



Manangoi & 5 others (Suing on their own behalf and on behalf of all the members of the Ildamat Clan) v Attorney General & 10 others; Kilusu & 8 others (Interested Parties) (Miscellaneous Civil Application 13 of 2018) [2024] KEELC 4261 (KLR) (24 May 2024) (Judgment)

Neutral citation: [2024] KEELC 4261 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
MISCELLANEOUS CIVIL APPLICATION 13 OF 2018
CG MBOGO, EM WASHE & MN GICHERU, JJ
MAY 24, 2024
(FORMERLY NAKURU MISC. CIVIL APPLICATION NO. 95 OF 2011)
(FORMERLY NAIROBI HIGH COURT MISC.CIVIL APPLICATION NO. 871 OF 2005
IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL RIGHTS
AND FREEDOMS OF THE INDIVIDUAL, UNDER SECTION 84 OF THE
CONSTITUTION.

AND
IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284 LAND
(GROUP REPRESENTATIVES) ACT CAP 287 AND THE REGISTERED
LAND ACT, CAP 300

BETWEEN

NEPATAO OLE MANANGOI 1ST APPLICANT
NAKOLA OLE TANIN 2ND APPLICANT
TEPELA SAMANTE 3RD APPLICANT
OSEUR OLE NARREMO 4TH APPLICANT
KIRIKA OLE MATIPE 5TH APPLICANT
KOINGET OLE REKARRUK SANANTE 6TH APPLICANT
SUING ON THEIR OWN BEHALF AND ON BEHALF OF ALL THE MEMBERS
OF THE ILDAMAT CLAN

AND

ATTORNEY GENERAL 1ST RESPONDENT



LAND ADJUDICATION OFFICER, NAROK ADJUDICATION
 AREA 2ND RESPONDENT
 NTULELE ADJUDICATION SECTION 3RD RESPONDENT
 REGISTRAR OF GROUP OF REPRESENTATIVES 4TH RESPONDENT
 DIRECTOR OF LAND ADJUDICATION 5TH RESPONDENT
 CHIEF LAND REGISTRAR 6TH RESPONDENT
 DISTRICT COMMISSIONER NAROK DISTRICT 7TH RESPONDENT
 PROVINCIAL COMMISSIONER, RIFT VALLEY PROVINCE 8TH
 RESPONDENT
 JOHN OLE KOONYO 9TH RESPONDENT
 HON OLE NTIMAMA 10TH RESPONDENT
 MINISTER OF LANDS AND HOUSING 11TH RESPONDENT

AND

SALAU OLE KILUSU INTERESTED PARTY
 SALASH OLE MATINDA INTERESTED PARTY
 KIPAKE OLE SIMIREN NADOKILA INTERESTED PARTY
 KOSIOM OLOLOISUNGA KISOTU INTERESTED PARTY
 ORNGASHARR OLE PUNYUA INTERESTED PARTY
 DAVID OLE KITAIKA INTERESTED PARTY
 SANKOYA OLE LESHU INTERESTED PARTY
 ASAINI OLE MEREU INTERESTED PARTY
 LONKISA OLE KOONYO INTERESTED PARTY

JUDGMENT

1. The 1st to 6th applicants filed this suit on their own behalf and on behalf of other members of the Ildamat clan, via an amended Originating Summons dated 17th November, 2021 seeking the following orders: -
 1. A declaration that the land rights under Maasai customary law are property rights within the meaning of Section 75 of the former Constitution and Article 40 of the 2010 Constitution.
 2. A declaration that the applicants are entitled, under both the Registered *Land Act*, and *Land Registration Act*, 2012 to be registered as proprietors of their share of the 56,000 acres parcel of land, comprised in the Ntulele Adjudication Section.
 3. A declaration that the applicants along with the other 2216 persons appearing in the adjudication register of Ntulele Adjudication Section are tenants in common in respect of the same equal shares.



4. A declaration that all the persons whose names appear in the adjudication register of Ntulele Adjudication Section are entitled to equal shares to the parcel of land comprised in the said Ntulele Adjudication Section.
5. A declaration that all the 2222 persons whose names appear in the adjudication register of the Ntulele Adjudication Section are tenants in common in respect of the parcel comprised in the said Ntulele Adjudication Section and none can neither turn the other out of the same or utilize more than his share of the same.
6. A declaration that the respondents have contravened the applicants right under both section 71 of the former Constitution and Article 26 of the 2010 Constitution, to life, by blocking registration under the Registered *Land Act*, since 1983, of the applicants' rights to the parcel of land known as Ntulele Group Ranch in Narok District.
7. A declaration that the 2nd to 6th and 11th Respondents are adjudication authorities within the meaning of Section 77 (9) of the former Constitution, and are obliged to complete the adjudication of land rights held by the applicants over the Ntulele Adjudication Section, Narok District/County, Rift Valley Province within a reasonable period.
8. A declaration that the 2nd, 3rd, 4th, 5th, 6th and 11th respondents have contravened the applicants' rights, under Section 77 (9) of *the Constitution* to have their rights to 56,000/- acre parcel of land adjudicated upon within a reasonable period after 3rd January, 1983.
9. A declaration that the respondents have, through their handling of/involvement in adjudication of land rights in Ntulele Land Adjudication Section, Narok District contravened since 1983, the applicants' rights under section 82 of the former Constitution and Article 27 of the 2010 Constitution not to be subjected to arbitrary or capricious exercise of power.
10. A declaration that the respondents have devalued/depreciated the applicants' right under Section 75 of *the Constitution* and Article 40 of the 2010 Constitution to the Registered *Land Act* Cap 300 and *Land Registration Act* 2012 and of rights of holders of Ntulele Adjudication Section, and by denial of the applicants' of equal access to the said Ntulele Group Land.
11. A declaration that the 2nd, 4th, 5th, 6th and 11th respondents have, since 1983 breached their respective statutory duties under the *Land Adjudication Act* to finish in Ntulele Adjudication Section the adjudication of land rights within a reasonable period.
12. A declaration that the 2nd to 6th respondents have contravened the applicants' rights under Section 77 (9) of the former Constitution to have their land rights heard and determined within a reasonable period after 1983.
13. An order that the 2nd respondent do advise the applicants and or the 2,222 owners of the 56,000-acre parcel of land comprised in the Ntulele Adjudication Section 23 (5) of the Land Adjudication Section, under section 23 (5) of the *Land Adjudication Act*, of their rights to be incorporated under the Land (Group Representatives) Act.
14. An order that the 4th respondent do discharge his duties over section 4 of the Land (Group Representatives) Act in respect of the applicants' portion of the land comprised in Ntulele Adjudication Section or the right of all the 2,222 owners of the same.
15. As alternatives to prayers numbers 13 and 14 above, an order of mandamus do issue compelling the 2nd and 4th respondents, respectively, to discharge their respective duties under section



23 of the [Judicature Act](#), and Section 4 of the Land (Group Representatives) Act, Cap 287, respectively in relation to the replacement contained in the Registered [Land Act](#), Cap 300.

16. An order of Mandamus do issue compelling the 3rd respondent to discharge his statutory duty under the [Land Adjudication Act](#), prepare a map in respect of the land comprised in Ntulele Adjudication Section and forward the same to the 2nd respondent, within three months or such other period as this Honourable court may deem just to order.
17. A declaration that the applicants, are together with other members of the Ildamat Clan, by virtue of sections 75, 80, and 82 of the former constitution and Articles 27,36 and 40 if the 2010 constitution entitled to a partition of the parcel of land comprised in the Ntulele Adjudication Section, both before and after the registration of ownership under the Registered [Land Act](#).
18. An order of mandamus do issue compelling the 3rd respondent to discharge his duties under the [Land Adjudication Act](#) an prepare a map in respect of the portion of the 56,000 acre parcel of land to which the applicants are entitled and forward the same to the 2nd respondent within six (6) months.
19. A declaration that under the [Land Adjudication Act](#), the 7th to 10th respondents have no role to play in the adjudication of land rights in Ntulele Adjudication Section.
20. A declaration that in the course of Adjudication of land rights in Ntulele Adjudication Section, the 7th and 8th respondents has usurped the functions of the 2nd and 3rd respondents under the [Land Adjudication Act](#).
21. A declaration that the purported subdivision, in September 1986 of the parcel of land comprised in Ntulele Adjudication Section amongst the Ildamat, Keekonyokie and Purko clans was illegal, null and void.
22. A declaration that the purposed establishment, retrospectively, through notices dated 26th November, 1992 or adjudication sections known as Nkorientio, Iloioborlungung, Oltepesi, Hilaries, Ntulele, Ildamat, Olosolepunyua and Olenkomei, is null and void for being unreasonable and arbitrary within the meaning of the Wednesbury's Principles.
23. An order that the 6th respondent do discharge his statutory duties under both the [Land Adjudication Act](#), within thirty (30) days of receipt, under Section 28 of the Act, from the 2nd respondent of the determinations of objections and appeals.
24. An order that the 6th respondent do discharge his statutory duties under both the [Land Adjudication Act](#) and the registered [Land Act Land Registration Act](#) within (30) days of receipt of either the final register of 2222 members, or that of the 608 members of the Ildamat clan.
25. An order that the 2nd to 6th and 11th respondents do discharge their duties under the [Land Adjudication Act](#) in respect of the land in Ntulele Adjudication Section within six (6) months.
26. As an alternative to prayers 23 above, the 2nd to 6th and 11th respondents do file in court, within thirty (30) days, both their plans and timetables for discharging their respective duties under the [Land Adjudication Act](#) and the registered [Land Act](#), for approval by this Honourable Court or further orders.
27. A prohibitory injunction do issue restraining the 7th to 10th respondents from interfering with the adjudication process in Ntulele Adjudication Section.



28. An order that the land comprised of the Ntulele Adjudication Section be partitioned/divided equally amongst the 2222 members of the Ildamat, Keekonyokie, and Purko clans whose names appear in the adjudication register.
 29. As an alternative to paragraph 28 above the Ntulele Land Adjudication Section be divided equally amongst the 2222 members.
 30. As an alternative to paragraph 29 above respective members of the Ildamat, Kekonyokie and Purko do incorporate Group Ranches under the Land (Group Representatives) Act for the different clans.
 31. General damages
 32. Exemplary damages
 33. That the costs be provided for.
2. The Amended Originating Summons was opposed by the 2nd respondent through the affidavit of Amos M. Musyoka sworn on 20th December, 2021.
 3. The 2nd respondent opposed the Amended Originating Summons on the following grounds.
 - a. Firstly, the 2nd respondent admitted to the declaration made on the 1st September, 1970.
 - b. Secondly it is admitted that the declaration of 1st September, 1970 established an adjudication section known as Ntulele Adjudication Section.
 - c. Thirdly, the administration of Ntulele adjudication section as declared on the 1st of September, 1970 turned out to be contentious and could not be finalized for a long period of time.
 - d. Fourthly, due to the controversies and disagreements on the ground, the 2nd respondent cancelled the original declaration of 1st September, 1970 through the notice of 26th November, 1992 and thereafter established seven (7) separate adjudication sections which are Nkorieni, Ilooborlungung, Oltepesi, Shilarie, Ntulele, Olosholepunyua, Olonkomei.
 - e. Fifthly, the 2nd respondent states that new demarcation committees were established for each of these 7 adjudication sections and recording of rights duly undertaken.
 - f. Sixthly, the completion and finalization of the adjudication records in relation to the 7 adjudication sections has not been finalized due to the persistent litigation by the applicants over this adjudication section.
 - g. Seventhly, the 2nd respondent insisted that the intended Ntulele Group Ranch which was to be established after 1977 was never registered and there were no rights over the said land which were ascertained and recorded in favour of any person.
 - h. Eighthly, the Ildamat community who are the applicants herein, the 2nd respondent was of the view that they were allocated one of the seven adjudication sections known as Ildamat adjudication section which is exclusively for their use.
 - i. Ninthly, the 2nd respondent further pleaded that the original number of occupants which is 2222, was found to be unrealistic because the population of people on the ground had increased with time and it was therefore not practical to restrict the adjudication to 2222.
 - j. Tenthly, the 2nd respondent stated that the creation of the 7 adjudication sections was well within time and had not contravened Section 77(9) of the former Constitution.



- k. Eleventhly, the 2nd respondent therefore sought for the court to discharge its orders prohibiting the completion of the adjudication process and dismiss the amended originating summons with costs.
 - l. Finally, the 2nd respondent reminded the court that every citizen of Kenya has a right to be adjudicated land and issued with the relevant documents bestowing ownership rights on him or her.
4. The 6th to 9th interested parties also opposed the amended originating summons by filing a replying affidavit sworn by one Lemein Ole Salaon and Kitaei Metian Nkoiboni on the 18th of September, 2019 on the following grounds: -
- a. The interested parties admitted that there was a declaration of Ntulele Adjudication Section on the 1st of September, 1970.
 - b. That Ntulele Adjudication Section was indeed administered and the adjudication records published for inspection on the 1st of December, 1982.
 - c. Pursuant to the publication of the completion exercise on 1st December, 1982 the general public was invited to inspect the adjudication record and raise any objection with a period of 60 days thereof.
 - d. During the period of inspection, hostilities arose and the Land Adjudication Officer was unable to complete his work and submit the maps to the Director of Survey for printing.
 - e. Similarly, the Director of Land adjudication did not issue the mandatory certificate of finality which would facilitate the Ministry of Lands to issue individual certificate of titles.
 - f. It was therefore the interested parties' position that the adjudication of Ntulele Adjudication Section remained incomplete.
 - g. In an effort to resolve this stalemate, the Government proposed that Ntulele Adjudication Section be sub divided into 7 adjudication areas namely: - Nkorieni, Ilooborlungung, Oltepesi, Shilarie, Ntulele, Olosholepunyua, Olonkomei.
 - h. The interested parties were of the view that the 7 new adjudication areas were purely administrative and to facilitate the smooth completion of the adjudication exercise.
 - i. The interested parties who are members of the Purko clan stated that the applicants' prayer to restrict the beneficiaries to 2222 members as had originally been intended was not tenable because adjudication requires the determination of the actual occupation on the ground before ownership rights are ascertained.
 - j. In the event that there was a dispute as to who should be on the ground and what acreage a person should occupy on the ground, then such a dispute can then be determined through the Statutory Dispute resolution mechanisms including filing of objections and appeals.
 - k. The interested parties pleaded that this amended originating summons should be dismissed and the adjudication process allowed to proceed to conclusion.
 - l. Lastly, the interested parties also raised an issue of law that the applicants had not obtained the mandatory consent to file legal proceedings as required under Section 30 of the [Land Adjudication Act](#) and therefore, the amended originating summons before court should be struck out.



5. After the applicants received the 2nd respondent's replying affidavit and the interested parties replying affidavit, they responded by way of a further affidavit sworn by Kirika Ole Matipe sworn on the 13th of June, 2022.
6. In the further affidavit the applicants responded as follows: -
 - a. They reiterated that there were members of Ntulele Group Ranch which consisted of 2222 members who had participated in the adjudication exercise undertaken between 1981 and 1982 in line with the declaration of 1st September, 1970 and the adjudication record of 1970.
 - b. Secondly, they admitted that there are various maps which have been filed by the 2nd respondent in relation to the 7 adjudication sections which were fraudulent and do not reflect the correct position of how the adjudication should be done.
 - c. Thirdly, the purported maps which were filed in court on 4th of May, 2022 are not signed by a licensed Surveyor as is required in law.
 - d. Fourthly, as regards the purported map in respect of Oloshore Punyua Registration Section, the map is said to have been compiled by the survey of Kenya in July 2021, while the map of Ildamat adjudication section was compiled on June 2021 and the last one relating to Iloibor Lukuny Registration section was compiled in July 2021.
 - e. Fifthly, the applicants stated that this exercise of preparing adjudication records, and maps undertaken by the 2nd respondent was unlawful, illegal and in contempt of the court orders issued on 10th February, 2009.
7. In essence therefore, the applicants pleaded that the actions by the 2nd respondent after the issuance of the orders of 2009 were unlawful, null and void and incapable of alienating any rights as purported.
8. In conclusion the applicants asked the court to allow the amended originating summons.

Applicants Case

9. The first witness called by the applicant was one NEPATAO OLE MANANGOI (PW1), who introduced himself as a retired chief and a member of the Ildamat clan members on whose behalf he testified.
10. Mr. Manangoi confirmed to have prepared, signed and filed the witness statement dated 19th of April, 2022 whose contents he adopted as his evidence in chief. In further support of the applicants' case, he produced the annexures to the affidavit as exhibits.
11. PW1 further in support of the allegation in the witness statement dated 19th April, 2022 produced the annexures therein as exhibits in support of the averments in the witness statements.
12. Upon admission of the said statements and exhibits therein PW1 closed his evidence in chief and proceeded for cross examination.
13. On cross examination, PW1 testified that he was the Chairman, duly elected between the year 1981 and 1982 of Ntulele Adjudication Committee when the adjudicating process commenced. Further to that, his role as the Chairman of the committee was to supervise the adjudication process on behalf of the Ildamat clan which he represented in the committee. It was his testimony that there were 3 sections of Ntulele and every section had its Chairman.



14. Secondly, Ntulele was to be sub divided among the Ildamat, Keekonyokie and Purko clans, and that the joint Chairman could have been a Government Officer. Initially, Ntulele belonged to Ildamat and the Purko bordered Ildamat from Mosiro while Keekonyokie occupied Nairegie Enkare.
15. Thirdly, he agreed that there were Purko and Keekonyokie in the land of Ildamat and that they were to sub divide the land on the basis of the people who were on the land, and the Purko, Keekonyokie and Ildamat were to forward their names.
16. Fourthly, he was not a Chief when the sections clashed and people lost their lives and, the Government was forced to intervene so as to ensure peace, and it combined the 3 sections of Purko, Ildamat and Keekonyokie.
17. Fifthly, he said that there is no clan known as Nkoirenito or Oloibor Lukuny. According to him, Oloibor, Lukuny, Oltepesi and Shilarie are just areas within Ntulele Adjudication Section.
18. Sixthly, the 7 areas were not divided and people's rights were not ascertained within the 7 areas. He could not tell if there were more than 2222 people from the other two sections, but that the members from Ildamat were adults and had identity cards.
19. Seventhly, the members that he represented, were not allocated land. On his part, he resides near Ntulele trading centre. However, he was not officially allocated the land that he occupies which consists of his homestead where he has built about 7 or 8 houses for his sons and brothers.
20. Eighthly, the other members of the Ildamat clan have their own portions where they live, while others share a portion. He added that people can tell the size of their farms depending on how one utilizes theirs and it is not limited to what one occupies. According to him, there are no members of the Purko clan who have come to occupy the land meant for the Ildamat clan as each of the three clans resides in their respective areas.
21. Ninthly he said that after identifying the 2222 members, a register was prepared and submitted to the Government and there is certainty as to the size of land each of the 2222 members will be allocated.
22. Tenthly, the population of the Ildamat clan was 608 and each member was to get 25 acres and after ascertaining the 2222 members, a Group Ranch was formed and it was registered as Ntulele Group Ranch. He could not confirm if the Group Ranch was issued with a certificate of registration and he could not tell the number of adult members of Ildamat who qualify to be allocated land. It was his testimony that since the Government ordered people to live where they occupy, there have never been any clashes.
23. Eleventhly, he said that he was born on the portion which he occupies and he cultivates approximately 50 acres and that each member of the Ildamat clan is entitled to 25 acres.
24. Finally, the witness said Ntulele adjudication section which is comprised of 56000 acres was occupied by the Ildamat clan, but they had no objection to the Purko and Keekonyokie clans getting land in the area. The adults who were residents of Ntulele were registered and that 25 acres for each member would be an equal share.
25. The 2nd witness on behalf of the applicants was one KOINGET OLE RUKARRUK SAMANTE (PW2) who introduced himself as a member of the Ildamat clan and a resident of Ntulele.
26. PW2 informed the court that he was born on the personal land he occupies and has since married and is blessed with a number of children.



27. PW2 confirmed to the court that he was a member of the Ntulele Group Ranch having registered himself in the year 1982.
28. According to PW2 one of the Adjudication Committee members in the original Ntulele Adjudication Section was PW1 who represented the Ildamat Clan.
29. PW2 then proceeded to adopt his affidavit sworn in February 2009 as his evidence in chief.
30. On cross examination, PW2 testified that he resides in Ntulele and the size of his land is about 5 acres. He testified that he was born on the said parcel of land, got married and brought up his family. It was his testimony that he shares the same house with his children and he has sons who are of age, each one of them with his own room.
31. PW2 testified that in the year 1982, while in Ntulele, he got himself registered as a member of the adjudication section as he is a member of the Ildamat clan. He admitted that he knows PW1 as he was a member of the committee that was appointed to oversee the adjudication process. He knows the size of his land and the endpoints, but, that there are no fixed boundaries. It was his testimony that he is surrounded by neighbours on all sides, who, they are at peace with. He admitted that many people have passed on and are buried in Ntulele area.
32. On further cross examination, PW2 admitted that he knows PW1 as they are immediate neighbours, but he does not know the size of the land that he occupies.
33. On re-examination, PW2 testified that he knows the boundaries of the Group Ranch, and that it has not been sub divided amongst its 2222 members.
34. The third witness to be called by the applicant was KIRIKA OLE MATIPE (PW3) who said that he is a member of Ildamat clan and that he resides within Ntulele Adjudication Section.
35. PW3 adopted the three (3) affidavits sworn on the 8th of July, 2019, 2nd of July, 2021 and 24th of July, 2021 as his evidence in chief.
36. The said three affidavits, sworn by PW3 were then duly admitted as evidence in chief and the annexures thereto marked as his exhibits.
37. On cross-examination, PW3 said that he resides in Ntulele and that he is a member of Ntulele Adjudication Section. Previously, Ntulele belonged to the Ildamat clan, but since they were few in number, the Purko and Keekonyokie clans joined in, and demanded that the Ildamat vacate Ntulele as a result of which a fight ensued.
38. Further to the above, in the year 1982, the three agreed that a register be prepared containing members from the three clans. Subsequently, a committee was formed comprising of 5 members from each clan, where it was agreed that a tractor be brought to mark the boundaries.
39. According to the witness, the night before the marking of the boundaries, the Purko clan led by one Koonyo tampered with the boundaries forcing members of the Ildamat clan to move to court. It was his testimony that members of the Ildamat clan have always lived in Ntulele and that the Purko came from Mosiro while the Keekonyokie clan came from Oltepesi Parsimei. Further, that the Purkos moved in the 1970s and prior to that, the land was occupied by members of the Ildamat clan. It was his evidence that the Ildamat clan did not have any document to show that the land was theirs but, that each clan had its own parcel of land.
40. PW3 agreed that the Ildamat would move from place to place to look for pastures, and that when the members of Purko and Keekonyokie moved in, there were no fights. According to him, the fight arose



- when the other clans demanded that the Ildamat move out. He said that he witnessed the clan clashes and in the years 1980 and 1981, the Government intervened.
41. With regard to his parcel of land, he said that he owns 5 acres of land which he occupies and which also happens to be the same place where he was born. Furthermore, his own brothers who live nearby, are members of the group ranch and own one (1) acre and two (2) acres respectively. According to him, the acreage of the land that he got was according to how he used to till it. He has not distributed his land amongst his children.
 42. PW3 added that he knows PW1, as he is his neighbour, but lives about 3 kilometers away and that he did not know the size of PW1's parcel of land. It was his testimony that when he was registered as a member of the group ranch, he did not tell the committee the acreage of land that he owned.
 43. According to him, the committee demanded to know where one was residing before they could be registered and PW1 was their leader and he knew each one of them. He testified that the registered members of Ildamat clan are 608 and are demanding for land within Ntulele Group Ranch. He agreed that people have passed on and are buried in Ntulele and that the composition of members from Ildamat is not equal to that of the Purko and the Keekonyokie.
 44. The witness told the court, that he had no problem with the land being sub divided on equal basis as long as members should not be moved from where they currently reside. Further, that some members have more than 300 acres and once they get their 25 acres, the rest can be distributed to other members and in his case, he is prepared to move to wherever his 25 acres of land will fall.
 45. PW3 testified that the first map on the respondents' documents shows that the survey was conducted for Nkoireinito Adjudication Section in June, 2021, Oloika Shilarie Adjudication Section in June, 2021, Oltepesi Adjudication Section in July, 2021 and Ole Nkoban Adjudication section in June, 2021. He added that since being registered in the year 1982 as member number 1737, he has never been involved in any other adjudication process and neither has he been issued with a title deed.
 46. On further cross-examination, the witness said that Ntulele Group Ranch was registered around the year 1982, though he was not sure about its gazzettment. He added that he does not own a parcel number but resides in the Group Ranch land, and that the maps do not reflect how people live on the ground as there are no individual parcels.
 47. In conclusion the witness said that Mr. Musyoka, is responsible for causing the maps complained of to be compiled in disobedience of the court orders made in the year 2009 as the maps were made in June 2021.
 48. The fourth witness called by the applicant was JOHN ONGALU LAKU (PW4) who is a former Land adjudication officer in Narok County.
 49. In his evidence, PW4 said that he was appointed under Section 34 of the [Land Adjudication Act](#) by the Minister and that one of his duties, is to ascertain rights and interests in land. He relied on his affidavit sworn on 23rd March, 2006 as his evidence. He testified that the notice setting up the adjudication section was the one at page 583 but he did not know the acreage of the adjudication section.
 50. The witness described the document at page 584 of volume 1 of the bundle of documents and said that according to the repealed Act, all the members of the Group Ranch are registered if the Group Ranch is incorporated. Thereafter, a title deed is issued to the Group Ranch and members are then entitled to eke out a living therein.



51. He identified the document at page 58 of the bundle, which is a notice of appointment of Adjudication Committee, signed by EK Birr, the Land Adjudication Officer. At page 537 is a notice of completion of the register as per section 25 of the *Land Adjudication Act* for Ntulele Adjudication Section and signed by D.J Ndwiga, the District Land Adjudication officer.
52. According to the witness Ntulele Group Ranch had 9 Group elected representatives whose responsibility was the running of the affairs of the Group Ranch on behalf of the members. However, the Group Ranch was never incorporated.
53. At page 431 of the bundle, the witness identified a letter written by Mr P.M. Munyalo, Adjudication Officer, to Keriako Tobiko Advocates regarding the suit, and, at page 754 an order of status quo until further orders. He said that 120 objections were filed and 108 of them were determined leaving a total of 12 pending.
54. The witness said that there existed clan institutions and that as per the minutes referred to at pages 538 to 540, the Provincial Commissioners cautioned the elders not to fan hostility. He agreed that the annexures in his affidavit do not reflect on the hostilities and that the notice dated 1st September, 1970 was applied retrospectively to the new adjudication sections.
55. According to him the latter declaration had a net effect that the 1st Ntulele's adjudication section ceased to exist, and that it took notice of the existing objections that were settled and those that were pending. On being referred to the letter dated 28th September, 2003, PW4 testified that the 7 adjudication sections could not be created retrospectively and he maintained that the Land Adjudication Officer was not allowed to receive instructions from the Provincial Commissioner. PW4 prayed that the application be dismissed due to the fact that the applicants have not complied with Section 30(1) of the *Land Adjudication Act*.
56. The witness added that the register established on 1st September, 1970 was published as complete in accordance with Section 25 of the *Land Adjudication Act* and that none of the registers of the 7-adjudication sections established on 26th November, 1992 have been published as complete and that the status quo order was made on 27th May, 1994 issued by Mr. Justice Pall.
57. According to him, Ntulele Land Adjudication Section has not become final due to Civil Misc Case Number 383 of 1993 and that between 7th May, 1994 and 31st May, 2005, everything stopped. He said that when he was the Land Adjudication officer in Narok in 2006, he had access to all the records of active Land Adjudication Sections which included Ntulele.
58. On cross examination, PW4 admitted that Ntulele area was declared as an adjudication section and that the purpose of the declaration was to seek to establish the rights of the people in the section, which rights had not been registered in individual names, in the adjudication section.
59. It was his evidence that ownership is not necessarily equal portions of land and that one is guided by the owners on what they claim to be the size of their land. It was his evidence that between 1970 to 1980s the rights that were ascertained as follows: -
 - a. Plot No.1 – 2222 members under Ntulele GroupRanch.
 - b. Plot No. 2 – Ntulele Trading Centre.
 - c. Plot No. 3 – Ntulele Trading Centre
60. In his evidence, the witness said that plot No. 1 originally constituted 3 clans-Purko, Keekonyokie and Ildamat and that the exercise did not confirm equal rights. According to him, the 2222 members owned



- different sizes of land within plot no 1, and that for equal ownership of plot no. 1, the 2222 members should have been grouped into a Group Ranch, which group ranch was never incorporated.
61. In the year 2010, when he left Narok, the land had not been shared equally between the 2222 members and that if the Group Ranch had not existed, the form of ownership would be communal and each group would go to their respective community.
 62. The witness confirmed that the 1992 creation of the seven (7) adjudication sections was due to the hostilities between the clans where the Purko and Keekonyokie refused to accept the Ildamat as equal members in the sharing of the land.
 63. According to him, the work is not complete because of the court order issued in the year 2005 and that the declaration that subsists is the one of 1992 as per the Ministry. It was his evidence that after the declaration of 1992, he used to come across incidents of hostilities.
 64. According to him, the Land Adjudication officer has power under Sections 9,10 and 11 of the [Land Adjudication Act](#) to make corrections under an existing declaration. He described the procedure of acquisition of land as per the [Land Adjudication Act](#) including hearing and determination of objections.
 65. On the process leading to ascertainment of land rights, the witness said that upon demarcation, an adjudication register is compiled and thereafter, placed on notice for public inspection and possible objection under Section 27. Further, that the Land Adjudication Officer, starts to hear the objections and when all the objections are heard and determined, the Land Adjudication Officer forwards the adjudication map to the Director of Survey to produce Registry Index Map (RIM).
 66. He said that the RIM is then forwarded by the Land Adjudication Officer to the Director of Land Adjudication to update the duplicate record earlier on provided to him at the declaration stage. He added that the RIM is accompanied by plots affected by objections and appeals.
 67. In this case, no RIM has been prepared for plot No. 1, and nothing was done even after the order in Misc Appl No. 383 of 1994 was issued and the process stopped at the stage of the 1992 declaration and this partly stalled some of the processes of 1970-the objections that were existing were not determined.
 68. The witness said that the 1992 declaration took into consideration the processes that had taken place pursuant to the 1970 declaration and that the rights that had been ascertained were cancelled and moved to the respective 7 adjudication sections. According to him, this did not change the ground occupation and the rights of the 2222 members have not crystalized into individual ownership and neither have they been issued with title deeds.
 69. On re-examination, the witness said that the 2222 members could not get titles until they were incorporated into a Group Ranch and that when a Group Ranch is incorporated, all the members own equal rights.
 70. According to the witness, it is the responsibility of the Land Adjudication Officer to ensure that a Group Ranch is incorporated by informing the Registrar of the Group Representatives and a Land Adjudication Officer is the only one who can forward a complete record for the titles to be issued.
 71. The witness concluded by saying that there were court cases stopping the adjudication process and that the purported creation of 7 adjudication sections did not stop the adjudication process. Further, that all these suits should not have been filed without the consent of Land Adjudication Officer as per Section 30 of Cap 284 and that if a Group Ranch is not incorporated, the 2222 members could raise objections which would have enabled the Land Adjudication Officer to finalize the register of individual ownership.



Respondents Case

72. The respondents first witness was Amos Musyoka (DW1) who said he is as a Land Adjudication Officer having served in Narok County between January 2019 to January, 2021.
73. His evidence is as follows: - Firstly, he is aware of the Ntulele Adjudication Section case and that the proper thing to do was to form a group ranch because it was a case of more than five persons claiming an interest in the land.
74. That when more than 5 people are lumped together as common owners since they cannot identify their boundaries. Further, that there is a form which they fill and the same is forwarded to the Registrar of Group Representatives who then calls for a meeting of the people for purposes of incorporation.
75. Secondly, the land adjudication officer ought to inform such joint owners of land to incorporate a group ranch. In case they do not form a group ranch, the alternative is to treat the members as common owners.
76. Thirdly, the common owners of the land give the Land Adjudication Officer the names of all members and the Land Adjudication Officer records the name given to him/her by the more than 5 owners and when the register is published, that is the name that will be inspected. DW1 testified that Ntulele Adjudication Section started the adjudication process in the year 1970 to the year 1982 and until the year 1992, it did not reach a finality.
77. Fourthly, each person wanted to own their parcels individually despite their advice that they form a Group Ranch and before the incorporation of the Group Ranch could be formed, clan scramble for the land erupted between the Ildamat, Purko and Keekonyokie clans.
78. Fifthly as a result of the clashes, and upon advice from the security officials, it was decided that the clans would not own land jointly, and the section was sub divided into various sections occupied by each of the clans. Maps were prepared showing where each clan would be allocated land.
79. Sixthly, the Ildamat got the place marked 1, the Purko got 4 sites all marked, and that Oletepesi and Olusho Lule Punyua went to Keekonyokie clan. The seven adjudication sections are well demarcated because bulldozers were used to mark the boundaries before November, 1992.
80. Seventhly, were it not for this case, registration would have been complete since the applicants' rights have been identified within the Ildamat Adjudication Section. Since 1970, farming activities have been taking place and the Land (Group Representatives) Act has since been repealed.
81. On cross-examination, the witness admitted that the land in the sketch map in page 527 is not one third of the entire area. He also admitted that he had no evidence of how the demarcation of the seven sections was done and if all the 2222 members were in agreement.
82. The officer got all this information from the official records and he was not an eye witness to the events of demarcation of the boundaries. He said he was not aware of the list of the 2222 members and he denied carrying out any adjudication after the court order of 10th February, 2009.
83. He added that the declaration dated 23rd May, 2019 is similar to the one on page 537 and that the register that could be inspected was for Oloshole Punyua Adjudication Section as per his notice dated 23/5/2019, inviting any objection since the adjudication process for the area in question was complete and no further survey or demarcation has taken place since the order of 10th February, 2009.



84. DW1 further testified that the order made by Nyamu, J on 10th February, 2009 restrains the 1st to 6th and 10th and 11th respondents from acting on the purported cancellation on 26th November, 2006. However, it was his evidence that the application was not served upon him.
85. Further to the above, by the time the circulars were issued, he had not been issued with the court order and order number 4 restrains the 1st to 6th, 10th and 11th respondents from splitting Ntulele Land Adjudication Section but by this time, he had not been served with the order.
86. The witness maintained that they did not attempt to conduct adjudication in Oltepesi Adjudication Section. According to him, the process was done by his predecessors and he did not decide to continue with the process.
87. With regard to Oloshole Punyua, DW1 testified that he did not purport to conduct an adjudication in the section when there was a court order against it. It was his evidence that he did not find the order dated 10th February, 2009 in the office when he was posted to Narok, and he only remembers the order that was served on him, which is dated 9th July, 2019.
88. The witness added that by 14th June, 2019, he had not received the orders of the court with regard to Ildamat Adjudication Section. With regard to the letter dated 18th November, 2003, he said that he was seeing the letter for the first time in court, and that even though the letter should be kept in the office records, he had not seen it.
89. He admitted that he carried out a second adjudication for the 3 sections to override the one referred to by Dr. T.O. Aroka in his letter and that no final certificate is issued until all the objections are heard and determined. His evidence is that an original declaration notice can be cancelled under Cap 284 and, the letter by Dr Aroka contains his personal opinion.
90. With regard to Oltepesi area list, DW1 testified that he requested for computation of the data so that they could demonstrate demographically what exists and for this reason, the area lists are not records in their office but they were prepared for the purpose of this case.
91. With regard to the adjudication record at page 60 of volume 1, DW1 testified that the declaration on 1st September, 1970 was for one big area and in 1992 a re-declaration was done establishing 7 Adjudicators Sections.
92. According to him, Dr Aroka gave a personal opinion that there can never be a re-declaration and that he did not see any resolution of members of the Group Ranch on how the land was to be sub divided. He agreed that Dr Aroka's letter, shows that 108 objections had been determined leaving 12 objections unresolved.
93. To the witness, it is in accordance with the law, that Ntulele Group Ranch was not incorporated with the re-declaration of 7 adjudication sections and the 6th to 9th interested parties have accepted the existence of 7 adjudication sections.
94. DW1 recalled meeting the people referred to in paragraph 35 of Mr Kirika Ole Matipe's affidavit, but he could not remember being served with the letter dated 11th June, 2019 annexed as KOM 4 to Mr Matipe's affidavit. He also did not know the officer who stamped the letter on 12th June, 2019. It was his testimony that had he seen the letter, he would have supplied the documents sought. He disputed that he was in contempt of the court orders as per his letter dated 13th August, 2019.
95. On further cross-examination, DW1 reiterated that he has been an adjudication officer since 1999, and is conversant with the provisions of the [Land Adjudication Act](#) and that the notice was declared under



Section 5 of the *Land Adjudication Act*, and to his knowledge, after the notice was issued in respect of Ntulele Adjudication Section, a committee was elected to deal with the adjudication process.

96. Further to this, the 1st applicant was appointed as a member of the committee, and he agreed that claims were made to the committee and were resolved and as per the notice of completion of adjudication dated 1st December, 1982, all claims had been resolved at this stage. Further to this, the Group Ranch was never registered, and to the best of his knowledge no such application was ever made.
97. DW1 could not recall the number of objections that he received, but to his knowledge all the objections were heard and determined apart from 12 which are still pending. He testified that the pending objections were to be determined in the respective sections that they fell under, and that the notice was issued to expedite the adjudication work and to ensure that members of each of the 3 sections could have their own parcels of land where they could inhabit homogeneously.
98. It was his position that the notice did not affect the existing rights, and that subsequent to the issuance of the notice, demarcation took place. He testified that, each of the 7 adjudication sections elected their own committees, and that the data that was for the old adjudication section was transferred to the 7 adjudication sections.
99. It was his testimony that each claimant was requested to point out their boundaries and the data was captured in the demarcation register, and the respective land owners were invited to identify their boundaries and the area list was compiled from the map that was produced after going around all the parcels.
100. DW1 further testified that the information in the area list is a reflection of what is in the adjudication record, and that the registration in the adjudication record at page 60 (volume 1) cannot be effected because of the cancellation of the old declaration notice.
101. Secondly, the law governing Group Ranches has been repealed, and in the new adjudication sections, the rights of the 2222 members have not been affected. In addition, in the further list dated 4th May, 2022, he produced the section adjudication book which contained defined boundaries created in the presence of their respective owners.
102. It was his testimony, in re-examination that the members in the adjudication section do not own their land in equal shares, and that the area list in the respondents' bundle is the identification of the parcel number and acreage in the adjudication section.
103. He reiterated that there were 12 objections pending, and that the exercise could not be completed because the exercise was a source of insecurity amongst 3 clans i.e. Ildamat, Purko and Keekonyokie.
104. The witness added that the hostilities necessitated the re-declaration of 1992 creating the 7 adjudication sections. As for the affidavit of service by Mr Munyori, he informed the court that there is nothing to show that he was served with the order dated 10th February, 2009.
105. Finally, the witness said that he has not done any act which amounts to disobedience of the court order and that the 2222 members cannot share the land equally as per the 1970 declaration because over time, people have settled and built houses. If he was to proceed with the exercise, he would publish what is available and invite people to inspect and raise objections under the *Land Adjudication Act*, and no new survey will be done.



Interested Parties Case

106. The interested parties witness was Lemein Ole Salaon (DW2). He confirmed swearing the affidavit dated 18th of September, 2019 which he adopted as his evidence in chief and produced the annexures therein as his exhibits in support.
107. According to DW2, there was a declaration for the adjudication of Ntulele Adjudication Section in the year 1970 and that exercise was carried out until the year 1982.
108. The initial proposal was that a Group Ranch would be formed comprising of the Ildamat clan, Purko clan and Keekonyokie clan.
109. However, after the adjudication record was declared complete in 1982, tribal clashes erupted which necessitated the Provincial Administration to come in and provide a resolution.
110. According to DW2, a committee was then formed with 5 representatives from each of the three clans namely, Keekonyokie Ildamat and Purko who were to assist in demarcating the land and marking the boundaries between the 3 clans. Later on, 7 new adjudication sections were created in the year 1992 and each adjudication section elected its own adjudication committee.
111. On cross examination, the witness said that he was born in 1960 and he belongs to the Purko clan, and he knows PW1, as he resides about 4 kilometers from him. His land is 30 acres and each of his three wives occupies ten acres.
112. It was his testimony that he has been in a meeting with PW1 on several occasions as a peace elder, and that they all live peacefully. According to him, there is no hostility between PW1 whose land is 50 acres, and his neighbours.
113. He testified that there was a time when the Government attempted to issue title deeds to them, but, the process was stopped by a court order and each person was involved when the 7 adjudication sections were created.
114. He added that the clashes were brought out by each of the 3 clans claiming the suit land as their own. He admitted that the Government used tractors to mark boundaries for the 3 clans and he lives in the place where he was before the boundaries were marked.
115. According to him, there are no disputes as to ownership of respective parcels of land and the 3 clans have started intermarrying and since the year 1992, there have been no hostilities.
116. On cross examination, DW2 testified that he knows the 10th respondent, Hon. Ole Ntimama, and the late John Ole Koonyo (both deceased) who were members of Purko clan. He testified that according to Purko and Keekonyokie clans, the Ildamat clan should move back to Melili and that according to the Ildamat, the Purko are from Mosiro. As at now, there is no dispute as to where each clan should live and since the year 1986, there has been peace in Ntulele area.
117. He agreed that his affidavit does not show how many people died in Ntulele, but he knows that the Provincial Commissioner was in charge of security, though he did not call him as a witness.
118. He testified that the, Purko, Ildamat and Keekonyokie requested that the area be sub divided into 7 adjudications sections and that it is not true that Purko and Keekonyokie benefited from the Provincial Commissioner's directions to create 7 adjudication sections.
119. The witness said that the three clans did not request for the subdivision of the 7 adjudication since he got the information contained in paragraph 11 of his affidavit from the Government and it was not



- true that some members of Purko community own 300 to 500 or even 1000 acres and he did not know if the members of Purko community own larger portions of land than the Ildamat community.
120. He said, that it was not true that the adjudication process has been delayed by the Purko community. He did not attach any document to his affidavit to show that the committee members of the 7 adjudications are similar to the one at page 58 volume 1 of the applicants list of documents, but he knows that each adjudication section had its own adjudication committee.
121. He agreed that there were 2222 persons who had registered themselves as members of Ntulele Adjudication Section between 1981 and 1992, and that in 1992, their fathers (members of Ntulele Adjudication Section) asked for their identity cards so that they could be registered as members.
122. After the 7 adjudication sections were created, he registered himself within Nkorienito adjudication section, but he did not see his land in Nkorienito being measured and what took place was the marking of the boundaries and he was not told about the acreage of his parcel of land.
123. On re-examination, DW2 testified that they have not been issued with title deeds because of the pending cases in court and that in the year 1986, Ole Koonyo (deceased), Kakino, Ole Punyua, Ole Pere, Ole Nchoe and others were in the committee comprising of five (5) elders from each of the three (3) clans.
124. He testified that he became aware of the clashes in 1975, 1980 and 1982 before the Government intervened and that he is a member of Nkorienito Adjudication Section, as that was his original place of residence and place of birth. He did not know if members of the Purko clan own larger portions than members of the Ildamat clan.
125. Upon completion of the respondents hearing, parties were given time to prepare, file and exchange their written submissions in support of their respective cases. The applicants filed their written submissions on 25th November, 2022, the respondents filed on 6th February, 2023 and the interested parties on 7th February, 2023.
126. The court has carefully considered the pleadings by the applicants, the respondents and the 6th to 9th interested parties, the oral testimonies of the witnesses as well as the exhibits produced in court and hereby identifies the following issues for determination: -

Issue No. 1-The legal significance of the adjudication record no. 447854 issued on 8th march, 1977.

Issue No. 2-The legality of the declaration made on 26th november, 1992.

Issue No.3- What is the legitimate expectation by the applicants?

Issue No. 4-What reliefs should this court grant in the amended originating summons.

Issue No. 5-Who bears the costs of these proceedings.

127. The findings of the court are as follows: -

Issue No. 1-validity of the Declaration Notice of 1st September, 1970.

128. It is not disputed by any of the parties in these proceedings that indeed a notice of declaration creating Ntulele Adjudication Section was published on 1st September, 1970 under Section 5 of the Land Adjudication Section (Act No. 35 of 1968).



129. Based on the declaration notice published on 1st September, 1970, the applicable law in the administration of land is the [Land Adjudication Act](#). Section 6 of the [Land Adjudication Act](#), requires the Land adjudication officer, in charge of the adjudication section to appoint an adjudication committee of not less than 10 people who are residents within the adjudication section for purposes of demarcating the said adjudication section.
130. According to the applicants, the land adjudication officer, in charge of Ntulele Adjudication Section appointed a total of 12 members on 10th August, 1981 to be adjudication committee members of the said section.
131. Indeed, the adjudication committee members embarked on their duties and registered a total of 2,222 persons as the bonafide residents of Ntulele Adjudication Section as contained in pages 63 to 298 of the applicants' bundle of documents filed on 20th May, 2019.
132. This adjudication record containing the 2,222 persons recognized to have ownership rights over the adjudication section has not been disputed by the respondents.
133. Section 23 (5) of the [Land Adjudication Act](#) provides as follows; -
- “Where a group is recorded as the owner of land or as entitled to an interest not amounting to ownership of land, the adjudication officer shall-
- a. cause the group to be advised to apply for group representatives to be incorporated under the Land (Group Representatives) Act (Repealed);
 - b. Cause the recording officer to record that the group has been so advised; and
 - c. Notify the Registrar of Group Representatives that the group has been so advised.”
134. Based on the adjudication record referred herein above, the Land Adjudication Officer recognized the interests and rights of the 2,222 members as all entitled either jointly or in common to a portion of the adjudication section by issuing an adjudication record number 447854 on 8th March, 1977.
135. Again, this particular adjudication record in the name of Ntulele Group ranch which comprises of the 2,222 members has not been challenged by the respondents.
136. After the issuance of the adjudication record, no. 447854 to Ntulele Group Ranch members, the subdivision exercise was undertaken successfully and a certificate of completion issued on 1st December, 1982.
137. The significance of the certificate of completion was a confirmation that Ntulele Adjudication Section had actually been subdivided between the 2,222 members, and now invited any person who was aggrieved with that subdivision to lodge an objection within 60 days thereafter as provided under Section 25 of the [Land Adjudication Act](#).
138. According to Section 24 of the [Land Adjudication Act](#), an adjudication register consists of two documents namely,
- i. The demarcation map;
 - ii. And the adjudication record.



139. A demarcation map under Section 2 of the Act, refers to maps prepared under Section 16 of the same Act.
140. Section 16 of the [Land Adjudication Act](#) provides as follows:
- “Subject to any general or particular directions given by the adjudication officer, the duties of the survey officer within an adjudication section are—
- (a) to carry out such survey work as is required in carrying out the adjudication process; and
- (b) to prepare or cause to be prepared a demarcation map of the adjudication section, showing every parcel of land identified by a distinguishing number, except that roads, railways, waterways and lakes need not be identified by a number.”
141. It is our finding that by the time an adjudication record is declared complete as was done on 1st December, 1982, it meant that both the demarcation map in favour of the 2,222 people as well as the adjudication record had been completed.
142. From the applicants’ submissions, a total of 120 objections were lodged of which all have been resolved save for 12 pending objections.
143. In essence therefore, it is this court’s considered finding that the adjudication record no. 447854 issued on 8th March, 1977 was lawful and reflective of the bonafide persons with legitimate rights over Ntulele Adjudication Section.

Issue No. 2-The Legality of the Declaration Made on 26th November, 1992.

144. This court having found that the adjudication record no. 447854 issued on 8th March, 1977 was lawful, the next question is why the 2nd respondent decided to cancel the original declaration notice issued on 1st September, 1970 and declared again the same adjudication section divided into 7 adjudication areas.
145. The respondents have pleaded and testified in court that the adjudication process of the original adjudication section declared in 1970 was marred with hostilities and violence after 1982 when the adjudication record was published for inspection.
146. Throughout the pleadings filed before the court and the evidence adduced in the witness statements, it is clear that indeed hostilities and or actual violent clashes occurred with the Ntulele Adjudication Section.
147. These incidences are the ones that actually brought in the provincial administration and political leaders of the three clans i.e. the Purko, Keekonyokie and Ildamat to try and resolve the dispute.
148. The general feeling or observation by the provincial administration and the politicians was that the Purko clan who were majority in numbers required more land than the Ildamat who were lesser in number.
149. On the other hand, the Ildamat first claimed that the Ntulele Adjudication section was their ancestral land and are entitled to the same acreage as all the other communities.
150. The Ildamat further stated because, they were pastoralists and moved from the disputed area from time to time in search of pasture and water, the other bigger clans would then move in and occupy their portions of land due to their growth in population within their own communities.



151. Furthermore, the applicants who are Ildamats are aggrieved that a portion of their land has now been leased to strangers by people whose identity and/or ownership cannot be ascertained.
152. In essence therefore, a substantive portion of the suit land has been unlawfully taken away from the legitimate owners and thereby resulting to very small portions of land remaining for occupation and use by the legitimate and rightful beneficiaries.
153. While the above scenario was pending, the 2nd respondent suo moto decided to degazette the original adjudication section published on 1st September, 1970 and declare 7 distinct adjudication sections on 26th November, 1992.
154. In the declaration of 26th November, 1992, the 2nd respondent not only cancelled the declaration of 1st September, 1970, but further directed that such cancellation would act retrospectively.
155. In other words, the 2nd respondent's declaration 26th November, 1992, nullified all the actions that had been done between 1st September, 1970 including the adjudication record published on 8th February, 1977 and the notice of completion issued on 1st December, 1982.
156. The question that now this court seeks to answer is whether the 2nd respondent in the very first place has the power to cancel a notice of adjudication issued under Section 5 of the [Land Adjudication Act](#).
157. First and foremost, we re-emphasize that indeed Section 5 of the [Land Adjudication Act](#) gives powers to the 2nd respondent to declare a certain area to be an adjudication section.
158. This power under Section 5 of the [Land Adjudication Act](#) is statutorily donated in the Act and cannot be challenged.
159. However, the [Land Adjudication Act](#) does not donate any power to the 2nd respondent to cancel a declaration of an adjudication section after it has been published. The 2nd respondent in the declaration of 26th November, 1992, did not give the provision that authorized him to cancel a declaration which had already been gazzetted.
160. If parliament in its wisdom had intended to give such power to the Land Adjudication Officer, then it would have been expressly done so in the Act.
161. The Land Adjudication Officer could not nullify an exercise that had cost time and resources with one stroke of a pen without giving reasons and without hearing the parties.
162. In our considered view, before an adjudication section is declared, a lot of consultations are done among the occupants of the area to be adjudicated and if there were any changes to be done, the same ought to have been consultative and consensus achieved from all the interested parties.
163. Although the 2nd respondent emphasized that the cancellation of the 1st declaration of 1st September, 1970 and the subsequent creation of the 7 sections done on 26th November, 1992 was to facilitate a smooth completion of the adjudication exercise, there is no evidence of any meeting or resolution arrived at by the residents of the area of adjudication including the 3 clans who are at the centre of this dispute to confirm this position.
164. Further, even if the 7 sections were to assist in the adjudication the legitimate expectation was that the 7 new adjudication sections would be for the benefit of the original 2,222 members contained in the adjudication record no. 447854, who were to be registered as Ntulele Group Ranch.



165. It is therefore our considered view, that the 2nd respondent had no power under the [Land Adjudication Act](#) or any other law to cancel the declaration issued on 1st September, 1970 as purported in the declaration of 26th November, 1992.

Issue No.3- What is the Legitimate Expectation by the Applicants?

166. This court having made a finding that the 2nd respondent did not have the powers to cancel the declaration published on 1st September, 1970 then it goes without saying that the applicants who are members of the original 2,222 people who collectively were to be registered as Ntulele Group Ranch have a legitimate expectation to be either tenants in common or joint tenants over the entire adjudication section known as Ntulele to the exclusion of any other person claiming any rights in that property.

167. De Smith, Woolf & Jowell in “Judicial Review of Administrative Action” 6th Edn. Sweet & Maxwell at page 609 says as follows:

“A legitimate expectation arises where a person responsible for taking a decision has induced in someone a reasonable expectation that he will receive or retain a benefit of advantage. It is a basic principle of fairness that legitimate expectations ought not to be thwarted. The protection of legitimate expectations is at the root of the constitutional principle of the rule of law, which requires predictability and certainty in government’s dealings with the public.”

168. The Supreme Court in Communications Commission of Kenya & 5 others v Royal Media Services Limited & 5 others [2014] eKLR, made the following observations: -

“(263) “Legitimate expectation” is a doctrine well recognized within the realm of administrative law, as is clear from the English case, *In re Westminster City Council*, [1986] A.C. 668 at 692 (Lord Bridge):

“...the courts have developed a relatively novel doctrine in public law that a duty of consultation may arise from a legitimate expectation of consultation aroused either by a promise or by an established practice of consultation”.

(264) In proceedings for judicial review, legitimate expectation applies the principles of fairness and reasonableness, to the situation in which a person has an expectation, or interest in a public body retaining a long-standing practice, or keeping a promise.

(265) An instance of legitimate expectation would arise when a body, by representation or by past practice, has aroused an expectation that is within its power to fulfil. A party that seeks to rely on the doctrine of legitimate expectation, has to show that it has locus standi to make a claim on the basis of legitimate expectation.

(266) Wade and Forsyth in their work, *Administrative Law*, 10th ed (pages 446-448), discuss the relevant legal principles on legitimacy of an expectation. For an expectation to be legitimate, it must be founded upon a promise or practice by the public authority, that is said to be bound to fulfil the expectation. Citing the House of Lord’s decision in *R. v. DPP ex p. Kebilene* [1999]



3 WLR 972(HL), the learned authors observe that a statement made by a Minister cannot found an expectation that an independent officer will act in a particular way. They cited the case, *R. v. Secretary of State for Education and Employment, ex p. Begbie* [2000] 1 WLR 1115 (CA), where the Court of Appeal held that an election promise made by a Shadow Minister did not bind the responsible Minister after a change of government. The authors cite the House of Lord's decision in *R. v. DPP ex p. Kebilene*, for the principle that clear statutory words override any expectation howsoever founded.

(268) An illuminating consideration of the concept of "legitimate expectation" is found in the South African case, *South African Veterinary Council v. Szymanski* 2003(4) S.A. 42 (SCA) at [paragraph 28]: the Court held as follows:

"The law does not protect every expectation but only those which are 'legitimate'. The requirements for legitimacy of the expectation include the following:

- (i) The representation underlying the expectation must be 'clear, unambiguous and devoid of relevant qualification': De Smith, Woolf and Jowell (op cit [Judicial Review of Administrative Action 5th ed] at 425 para 8-055). The requirement is a sensible one. It accords with the principle of fairness in public administration, fairness both to the administration and the subject. It protects public officials against the risk that their unwitting ambiguous statements may create legitimate expectations. It is also not unfair to those who choose to rely on such statements. It is always open to them to seek clarification before they do so, failing which they act at their peril.
- (ii) The expectation must be reasonable: *Administrator, Transvaal v. Traub* (supra [1989 (4) SA 731 (A)] at 756I - 757B); De Smith, Woolf and Jowell (supra at 417 para 8-037).
- (iii) The representation must have been induced by the decision-maker: De Smith, Woolf and Jowell (op cit at 422 para 8-050); *Attorney-General of Hong Kong v. Ng Yuen Shiu* [1983] 2 All ER 346 (PC) at 350h - j.
- (iii) The representation must be one which it was competent and lawful for the decision-maker to make without which the reliance cannot be legitimate: *Hauptfleisch v. Caledon Divisional Council* 1963 (4) SA 53 (C) at 59E - G."

(269) This was also referred to with approval in *Walele v. City of Cape Town and Others*; 2008 (6) S.A 129 (C.C.) paragraph 41.

(269) The emerging principles may be succinctly set out as follows:



- a. there must be an express, clear and unambiguous promise given by a public authority;
- b. the expectation itself must be reasonable;
- c. the representation must be one which it was competent and lawful for the decision-makers to make; and
- (d) there cannot be a legitimate expectation against clear provisions of the law or *the Constitution*.”

169. In view of the authorities hereinabove and applying the facts of this matter, we are persuaded on a balance of probabilities that there is a legitimate expectation by the original 2,222 members contained in the Adjudication Register completed on the 1st December 1982.

170. It therefore goes without saying that the original Adjudication Register completed on the 1st December 1982 should proceed to finality by determining the pending 12 objections and thereafter the suit property be sub-divided in accordance to the demarcation maps contained therein.

171. For avoidance of doubt, the 2,222 persons contained in the Adjudication Register completed on the 1st December 1982 are deemed to be tenants in common of the entire suit property known as Ntulele Adjudication Section.

Issue No. 4-what Reliefs Should this Court Grant in the Amended Originating Summons.

172. In essence therefore, the Court hereby grants prayers no. 2, 3,4,5 and 28 as follows: -

2. A declaration that the applicants are entitled, under both the Registered *Land Act*, and *Land Registration Act*, 2012 to be registered as proprietors of their share of the 56,000 acres parcel of land, comprised in the Ntulele Adjudication Section.
3. A declaration that the applicants along with the other 2216 persons appearing in the adjudication register of Ntulele Adjudication Section are tenants in common in respect of the same equal shares.
4. A declaration that all the persons whose names appear in the adjudication register of Ntulele Adjudication Section are entitled to equal shares to the parcel of land comprised in the said Ntulele Adjudication Section.
5. A declaration that all the 2222 persons whose names appear in the adjudication register of the Ntulele Adjudication Section are tenants in common in respect of the parcel comprised in the said Ntulele Adjudication Section and none can neither turn the other out of the same or utilize more than his share of the same; and
28. An order that the land comprised of the Ntulele Adjudication Section be partitioned/divided equally amongst the 2222 members of the Ildamat, Keekonyokie, and Purko clans whose names appear in the adjudication register.

Issue No. 5-Who Bears the Costs of this Proceedings.

173. In view of the fact that the Amended Originating Summons has merit, the Applicants are entitled to costs.

DATED, SIGNED & DELIVERED ON THIS this 24th day of MAY, 2024.



HON. MBOGO C.G.

.....

JUDGE

HON. GICHERU MAXWELL

.....

JUDGE

HON. EMMANUEL WASHE

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of: -

Mr. Meyoki Pere – Court Assistant

Mr. Ndung'u holding brief for Dr. Kamau Kuria for the Applicants

Ms. Mbatiany holding brief for Mr. Motari for the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th, 8th and 11th Respondents

Mr. Rabut for the 6th to 9th Interested Parties

