



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: MARAGA, MUSINGA & MURGOR, J.J.A.)

CIVIL APPEAL NO. 29 OF 2014

BETWEEN

PETER TOMITO KORINKO1ST APPELLANT

JOSEPH S. KETERE2ND APPELLANT

MICHAEL O. KIRUSUA3RD APPELLANT

AND

KORINKO N. NKOLIAI1ST RESPONDENT

JONATHAN K. KETERE2ND RESPONDENT

BENARD KETERE3RD RESPONDENT

STEPHEN M. OLOLTULET.....4TH RESPONDENT

DAVID KIRIONKI.....5TH RESPONDENT

SAMSON LIMPAL.....6TH RESPONDENT

OLE NANYUKIE KITIAPI.....7TH RESPONDENT

LESHAN KUKUU.....8TH RESPONDENT

SAMSON LALAMYO.....9TH RESPONDENT

OLOELEBOI KAIKAI.....10TH RESPONDENT

OLOMISMIS GROUP RANCH.....11TH RESPONDENT

THE DISTRICT LANDS REGISTRAR,

TRANS-MARA.....12TH RESPONDENT

(An Appeal from a Ruling of the High Court of Kenya at Kisii,

(Environment & Land Court), (Okong'o, J.)

dated 4th April, 2014

in

(H.C.C. ELC. NO. 249 OF 2013)

JUDGMENT OF THE COURT

This is an appeal from an interlocutory order refusing to grant the appellants an injunction pending the hearing of the suit in the Environment and Land Court at Kisii. That suit has not even been fixed for hearing.

We are told the dispute relates to the ownership and distribution among members of Olomismis Group Ranch of a parcel of land measuring approximately 9,640 hectares. The number of people claiming a share of the land we are told is about 1700.

The claim in the plaint includes complainants that some members of the Group Ranch have not been given any portion of the land; some have been given more than they deserve; and even non-members have been given shares of the land. The defences deny all those claims which they term baseless.

The hearing and determination of this appeal will therefore not resolve the dispute at hand. In the circumstances, and after consultation with counsel for the parties and a few of their clients' representatives in court, save for the issue of costs which we will deal with at the end of this judgment, we make the following orders by consent.

1. Pending the hearing and final determination of Kisii Environment and Land Case No. 249 of 2013, the status quo obtaining as at the date hereof in respect of the parcel of land formerly known Transmara/Olomisimis/1 and or any resultant titles arising from its subdivision shall be maintained.

2. The status quo referred to in No. 1 above means and includes,

(a) No further sales, leases or transfers of the said resultant title or issue of any further titles shall be undertaken by the members or officials of the Group Ranch.

(b) No encroachment or interference with the current occupation of the resultant titles shall be done.

(c) All occupants of the land and/or the resultant titles shall remain where they are as of today and there will be no admission of any new members on to the land.

3. We direct the parties to take urgent steps to have Kisii Environment and Land Case No. 249 of 2013 heard on priority basis and determined within six months.

4. Parties are hereby granted liberty to apply.

5. As regards costs of the appeal, which the parties have not agreed upon, considering the nature of this matter and that the orders herein have been issued largely at the instance of the court, in the spirit of Article 159(2) (C) of the Constitution, we order that each party bears its own costs of this appeal.

Dated and delivered at Kisumu this 14th day of October, 2015.

D.K. MARAGA

.....

JUDGE OF APPEAL

D.K. MUSINGA

.....

JUDGE OF APPEAL

A.K. MURGOR

.....

JUDGE OF APPEAL

I certify that this is a true copy
of the original.

DEPUTY REGISTRAR