



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**  
**CIVIL APPLICATION 124 OF 2005 (UR. 70/2005)**

1. JULIUS KERIKA LEPERES )
2. JAMES ASHIRA KESERI )
3. TUMATEE OLE SAIMIE )
4. JOHN PARKIPAI OLE SUSAINKA )
5. RAPASI OLE PARSIRA )
6. SIMON MATAYIAN OLOIKO )
7. MOSES OLE KASAINI )
8. LOOTU OLE KASAINI)
9. PARSELETO OLE KAMAKEI )
10. KAMAKEI OLE KUYAN )
11. NANDORO OLE PARKESUI )
12. LEKUNDATE OLE MATINKOE)
13. SANKAIRE OLE SUPATI )
14. TIKAKO LEWUASI )
15. SIMON KAITO )
16. RUNKE KALAMA)
17. JACKSON KALAMA KOILEKEN)
18. ERIC RIANTO SUSAIKA )
19. MOSES KANAI KAILOL )
20. MICHAEL MOROMBI TUMAINA ) ..... APPLICANTS

AND

1. NKAMA GROUP RANCH )
2. KEREMPU KAATA )
3. WILLIAM KAYIAA... ).....RESPONDENTS

*(An Application for an injunction from the Ruling and Order of the High Court of Kenya*

*Nairobi (Ransely, J) dated 26<sup>th</sup> May, 2005 In H.C.C.C. No. 8 of 2004)*

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**RULING OF THE COURT**

The twenty applicants who are apparently being led by James Ashira Kesere who appears on the list as the second applicant and who has sworn an affidavit on behalf of the others, are asking us for an order of injunction against the respondents, Nkama Group Ranch, Kerempu Kaata and William Kayiaa. The applicants' notice of motion asking for an injunction is brought pursuant to *Rule 5(2)(b)* of the Court's Rules. The first respondent Nkama Group Ranch is the registered owner of the property known as *L.R. No. Kajiado/Kaputiei South/94* and the first respondent holds that land pursuant to the provisions of the *Land (Group Representatives) Act*, Chapter 287 Laws of Kenya. The second and third respondents are apparently officers of the first respondent. The applicants appear to us to claim that they ought to be registered as members of the first respondent but that the respondents have refused or neglected to so register them. In the meantime, the first respondent is sub-dividing its land with a view to issuing separate titles to the members in its register. If the sub-division is completed and titles issued before the applicants are registered as members, the applicants will lose out, as they will not get any land from the first respondent. So the applicants approached the High Court asking, first for an injunction to restrain the respondents jointly and severally, whether by themselves, their agents or servants from sub-dividing the disputed land and issuing individual title deeds and secondly, an order compelling the respondents to issue to the applicants certificate of membership and register the applicants as members of Nkama Group Ranch. Ransely, J. heard the applicants on these issues. He refused to grant to the applicants any of the orders they sought. The applicants are now before us under *rule 5(2)(b)* of the rules.

Do the applicants have an arguable appeal against the learned Judge's order refusing to grant them an order of injunction?

Bodies such as the first respondent are created by the *Land (Group Representatives) Act*, the Act hereinafter. *Section 28* of the Act is in these terms: -

***“Where a question arises whether a particular person is a member of a group a certificate signed by a majority of the group representatives shall be conclusive of the question:***

***Provided that a person who is aggrieved by the issue of such a certificate may apply to a District Magistrate's court having jurisdiction in the area, to determine the question, and in such a case the determination of the court shall be conclusive.”***

From this section, the jurisdiction to determine who is or who is not a member of a group ranch is first with the majority of the group representatives. They have to sign a certificate stating who is or is not a member. Once they sign that certificate and a party is aggrieved by their decision, the next course of action for such an aggrieved party is to proceed to the court of a District Magistrate exercising jurisdiction in the area where the ranch is situated. The determination of the District Magistrate on the question of who is or who is not a member is conclusive and there is even no right of appeal to the High Court. Mr. Ombette, learned counsel for the applicants told us that the local District Magistrate had declined to deal with the matter on the ground that he had no jurisdiction. We have read the ruling of the Magistrate; he

clearly recognized that he had jurisdiction to deal with the issue of disputed membership for he says in his ruling dated 16<sup>th</sup> February, 1994:-

*“.....However it should be noted that by virtue of Section 28 of the Land (Group Representatives) Act, Chapter 287, this Court’s jurisdiction is limited to the issue of determining members of group ranches. In view of the prayers sought in the plaint, it is my finding that this court has no jurisdiction to entertain it.....”*

Earlier on, the Magistrate had concluded that the complaint of the applicants before him was that the applicants were questioning the sale of part of the ranch to another person. So the Magistrate knew he had jurisdiction to determine the dispute as to who were or were not members of the group ranch but he thought that was not the question he had been asked to determine. The High Court declined to grant an injunction on the basis of *section 28* of the Act. We do not see that there could ever be an arguable point arising from that conclusion. Mr Ombette told us that the group ranch representatives had not issued the relevant certificate under *section 28* of the Act, so as to enable the applicants go before the Magistrate. But there is nothing to show that the applicants had applied for the certificate and the group ranch representatives have refused to issue one. The Act does not say whether the certificate is to be issued on demand or when a dispute arises. We think it would be good practice for group ranch representatives to issue the certificate as soon as a dispute as to membership arises. But if they fail to do so, the aggrieved party should apply for the issue of one and if there is no response, other steps can be taken in the High Court to compel them to issue the certificate. On the material before us, we are not satisfied that the intended appeal by the applicants is an arguable one. Having so held, we need not deal with the issue of whether the appeal, if it were to succeed, would have been rendered nugatory. Nor are we inclined to deal with the issue of the validity or otherwise of the affidavit of the second applicant which issue was raised by M/s Ndegwa-Shaw, learned counsel for the respondents. That issue must await determination on another occasion. The motion by the applicants dated 10<sup>th</sup> May 2005 fails and we order that it be and is hereby dismissed with costs to the respondents.

Dated at Nairobi this 10<sup>th</sup> day of June, 2005.

**R.S. C. OMOLO**

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**JUDGE OF APPEAL**

**P.N. WAKI**

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**JUDGE OF APPEAL**

**W.S. DEVERELL**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**