



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 106 OF 2016.

DAUDI LECHE RONO AND 749 OTHERS.....PLAINTIFFS

VERSUS

WORAGUS LIMITED1ST DEFENDANT

AGRICULTURAL DEVELOPMENT

CORPORATION.....2ND DEFENDANT

LAND LIMITED3RD DEFENDANT

CHIEF LAND REGISTRAR4TH DEFENDANT

INSPECTOR GENERAL OF THE NATIONAL

POLICE SERVICE.....5TH DEFENDANT

HASSAN MUSA6TH DEFENDANT

ABDUL NASSIR.....7TH DEFENDANT

RULING

(Application for injunction; principles to be applied; plaintiffs arguing that various land under ADC are public land and that they have rights of occupation since they have been utilizing the same; argument also that any disposal of ADC land needs Parliamentary approval; ADC having leased land to entities some not parties to the suit; these entities having taken possession and made massive investments; best that the status quo prevailing be maintained; further directions given on various other procedural aspects of the case including disclosure of the other persons holding leases to the ADC farm in issue; determination of whether or not Parliamentary approval is required best left to be decided after a full hearing on merits).

1. The subject of this ruling is an application for injunction which was filed alongside the suit by the plaintiffs against the defendants, and two other applications for injunction filed by the 1st, 2nd and 3rd

defendants, seeking orders of injunction against the plaintiffs. Before I go far, I think I need to give the background to this suit and to the applications for injunction.

2. This suit was commenced by way of plaint filed on 6 April 2016. There are 750 named plaintiffs. The subject matter in dispute is the land parcel LR No. 10069 also known as Mutara Ranch, situated in Mutara, Rumuruti in Laikipia County (hereinafter also described as "the suit land"). It is averred by the plaintiffs that the land is listed as a special farm under the Agricultural Development Corporation (Special Farms) Rules, 2001. It is pleaded in the plaint that the plaintiffs are pastoralists and that they have historical, community and pastoral tenure over the suit land with access to grazing land, pasture, water, salt licks and other land resources. The plaint avers that most of the plaintiffs come from the Samburu Community and that before colonialism, they used the land, given that they are pastoralists. It is their case that the land is public land held, used and occupied by the 2nd and 3rd defendants which are respectively the Agricultural Development Corporation, a State Corporation established by the Agricultural Development Corporation Act, Cap 444, Laws of Kenya, and Lands Limited, a limited liability company said to have the objective of holding land on behalf of state corporations. It is pleaded that the 2nd and 3rd defendants have managed the suit land in accordance with their mandate while recognizing the traditional and present land rights of the plaintiffs including access to water, pastures and salt licks. It is averred that in recognition of the plaintiffs' rights to water and pasture, the 2nd defendant has been receiving payments from the plaintiffs as subscription towards the 2nd defendant's funds thus creating a legal and symbiotic relationship between them which has also benefited the 2nd defendant by controlling vegetation growth and hazard of pests, and contributed towards the promotion of peace in the area.

3. What prompted the suit is the discovery by the plaintiffs of a lease dated 1 October 2015 and registered on 10 December 2015, whereby ADC and Lands Ltd (2nd and 3rd defendants) leased part of the suit land measuring approximately 15,000 acres to the 1st defendant, a limited liability company, at the rate of Kshs. 500/= per acre as annual rent. It is further alleged that the 2nd and 3rd defendants have assigned portions of the land to the 6th and 7th defendants (Hassan Musa and Abdul Nassir). It is the position of the plaintiffs that this lease and assignment of land to the 6th and 7th defendants is unlawful, inter alia on the argument, that there first needed to be parliamentary approval. It is also stated that the lease is unlawful for it failed to consider the status of the plaintiffs and their community as a marginalized group; that it contravenes the plaintiff's entitlement to a clean and healthy environment; that it has impeded their access to Mutara Ranch which is said to be a special farm established for purposes of agricultural development and research in the interests of the public and advancement of national production; that the lease is without regard to the values and principles of land management and administration; that owing to the lease, police have been deployed and have arbitrarily subjected the plaintiffs to harassment, false arrest and malicious prosecution; the lease has ignored the law on procurement and disposal of public property; the lease defeats the Constitution, the Land Act, the Environmental Management and Coordination Act, the Agricultural Development Corporation Act, and the Public Procurement and Disposal Act. It is also contended that in entering the lease there was failure to publish notices and invoking public participation; there was failure to follow the law relating to allocation of public land; there was failure to involve the County Government thus undermining the principles of devolution; there was neglect of the interests of the plaintiffs and the local communities who should have been given first priority to lease the land; there was no undertaking of an Environmental Impact Assessment to determine the effects of the activities of the defendants on the land and the statutory programmes under the ADC Act.

4. It is pleaded that the lease will cause hardship and impoverishment of the plaintiffs and affected communities, and at the same time, create adverse socio-economic impact or conditions in the surrounding areas. This it is averred has occasioned the plaintiffs and other members of the public, loss, harm, damage and injury.

5. In the suit, the plaintiffs seek the following orders :-

(a) A declaration that the lease dated 1st October 2015, and registered on 10th December 2015, leasing to the 1st defendant the piece of land situated on the west side of the Mutara/Rumuruti Road bordering Pesi River measuring approximately 15,000 acres or thereabouts is illegal and

therefore null and void.

(b) *Permanent injunction against the 1st, 6th and 7th defendants restraining each and all, their agents and/or servants from using, cultivating, developing, or erecting or constructing any structures, or buildings, and/or using the land as pasture or private conservancy or in any manner dealing with the leased land or LR No. 10069 or any part thereof;*

(c) *An order of mandatory injunction compelling the 4th defendant to revoke, cancel, rescind, annul and/or reverse the registration of the lease dated 1 October 2015, and registered on 10 December 2015.*

(d) *A permanent injunction granting each and all the plaintiffs access to pasture, water and salt licks and corridors for the movement of their cattle.*

(e) *A permanent injunction against the 5th defendant restraining it and/or its officers from arresting and harassing the plaintiffs and holding, keeping and detaining the plaintiffs' livestock arising from the legitimate use of the pasture, water and salt licks and the lawful entry of the plaintiffs and their livestock to land reference number 10069 situate within Mutara Area, Rumuruti, Laikipia County and otherwise known as Mutara Ranch.*

(f) *Damages,*

(g) *Costs of this suit,*

(h) *Any other or further order or relief as the Honourable Court may deem just and fit to grant.*

6. In the application for injunction, the plaintiffs seek the following substantive orders (slightly paraphrased for brevity) which are cited as prayers 3, 5, 7 and 8 being :-

(i) *That this Honourable Court be pleased to issue an order of injunction against the 1st, 6th and 7th defendants restraining them, their agents, and/or servants from cultivating, developing, constructing and/or in any manner interfering with the suit land, pending hearing and final determination of this suit.*

(ii) *That this Honourable Court do issue an order of injunction against the 2nd and 3rd defendants restraining them from subdividing, allocating, selling, leasing, transferring, wasting and/or in any manner disposing of the suit land pending the hearing and final determination of this case.*

(iii) *That this Honourable Court be pleased to issue an order that the plaintiffs be allowed access to resources on the suit land including water points and pasture pending the hearing and final determination of this case.*

(iv) *That this honourable court be pleased to issue an order of injunction against the 5th defendant restraining it and/or its officers from arresting and harassing the plaintiffs or holding the plaintiffs' livestock for reasons of accessing natural resources including water points and pasture on the suit land pending the hearing and final determination of this case.*

7. The application is based on 20 grounds inter alia being that the suit land is public land and that Section 36 (1) of the Land Act, requires a publication in the gazette and two daily newspapers, of a disposal of public land; that under Section 12 (1) of the Land Act, allocation of public land should be by way of public auction; that Rule 2 of the Agricultural Development Corporation (ADC) (Special Farms) Rules, 2001, provides that no special farm should be sold, subdivided, transferred or otherwise disposed of without the prior approval of Parliament and Rule 3 nullifies any such transaction; that Mutara Ranch is land preserved for public welfare, wildlife conservation, agricultural development and research and is listed as a Special Farm under the ADC (Special Farms) Rules, 2001, Schedule of Special Farms Rules.;

that the lease to the 1st defendant, dated 1 October 2015 is illegal; that Article 42 provides the right to a clean and healthy environment; that the plaintiffs who are residents of Mutara area are direct beneficiaries of Mutara Ranch as members of the public; that the 1st defendant has fenced off the only access to Mutara Ranch denying the plaintiffs access; that the plaintiffs cannot access the only river in the area and have no access to any water for themselves and their livestock and thus face risk of diseases and death; that the plaintiffs have been paying Kshs. 200/= monthly to graze their animals on the unutilized area of the ranch and have been cross-breeding their animals and acquiring improved breeds from ADC; that there was no notice of intention to lease the land; that the 5th defendant has been hired by the 1st defendant to guard the suit land ; that the 2nd defendant has acted contrary to its functions as enumerated in Section 12 of the ADC Act and has gone ahead to serve individual interests; that there will be a miscarriage of justice if the 1st, 6th and 7th defendants are allowed to possess, cultivate, graze, develop and construct part of the suit land whereas the land is preserved for agricultural research to ensure sustainability of food for all Kenyans.

8. The application is supported by the affidavit of Daudi Leche Rono who is the first plaintiff. He has stated that he has the authority of all the other plaintiffs to swear and make the affidavit. He has more or less repeated what I have set out above as constituting the case of the plaintiffs. He has inter alia annexed a copy of the Certificate of Title of the land in issue; the documents of registration of the 3rd defendant company; and a research study report by one John Letai titled "*Land Deals in Kenya : The Genesis of Land Deals in Kenya and its Implication on Pastoral Livelihoods- A Case Study of Laikipia District, 2011*"; some receipts issued by ADC as payment for herding cattle; some charge sheets showing that some of the plaintiffs have been charged with trespass over the suit land; some minutes of a meeting that the plaintiffs held, and the lease in issue.

9. The 1st defendant has not only opposed the application, but has filed defence and counterclaim and its own application seeking to have the plaintiffs restrained from the portion of land leased to the 1st defendant. In its application, the 1st defendant has averred that it does hold a lease for 15,000 acres ; that pursuant to the lease, it did fence the boundaries of the land leased to it and has made massive investments; that the plaintiffs have on various instances forcefully encroached onto the premises leased to it by destroying the electric fence and grazing their animals without authority from the 1st defendant; that the plaintiffs have also destroyed solar panels which serve the electric fence and demolished guard houses; that they have shot and critically wounded three of its guards; and that the plaintiffs have no known proprietary interest.

10. The supporting affidavit is sworn by Mark Barry Myatt Taylor who is the Managing Director of the 1st defendant. He has deposed that his company is engaged in the business of rearing, breeding, and production of cattle, goats and sheep meat, as well as the business of farming, cultivating of food grains, crops seeds, fodder and growing and dealing in crops of all kinds. He has stated that prior to the Lease, all payments were made and consent of the Land Control Board given. He has averred that to secure the premises, it has fenced it and they have invested over Kshs. 200 Million in the property by hiring employees, constructing farm structures, cultivating over 6,000 acres; purchase and rearing over 2,000 beef cattle and 2,000 sheep; rehabilitation of disused boreholes and purchase of farm machinery. He has further deposed that the company has entered into various multi-million contracts with 3rd parties for the supply of various services and purchase of its products. He has pointed out various instances of destruction of the fence and of the company's properties and has stated that owing to these actions some of the plaintiffs have been arrested and charged. It is his view that the plaintiffs have no cause of action against the 1st defendant inter alia because the land is not community land and the plaintiffs are not pursuing any public interest. 11. He has further averred that the bordering land is privately owned. He has argued that Parliamentary approval was not required for the lease transaction as claimed by the plaintiffs. He has also contended that the manner in which the 1st defendant uses the land is consonant with the statutory mandate of ADC.

11. It is argued that the suit is fatally defective as there is no authority produced giving the 1st plaintiff authority to sue on behalf of the other plaintiffs. The 1st defendant is of the view that this is a classic attempt at land grabbing by the plaintiffs. In its counterclaim, the 1st defendant has sought a declaration that the plaintiffs have no proprietary interest in the 15,000 acres leased to it ; a permanent injunction

against the plaintiffs; damages for trespass; special damages for loss occasioned by the alleged activities of the plaintiffs and costs of the suit.

12. A supplementary affidavit was filed to challenge some averments raised by the 1st defendant. One was a technical objection to the affidavit which was argued to be defective. It is further stated that the 1st plaintiff is not suing on behalf of any of the plaintiffs herein and that he is only authorized to swear the affidavit. It is averred that the line of business of the 1st defendant cannot be authenticated as no Memorandum and Articles of Association are annexed. A lot of the other depositions merely assert the claims of the plaintiffs as earlier described.

13. The 1st defendant deemed fit to swear a supplementary affidavit as well. Inter alia it has displayed evidence that some of the plaintiffs are facing criminal charges including attempted murder and malicious damage to property.

14. On the part of the 6th and 7th defendants, a replying affidavit to the plaintiffs' application was filed sworn by the 6th defendant. It is averred that they have been wrongly sued since they are merely directors of Lawangiro Camel Farms Limited, which has leased a portion of Mutara Farm. A lease dated 1 August 2010 was annexed. It shows that Lawangiro Camel Farms Limited has leased about 8,000 acres for a period of 15 years at an annual rent of Kshs. 150/= per acre per annum. He has deposed that their company has been in occupation since then, and have openly been rearing cattle sheep and goats. It is stated that the company has made massive investments since entering into the lease. It is deposed that the claim of the plaintiffs is a mere after thought as they have been aware of the presence of the company since the year 2010. They have pointed out that the effect of granting the orders of injunction will be to have the company remove all its livestock and infrastructure without the matter having been heard. The 6th defendant has deposed that it is apparent that from time to time, the plaintiffs have been accommodated in the unused portions of the Mutara Ranch. It is contended that their lease, being of 2010, then the Land Act, being a 2012 statute, cannot apply retrospectively. It is argued that only 23,000 acres has been leased out yet the land is 63,000 acres and this cannot be said to have deprived the plaintiffs of their livelihoods.

15. In addition to the replying affidavit, the 6th & 7th defendants have also filed defence wherein they have refuted all the claims of the plaintiffs.

16. The State Law Office, for the 4th and 5th defendants (Chief Land Registrar and Inspector General of Police), filed a preliminary objection on two grounds being :-

(i) The 4th and 5th defendants were not served with the statutory notice of intention to sue and the plaint does not comply with Section 13A of the Government Proceedings Act.

(ii) The suit does not comply with the mandatory provisions of Order 4 Rule 1 (3) of the Civil Procedure Rules, 2010.

17. On the part of the 2nd and 3rd defendants, they did file a defence and counterclaim, a replying affidavit to the plaintiffs' application for injunction, and just as the 1st defendant did, an application of their own seeking to have the plaintiffs restrained from the suit land and to be evicted from it, pending hearing and determination of this suit. In their defence and counterclaim, it is contended that all the 2nd and 3rd defendants have done is to grant some of the plaintiffs temporary licences to graze their animals on portions of the suit land and this was subject to their right to lease the land to other persons. It is argued that the temporary licences did not confer to the plaintiffs any proprietary rights. They have admitted leasing part of the land, in total 32,000 acres, not only to the 1st defendant but also to other persons not named in the plaint. In their counterclaim, they state that the plaintiffs have encroached and squatted in portions of the suit land thus interfering with the activities of the 2nd and 3rd defendants. They thus seek to have the plaintiffs evicted from the land and a permanent injunction stopping them from setting foot on it, damages for trespass and costs.

18. In their replying affidavit to the plaintiffs' application, and in their supporting affidavit to their own

application for injunction, it is averred inter alia that the application of the plaintiffs is unjustified and an attempt at imposing anarchy to curtail activities of a state corporation. It is reiterated that the corporation has only permitted some of the plaintiffs to use parts of the ranch to graze their livestock and that the licences are specific. It is claimed that some of the plaintiffs have interfered with a conservancy in the land by illegally grazing in the area reserved for wild animals resulting in low income from tourists. It is claimed that the animals of the plaintiffs transmit diseases to those of the 2nd defendant which affect the quality of their animals for the export market and in some cases resulting in death of these animals. It is further stated that the plaintiffs have depleted water resources of the 2nd defendant and have damaged perimeter fences.

19. The plaintiffs filed a replying affidavit sworn by the 1st plaintiff on behalf of himself and the others to oppose the motion by the 2nd and 3rd defendants. They also filed a supplementary affidavit to respond to the allegations raised in the replying affidavit of the 2nd and 3rd defendants and the 6th and 7th defendants. Again, there is contention as to the veracity of the affidavit of the 2nd and 3rd defendants which was sworn by Ahmed Mohammud. It is again inter alia asserted that the leases are illegal, that they have community and historical rights to the land ; that the lease to the 6th and 7th defendants is not registered and is null and void ; that there is nothing to show that the 6th and 7th defendants are directors of Lawangiro Camel Farms Limited; that although it is true that the 6th and 7th defendants have been grazing their animals in Mutara Ranch, they have had a co-existing relationship with the plaintiffs until September 2015 when they dug a trench to prevent the plaintiffs from accessing the land; that the leases are illegal as pronounced in their plaint.

20. I invited counsels to make both written and oral submissions and I have considered these in my ruling.

21. What is before me are applications for injunction filed by the plaintiffs and also the 1st and 2nd & 3rd defendants. The principles for the issuance of orders of injunction were laid down in the case of **Giella vs Cassman Brown (1973) EA 358**, wherein it was stated that to succeed in an application of this nature, one needs to demonstrate a prima facie case with a probability of success; demonstrate that he stands to suffer irreparable loss if the injunction is not granted, and if the court is in doubt, the application will be decided on a balance of convenience. I do not contest this approach to deciding applications for injunction. I only wish to state that in my considered opinion, the court needs to be alive, that in essence, it is being called upon to make a decision on how best the subject matter of the suit ought to be preserved pending hearing and determination of the case. The application of the approach provided in the case of **Giella vs Cassman Brown** ought not to be a mere mechanical exercise of ticking the three principles and should not to derail the court from making a decision that is just, equitable and appropriate in the circumstances of each case on how the subject matter of the suit ought to be preserved pending the hearing and disposal of the matter.

22. I do not wish to delve much into the fairly technical points raised by the plaintiffs on the veracity of the affidavits on record. I on my part have seen nothing wrong with these affidavits. They seem to me to be properly sworn and are properly on record. I also do not wish at this stage to deal with the technical objection of the 4th and 5th defendants on the Notice under Section 13A of the Government Proceedings Act. If the State is of the view that the suit is defective, let a formal application for striking out of the suit be made. I prefer to deal with the substance of the matter before me and to pronounce myself on how best I think the suit land ought to be maintained pending hearing and determination of this case. Having said that, I still do think that there are some other technical issues on the suit that will need to be addressed and I will mention them shortly after I deal with the question of injunction.

23. The parties have laid down their elaborate cases which I have set out at considerable depth. I hope to be forgiven for the length in which that has added to this ruling. I do note that the pith and core of the plaintiffs' case, is that ADC ought not to have entered into the leases in question. Various reasons have been given including the argument that Parliamentary approval was required. It is their case that Mutara Ranch is public land.

24. Mr. Muchemi for the plaintiffs pointed me to the fact that the land is among the Special Farms under the ADC Special Farms Rules, particularly Rule 2 thereof which provides as follows :-

(1) The farms of the corporation described in the Schedule to these Rules are designated as special farms for the agricultural purposes specified in relation to each of the farms.

(2) No special farm shall be sold, subdivided, transferred or otherwise disposed of without the prior approval by way of a Bill of Motion to be approved by Parliament.

(3) Any sale, subdivision, transfer or disposal of any special farm made in contravention of this rule shall be null and void, and no instrument relating to such transaction shall be registered under any written law for the time being in force requiring the registration of such instrument.

25. Mutara Farm is in the Schedule of Special Farms. The schedule notes that the purpose for the farm is for the "National Boran Stud".

26. Mr. Kemboi for the 1st defendant, and Mr. Odhiambo for the 2nd and 3rd defendants, argued that the Rules are made pursuant to the power donated by the Minister by dint of Section 20 of the ADC Act, Cap 444, Laws of Kenya, which provides as follows :-

20. Rules

The Minister may, after consultation with the Corporation, make rules generally for better carrying out the purposes and provisions of this Act and, in particular and without prejudice to the foregoing generality, may make rules for—

(a) raising such loans and making investments, on such terms as the Minister may, after consultation with the Minister for the time being responsible for finance, approve;

(b) regulating and controlling the Corporation or any of its agencies;

(c) prescribing the procedure to be followed in the appointment of members to the Corporation and its agencies;

(d) controlling and regulating the purchase and sale of land for agricultural development;

(e) regulating and prescribing the powers, duties, functions, responsibility and remunerations of officers, employees and agents of the Corporation;

(f) prescribing, controlling and regulating schemes for agricultural development.

27. It was argued that the powers of the Minister are limited to controlling and regulating purchase and sale of land, and following this argument, will not therefore cover leases. It was pointed out that Section 13 of the ADC Act, does give power to the Corporation (ADC) to inter alia, lease land. That section is drawn as follows :-

Powers of Corporation

(1) The Corporation shall subject to the provisions of this Act, do all such things and enter into all such transactions as to the Corporation appear to be necessary for, or conducive or incidental to, the performance of its functions under this Act.

(2) Without prejudice to the generality of subsection (1) of this section, the Corporation shall have power—

(a) to provide credit and finance by means of loans or the subscription of loan or share capital or otherwise for agricultural undertakings in Kenya;

(b) to advance, deposit or lend money, securities and property to or with such persons and on such

terms as may seem expedient; create, make, draw, accept, endorse, execute, issue, discount, buy, sell, negotiate and deal in bills, notes, bills of lading, warrants, coupons, debentures and other negotiable or transferable instruments;

(c) to borrow money in support of the Corporation on such terms and for such purposes as may be approved by the Minister after consultation with the Minister for the time being responsible for Finance;

(d) to purchase, take on lease or otherwise acquire, and sell, exchange, surrender, lease, mortgage, charge, convert, turn to account, dispose of and deal with, any movable or immovable property and rights of all kinds;

(e) to appoint such agents as the Corporation may consider necessary for the proper discharge of the functions as the Corporation may determine;

(f) to do all such other things, whether of an agricultural or other nature, as may be deemed to be incidental or conducive to the proper discharge of the functions of the Corporation.

28. It is thus contended that only sale and purchase need Parliamentary approval. Mr. Odhiambo further argued that the applicable law should be the ADC Act, and not the Land Act, since the ADC Act is the more specific statute.

29. I would not wish at this stage of the proceedings to make a final determination on whether or not ADC can lease any of its farms, or a farm which is noted in the Schedule of Special Farms, without requiring Parliamentary approval. It is an extremely critical holding and I think that it is wise that such a fundamental decision be left after a full hearing on merits. But I do not think, without deciding the point with finality, that the issue raised by the plaintiffs is superfluous. The Special Farm rules do point at Parliamentary approval for any disposition. Ordinarily a lease would qualify as a disposition. Whether or not this is against Section 13 and 20 of the ADC Act, is subject to debate, and as I have said, it is not wise to go into that at this point in time as it may affect or conflict with what may be decided after hearing the case on merits. However, it is an arguable point raised by the plaintiffs and I do not think one needs to demonstrate any special interest, or that he is directly affected, before raising such point. Any member of the public can indeed raise the issue as a question of public interest for what is at stake is public land. Where such matter is raised, the court needs to make inquiry into such disposition and if it is found that public land was not disposed of as required by law, then make a pronouncement and issue such orders as may be deemed fit.

30. However, as that question is pending to be tried, the 1st defendant does enjoy a lease and has taken occupation of a portion of the suit land. It has also made elaborate investments on the land. It is also apparent that there is a lease in favour of Lawangiro Camel Farms Limited, of whom the 6th and 7th defendants are directors. They have been in occupation since the year 2010. The 2nd and 3rd defendants have also admitted to having entered into leases with other entities for a total acreage of 32,000 acres.

31. The 1st defendant seems to have made heavy investment and in my view is entitled to have exclusive possession of the 15000 acres that it has leased pending hearing and determination of this case.

32. For the portion of land still under ADC and which has not been leased out, ADC should manage this land in the same manner that it has all along been managing it. They should permit the user of this land to be the same as it was before all these wrangles erupted and they should not enter into any additional lease or any other disposition over this area of land pending hearing and determination of this case.

33. The status quo prevailing in the land under the direction of the 6th and 7th defendants should continue pending hearing and determination of this suit. I urge the parties to ensure that the peace and balance that prevailed before the dispute arose is maintained pending hearing and determination of this case.

34. Before I close, it will be recalled that I did mention that there are a few technical matters that I have

noted and which need to be resolved before the suit may be tried.

35. First, it has been raised that the suit is incompetent for want of authority. It is a valid point. In as much as this is not a representative suit, there is only one verifying affidavit sworn by Daudi Leche Rono. He has stated that he has the authority of the others but no authority is annexed. It follows that for the suit to be competent all the plaintiffs must swear and file verifying affidavits. The alternative is that Daudi Leche Rono must file the authority from the others, permitting him to swear affidavits and file documents on their behalf. This is an issue that has led to the outright striking out of suits. See for example the cases of *Ndungu Mugoya & 473 Others vs Stephen Wangombe & 9 Others, Nakuru HCCC No. 142 of 2005 (2005) eKLR* and *John Kariuki & 347 Others vs John Mungai Njoroge & 8 Others, Nakuru HCCC No. 152 of 2003* (unreported). In the latter, it was stated as follows concerning the then **Order 1 Rule 12** , (the equivalent of the current **Order 1 Rule 13 in the Civil Procedure Rules of 2010 :-)**

"The plain reading of the above rule (Order 1 Rule 12 Civil Procedure Rules), is that where a party requires another party to appear, plead, or act on his behalf he has to give authority in writing before such a person filing suit can claim to be representing such person. The said written authority has to be signed by the person giving the authority and must be filed in court where the suit is to be filed. The mischief that the said rule was meant to address, in my humble view, is to prevent a situation where a party may become bound by a court decision without his having any knowledge of the suit that led to the said decision. The court can envisage a scenario, where , lets say, after the dismissal of a suit, such a plaintiff whose name has been included declines to settle the costs on the pretext that he did not authorise the suit to be filed in his name. In my considered view, this requirement is mandatory. A party cannot be condemned or enjoy a benefit from a court process without his say so."

36. It is not enough for a person to depone that he has authority. He must annex the instrument of that authority duly signed by all the others. I could very well dismiss this case at this stage, but in my own discretion, I will give the plaintiffs time to ensure that this is rectified. They have 14 days, either for each person to file a verifying affidavit, or for Daudi Leche Rono to file an authority indicating that he has been authorized to swear affidavits on behalf of the rest of the plaintiffs. If this is not done, I reserve the right to strike out this suit.

37. Secondly, it is apparent that there are leases to other entities not parties to this suit. The 6th and 7th defendants do not hold any lease. The proper party in my view ought to be Lawangiro Camel Farms Limited. But the plaintiffs can be forgiven for they did think that it is the 6th and 7th defendants who hold leases. It is not clear who else holds a lease to the subject property for some of these leases are not registered and they were not displayed by the 2nd and 3rd defendants. So that these may be known, I do order the 2nd and 3rd defendants to disclose all leases that it holds and to file and serve upon the plaintiff's counsel copies of these within 14 days from today. Upon disclosure, I will leave it to the plaintiffs to make a decision on whom to add as party to this suit and whether they also wish to contest the other leases.

38. Finally, I think I need to mention something that I deem extremely important. I have seen evidence of some lawlessness on the ground. I have also seen that some of the plaintiffs have been charged and some even convicted of various offences. I am generally appalled by any scale of disregard for the law and outraged by any form of violence. No person is entitled to take the law into his/her own hands. It is incumbent upon all and sundry to obey the rule of law and to live in peace until such persons' rights are determined.

39. On costs, each party will bear his/her own costs.

40. This being a case of immense public importance and public land being at stake, I direct that the same be fast-tracked for hearing.

41. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 16th day of February 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :

Mr. Muchemi for the plaintiffs

Mr. Omingo holding brief for Mr. Kemboy for 1st defendant

Mr. Kirui for the 4th & 5th respondents and holding. brief for Mr. Gichamba for the 6th and 7th respondents.

Ms. Lagat for the 2nd and 3rd respondents.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU