



**Elangata-Ewuas Group Ranch (Suing through its Registered Group Ranch Representative Officials) v County Government of Kajiado & 2 others (Environment & Land Case 443 A of 2017) [2024] KEELC 4189 (KLR) (13 May 2024) (Judgment)**

Neutral citation: [2024] KEELC 4189 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 443 A OF 2017**

**MN GICHERU, J**

**MAY 13, 2024**

**BETWEEN**

**ELANGATA-EWUAS GROUP RANCH (SUING THROUGH ITS REGISTERED GROUP RANCH REPRESENTATIVE OFFICIALS) ..... PLAINTIFF**

**AND**

**COUNTY GOVERNMENT OF KAJIADO ..... 1<sup>ST</sup> DEFENDANT**

**COUNTY OF KAJIADO LAND SURVEYOR ..... 2<sup>ND</sup> DEFENDANT**

**LAND REGISTRAR, KAJIADO ..... 3<sup>RD</sup> DEFENDANT**

**JUDGMENT**

1. The plaintiff prays for the following reliefs against the defendants.
  1. That a declaration that the Registered Group Ranch Representatives or Committee of Elangata Wuas Group Ranch are the only persons that have the mandate, are under a duty and responsible to hold any such asset and or property of the said group ranch and to exercise their powers as such, for preparing a plan for the development of the group ranch common areas, in particular all those parcels of land namely Kajiado/Elangata-Wuas/390, 774, 776, 780 and 783 – 9 respectively and to implement such plan in consultation with the Land Adjudication Officer and the 1<sup>st</sup> defendant’s County Planner on behalf of and for the collective benefit of all members of the group ranch.
  2. That the 2<sup>nd</sup> and 3<sup>rd</sup> defendants be and are hereby directed that the purported amendments on the Cadastral Map (Registry Index Map) issued on 25/7/2014 of LR Kajiado/Elangata-Wuas/1 and more in particular that shows the following purported amendments; - Key T.c Trading Centre; P.sc Primary School; W.p Water Point; Cc Community Conservancy; A. St



Air Strip; S.ch. School And W.I. Wetland be revoked and all consequential restrictions arising as a result of the said purported amendment such as appearing as:- Reserved for;-

- a. T.C. on LR 773
  - b. Olpirikata Trading Centre on LR 774
  - c. T. C/S. CH on LR 776
  - d. T.C. on LR 777
  - e. T.C. on LR 778
  - f. W.P. on LR 779
  - g. Iloshon Primary School and Trading Centre on LR 780
  - h. CC and A. ST or LR 781 and 782
  - i. Iyarat Trading Centre on LR 783
  - j. Enchoro Esenteu Primary School on LR 785.
  - k. T.C. and P.SC on LR 786.
  - l. Inandot Trading Centre and Primary School on LR. 787
  - m. Intakii Trading Centre and Primary School on LR 788.
  - n. Isinya Omelook (CC) on LR. 789
  - o. Singiraine Community Water Pan on LR 791.
  - p. Oololainyamok Water Pan on LR 793
  - q. Public Utility –Nkompok-Ooonkanak Water Pan on LR 794, be removed and cancelled forthwith.
3. That the 1<sup>st</sup> defendant officials, governor, deputy governor, members of the county Assembly, speaker, clerk, executive County Secretaries, agents, servants, nominees and or such persons that may derive instructions from them be and are hereby prohibited from interfering with all that registered community land known as Kajiado/Elangata-Wuas/1 and all its subsequent subdivisions to the respective individual members of the group ranch and the identified common areas of interest in particular LR Kajiado/Elangata-Wuas/390, 774, 776, 780 and 783 – 9 respectively, suit land and resultant parcels.
  4. That the same officials mentioned on No. (3) above and are hereby further prohibited from interfering with the statutory duties of or intimidating the County Physical Planner/officials, County Environment and Natural Resources Executive Secretary/officials, County Land Surveyors/officials and the Land Registrar, Kajiado/officials, while dealing with the matters touching on all the suit land and resultant parcels.
  5. That the 2<sup>nd</sup> and 3<sup>rd</sup> defendants be and are hereby directed in the exercise of implementing the development plan of LR 786 to finalize the remaining registration of the approved areas and any restriction thereof be removed and cancelled.
  6. That the 1<sup>st</sup> defendant’s County Planner and his officials be and are hereby directed to visit LR Nos 390, 774, 776, 780, 783 – 9 together with the registered officials/committee of the said



group ranch for the purposes of planning and approving the development plans on behalf of and for the collective benefit of all the members of the group ranch.

7. That the costs of this application be provided for and such other and/or further reliefs be granted as this court may deem fit and just to grant in the unique circumstances of this matter. This is as per the originating summons dated 2/3/2015.
2. The plaintiff's case is as follows. It was the registered owner of LR Kajiado/Elangata – Wuas/1 which measured 59, 687 hectares. The group ranch had 568 registered members. Each member was allocated approximately 109.3 (275 acres) hectares. This allocation of 275 acres to each member was done pursuant to an order of the court issued on 19/5/2005 in Civil Case No. 385 of 2002 at the High Court at Nairobi. The ranch was subdivided into 489 equal parcels and eleven (11) common areas. The eleven common areas were parcels No. Kajiado/Elangata-Wuas/390, 774, 776, 780 and 783 – 9 respectively. The survey and subdivision of the group ranch was a long and tedious exercise. It was successfully concluded and all group ranch members issued with their title deeds. Title deeds were also issued for the common areas.
3. In the year 2013, the group ranch committee prepared a development plan for the LR 786 which is one of the common areas. The said development plan was approved after complying with all the requisite procedure. Suddenly, the 1<sup>st</sup> defendant interfered and stopped the process of issuance of the title deeds and the implementation of the development plan. Further it coerced the 2<sup>nd</sup> and 3<sup>rd</sup> defendant's officials to issue and transfer the land to itself as the purported guardian of trust land.
4. Further to the above, the defendant secretly and without the consent of the plaintiff purported to make amendments to the original cadastral map of the original group ranch land Elangata-Wuas/1. This has interfered with the power of the group ranch representatives to deal with the common areas for the benefit of the members of the group ranch. The said amendments are contained in the prayer Number 2 above.
5. It is the plaintiff's contention that the defendants' action is unlawful and it is the reason why this suit was filed.
6. In support of its case, the plaintiff filed the following evidence.
  - a. Copy of letter dated 26/9/1997 and written by the Director of Land Adjudication and Settlement.
  - b. Copy of certificate of incorporation of Elangata – Wuas Group Ranch dated 26/9/1997.
  - c. Copy of minutes of a meeting held on 29/4/1999.
  - d. Copy of agreement for planning, surveying and processing of title deeds dated 24/8/2001.
  - e. Copies of orders issued by the High Court Case No. 385 of 2002 in Nairobi.
  - f. Copy of letter of consent dated 11/5/2005 to subdivide LR Elangata – Wuas/1 into 514 parcels.
  - g. Copies of official receipts dated 17/5/2005 and 24/6/2005
  - h. Copy of area list.
  - i. Copy of original Cadastral Map (R.I.M.) of LR Elangata - Wuas/1.
  - j. Copies of certificates of official search for LR Numbers 390, 774, 780 and 783 – 9 dated 31/7/2014.



- k. Copies of certificate of official search, approved application and letter of consent dated 30/4/2013, mutation form and other relevant forms for the subdivision of the LR 786 in compliance with the approved plan.
  - l. Copy of letter by the first defendant dated 11/7/2014.
  - m. Copy of the amended Cadastral Map.
  - n. Copies of certificates of official search for LR 773, 777, 778, 779, 791, 793 and 794.
  - o. Copy of letter dated 23/7/2014 and another dated 28/7/2014.
7. The plaintiff's suit seeks the determination of the following questions.
- a. Whether the defendants collectively and severally have the mandate to interfere with a registered community land and more in particular, such common areas which the plaintiff's representatives have earmarked for the benefit of its members.
  - b. Whether the defendants collectively and severally have any mandate to interfere with and make such amendments over an original Cadastral Map (R.I.M) of a registered community land without the consent of the plaintiff's group representatives and or approval of the Land Adjudication Officer.
  - c. Whether the 3<sup>rd</sup> defendant has any right and/or mandate to interfere and or make restrictions and confer to such amendments over a registered community land, whilst the purported amendments were neither approved by the land Adjudication officer nor were with the consent and or fair hearing of the Group Representatives.
8. The summons is opposed by the 1<sup>st</sup> defendant and its County Secretary in the year 2016, Dr. Kennedy Kerei has sworn a replying affidavit dated 23/8/2016 in which he replies as follows.
- Firstly, the 1<sup>st</sup> defendant has legal mandate to interfere, in terms of the management, control and supervision of registered community land and particularly the common areas set aside for purposes of public utilities such as markets, hospitals, cemeteries, schools, public roads and trading centres.
- Secondly, the 1<sup>st</sup> defendant has legal mandate to cause for any amendments over the original cadastral map but with approval of the National Land Commission and the representatives of the group ranches.
- Thirdly, the County Government has powers of Land Planning and Management under Sections 102 to 110 of the *County Government Act*.
- Fourthly, under the *Land (Group Representatives Act)*, Cap 287), it is the secretary and not the chairman to handle all correspondence of the group ranch.
- Fifthly, the plaintiff has failed to provide a proper register of all the 568 bona fide registered members of the plaintiff as required under Section 17 of the *Act*.
- Sixthly, the subdivision of the plaintiff did not comply with the law because public utilities were not provided for, the requisite quorum of 2/3 of the members was not met, no consent of the Land Control Board was sought or obtained, social amenities were not provided for and the group ranch was not properly dissolved.
- Seventhly, all the public utilities ought to have been handed over to the 1<sup>st</sup> defendant to be managed by the 1<sup>st</sup> defendant as required by the law.



Eighthly, the 11 title deeds were registered in the names of influential individuals for their own personal gain and enrichment due to greed and selfishness.

Ninthly, the group ranch officials colluded with land registrars and got registered irregularly and illegally. In essence, they created 22 group ranches from one group ranch. The above irregularities and acts of fraud caused demonstrations and public outcry.

Tenthly, the illegally issued title deeds were stopped and obliterated as the Land Registrar is forbidden by law from registering any instrument disposing of rights or interest in the Community Land held by the plaintiff without following the law.

Finally, the plaintiff is operating contrary to the law because they have no records of money received from the members and how it has been used, it has no written constitution to guide its operations and its officials are interfering with the management of its affairs. In support of its case, the 1<sup>st</sup> defendant filed a copy of the letter dated 11/7/2014 which had also been filed as part of the plaintiff's documents.

9. At the trial on 16/11/2023, only the plaintiff's witness and counsel turned up. There was no appearance by the 1<sup>st</sup> defendant or counsel. The plaintiff's witness testified on oath and adopted the affidavit in support of the summons and the documents.
10. Counsel for the parties filed written submissions dated 29/1/2024 and 20/2/2024 by the set timeline of 31/3/2024. In the 1<sup>st</sup> defendant's written submissions, a new issue which the plaintiff did not identify has been introduced. It reads as follows:-

Whether the procedure leading to the subdivision and transfer of the group ranch was conducted as per the law.

11. I have carefully considered the summons in its entirety including the affidavits, annexures, testimony at the trial, written submissions by Learned Counsel and the law cited therein. I make the following findings on the four issues raised by the Learned Counsel for both sides.

On the first issue, I find that the defendants have no mandate to interfere with registered community land. Under Article 63(3) of the [Constitution](#) it is provided as follows;-

“ Any unregistered community land shall be held in trust by County Governments on behalf of the communities for which it is held”.

Since none of the plaintiff's land is unregistered, the 1<sup>st</sup> defendant does not come in. It would only have come in if there was any unregistered land. There is no legal requirement that public utilities in a Group Ranch be registered in the name of the [County Government](#). This is because under Section 4(3) of the [Community Land Act](#), (Act No. 27 of 2016) it is provided as follows.

“ Community Land shall vest in the community and may be held under any of the following tenure system –

- a. Customary
- b. Freehold
- c. Leasehold, and
- d. Such other tenure system recognized under this Act or other written law”.



It follows from the above provision that there is nothing wrong with all the land belonging to the plaintiff being held under freehold tenure as it currently is.

12. On the second issue, I find that the defendants had no authority at all to amend the map of the registered land without the consent of the plaintiff. The only other route was through a suit in which the plaintiff was a party. The defendants could not stop and obliterate title deeds lawfully issued to the plaintiff.
13. On the third of the plaintiff's question, I find that the third defendant was within his mandate to lawfully register a restriction. That mandate is donated by Section 76 of the [Land Registration Act](#) ( Act No. 3 of 2012). The land registrar cannot be faulted for this.
14. On the extra issue raised by the 1<sup>st</sup> defendant, I find that no evidence has been tendered in these proceedings to show that there was anything wrong with the subdivision of the group ranch land. Even though I find that there is discrepancy as to the number of members of the Group Ranch according to paragraphs 2 and 4 of the affidavit by Joel Kanchori Ole Sigeen, no evidence from the defendants has been adduced. The discrepancy is in the number of registered members being 568 as per paragraph 2 and the land being subdivided into 489 equal parcels as per paragraph 4 of the affidavit. If that were the case it would mean that 79 registered members of the group ranch did not get land.
15. It is not disputed by the plaintiff that the 1<sup>st</sup> defendant has mandate under the law to approve any application for development and that is why in prayer 1 it is pleaded as follows.

“... and to implement such plan in consultation with the ... 1<sup>st</sup> defendant's County Planner...”

16. This matter was commenced by way of originating summons. Essentially, a dispute commenced in such a manner as this should concern matters where it is unlikely that substantial dispute of facts will arise. The replying affidavit by the 1<sup>st</sup> defendant has raised ten issues most of which are not supported by evidence. This means that they are disputed and not proved. It was incumbent upon the 1<sup>st</sup> defendant to file a suit by way of plaint to plead and prove those issues. The replying affidavit filed falls short of what is expected. It does not suffice.
17. Having made the above findings, I now come to the prayers that I find proved by the plaintiff which ought to be allowed.

Firstly, prayer 5 cannot be allowed because both the 2<sup>nd</sup> and 3<sup>rd</sup> defendants have power under the law to perform their duties independently and without any direction or control by any authority. The Land Registrar has power under Section 14 of the [Land Registration Act](#) which cannot be wished away. The same with the Government Surveyor. In the same vein, the 2<sup>nd</sup> and 3<sup>rd</sup> defendants cannot be directed when and how to approve the development plans. They have discretion on how to perform their duties. I find that it is only prayers 1, 2, 3,4 and 7 that have been proved.

Accordingly, I enter judgment for the plaintiff against the defendants jointly and severally in terms of those prayers only.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 13<sup>TH</sup> DAY OF MAY 2024.**

**M.N. GICHERU**

**JUDGE**

