.
 5. Whether as of 2016, Narok/Cis/Mara/MajiMoto/8 was existent and capable of being passed on.
 6. Whether the law provided for dispute resolution mechanisms for aggrieved members of MajiMoto-1978 and whether this grievance mechanism was exhausted.
 7. Whether innocent parties with bona fide interests were denied a fair hearing in Petition 268 of 2017 and what effects does denial to a fair hearing have on these innocent third parties.
 8. Whether the honourable court is functus officio and whether it should set aside the judgment of 8th July 2022 ex debito iustitiae and in the interest of justice.
34. On the first issue, the applicants submitted that under Section 7(4) of the Land Group Representatives Act (repealed), the group representatives shall have perpetual succession with powers to sue and it therefore follows that a group ranch can only come into existence as a corporate entity.
35. On the second issue, the applicants submitted that MajiMoto 1978, was dissolved on 1st December 1995 vide a letter dated 1st December, 1995 and the officials remained in the office to foresee the subdivision and sign the necessary documents.
36. On the third issue, the applicants submitted that contrary to the spurious averments by the petitioners, Majimoto Group Ranch-2016 was not registered under the [Land Adjudication Act](#) as read together with the Land (Group Representatives Act). They submitted that through the orders dated 29th November, 2016 Justice Ombwayo cancelled the elections of the petitioners as group representatives of the group ranch who were elected on 13th December, 2016. Further, that the Certificate of Incorporation number 0264 which was issued by the respondent (Registrar of Group Representatives)



- was suspended. They submitted that Majimoto 2016 was not incorporated as the elections and the subsequent incorporation was cancelled and as such, the petitioners were not validly elected as officials of the group ranch.
37. On the fourth issue, the applicants submitted that even if Majimoto-2016 was successfully incorporated, it would have been a separate, distinct and different from Majimoto Group Ranch-1978.
 38. On the fifth issue, the applicants submitted that Narok/ Cis-Mara/ Majimoto/8 was not available for allocation to another entity in the year 1978, nor could it be inherited by another in the year 2016 since it had ceased to exist.
 39. On the sixth issue, the applicants submitted that there were inbuilt statutory procedures that an aggrieved member of the Majimoto group ranch-1978 could follow which was the Land Adjudication Act, the Land (Group Representatives) Act and the Constitution of the Majimoto Group Ranch 1978.
 40. On the seventh issue, the applicants submitted that the applicants who are bonafide owners of the parcel of land learnt about the judgment through a newspaper advertisement and for this reason, they were denied a right to a fair hearing. The applicants relied on the cases of Msagha versus Chief Justice & 7 Others, Nairobi HCMCA No. 1062 of 2004 [2006] 2 KLR 553 and Alton Homes versus Davis & Others [2019] eKLR.
 41. On the eighth issue, the applicants submitted that the court through its judgment purported to deal with Narok/Cis-Mara/Majimoto/8 belonging to Majimoto Group Ranch 2016, while it lacked jurisdiction for the reasons that Majimoto Group Ranch, 1978 had been dissolved on 1st December, 1995. It was also submitted that it is an inveterate principle of law that no decree in a suit can bind a person if he is not a party thereto, or duly represented therein. Reliance was placed in the case of Sangram Singh versus Election Tribunal, Kotah, AIR SC 664, at 711.
 42. The applicant, Mark Ademba Okumu, filed his written submissions (with respect to the notice of motion dated 15th September, 2023), dated 23rd September, 2023 where he raised four issues for determination as listed below: -
 1. Whether Majimoto 1978 was dissolved and what were the effects that ensued.
 2. Whether the purchase of Cis-Mara/Majimoto/681, Cis-Mara/Majimoto/ 682, Cis-Mara/Majimoto/683 and Cis-Mara/Majimoto/721 could only be done from a member of Majimoto Group Ranch.
 3. Whether innocent parties with bona fide interests were denied a fair hearing in petition 268 of 2017 and what effects does the denial to a fair hearing have on these innocent third parties.
 4. Whether the honourable court is functus officio and whether it should set aside the judgment of 8th July, 2022 ex debito justitiae and in the interest of justice.
 43. On the first issue, the applicant submitted that contrary to the spurious averments by the petitioners, Majimoto Group Ranch-2016 was not registered under the Land Adjudication Act as read with the Land (Group Representatives) Act. Further, that the petitioners were neither validly elected as officials of Majimoto-2016 nor was the group incorporated. Further, that Majimoto-1978 was dissolved on 1st December, 1995 and the officials remained in office to foresee the subdivision and sign the necessary documents. Further, that the effect of this was that as of the year 1978, Narok/Cis-Mara/Majimoto/8 was not capable of being the subject of incorporation of another group representative and Majimoto-2016 had no business to deal with any property that was dealt with by Majimoto Group Ranch of 1978, since it had ceased to exist.



44. On the second issue, the applicant submitted that all property under Majimoto Group Ranch 1978, was transferred from community land to private land, where it ceased to be a public land and that the title deeds allocated generally had no restrictions as to the use and occupation of the land. They relied on the cases of *The Speaker of the National Assembly versus James Njenga Karume* [1992] eKLR and *Patel & Others versus Dhanji & Others* [1975] EA 301.
45. On the third issue, the applicant submitted that he learnt about the judgment through a newspaper advertisement, and that he was not served with court papers to enable him appear and make representation. To buttress on this submission, the applicant relied on the cases of *Msagha versus Chief Justice & 7 Others*, Nairobi HCMCA No. 1062 of 2004 [2006] 2 KLR 553 and *Elton Homes versus Davis & Others* [2019] eKLR.
46. On the fourth issue, the applicant submitted that the court, through its judgment delivered on 8th July, 2022, purported to deal with Narok/Cis-Mara/Majimoto/8 belonging to Majimoto Group Ranch 2016 while it lacked jurisdiction for the reasons that Majimoto Group Ranch, 1978 had been dissolved on 1st December, 1995. The applicant went on to submit that it is an inveterate principle of law that no decree in a suit can bind a person if he is not a party thereto or duly represented therein. Reliance was placed in the cases of *Sangram Singh versus Election Tribunal, Koteh*, AIR SC 664, at 711, *Serve In Love Africa (Sila) Trust versus Abraham Kiptarus Kiptoo & 2 Others* [2019] eKLR.
47. The 1st to 11th petitioners filed their written submissions (to the notice of motion dated 8th September, 2023) dated 27th September where they raised the following issues for determination: -
 - a. Whether this honourable court has jurisdiction to hear and determine the application dated 31st August, 2023 and issue the said orders.
 - b. Whether the orders were obtained through deceit and material non-disclosure.
 - c. Whether the application is an abuse of the court process.
48. On the first issue, the 1st to 11th petitioners submitted that, in the absence of an appeal or review order, the court has no jurisdiction. Further, that this court has already pronounced itself on the issue of stay of implementation of the decree pursuant to the ruling delivered on 6th July, 2023. The petitioners relied on the cases of *Telkom Kenya Limited versus John Ochanda* (Suing on his own behalf and on behalf of 996 Former Employees of Telkom Kenya Limited) [2014] eKLR and *Owners of the Motor Vessel "Lillian S" versus Caltex Oil (Kenya) Limited* [1989] eKLR.
49. On the second issue, the 1st to 11th petitioners submitted that this court lacks jurisdiction to sit and determine the issue of land illegally allocated, when the court by operation of law has effectively cancelled those titles.
50. On the third issue, the 1st to 11th petitioners submitted that vide the judgment delivered by this court on 8th July, 2022, parcel no. Cis Mara/Majimoto/2078 automatically reverted to the 1st petitioner herein upon the lapse of fourteen days from the date thereof. That as such, parcels Cis Mara/ Majimoto/ 1963 and 2220 will revert to Mr. Lekishon Soyiantet from James Ashire. Also, that Mr. Sasine Tongoyo will keep his parcel no. 2220 that has never been allocated to the applicant, Samuyan Ashire.
51. The 1st to 11th petitioners further submitted that the applicants have a recourse in law by making a claim through filing a fresh suit in a court of law limiting their claim to their disputed parcels of land. Further, that the applicants are reverting to the antics of the 1st to 10th respondents of abusing the court process, through filing numerous applications marred with material non-disclosure. To buttress on this submission, the 1st to 11th petitioners relied on the cases of *Muchanga Investments Limited versus*



- Safaris Unlimited (Africa) Limited & 2 Others, Civil Appeal No. 25 of 2002 [2009] eKLR and Stephen Somen Takwenyi & Another versus David Mbutia Githare & 2 Others, Nairobi (Milimani) HCCC No. 363 of 2009.
52. The 1st to 11th petitioners filed their written submissions dated 27th September, 2023. (to the notice of preliminary objection dated 26th September 2023, the applications dated 8th August, 2023, 31st August, 2023 and 15th September, 2023)
53. The petitioners submitted that this court lacks requisite jurisdiction to hear and determine, the applications placed before it. Further, that the applications before this court do not fall under the said exceptions to the *functus officio* doctrine. Reliance was placed in the cases of Raila Odinga & 2 Others versus Independent Electoral & Boundaries Commission & 3 Others [2013] eKLR and David Wepukhulu Kasambula & Another versus Robert Sundwa Wangolo [2018] eKLR.
54. On 9th November, 2023, the 1st to 11th petitioners filed supplementary submissions dated 6th November, 2023 (to the petitioners notice of motion application dated 8th September, 2023) they raised the following issues for determination: -
- a. Whether the petitioners had locus to institute the petition resulting into the judgment delivered on the 8th July, 2022 in their favour.
 - b. Whether the purchase of Cis-Mara/ Majimoto/ 681,682,683 and 721 could only be done from a member of the Majimoto Group Ranch and the right to be heard.
 - c. Whether the court is *functus officio*.
55. On the first issue, the 1st to 11th petitioners submitted that Section 9 of the Land (Group Representatives) Act (repealed) provides for the changes in group representation, as was the case herein resulting into the certificate of incorporation dated 14th December, 2016, which is interestingly, the same way the 1st to 10th respondents ascended to office on the 20th August, 2010. They submitted that the alleged dissolution was dealt with by the court in its judgment. They relied on the case of CMC Aviation Limited versus Cruisair Limited (No.1) [1978] KLR 103; [1976-80] 1 KLR 835.
56. On the second issue, the 1st to 11th petitioners submitted that parcels nos. Cis-Mara/Majimoto/681, 682, 683 and 721 could only be purchased from a member of the group ranch in the primary register whose interest lies in the particular parcel of land as per the area list. That in this case, enjoining a holder of illegal titles with no legal proprietary interest in Majimoto as Mark Ademba was not an exercise the petitioner would wish to undertake. Reliance was placed in the case of Msagha versus Chief Justice & Others [2006] eKLR.
57. On whether the court is *functus officio*, the 1st to 11th petitioners reiterated that this court having determined the same in its ruling delivered 6th July, 2023, lacks jurisdiction to determine the applications.
58. I have considered the pleadings, the written submissions filed and the authorities cited and the issue for determination is whether applicants are entitled to the orders of stay of implementation and execution of this court's judgment delivered on 8th July, 2022.
59. This court has previously dealt with similar applications wherein the 1st, 2nd, 5th, 6th and 7th respondents sought similar orders of stay of implementation and execution of the decree of the judgment of this court delivered on 8th July, 2023. This court pronounced itself on this issue and the most recent being the ruling delivered on 6th July, 2023. The only contrast with the present applications is that they are filed by persons who claim that they were not parties to the proceedings and as such, they were



not present to make representation. According to the applicants, they became aware of the judgment through an advertisement in the Daily nation published on 28th July, 2023. That upon enquiry, they were shocked to learn that the judgment delivered on 8th July, 2023 revealed that their respective parcels of land were under challenge and hence they were condemned unheard.

60. The applicant in the notice of motion dated 8th August, 2023, is a company known as D& E Holdings Limited, duly incorporated as such on 5th March, 2014 under CPR/ 2014/ 133448. The applicant contended that parcel known as Cis-Mara/Maji Moto/ 2078 belongs to it and being a legal entity, it was not sued, which violated its right to a fair hearing. In support of its application, the applicant annexed a copy of the Certificate of Incorporation and a copy of the 1st page of the title deed as well as a copy of the judgment and the decree. However, the documents in my view are not sufficient to enable this court make any consideration. For example, there is no copy of records emanating from the Registrar of Companies to confirm details as to the directorship of the company to enable this court confirm whether Edward Oyiano Mayone is indeed a Director with authority to swear the affidavit. The 1st page of a copy of the title deed is also not in itself sufficient to satisfy this court that indeed, the applicant is the registered owner of the said parcel of land. Equally, this application did not seek joinder of a party either.
61. The notice of motion dated 31st August, 2023 is filed by Samuyan Ashire and Oyiano Mayone, who contended that the petitioners are pushing for an immediate cancellation of their title deeds, being Cis-Mara/Maji Moto/2220 and Cis-Mara/Maji Moto/1963. This particular application and its supporting affidavit does not contain any deposition that the applicants are the registered owners of the parcels of land. Upon perusal of this application, there is no document i.e. title deed whatsoever showing proof that they are the holders of these titles. In the absence of such proof, this court is unable to tell whether they are indeed the owners of the parcels of land they claim to own. Equally, this application did not seek joinder of a party either.
62. The notice of motion application dated 15th September, 2023 is filed by Mark Ademba Okumu who averred that he is the registered absolute proprietor of parcels nos. Cis Mara/Maji Moto/681, Cis Mara/Maji Moto/682, Cis Mara/Maji Moto/683 and Cis Mara/Maji Moto/721 having purchased the same for valuable consideration. In his supplementary affidavit sworn on 17th October, 2023, the applicant contended that upon completing the subdivisions, each member was at liberty to deal with their respective properties as they wished and it is as a result of this that he became the owner of the listed parcels of land, legitimately for valuable consideration.
63. The instant application went into detail and sought to address the issues of the incorporation of the group ranch and argued that Majimoto Group Ranch of 1978 was dissolved on 1st December, 1995, and its function which was to deal with the original title Narok-Cis/Mara/8 could not be transferred to another entity. And as such, Majimoto Group Ranch officials were not validly elected in the year 2016 to further deal with the original title. The question then is, what is the recourse available to the applicant in this case? Would it be in the interest of justice to grant the orders of stay or would it be reasonable to pursue a claim against the vendor? The reason I say so is because the judgment made mention of the primary register of members and in my view, that is where the legality or otherwise, of his title stems from. The recourse for the applicant lies elsewhere and not in this petition as he acquired the parcels of land through purchase.
64. My analysis of the applications is that the applicants have neither established a basis for this court to consider the applications for stay of execution. Most notable is that the applications dated 8th August, 2023 and 31st August, 2023 did not find it necessary to seek an order for joinder of party. In my view,



they were somehow casual in their approach, which convinces me that they are busy bodies trying to deny the successful party from enjoying the fruits of the judgment.

65. The applicants, by and large went into detail as concerns the incorporation of the group ranch which I will not make any attempt to comment on as it would embarrass this court. I say so because, the issue of whether the petitioners were validly elected or not and had locus, or whether the group ranch was dissolved, have already been discussed in the judgment. In other words, the most suitable court to deal with the issues raised in the applications is the Court of Appeal and not this court.

66. For example, paragraph 166 of the judgment reads as follows: -

“The 1st-10th respondents did not lead any evidence of compliance with Section 13 of LGRA CAP 287. Therefore, and in addition to reviewing the evidence and testimonies of the witness this court concludes that the evidence of the Group Ranch registrar as the designated officer administering all the group ranches in Kenya as conclusive and that indeed dissolution of Majimoto Group Ranch did not occur.”

67. The upshot of the foregoing is that the notice of motion dated 8th August, 2023, 31st August, 2023 and 15th September, 2023 lack in merit and they are all hereby dismissed with costs to the 1st to 11th petitioners. The notice of motion dated 8th September, 2023 is allowed in terms of the following orders:

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- i. That the orders staying the execution issued on the 5th of September, by Justice J. Mugo is hereby vacated.
- ii. The petitioners are awarded the costs of this application.

It is so ordered.

DATED, SIGNED & DELIVERED VIA EMAIL THIS 24TH DAY OF JANUARY, 2024.

HON. MBOGO C.G.

JUDGE

24/1/2024.

In the presence of: -

CA:Meyoki

