



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ELC CAUSE NO. 246 OF 2017
FORMERLY NAKURU HCC NO. 219 OF 2011

MERIN OLE TUYOTO & 124 OTHERS.....PLAINTIFFS

-VERSUS-

THE CHAIRMAN LIMANET GROUP

RANCH COMMITTEE.....1ST DEFENDANT

DISTRICT LAND REGISTRAR.....2ND DEFENDANT

THE HON. ATTORNEY GENERAL.....3RD DEFENDANT

DANSON RIKANA SANOE.....4TH DEFENDANT

RULING

The Application before me is the Amended Notice of Motion dated 19th December, 2017 seeking orders for stay of proceedings in Civil Suit No. 166 of 2017 before the Chief Magistrate's Court at Narok and the orders stopping the burial of the Applicants father Tinga Ole Sanoe on parcel No. Cis Mara/Ilmashariani Morijo/1231 and setting aside of the said orders.

The Application was based on the grounds inter alia that parcel No. Cis Mara/Ilmashariani/Morijo/1231 was carved out of parcel No. Morijo 48 which is substantially the suit and that the suit before the Magistrate court will result in conflicting decisions on the matter.

The Application was opposed by the 5th Respondent. The Respondent averred that the deceased was his late father and the registered allottee of parcel No. Cis Mara/Ilmashariani Morijo/1231 and further states that the dispute in the matter before the Magistrate Court is distinct from the one between the Applicant and the Respondent whereas the petition before the High Court is about the entire group ranch and the orders sought to be stayed have been granted.

I have read the Application before me and the replying affidavit on the same and the submissions made by the counsel for the parties and find out that the Applicant has moved to this court simultaneously after the Respondent filed an application before the lower court stopping the burial asking the court to stay the proceedings there. While the application was pending before me, the lower court delivered its ruling.

It is my considered view that the application before me is not merited as the Applicant rather than file the present case ought to have participated in the proceedings before the Magistrate court and if not satisfied

with the outcome pursued an Appeal and a stay of the orders of the lower court.

Having said that I must add that the petition before me is by the entire Limanet group ranch where the suit before the lower court is a dispute between the Applicant and the Respondent over a parcel of land which in my view should be litigated upon as such so as to determine who is the owner of the parcel in dispute.

The upshot of the above is that the application dated 19th December, 2017 is unmerited and the same is an abuse of the court process and I dismiss the same with no orders as to costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **22nd** day of **December, 2017**

Mohammed Noor Kullow

Judge

In the presence of:-

Masikonde for the applicant

Onduso for the respondent

CA:Chuma

Mohamed Noor Kullow

Judge

22/12/17