



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

JR NO.13 OF 2014

REPUBLICAPPLICANT

VERSUS

MUSANKA OLE RUNKES TARAKWA

LEMPASO OLE KUYIONI

OLOIBANKUTI OLE KUYIONI (ALL SUED AS OFFICIALS

OF ENOORMBARBALI GROUP RANCH).....1ST RESPONDENT

DISTRICT SURVEYOR NAROK DISTRICT.....2ND RESPONDENT

DISTRICT ADJUDICATION OFFICER.....3RD RESPONDENT

EX-PARTE JOSEPH LESALOL LEKITIO & OTHERS

JUDGMENT

(Judicial Review; suit seeking to quash various land documents issued by a Group Ranch over land that is subject to adjudication; judicial review; matters amenable to judicial review process; persons subject to judicial review; whether Group Ranch subject to judicial review; judicial review process being over public bodies; Group Ranch not a public body but private entity not subject to judicial review; Consent of Land Adjudication Officer; when such consent must be sought; no need for such consent if the issue does not concern an interest in land; no need for consent if the process of adjudication is contested for such is not an interest in land; stay orders under Order 53; whether such are similar to stay under Order 40; such orders not similar; suit dismissed for reason that Group Ranch not subject to judicial review and matters raised being matters concerning an interest in land and not the process of adjudication; further orders made quashing publication of register when stay orders were in existence)

PART A : INTRODUCTION AND PLEADINGS

1. Through an application dated 31 March 2014 which was amended on 3 April 2014, and allowed on 4 April 2014, the 8 ex-parte applicants were granted leave to commence judicial review proceedings against the respondents. Together with the leave, stay was granted for 60 days. The main motion for judicial review is dated 16 April 2014 and was filed on 23 April 2014. In it, the ex-parte applicants have sought

the following orders :-

(i) *That an order of certiorari be issued to bring into this court for purposes of quashing the list/register of members of Enoormbarbali Group Ranch/Adjudication Section compiled by the 1st respondent which included minors and non members and submitted to the 2nd and 3rd respondent.*

(ii) *That an order of certiorari to bring into this court for purposes of quashing the survey plan and/or the subdivision scheme of Enoormbarbali Group Ranch/Adjudication Section compiled by the 1st respondent and submitted to the 2nd and 3rd respondents.*

(iii) *That an order of prohibition be issued to restrain the officials of Enoormbarbali Group Ranch/Adjudication Section, the 1st respondents herein from processing titles based on the survey plan and the area list, members register and/or map sheets submitted by the 1st respondent to the 2nd and 3rd respondent.*

(iv) *That costs of this application be borne by the respondents.*

2. The main motion was not accompanied by a supporting affidavit as is customary, but the ex-parte applicants referred to grounds set out in the application for leave, their statements of facts and the verifying affidavit filed together with the application for leave. These documents set out why the ex-parte applicants thought it fit to ask for the prayers in the main motion and they detail the case of the ex-parte applicants.

3. The grounds upon which the ex-parte applicants have sought the above orders are as follows :-

(a) *That Enoormbabali Group Ranch is an entity of sufficient public character and it has over 200 members. The group has its own bye-laws governing the subdivision of the group's land and eventual issuance of title documents.*

(b) *That the bye laws of the group provided that minor (sic) ought not to be given land, no member (sic) (probably meant non-members) ought not to exceed ten and they ought not to be given more than ten acres each, the surveyor ought not to benefit from the land and that each member shall get equal portion of the land. The planning, surveying and the intended issuance of the title is being done in flagrant breach of the bye laws.*

(c) *That the applicants, by virtue of being members of the group ranch have the legitimate expectation that the subdivision of the land and the eventual issuance of the title documents shall be done according to the bye laws, legally, reasonably and fairly. The subdivision by the officials of the group ranch has been done unfairly, unreasonably and in flagrant breach of the bye laws of the group ranch and in breach of the applicant's legitimate expectation.*

(d) *That unless the court intervenes and stops the entire process, the applicants are likely to be highly prejudices (sic).*

4. The verifying affidavit has been sworn by Joseph Lesaloi Lekitio. He has deposed that he is a member of Enoormbarbali Group Ranch and has stated that the Group Ranch has about 492 members. He has deposed that the Group Ranch operates on a set of bye laws which include the following :-

(i) *No allocation of land should be given to minors.*

(ii) *Committee members should get at most ten acres over and above the other members.*

(iii) *Nobody should be allowed to get a double share.*

(iv) *Non members should not exceed ten and they should not get more than ten acres.*

(v) *All members other than committee members should get equal shares.*

5. It is alleged that in contravention of the bye-laws of the group ranch and the applicants' legitimate expectation, the officials of the group ranch proceeded with the process of subdivision of the group ranch. It is stated that the surveyors, together with the officials, have made proposals to include minors and more than 50 non members in the list of allottees. It is also averred that the officials have allocated themselves more than one share, and more than 10 acres, over and above what is allowed under the bye-laws. It is deposed that the survey plans, maps sheets and the register which has the illegal allocations and insertion have been submitted to the land registrar for eventual issuance of title deeds. It is averred that all members have equal rights to the land and none of the members have made more contribution than the other, and that fairness demanded, that all members be given equal portions of the land. He has averred that the documents tendered to the land registry ought to be delivered to court for quashing on the grounds of illegality, irregularity, unreasonableness and breach of their legitimate expectation.

6. To the supporting affidavit, the deponent annexed copies of the area list and a list showing the allocation to the committee members and their children. Also annexed is a list said to be of members together with their allocation of land.

7. The 1st respondent in addition to filing a replying affidavit, filed a Statement of Grounds of Opposition and a Notice of Preliminary Objection. The matters raised in the Statement of Grounds of Opposition and Preliminary Objection are as follows :-

(a) *That the application is incompetent and faulty in that it has overlooked the mandatory provisions of Section 30 Rule 1 (sic) of the Land Adjudication Act CAP 284 of the Laws of Kenya.*

(b) *That the entire suit is incompetent for contravening the mandatory provisions of Order 1 Rule 13 (1) of the Civil Procedure Rules.*

(c) *That ex parte orders ought to be deemed to have expired under the mandatory provisions of Order 40 Rule 4(2) of the Civil Procedure Rules, 2010.*

(d) *That the applicant's chamber summons and the entire judicial review application should be struck out and the interim orders lifted as the applicants lack locus standi to bring this suit.*

8. The replying affidavit is sworn by Musanka Ole Runkes Tarakwai, who is the Chairman of Enoombarbali Group Ranch. He had deposed inter alia that they have conducted the subdivision and proposed transfer to individual members in a transparent and honest manner. He has stated that the minors are not proposed to be registered as beneficiaries and that their parents, including the 1st applicant, will hold the allocated land in trust. It is also stated that the 1st applicant had filed a previous suit being Narok CMCC No. 74 of 2013 which case was dismissed on 5 June 2013, after which, the 1st applicant filed an appeal in the High Court at Nakuru, being Nakuru High Court Civil Appeal No. 76 of 2013 which is still pending. It is averred that the 2nd, 3rd, 5th and 8th applicants have no locus standi in the matter as they are not members of Enoombarbali Group Ranch. It is also said that the 1st and 8th applicants are members of other group ranches; that it was agreed that children may be allocated land and that some non members in the list purchased land from members. It was also raised that the 1st applicant has not demonstrated any consent or authority to plead on behalf of the 2nd to 8th applicants yet the matter is a representative suit.

9. The 1st respondent also filed an application, dated 2 May 2014, to lift the stay orders granted on 4 April 2014 when the application for leave was allowed. In the course of the proceedings, the ex-parte applicants filed an application for contempt, on the ground that the Adjudication Officer had published the adjudication register in readiness for issuance of titles. These applications were deferred in favour of

hearing the main motion.

10. On the part of the 2nd and 3rd respondents, a replying affidavit was filed, sworn by Ruth Mbatha Muli, the District Land Adjudication and Settlement Officer, Narok North. She first raised the issue that no consent to institute this case was sought as required by Section 30 (1) of the Land Adjudication Act and the issue that this being a representative suit, no authority to plead has been shown by the applicants. She has deposed that on 17 April 2013, pursuant to the request by members of Enoormbarbali Group Ranch, she published a notice establishing Enoormbarbali as an adjudication section. She has deposed that there was no limit set on the acreage that could be allocated to non members and acceptees, and that there was no restriction that minors could not be allocated land. These were contained in a letter dated 6 March 2014 and minutes of a meeting held on 21 June 2013. She has deposed that on 26 June 2014, the adjudication register had been completed and published and a completion notice issued, whereby members were invited to inspect the register and submit complaints, and that members not satisfied with the register have already filed their objections. She has deposed that so far, she has not yet forwarded the documents to the District Surveyor Narok District. She has further averred that no surveyor has been allocated land or benefited in any way from the adjudication section. She has pointed out that the applicants have not placed before the court any evidence in support of their claim in particular the by-laws. She has also raised the issue of the case Narok CMCC NO. 74 of 2014 which she has deposed was dismissed with costs and has annexed a court order. She has asked that the motion be dismissed.

PART B : SUBMISSIONS OF COUNSEL

11. In his written and oral submissions, Mr. Githui for the ex-parte applicants, on the preliminary points raised by the respondents, inter alia submitted that Section 30 (1) of the Land Adjudication Act, which requires consent of the Land Adjudication Officer before instituting civil proceedings, is inapplicable in matters of judicial review, since judicial review proceedings are special proceedings, neither civil nor criminal. He directed me to Section 8 of the Law Reform Act. He also relied on the cases of **R vs Tanathi Water Services Board & 2 Others JR No. 374 of 2013** and **R vs Chief Magistrate Milimani Commercial Court & Others, JR No. 262 of 2013**. He submitted that the subject action is not a representative action. He submitted that each of the applicants gave authority to counsel to file the motion and that the authority was attached in reply to the application for setting aside the order of leave. He further submitted that Order 53 Rule 6 allows any party who may be affected by the orders of the court to be heard whether (or not) he has filed documents in response. He submitted that the 2nd to 8th applicants have pleaded that they are members of the adjudication section and that they will be affected by the outcome of the adjudication process, and the fact that they have not filed any affidavits, does not preclude them from being heard. He submitted that assuming that no authority has been given by the 2nd -8th applicants, the worst that this can portend is a misjoinder of parties. He also submitted that the stay orders are not caught up by Order 40 Rule 4(2) of the Civil Procedure Rules.

12. On the substantive motion, Mr. Githui submitted that the register presented to the 2nd and 3rd respondents violated the bye-laws, and that these depositions of fact, deposed by the ex-parte applicants on how the land has been allocated and distributed, had not been traversed. He submitted that since this is not traversed, the scope and extent of the bye-laws is not a matter that requires proof and he relied on Section 61 of the Evidence Act. He therefore submitted that the decision of the respondents was ultra vires and the area list, survey plan and subdivision scheme ought to be quashed. He further submitted that there was violation of the ex-parte applicants' legitimate expectation, as they expected that there would be strict compliance by the officials with the bye-laws. He relied on the case of **Joel Nyabuto Omwenga vs IEBC EP 2 & 3 of 2013** (which with respect, cannot be an authority, as it is a decision of the subordinate court). He further submitted that there was substantial unfairness, as the benchmark was what was provided for in the bye-laws. He pointed at the discrepancies in the acreages granted to the members as compared to the officials who appeared to have been issued with much more land.

On her part, Ms. Muigai for the 1st respondent submitted, in respect of the preliminary points, that the suit is a non starter for want of consent of the Land Adjudication Officer as required by Section 30 (1) of the Land Adjudication Act. She submitted that the parcel of land in question is under adjudication whose Section had not been closed at the time of filing suit. She further submitted that the suit is a representative

suit brought by more than one person and that the 1st applicant had no authority, nor consent, from the 2nd to 8th respondents to appear, plead or swear the verifying affidavit. She was also of the opinion that the ex-parte orders of stay, issued in the first instance, had expired by dint of Order 40 Rule 4 (2) and (4). She also submitted that the applicants had concealed the fact that they had filed a previous suit together with an appeal, and have therefore not come to court with clean hands. On the need for consent of the Land Adjudication Officer, she relied on the cases of *Stephen Muchuki Kiunga vs Nkuni M'turuchiu & 2 Others (2013) eKLR* and *Peter Muema Mumo vs Amos Mulee Mutisya (2014) eKLR*. On the issue of authority to plead, she relied on the case of *East Africa Portland Cement Ltd vs Capital Markets Authority & 4 Others (2014) eKLR*.

13. Mr. Mbaka for the 2nd and 3rd respondents, associated himself with the submissions of Ms. Muigai for the 1st respondent. He added that the adjudication officer followed the area list provided; that it had not been shown that non members were granted land and that others were granted more land than others; that the Group Ranch allowed for allocation of land to minors and that the applicants had avenue to complain after publication of the register.

PART C : ANALYSIS AND DECISION

14. I am of the view that the following issues are open for determination.

- (i) *Whether the suit offends the provisions of Order 13 Rule 1 of the Civil Procedure Rules.*
- (ii) *Whether the suit herein offends the provisions of Section 30 (1) of the Land Adjudication Act and whether it was mandatory for the consent of the Land Adjudication Act to be given before instituting this suit.*
- (iii) *Whether the remedies sought may be granted.*

Issue (i) : Whether the suit offends the provisions of Order 13 Rule 1 of the Civil Procedure Rules

Order 13 Rule 1 is drawn as follows :-

Appearance of one of several plaintiffs or defendants for others [Order 1, rule 13.]

- (1) *Where there are more plaintiffs than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding, and in like manner, where there are more defendants than one, any one or more of them may be authorized by any other of them to appear, plead or act for such other in any proceeding.*
- (2) *The authority shall be in writing signed by the party giving it and shall be filed in the case.*

15. Order 1, as drawn, generally deals with suits commenced by way of plaint. That is why the terminology of Rule 13 is plaintiff and defendant. But the principle therein is nonetheless applicable to matters commenced by other processes. Where there are more litigants than one, one of them may be authorized by others to appear, plead or act on their behalf. But such authority must be in writing and must be signed by the party or parties giving it, and must be filed. That is the only way, that the court will know that the other parties have given the one before court, the authority to act for them. In this instance, there was no authority displayed by the person who swore the affidavits for the applicants, that is Joseph Lesanoi Lekitan. It cannot therefore be purported that he had authority from the rest to present them in this case.

16. I however need to make clear that this case is not a representative suit as alleged by Ms. Muigai. This is a suit which purports to be of 8 persons. The 8 persons are not representing others who are not in the suit; they themselves are the applicants. The 8 persons needed to file their separate documents and file

their affidavits individually. If they thought it convenient to appoint one person, then they needed to do so in writing, so that it is clear that the one person has their authority to file documents, which documents would then also represent their interests. This is exactly what the Court of Appeal held in the case of **Research International East Africa Ltd vs Julius Arisi & 213 Others, Court of Appeal at Nairobi, Civil Appeal No. 321 of 2003, (2007) eKLR**. The court stated as follows :-

"In our view, the true construction of Rule 1 (2) of Order VII Civil Procedure Rules is that even in cases where there are numerous plaintiffs, each plaintiff is required to verify the correctness of the averments by a verifying affidavit unless and until he expressly authorizes any of the co-plaintiffs or some of them in writing, and, files such authority in the case, to file a verifying affidavit on his behalf in which case such a verifying affidavit would be sufficient compliance with the rule."

17. Authority in a case where there are several litigants is critical, for it is the only way that others can be bound by what one person files. It is not a matter to be taken casually. One cannot purport to bind others unless with their authority. There was no such authority filed with the suit and I cannot therefore hold that the 1st applicant had the authority of the 2nd - 8th applicants to commence this suit. There was a belated attempt to file an authority on 16 June 2014. I have looked at the authority which is not even dated, and even if I were to assume that it is a proper authority, at best, it could only take effect on 16 June 2014 and not before. The 2nd - 8th applicants in essence have pleaded nothing in this case and their case must be dismissed. I can only entertain the case in so far as it concerns the 1st applicant.

Issue (ii): Whether the suit herein offends the provisions of Section 30 (1) of the Land Adjudication Act and whether it was mandatory for the consent of the Land Adjudication Act to be given before instituting this suit and Issue (iii): Whether the remedies sought may be granted.

18. I opt to combine the 2nd and 3rd issues in the discourse that follows.

19. First, it has been claimed by the respondents, that this suit offends the provisions of Section 30 (1) of the Land Adjudication Act, Chapter 284, Laws of Kenya. For full effect, the entire Section 30 is drawn as follows :-

Staying of land suits

S. 30 (1) Except with the consent in writing of the adjudication officer, no person shall institute, and no court shall entertain, any civil proceedings concerning an interest in land in an adjudication section until the adjudication register for that adjudication section has become final in all respects under section 29(3) of this Act.

(2) Where any such proceedings were begun before the publication of the notice under section 5 of this Act, they shall be discontinued, unless the adjudication officer, having regard to the stage which the proceedings have reached, otherwise directs.

(3) Any person who is aggrieved by the refusal of the adjudication officer to give consent or make a direction under subsection (1) or (2) of this section may, within twenty-eight days after the refusal, appeal in writing to the Minister whose decision shall be final.

(4) The foregoing provisions of this section do not prevent a final order or decision of a court made or given in proceedings concerning land in an adjudication section being enforced or executed, if at the time this Act is applied to the land the order or decision is not the subject of an appeal and the time for appeal has expired.

(5) A certificate signed by an adjudication officer certifying land to be, or to have become on a particular date, land within an adjudication section shall be conclusive evidence that the land is such land.

(6) Every certificate purporting to be signed by an adjudication officer shall be presumed to be so signed unless the contrary is shown.

20. It will be noted that Section 30 (1) above, prevents the institution of suits in court, on matters concerning an interest in land in an adjudication section, until the adjudication register has become final, except with the consent of the adjudication officer. The adjudication register becomes final after exhausting the mechanism provided in the Land Adjudication Act, which provides for the determination of who is entitled to an interest in the land in question. There is no dispute that no consent of the Land Adjudication Officer was sought before the filing of this matter and there cannot also be a dispute, that the process of determining interests in land provided by the Land Adjudication Act, has not been exhausted.

21. It was argued by Mr. Githui, that the proceedings herein, being judicial review proceedings, are neither civil nor criminal. That may be so, and I have no problem with the institution of judicial review proceedings, where appropriate, even where the adjudication process has not come to an end. But what are judicial review proceedings ?

22. Judicial review proceedings, may be in the nature of prohibition, certiorari, or mandamus. These kind of proceedings generally question, not the decision itself, but the decision making process. As stated in the case of ***Municipal Council of Mombasa vs Republic & Umoja Consultants Ltd Civil Appeal No. 185 of 2001***, (cited in ***Republic vs Chief Magistrate Milimani Commercial Court & 2 Others ex-parte Violet Ndanu Mutinda & 5 Others (2014) eKLR***) :-

"Judicial review is concerned with the decision making process, not with the merits of the decision itself : the court would concern itself with such issues as to whether the decision makers had jurisdiction, whether the persons affected by the decision were heard before it was made and whether in making the decision the decision maker took into account relevant matters or did take into account irrelevant matters... The court should not act as a Court of Appeal over the decider which would involve going into the merits of the decision itself- such as whether there was or there was not sufficient evidence to support the decision."

23. In a situation regarding land under adjudication, there is an elaborate process that is laid down by the Land Adjudication Act, on how to determine which persons are, and the extent to which, they are entitled to interests in the land under adjudication. There would be no bar to instituting judicial review proceedings, to question the process being undertaken, and in my view, such proceedings, which go to question the process undertaken in the adjudication process would not require the consent of the Land Adjudication Officer. This is because such a dispute would not be a dispute "*concerning an interest in land*" which is what Section 30 (1) specifically bars. The term "*interest*", in relation to land under adjudication, as defined by Section 2 of the the Land Adjudication Act, "*... includes absolute ownership of the land and any right or interest in or over the land which is capable of being registered under the Registered Land Act (Cap. 300)*".

24. A suit that questions the process of land adjudication, rather than the determination of interests, would not be a suit concerning an interest in land , and would therefore not require the consent of the Land Adjudication Officer. Thus, where the Adjudication Officer, does not, for example, appoint an Adjudication Committee, as provided by Section 6 of the Land Adjudication Act, a person may be perfectly entitled to institute proceedings in the nature of mandamus, to compel him to appoint the said Committee. That would not be a determination of interests in land, but would be a proceeding aimed at giving legitimacy to the adjudication process. In such an instance, the consent of the Land Adjudication Officer would not be needed, for the proceeding would not be one "*concerning an interest in land.*" But if a litigant wants to sue the Adjudication Officer, because the officer has decided that he is not entitled to the land in question, then in such a case, the litigant, must exhaust the appeal process provided in the Land Adjudication Act, or if he feels that the issue needs to be decided by the court, then he must seek the consent of the Land Adjudication Officer, for the litigation in this instance, would clearly be litigation "*concerning an interest in land.*"

25. Thus a proper judicial review proceeding, which questions the process, being undertaken in land adjudication, and not the particularly determinations of interest in land, would not require the consent of the Land Adjudication Officer. If they attempt to question the merits of the determination of who should own what, then that would be a question "concerning an interest in land" and it would be outside the purview of judicial review. It would also not be entertained as a traditional civil proceeding unless with the consent of the Land Adjudication Officer. The reasoning behind Section 30 of the Land Adjudication Act, is that it is the people on the ground, and not the courts, who are best able to determine who is entitled to an interest in a land adjudication area. That is why the jurisdiction of the courts is ousted, unless with the consent of the Land Adjudication Officer.

26. So is the litigation herein one that questions the process of adjudication or does it question the merits? In my view, the case herein questions the determination of interests in land and not the process of adjudication. It raises questions such as whether minors are entitled to land, whether outsiders are entitled to land and to what extent, and whether the committee members of the Enoombarbali Group Ranch were entitled to more acreage than other members. Those are questions concerning interests in land and they are outside the ambit of judicial review, and indeed, the court itself is ousted of jurisdiction, unless with the consent of the Land Adjudication Officer. The proceedings are therefore a non-starter and this suit must be dismissed on that ground.

27. Apart from the above, the suit would still fail as the orders sought cannot be granted as drawn. The first prayer is of certiorari, to quash the area list and/or register submitted by the officials of the Enoombarbali Group Ranch/ Adjudication Section. But the officials of Enoombarbali Group Ranch cannot be subject to judicial review proceedings. Enoombarbali Group Ranch cannot be said to be a public body and their decisions cannot be quashed through judicial review. That will be stretching judicial review proceedings to private entities. As stated by Wade & Forsyth in the text **Administrative Law, 10th Edition, OUP**, at page 540, "*Judicial review is designed to prevent the excess and abuse of power and the neglect of duty by public authorities.*" There is no way that a Group Ranch or its officials can be said to be public authorities or indeed public entities. Group Ranches are private entities without any public element attached to them.

28. The point is also stressed in **Halsbury's Laws of England, 4th Edition Volume 1 (1)**, page 20, which explains the persons against whom Judicial Review may lie. Inter alia, it is stated as follows :-

"The source of the body's power is a significant factor. If the source of the body's power is statute or subordinate legislation it will usually be amenable to judicial review. Decisions of bodies whose authority is derived solely from contract or from the consent of the parties will usually not be amenable to judicial review... If the duty is a public duty or the function a public function, then the body in question will be subject to public law."

29. Group Ranches do not exercise public functions and neither are they public bodies in the above sense. It was argued that the 1st respondent is a body of sufficient public character. I do not agree. What is important is the demonstration of a public element and public element is not the same as public interest. I quote again the **Halsbury's Law of England (supra)** where it is written as follows :-

"A 'public element' suggests a governmental or quasi-governmental element. A public element is not to be equated with the interests of the public...judicial review is not the appropriate procedure to challenge the decisions of private or domestic tribunals or any body whose jurisdiction derives from contract or from consensual submission of the parties.."

30. The mere fact that the Group Ranch has a huge number of persons is not in itself sufficient to make it have a "public element". Companies, Clubs and Societies have big numbers too, but this does not make them amenable to judicial review. If the applicants were aggrieved by some violation of the bye-laws of the Group Ranch, or that the Group Ranch violated their expectations, then the avenue would be to file suit for a declaration, or injunction, but not to file judicial review proceedings, for the decisions made by the Group Ranch or its committee members, is not subject to such process.

31. The second and third prayers are prayers to quash the survey plan and/or the subdivision scheme submitted to the land registry and/or survey office and to prohibit the issuance of titles based on the same. As I mentioned earlier, this court cannot go to the merits of the matters under adjudication. If the applicants are aggrieved by the process, they ought to have come out clearly to say what process has been missed, but they cannot ask this court to go to the merits of who should get what land, and what acreage, through judicial review, or even in a traditional suit, without the consent of the Adjudication Officer. The second and third prayers must collapse.

32. The above in essence disposes of the matter but there are other issues that cropped up during the litigation which I feel compelled to address. First, it was raised by the respondents, that there was a previous suit that had been filed by the 1st applicant, that is Narok CMCC No. 74 of 2013, which is said to have been dismissed and which gave rise to Nakuru High Court, Civil Appeal No. 76 of 2013. I am a bit disturbed that the applicants did not deem it fit to disclose the existence of this case. I however, do not wish to say more on this, for the respondents did not provide the pleadings in the said case, nor provide the Memorandum of Appeal for the appellate case. But it does seem, at least from the order displayed by the respondents, that there was such a case, and it was the duty of the applicants to disclose the existence of this case.

33. Secondly, there is the issue regarding the order of stay. That stay was issued in the first instance for 60 days on 4 April 2014. It was argued by Ms. Muigai, that the stay lapsed after 14 days, and Order 40 Rule 4 was cited as authority. Order 40 Rule 4 provides that an ex parte injunction may be granted only once for 14 days. That may be so, but the court always has discretion to extend the period of stay depending on the surrounding circumstances of the case and the court diary. Thus even where a stay is granted in excess of 14 days, it must be obeyed. There can be no excuse for disobedience.

34. But the point I wish to make is that the order of injunction under Order 40, is not the same as the stay granted vide the provisions of Order 53 Rule 4. The latter is an order of stay pending hearing of the judicial review proceedings. It is not shackled by the time frames of Order 40 and is an order independent of Order 40. I need not say more on this, only to add, that the stay granted in the first instance on 4 April 2014, essentially stayed any activity regarding the adjudication process of the Enoormbarbali Group Ranch. The stay was granted in the first instance for 60 days, and extended on several occasions, significantly, on 20 May 2014 and 9 July 2014, which extensions spread the stay up to 3 December 2014. It is disturbing that despite these orders of stay, the Land Adjudication Officer appears to have proceeded and published on 26 June 2014, the opening of the adjudication register for inspection, and gave 60 days for the lodging of any objections. This is probably what prompted the filing of an application for contempt, which was however held in abeyance to pave way for the quick disposal of this suit.

35. It will be unfair to the applicants to now be shut out, from presenting any objections, for the 60 day period has lapsed. It is also apparent to me that the notice of completion, was issued when there was a stay in this case, which prevented such activity. It will be revolting to justice if that notice were to be allowed to remain. I on my part am unable to allow it to remain. I hereby quash it and declare it to be of no effect. I take shelter in Article 159 (2) (d) which provides that justice must be administered without undue regard to technicalities. This order is granted without prejudice to any other order that the 1st applicant may wish to pursue given the apparent disobedience displayed by the Land Adjudication Officer.

36. If the Adjudication Officer is of the view that the register is complete, she must issue a new notice of completion, for the notice of 26 June 2014 cannot be relied upon, having been issued in clear violation of the stay orders herein.

37. I think I have dealt with all issues in this case. For the reasons stated above, the suit herein must be dismissed. I am however unable to grant costs to the 2nd and 3rd respondents given their conduct. Costs will only be to the 1st respondents.

38. It so ordered.

Dated, signed and delivered in open court at Nakuru this 23rd day of September 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of :-

Mr. Githui for the Ex-parte applicants

Ms. Nchoe holding brief for Ms. Muigai for 1st respondent

N/A for state law office for 2nd & 3rd respondents

Court Assistant : Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT