



**Director Land Adjudication & Settlement, Narok & 2 others v Koirak & 8 others;  
Loonkushu & 9 others (Interested Parties) (Environment and Land Miscellaneous  
Application E001 of 2024) [2024] KEELC 4945 (KLR) (24 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4945 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E001 OF 2024  
CG MBOGO, J  
JUNE 24, 2024**

**BETWEEN**

**THE DIRECTOR LAND ADJUDICATION & SETTLEMENT,  
NAROK ..... 1<sup>ST</sup> APPLICANT  
SUB-COUNTY LAND ADJUDICATION OFFICER, NAROK .... 2<sup>ND</sup> APPLICANT  
THE COUNTY COMMISSIONER, NAROK ..... 3<sup>RD</sup> APPLICANT**

**AND**

**JAMES OLOSERIAN KOIRAK ..... 1<sup>ST</sup> RESPONDENT  
KESWE OLE KARENKA ..... 2<sup>ND</sup> RESPONDENT  
NKONYONYO OLE KISEENTU ..... 3<sup>RD</sup> RESPONDENT  
LEMPOYIO LEKISHON ..... 4<sup>TH</sup> RESPONDENT  
DANIEL OLIRUMBE SEKUT ..... 5<sup>TH</sup> RESPONDENT  
SWAKEI ILE YAILE ..... 6<sup>TH</sup> RESPONDENT  
NTIKISE OLE KUYIONI ..... 7<sup>TH</sup> RESPONDENT  
NGOOMBE OLE NKURUMWA ..... 8<sup>TH</sup> RESPONDENT  
NAROOSURA GROUP RANCH ..... 9<sup>TH</sup> RESPONDENT**

**AND**

**SARUNI OLE LOONKUSHU ..... INTERESTED PARTY  
KIPRON OLE SIMPAI ..... INTERESTED PARTY  
DAVIES SANARE NEILLIANG ..... INTERESTED PARTY  
JOSEPH KITIREI SARITE ..... INTERESTED PARTY**



DALTON OLTET'TIA LILA .....	INTERESTED PARTY
TARIMO OLE KITALO .....	INTERESTED PARTY
KIJUKU OLE KESIER .....	INTERESTED PARTY
KANTAI OLE KOITUMET .....	INTERESTED PARTY
KONENE OLE NAIJI .....	INTERESTED PARTY
WILLIAM KALEKU .....	INTERESTED PARTY

## RULING

1. Before this court for determination is the Notice of Motion Application dated 15<sup>th</sup> January, 2024 and the Notice of Preliminary Objection dated 18<sup>th</sup> March, 2024 respectively.
2. The Notice of Motion Application dated 15<sup>th</sup> January, 2024 is filed by the applicants herein, and it is expressed to be brought under Order 40 Rule 1, 2 & 3(1), (2) and (3) of the Civil Procedure Rules, and Section 3A of the Civil Procedure Act seeking the following orders: -
  1. **Spent.**
  2. **Spent.**
  3. That the honourable court be pleased to grant temporary injunction against the defendants/ respondents, stopping them from subdividing, selling and distributing the parcel of land known as Narok/ Cis-Mara Naroosura/1 measuring approximately 62,336 hectares, (herein after referred to as the 'suit property') pending the hearing and determination of the substantive issues raised by the applicant's application.
  4. That the office of the Director, Land Adjudication and Settlement be allowed to peacefully resolve the land disputes within the Naroosura Group Ranch pursuant to Section 10 (1) of the Land Adjudication Act.
  5. That the costs of and incidental to this application be borne by the respondents herein.
3. The application is premised on the grounds inter alia that there are land disputes within Naroosura Group Ranch which the court had directed that the Land Adjudication Officer to resolve pursuant to Section 10 (1) of the Land Adjudication Act, and the respondents' actions to subdivide, sell and distribute the suit property are a violation of the constitutional rights of the majority of members due to the pending disputes.
4. The application is supported by the affidavit of Josephine N. Njoroge, the Sub-County Land Adjudication Officer sworn on even date. The 1<sup>st</sup> applicant deposed that Naroosura Group Ranch was issued with a title deed on 4<sup>th</sup> October, 1978 with an approximate acreage of 62,336 hectares. She deposed that the subdivision of the group ranch was to be carried out in two phases and that the 1<sup>st</sup> phase resulted in 1,742 parcels. She further deposed that some group of members were dissatisfied with how the subdivision exercise was carried out and they filed ELC Petition No. 4 of 2018. That in response to the petition, the 5<sup>th</sup> to 15<sup>th</sup> respondents filed a notice of preliminary objection contending that the petitioners did not have a consent from the Land Adjudication Officer to file the petition leaving the court without jurisdiction to hear the same.



5. The 1<sup>st</sup> applicant deposed that in a ruling delivered on 9<sup>th</sup> February, 2022, the court upheld the objection and stated that it lacked jurisdiction to handle that case. She deposed that the Land Adjudication Officer complied with the court's direction by holding four dispute resolution meetings between the petitioners, respondents and other stakeholders and gave a resolution on the way forward on how to resolve the disputes in the group ranch. It was deposed that the 1<sup>st</sup> applicant was again served with another court order in ELCC No. 5 of 2023 dated 14<sup>th</sup> March, 2023 stopping any further meeting and in a ruling delivered on 26<sup>th</sup> July, 2023, the court upheld the objection and stated that it did not have jurisdiction.
6. The 1<sup>st</sup> applicant further deposed that the ruling delivered on 26<sup>th</sup> July, 2023, vacated the orders issued on 14<sup>th</sup> March, 2023 which had stopped the group ranch from holding any further meetings. It was also deposed that the respondents continue to sub-divide and distribute the suit property despite a letter dated 2<sup>nd</sup> March, 2023, informing them to put on hold any subdivision activities. The 1<sup>st</sup> Applicant went on to depose that they now seek injunction orders to enable them resolve the land disputes within the group ranch. It was also deposed that the actions of the respondents may result in disputes escalating to unmanageable levels which is in violation of the constitutional rights of other group ranch members.
7. The 9<sup>th</sup> respondent filed a notice of preliminary objection dated 18<sup>th</sup> March, 2024 challenging the application on the following grounds: -
  1. That this honourable court has no jurisdiction to hear and determine this matter.
  2. That the issues raised in this application are the same issues that were raised and arbitrated upon in Narok Environment and Land Court Case No. E005 of 2023 hence this suit is res judicata.
  3. That the issues raised in this suit cannot be arbitrated upon in an application, hence a proper claim should have been filed, which is missing, hence the application is incompetently before this honourable court.
  4. That the orders sought are deliberately meant to circumvent the ruling and orders of the court given vide Narok Environment and Land Court Case No. E005 of 2023.
8. The respondents filed their response to the application vide the replying affidavit of the 1<sup>st</sup> respondent sworn on 18<sup>th</sup> March, 2024. The 1<sup>st</sup> respondent deposed that this court has no jurisdiction to entertain the application, and that the said affidavit is sworn by a public officer who is expected to take a neutral role in such matters. He further deposed that the public officer is biased and harbours an ulterior motive aimed at championing the interests of the interested parties herein. He deposed that the 1<sup>st</sup> applicant has failed to demonstrate through evidence the nature of disputes or complaints of those alleged disputes.
9. The 1<sup>st</sup> respondent further deposed that since the striking out of Petition No. 4 of 2018, the working committee led by Joseph Kasale, the Chairman, more than 2000 title deeds have been issued. Further, it was deposed that the group ranch having been dissolved on the members unanimous decision, the members put in place the current committee to spearhead and oversee the process of sub-division and issuance of individual titles to the members. He deposed that some of the interested parties' interest is to be a part of the working committee for selfish gains. It was also deposed that the purported disputes contained in the dismissed petition have been overtaken by events, and no new disputes have been filed before the Land Adjudication & Settlement Officer.
10. The 1<sup>st</sup> respondent deposed that all the interested parties herein have obtained individual title deeds for their respective shares, and that the process the 1<sup>st</sup> applicant seeks to introduce would only lead to



a further, yet unnecessary delay in the realisation of the members dreams. He deposed that there is no longer any leadership dispute except that the interested parties have changed the goal post, and now want to be part of the elected committee. He deposed that no single member of the group ranch has raised any issue relating to sub-division or issuance of title deed, and in the joint meetings, members agreed in one accord to have the process continue smoothly without any interference.

11. The 1<sup>st</sup> applicant filed a further affidavit sworn on 18<sup>th</sup> June, 2024. The 1<sup>st</sup> applicant while reiterating the averments contained in her supporting affidavit, deposed that the respondents mentioned are not group representatives of the group ranch as per the certificate of incorporation number 0263 dated 21<sup>st</sup> February, 2014, and that they are not aware that the issues raised herein concerning the subject matter was heard in Petition No. 4 of 2018. She further deposed that in view of the issues involved in this matter, and the fact that the group ranch members are more than 5000, they are entitled to be informed of any development pertaining to the group ranch. It was also deposed that the respondents herein have not come to court with clean hands because they are not group representatives. She went on to depose that the issues between the respondents and the interested parties have never been canvassed and determined by any court of competent jurisdiction.
12. She deposed that the application is properly before this court pursuant to Section 4 (2) of the [Land Adjudication Act](#), and that among the disputes they intend to resolve include, and are not limited to the ones raised in Petition No. 4 of 2018 as they have never been determined. She deposed that the respondents have not disclosed full material information, and details of the interested parties who have expressed their dissatisfaction on how the interested parties have conducted themselves with the working committee.
13. The 1<sup>st</sup> applicant further deposed that the fact that the group ranch has processed 2000 titles does not imply that the issues, and disputes in the group ranch stand resolved. She also deposed that the fact that the group ranch has been dissolved does not mean that any disputes or issues that arise in the group ranch should not and cannot be resolved or addressed. She deposed that the respondents have not shown the issues that have been resolved and those that haven't, which means that there are pending disputes to be resolved, and it is in the public interest they be logically concluded. She deposed that by dint of Section 10 of the [Land Adjudication Act](#), the Land Adjudication Officer is conferred with the exclusive original jurisdiction of resolving disputes arising from the Act.
14. Further, she deposed that the efforts to resolve the disputes within the group ranch were at the tail end of the process, and it would not take much time to conclude the process of resolving the disputes including leadership wrangles. She deposed that whereas leadership wrangles were amicably resolved during the meetings, and that the pending matter was to put the same information to the group members for their concurrence, the 1<sup>st</sup> applicant put the respondents to strict proof. She deposed that there are several people who lodged complaints as per the letter dated 7<sup>th</sup> August, 2023 which indicates there are issues regarding subdivision and issuance of title deeds.
15. The 3<sup>rd</sup> interested party filed his affidavit sworn on 24<sup>th</sup> March, 2024. The 3<sup>rd</sup> interested party deposed that a lot of activities have occurred in relation to survey work, sub-division and issuance of title deeds within the group ranch. He deposed that the petitioners who are the interested parties have always been motivated by personal and political interests, and that majority of the members of the group ranch are in support of the ongoing process, and most of them including the very interested parties have received their title deeds.
16. The 3<sup>rd</sup> interested party further deposed that in the recent members meeting, it was agreed that the working committee remains as it is, and the interested parties who were the petitioners in ELC Petition No. 4 of 2018 to act as the supervisory committee. He deposed that the 1<sup>st</sup> applicant has taken sides



in this matter championing the interested parties' personal and business interests. He deposed that having already acquired his 27 acres share of the suit property, he no longer has any more interest left in the matter except to see that all members eventually get their equal shares.

17. The 3<sup>rd</sup> interested party deposed that he has sworn his affidavit to withdraw himself from the matter, and to confirm that his interest is no longer similar to that of the other interested parties.
18. The 6<sup>th</sup> interested party filed his affidavit sworn on 24<sup>th</sup> March, 2024. The averments contained in his affidavit are similar to that which is contained in the affidavit sworn by the 3<sup>rd</sup> interested party. There would be no need of rehashing the same, save to note the contents therein.
19. The notice of motion and the preliminary objection were canvassed by way of written submissions. The applicants filed their written submissions dated 18<sup>th</sup> June, 2024, where they raised three issues for determination as listed below: -
  - i. Whether this application is res judicata and if so whether this court has jurisdiction to hear and determine the same.
  - ii. Whether this application can be arbitrated upon in an application.
  - iii. Whether the orders sought in this application are merited and should be granted.
20. On the first issue, the applicants while relying on the case of John Florence Maritime Services Limited & Another versus Cabinet Secretary for Transport & Infrastructure & 3 Others [2021] eKLR submitted that the instant matter is not res judicata since there was no judgment delivered in ELC Case No. E005 of 2023, and that the ruling dealt with an order striking out the suit for want of jurisdiction. They submitted that the 1<sup>st</sup> and 2<sup>nd</sup> applicants are mandated to adjudicate on land disputes pursuant to Section 10 (1) of the [Land Adjudication Act](#).
21. The applicants further submitted that the preliminary objection lacks merit for the reason that in ELC Case No. E005 of 2023, the court referred the matter back to the adjudication officer, who has the mandate pursuant to Section 10 of the [Land Adjudication Act](#) to handle.
22. On the second issue, the applicants submitted that since there are no disputed facts to be tried in this application, there was no compelling reason to file a substantive or main suit.
23. On the third issue, the applicants submitted that there are issues which require to be determined before the distribution, subdivision and selling of the suit property, and if the orders sought are not granted, there are people who will suffer prejudice. It was also submitted that there are unresolved leadership wrangles within the group ranch which may escalate to an unmanageable crisis if the same remain unresolved. Finally, it was submitted that since these are matters of public interest, this court should allow the application, and protect the adjudication process to proceed to conclusion before the subdivision, distribution and selling of the suit property takes place.
24. The interested parties filed their written submissions dated 6<sup>th</sup> June, 2024 where they raised two issues for determination as listed below: -
  - a. Whether the application is res judicata, and if so, whether the court lacks jurisdiction to determine this application.
  - b. Whether the application is merited and ought to be allowed as prayed.



25. On the first issue, the interested parties submitted that the preliminary objection has no merit for the reason that the present application seeks to secure the court's intervention to stop the ongoing frustration of the adjudication process by the respondents, and that it should be recalled that the court in striking out the respondents' suit, reaffirmed that the mandate of adjudication lied with the applicants.
26. While relying on the case of DSV Silo versus The Owners of Sennar [1985] 2 All ER 104, the interested parties submitted that the present application is not res judicata as the court made no further determination other than declining jurisdiction to arbitrate the disputes. Further, they submitted that the application does not seek the determination to stop any right or interest in land to warrant the institution of a suit by way of a plaint.
27. On the second issue, the interested parties submitted that the orders sought are designed to ensure that the process of adjudication is not defeated by the subdivision and alienation of the suit property. They went on to depose that some of the interested parties and majority of the members of the group ranch have not received their shares due to the illegal subdivision of the group ranch by the respondents. They submitted that there are outstanding issues that require determination in a fair and just manner including grabbing of public utility land, displacement of members, allocation of land to persons who are not members, and unfair and unequal distribution of land yet the members should get equal acreage.
28. The interested parties further submitted that the respondents have blocked them from leadership seats which should be shared on an equal basis, and which are matters for resolution by the applicants. Further, they submitted that if distribution and subdivision is left to continue before issues can be resolved, there will be substantial loss as well as irreparable harm which will affect them as well as the rest of the members of the group ranch. In conclusion, the interested parties submitted that it is the invocation of the doctrine of necessity that the applicants have moved the court seeking the said orders.
29. The respondents did not file their written submissions. Be that as it may, I have considered the application, the notice of preliminary objection, the replies thereof and the written submissions filed by the applicants and the interested parties.
30. Through a miscellaneous application, the applicants herein sought temporary orders stopping any subdivision distribution or selling of the suit property within Naroosura Group Ranch. The applicants in their submissions as well as the interested parties submitted that they saw no need of filing a substantive suit since there is no determination of rights or interest save to stop the subdivision that is taking place to enable them adequately conclude the adjudication process.
31. In challenging the said application, the 9<sup>th</sup> respondent filed a notice of preliminary objection on grounds that the suit is res judicata and thus, the court lacks jurisdiction to hear and determine the application.
32. The application was opposed by the respondents and the 3<sup>rd</sup> and 6<sup>th</sup> interested parties maintained that they have no problem with the working committee and further, that their interests, are no longer similar to that of the rest of the interested parties.
33. In my view the issues for determination by this court are as follows: -
  - i. Whether the notice of preliminary objection has merit.
  - ii. Whether the applicants are entitled to the orders sought in their application.



iii. Who is to bear costs.

34. A Preliminary Objection was described in the *Mukisa Biscuits Manufacturing Co. Ltd versus West End Distributors Ltd (1969) EA 696* to mean: -

per Law, JA

“So far as I am aware, a Preliminary Objection consists of a point of law which has been pleaded, or which arises by clear implication out of pleadings, and which if argued as a preliminary point may dispose of the suit. Examples are an objection to the jurisdiction of the court or a plea of limitation, or a submission that the parties are bound by the contract giving rise to the suit to refer the dispute to arbitration”.

Further Sir Charles Newbold, P stated that: -

“A Preliminary Objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the facts pleaded by the other side are correct. It cannot be raised if any fact had to be ascertained or if what is sought is the exercise of judicial discretion. The improper raising of points by way of Preliminary Objection does not nothing but unnecessarily increase costs and, on occasion, confuse the issue. The improper practice should stop”.

35. This court having made a finding on the description of a preliminary objection, it is not in doubt that a preliminary objection raises pure point of law, which is argued on the assumption that all facts pleaded by the other side are correct. However, it cannot be raised if any facts have to be ascertained from elsewhere or the court is called upon to exercise judicial discretion. In the case of *Quick Enterprises Ltd Vs Kenya Railways Corporation, Kisumu HCCC No.22 of 1999*, the court held that: -

“When preliminary points are raised, they should be capable of disposing the matter preliminarily without the Court having to result to ascertaining the facts from elsewhere apart from looking at the pleadings.”

36. The 9<sup>th</sup> respondent argued that the instant application is res judicata since the issues raised herein are similar and were arbitrated in ELC Case No. E005 of 2023.

37. The doctrine of res judicata is set out in Section 7 of the *Civil Procedure Act*. The doctrine ousts the jurisdiction of a court to try any suit or issue which had been finally determined by a court of competent jurisdiction in a former suit involving the same parties or parties litigating under the same title.

38. A close reading of Section 7 of the Act reveals that for the bar of res judicata to be effectively raised and upheld, the party raising it must satisfy the doctrine’s five essential elements which are stipulated in conjunctive as opposed to disjunctive terms. I place reliance in the case of *Independent Electoral & Boundaries Commission vs Maina Kiai & 5 Others [2017] eKLR* where the Supreme Court stated: -  
“The doctrine will apply only if it is proved that:

- i. The suit or issue raised was directly and substantially in issue in the former suit.
- ii. That the former suit was between the same party or parties under whom they or any of them claim.
- iii. That those parties were litigating under the same title.
- iv. That the issue in question was heard and finally determined in the former suit.



- v. That the court which heard and determined the issue was competent to try both the suit in which the issue was raised and the subsequent suit.”
39. In considering whether the instant application is res judicata, this court will be required to ascertain through the evidence which would defeat the whole purpose of what a preliminary objection constitutes. The evidence where the claim for res judicata is hinged is not contained in this matter and the court will be required to draw inference from that which is outside the pleadings herein, thereby defeating the purpose of a preliminary objection. The notice of preliminary objection filed by the 9<sup>th</sup> respondent is thus dismissed.
40. On the second issue, the applicants are seeking the orders of this court to stop any activity on the suit property, and that they be allowed to resolve the land disputes within the group ranch pursuant to Section 10 (1) of the [Land Adjudication Act](#). I have carefully considered the said application and looking at the prayers sought, and which I find that the applicants may have misunderstood to further seek the same, is that it cannot be determined at this stage.
41. Prayer 3 of the instant application reads as follows: -
- “That the honourable court be pleased to grant temporary injunction against the defendants/ respondents, stopping them from subdividing, selling and distributing the parcel of land known as Narok/ Cis-Mara Naroosura/1 measuring approximately 62,336 hectares, (herein after referred to as the ‘suit property’) pending the hearing and determination of the substantive issues raised by the applicant’s application.”
42. My understanding of the above prayer is that the same was to be considered ex-parte before anything else. The same is now not open for consideration at this stage. The only prayers left for this court to determine is prayer 4 and 5 of the application.
43. Section 10 (1) of the [Land Adjudication Act](#) provides: -
- “The adjudication officer shall have jurisdiction in all claims made under this Act relating to interests in land in the adjudication area, with power to determine any question that needs to be determined in connexion with such claims, and for that purpose he shall be legally competent to administer oaths and to issue summonses, notices or orders requiring the attendance of such persons or the production of such documents as he may consider necessary for the carrying out of the adjudication.”
44. In maintaining its position that it has jurisdiction to hear and determine land disputes within the group ranch, the 1<sup>st</sup> applicant contended that there are issues which remain unresolved where the respondents continue to subdivide, distribute the suit property. That if the actions are allowed to continue, it may escalate to unmanageable levels. The 1<sup>st</sup> to 8<sup>th</sup> respondents in their replying affidavit contended that the 1<sup>st</sup> applicant has taken a position besides being a public officer and together with the interested parties, they seek to pursue their personal interests. The 1<sup>st</sup> to 8<sup>th</sup> respondents argued that the interested parties’ interest is to gain access or join the elected committee for their selfish gain. They further contended that the group ranch having been dissolved, there is a working committee spearheaded by Joseph Kasale, the chairman and that the process of issuing titles is more than 80 % complete.
45. In their further affidavit, the 1<sup>st</sup> applicant argued that there are issues that remain unresolved, including the need to resolve the leadership wrangles in the group ranch. The 1<sup>st</sup> applicant further stated that there are several people who lodged complaints by the letter dated 7<sup>th</sup> August, 2023, signifying unresolved disputes.



46. Having carefully analysed the application, this court is left with doubt as to the authenticity of the claims by the applicants herein. The 1<sup>st</sup> applicant being the Land Adjudication Officer, has the adjudication records of Naroosura Group Ranch which includes all information since the area was declared an adjudication section. It is therefore upon the applicants to show this court what issues remain unresolved as opposed to shifting the burden to the respondents. The applicants also went ahead to state what 'issues' remain unresolved in their written submissions which is unprocedural and which facts cannot be considered in that regard. In other words, the applicants have not discharged the burden of proof as to the complaints and the extent thereof.
47. What is clear to me is that there are leadership wrangles which appear to have been fronted by some of the interested parties with the exception of the 3<sup>rd</sup> and 6<sup>th</sup> interested parties. Without sufficient evidence, this court is not satisfied that the applicants are deserving of the orders sought.
48. Arising from the above, I see no merit in the notice of motion application dated 15<sup>th</sup> January, 2024, the same is hereby dismissed. The notice of preliminary objection dated 18<sup>th</sup> March, 2024 is also dismissed. Each party to bear its own costs. Orders accordingly.

DIVISION -

DATED, SIGNED & DELIVERED VIA EMAIL this 24<sup>TH</sup> day of JUNE, 2024.

**HON. MBOGO C.G.**

**JUDGE**

**24/06/2024.**

8| Page RULING ELC MISC. APPL. NO. E001 OF 2024 DELIVERED VIA EMAIL ON 24<sup>TH</sup> JUNE, 2024.

