



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC SUIT NO. 220 OF 2017

MARTINE OLE NKUITO.....1ST PLAINTIFF
LONKISA NKUITO.....2ND PLAINTIFF
NKIRIMPA NKUITO.....3RD PLAINTIFF
TENKES OLE NKUITO.....4TH PLAINTIFF
PARSARIRO OLE NKUITO.....5TH PLAINTIFF
DICKSON OLOSIAPAI NKITO.....6TH PLAINTIFF
ESTHER ENE NKUITO.....7TH PLAINTIFF
LEMERIA NKUITO.....8TH PLAINTIFF
SABAYA NKUITO.....9TH PLAINTIFF

-VERSUS-

TING'A OLE NKUITO.....1ST DEFENDANT
NTANGOI NKUITO.....2ND DEFENDANT
SAKAMO NKUITO.....3RD DEFENDANT
KIMAREN NARANKAIK.....4TH DEFENDANT

RULING

The Application before me is the Notice of Motion dated 14th February, 2017 in which the Applicants seeks for orders of injunction against the Defendants.

The Application is brought under order 51 Rule 1, order 40 Rule (1) and (2) and under section 1(a) and 1 (b) of the Civil Procedure Act. The Application is based on the grounds that land parcel No. 425 and 40 located at Naituyupaki Location, Olokurto Division is the Plaintiffs/Applicants ancestral land and that they inherited the same from their ancestors according to Maasai customary law, that the Respondents have without any right tampered with the beacons which demarcated the suit parcels and thus trespassed

on the land.

The Applicants further allege that the Respondents have sub-divided the suit land without the authority of the Applicants.

The Applicants allege that despite attempts to settle the matter among the Maasai Council of Elders the efforts did not bore any fruits as the 3rd and the 4th Defendants who are the administrators have attempted to interfere with the process.

The Application was also supported by an affidavit of Martine Ole Nkuito who is the 1st Plaintiff/Applicant with the authority of the other Applicants. The Applicant has in the said affidavit expounded what were the grounds that I have enumerated hereinabove which I will not restate.

The Respondents opposed the said Application by way of a Replying Affidavit sworn by the 2nd Respondent/Defendant and with the authority of the other Respondents.

The Respondents allege that they are in possession and occupation of the suit land contrary to the averments made by the Applicants. They deny ever encroaching on the parcels Number 40 and 425 Olkurto neither were they involved in the sub-division of the said land. The Respondents to back up this claim have stated that the Applicants have not registered nor lodged any objection with the said sub-division with the adjudication officer. The Respondents lastly state that the Applicants merely want to dispossess them of the land which they are in occupation and they will suffer irreparably in the event that the court grants the order sought.

I have heard submissions made by counsel for both the Applicants and Respondents. During the hearing the Respondents also raised the issue of jurisdiction of the court to hear the matter since they allege that the suit offends the mandatory provisions of section 30 of the Land Adjudication Act Chapter 284.

In determining the Preliminary Objection and the Application the court suo moto asked the Narok North Sub County Adjudication and Settlement Officer to file a report. The said officer had filed the said report on 3rd July, 2017. The said officer did confirm that the Adjudication has not been finalized and that the aggrieved Applicants have not sought the consent of the adjudication officer before commencing the proceedings in the matter.

In view of the above and without going into the merits of the application I sustain the preliminary objection that was raised by the application with each party bearing its own costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this 3RD day of **NOVEMBER**, 2017.

Mohamed N. Kullow

Judge

3/11/17

In the presence of:

N/A for the parties

CA:Chuma