



REPUBLIC OF KENYA



**Kiptoo & 3 others v Rono & 4 others (Environment & Land Case E024 of 2023) [2024] KEELC 5423 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5423 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE E024 OF 2023**

**JM ONYANGO, J**

**JULY 17, 2024**

**BETWEEN**

**KIPLORI KIPTOO ALIAS BARNGETUNY KIPTOO ..... 1<sup>ST</sup> PLAINTIFF  
SOKOME KIPTANUI ..... 2<sup>ND</sup> PLAINTIFF  
FRANCIS KIPTUM CHEPKWONY ..... 3<sup>RD</sup> PLAINTIFF  
KIMOROK FARM LIMITED ..... 4<sup>TH</sup> PLAINTIFF**

**AND**

**JOSEPH KIMUTAI RONO ..... 1<sup>ST</sup> DEFENDANT  
EMMY CHEPKEMBOI KURGAT ..... 2<sup>ND</sup> DEFENDANT  
HELLEN JEBOTIN MASINGO ..... 3<sup>RD</sup> DEFENDANT  
AGNES KIMOOI MOI ..... 4<sup>TH</sup> DEFENDANT  
STEPHEN KIPROTICH CHEPYATOR ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. The Plaintiffs commenced this suit by way of Plaint dated 20<sup>th</sup> April, 2023. Together with the Plaint, the Plaintiffs filed a Notice of Motion dated 19<sup>th</sup> April, 2023 seeking orders That:
  - i. Spent
  - ii. Spent
  - iii. Pending the hearing and determination of this application inter-partes the Applicants be granted permission to continue the claim herein as a derivative claim.



- iv. There be an order of injunction restraining the Defendants/Respondents by themselves and their agents or anyone acting under their authority from pursuing and causing the preparation and issuance of title deeds to the shareholders or persons claiming under them or at all in respect of parcel of land number 1866/4 known as KIMOROK FARM measuring 1936 Acres pending hearing and determination of this suit.
  - v. Costs be provided for.
2. The Application was supported by the Affidavit of Kiplori Kiptoo alias Barngetuny Kiptoo, the 1<sup>st</sup> Plaintiff/Applicant who deponed that he was a member of the 4<sup>th</sup> Plaintiff herein, Kimorok Farm Limited. He deponed that there is a consent order issued on 7<sup>th</sup> February, 2020 in Eldoret ELC Case No. 943 of 2012. The order directed the Defendants to survey and distribute the parcel of land known as No. 1866/4 measuring 1936 Acres (the suit property), according to the shares each shareholder held or to persons claiming under them. The order directed the Defendants, who are the Directors of the 5<sup>th</sup> Plaintiff together with the County Land Registrar and County Surveyor to subdivide and transfer the suit property to the shareholders.
  3. The 1<sup>st</sup> Plaintiff deponed that they recently obtained a copy of the Surveyor's Report dated 28<sup>th</sup> September, 2021 in which the surveyor claims to have done the survey as per the list of shareholders provided by the Defendants. It is the Plaintiff's case that the Area List attached to Surveyor's Report does not contain any names of the shareholders/members of the Company as it only indicates the parcel number and acreage, so it is not possible to tell to whom each parcel belongs. That further, the Surveyor did later avail them the list he obtained from the Respondents containing the names of 155 shareholders together with the names of the beneficiaries and their acreage. The 1<sup>st</sup> Plaintiff deponed that the list used by the Surveyor is full of anomalies and subject to grievances by some members. He deponed that some members like himself are indicated as dead yet they are still alive, other members received less acreage than they are entitled to, some members were left out and that others were allocated land but were indicated as non-shareholders, among other grievances.
  4. The 1<sup>st</sup> Plaintiff further deponed that the Defendants have commenced the process of issuance of title deeds using the skewed list and has approached certain members to raise money to be issued with the title deeds. He averred that unless restrained by the court, the Defendants are likely to cause issuance of title deeds to the detriment of some members such as the Plaintiffs herein. That the members shall be greatly prejudiced if the Defendants shall are not restrained. He added that the Defendants are acting in their own selfish interests and not the interests of the shareholders or the company. He stated that it was necessary to grant them leave to proceed with this suit herein as a derivative suit against the Defendants. That the course of action arose from actual or proposed acts of omission and involving negligence, default, breach of duty or breach of trust by the Defendants. She deponed that the application is brought in utmost good faith.
  5. The application was opposed vide a Replying Affidavit sworn by Agnes Kimooi Moi, the 4<sup>th</sup> Defendant on 8<sup>th</sup> May, 2023. She swore the said affidavit on her own behalf and on behalf of the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants who she deponed are indeed the Directors of the 4<sup>th</sup> Plaintiff. She contended that the application is incompetent, ill-conceived, a nonstarter and a cultured abuse of the court process and ought to be dismissed with costs. She deponed that the 1<sup>st</sup> Plaintiff, Kiplori Kiptoo, had not tendered any proof that he was Barngetuny Kiptoo who is the shareholder neither had he presented a deed poll on the names. She deponed that even if the 1<sup>st</sup> Plaintiff is listed as dead, his portion is provided for, hence this should not stop the entire exercise because it was done as per the list of shareholders presented in court. She deponed that the 2<sup>nd</sup> and 3<sup>rd</sup> Plaintiffs are not shareholders of the Company and cannot be allowed to prosecute this suit as a derivative suit since it is only a preserve of shareholders.



6. The 4<sup>th</sup> Defendant deponed that there was no resolution to commence these proceedings and they are not sanctioned by the Company's Directors. She stated that the exercise has not been completed, but urged that the Plaintiffs had not applied to set the consent aside if it is against their wishes. She asserted that the list of shareholders annexed by the Plaintiffs as KK3 shows the shareholder's name, name of their beneficiary, plot number, ID number and acreages. The 4<sup>th</sup> Defendant added that the Plaintiffs are on an endless litigation mission from the various suits filed and that this suit should be dismissed because the issues are res judicata. She raised a question as to whether the 1<sup>st</sup> Plaintiff has authority to present the grievances of other shareholders. She added that allowing the application amounts to a review of the orders of the court in Eldoret ELC Case No. 943 of 2012. Further that the Plaintiffs have enjoined the Company wrongly, as they have sued the Directors who did not pass any resolution to sue. She concluded that the application is without legal basis since there have been other suits filed by the same parties, which have been dismissed.

### **Plaintiff's Submissions**

7. On 8<sup>th</sup> May, 2024 the court issued directions that the application be canvassed by way of written submissions. The Plaintiffs filed their submissions dated 5<sup>th</sup> June, 2024 stating that they ought to be granted leave to continue the suit as a derivative claim. Counsel cited Section 238 on the definition of a derivative claim, and Section 239 on the requirement for permission to continue a derivative suit. Counsel submitted that the said provisions empower a member of a company to institute a derivative suit, which he added is the pillar of corporate litigation. He relied on Ghelani Metals Ltd & 3 Others vs Elesh Ghelani Natwarlal & Another (2017) eKLR and Arnold Kipkirui Langat vs Atticon ltd & 6 Others; Linkit Ltd (Affected Company) (2021) eKLR. It was submitted that the Plaintiffs had presented sufficient material for the court to grant it permission to continue the suit herein as a derivative claim. That the actions of the Defendants, which include negligence, default, breach of duty and trust, were for personal and selfish interests but not the best interest of the shareholders. He submitted that the Plaintiffs fairly and adequately represent the interests of other shareholders and are acting in absolute good faith.
8. Counsel for the Plaintiffs submitted that they had established a case for the preliminary reliefs sought as set out in Giella vs Cassman Brown Co. Ltd (1973) EA 360 and Mrao vs First American Bank of Kenya Ltd & 2 Others (2003) KLR 125. Counsel pointed out that the contents of the supporting affidavit have not been rebutted thus an arguable and prima facie case has been made out. On irreparable harm, Counsel submitted that the Defendants' actions are likely to lead to destruction of the subject matter and that the possibility of damages is no objection to the exercise of jurisdiction by grant of an injunction. Counsel relied on Halsbury's Laws of England, 3<sup>rd</sup> Edition, Volume 21 Para 739, Page 352. He added that the balance of convenience lies in granting the orders sought and urged that the court to also grant leave to the Plaintiffs to continue the suit as a derivative claim.
9. I have perused the court file and checked on the CTS filing platform and have seen no submissions filed on behalf of the Defendants.

### **Analysis and Determination**

10. Having read the application, response thereto and the Plaintiff's submissions as well as the authorities cited therein, the following two issues fall for determination: -
  - a. Whether leave should be granted to the Plaintiffs to continue the derivative action;



- b. Whether the Plaintiffs are entitled to an interim order of injunction restraining the Respondents from the preparation and issuance of title deeds to the shareholders pending hearing and determination of this suit
11. Notably, the Defendants in their Replying Affidavit raised the objection that the matters in this suit are res judicata, that the Plaintiffs had no locus standi to institute a suit on behalf of the Company or the other shareholders not named herein among others. Consequently, the Defendants filed a Notice of Preliminary Objection dated 20<sup>th</sup> July 2023 where they raised these objections on the following grounds:
- i. That the suit against the 1<sup>st</sup> to 4<sup>th</sup> Defendants is based on orders of a suit in Eldoret ELC 943 of 2012 Jeremiah Busienei & 2 Others vs Kimorok Farm Limited & Philip Serem.
  - ii. That the matter is Res Judicata having been substantially dealt in Eldoret ELC 943 of 2012 Jeremiah Busienei & 2 Others vs Kimorok Farm Limited & Philip Serem and Eldoret ELC E044 of 2022.
  - iii. That the Plaintiffs/Applicants do not have the requisite locus standi to institute this suit on behalf of the parties they claim to represent.
  - iv. That the Plaintiffs/Applicants are not shareholders of the 4<sup>th</sup> Plaintiff/Applicant.
  - v. That the shareholding and distribution of shares is a factor Company law and the jurisdiction vests in the High Court and not the Environmental and Land Court.
  - vi. That the suit is defective having been instituted against the 1<sup>st</sup> to 4<sup>th</sup> Defendant/Respondents in their personal capacity.
  - vii. That this court lacks jurisdiction to entertain this application/suit herein as it was vexatious and an abuse of the court process as litigation must come to an end.
12. Vide a Ruling delivered on 29<sup>th</sup> April, 2024 this court made the following findings on the said PO:-
- “With regards to the Defendants’ Notice of Preliminary Objection dated 20<sup>th</sup> July, 2023 the court finds that:-
- i. This court has jurisdiction to hear and determine the instant suit.
  - ii. The 1<sup>st</sup> and 2<sup>nd</sup> Plaintiff have the requisite locus standi to institute this suit on behalf of the 4<sup>th</sup> Plaintiff.
  - iii. The 3<sup>rd</sup> Plaintiff has no locus standi to institute this suit on behalf of the company and his name be struck off these proceedings.
  - iv. The suit herein is not res judicata.”
13. These issues having been determined already, it follows therefore that this court need not address itself further on the same. For this reason, the court will restrict its decision to the prayers set out in the instant application.



### a. Whether leave should be granted to the Plaintiffs to continue the derivative action

14. Justice Onguto in *Ghelani Metals Limited & 3 others vs Elesh Ghelani Natwarlal & another* (2017) eKLR, gave a definition of what a derivative suit is in the following words:-

“ 37. Derivative actions are the pillars of corporate litigation. As I understand it, a derivative action is a mechanism which allows shareholder(s) to litigate on behalf of the corporation often against an insider (whether a director, majority shareholder or other officer) or a third party, whose action has allegedly injured the corporation. The action is designed as a tool of accountability to ensure redress is obtained against all wrongdoers, in the form of a representative suit filed by a shareholder on behalf of the corporation: see *Wallersteiner v Moir* (No.2) [1975] 1 All ER 849.”

15. A derivative suit is intended to protect the company and its minority shareholders from the detrimental acts or omissions of directors, majority shareholders, and in some instances even third parties. Although derivative suits have roots in common law, in Kenya, they now have a foundation in statute under Part XI of the *Companies Act* No 17 of 2015, which runs from Section 238-241. Under Section 238 (1) of the *Companies Act*, a “derivative claim” is described as proceedings by a member of a company in respect of a cause of action vested in the company and seeking relief on behalf of the company. Section 238(3) provides that a derivative claim may be brought only in respect of a cause of action arising from an actual or proposed act or omission involving negligence, default, breach of duty or breach of trust by a director of the company. Under Subsection 4 thereof, the claim may be brought against the director or another person, or both.

16. Leave must be obtained from the court for one to be allowed to prosecute a derivative claim. Section 239 allows a party to seek leave to continue a suit already filed as a derivative claim, and provides that:-

“ 239. Application for permission to continue derivative claim

(1) In order to continue a derivative claim brought under this Part by a member, the member has to apply to the Court for permission to continue it.”

17. The essence of judicial approval under the Act is to screen out frivolous claims. The court is given an opportunity to determine whether the claim is in the best interests of the company and made in good faith or whether the motive for bringing the claim is based on personal motives. On the issue of leave, the Court of Appeal in *Amin Manji & 2 Others vs Altaf Abdulrasul Dadani & Another* (2015) eKLR held as follows:-

“Leave of the court shall be obtained before filing of a derivative suit but may also be obtained to continue with the suit once filed. On this the court was right in adopting the exposition of the treatise “Minority shareholders”; Law, Practice and Procedure” by Joffe that ‘there is no approved pre-action protocol in relation to the derivative action’ and that after the claim form has been issued, the claimant is required to make an application which must be supported with written evidence for permission to continue with the claim’. It is our view that at whatever stage leave is sought, the crucial requirement is for the applicant to establish a prima facie case demonstrating that he has locus standi to institute such an action, the



company is entitled to the intended relief and the action falls within any of the exceptions of the rule in Foss vs Harbottle.”

18. The application for leave is therefore, meant to enable the court to screen the case and satisfy itself that there is a prima facie and meritorious case worthy of its leave/permission. Section 239(2) of the Act provides that the application for leave will be dismissed if the evidence adduced in support does not disclose a case for giving of permission. A court will only allow meritorious claim. An Applicant thus needs to establish through evidence, that there exists a prima facie case without the need to show that it will succeed. The test for determining whether or not a Plaintiff has established a prima facie case for leave to be granted in a derivative suit has been laid down in *Isaiah Waweru Ngumi & 2 others vs Muturi Ndung'u* (2016) eKLR, where the court held:-

“ 21. Counsel for the Respondent and Interested Parties suggested that the test is the substantive one whether the Applicants have made out a prima facie case. That test intuitively makes sense given the policy objectives of the requirement for leave I posited above. In making that determination, the Court is guided by the considerations stipulated in section 241(2) of the *Companies Act*. Among other things, the Court considers the following factors:

- ‘a. Whether the Plaintiff has pleaded particularized facts which plausibly reveal a cause of action against the proposed defendants. If the pleaded cause of action is against the directors, the pleaded facts must be sufficiently particularized to create a reasonable doubt whether the board of directors’ challenged actions or omissions deserve protection under the business judgment rule in determining whether they breached their duty of care or loyalty;
- b. Whether the Plaintiff has made any efforts to bring about the action the Plaintiff desires from the directors or from the shareholders. Our Courts have developed this into a demand or futility requirement where a Plaintiff is required to either demonstrate that they made a demand on the board of directors or such a demand is excused;
- c. Whether the Plaintiff fairly and adequately represents the interests of the shareholders similarly situated or the corporation. Hence, a shareholder seeking to bring a derivative suit in order to pursue a personal vendetta or private claim should not be granted leave. In the American case of *Recchion v Kirby* 637 F. Supp. 1309 (W.D. Pa. 1986), for example, the Court declined to let a derivative lawsuit proceed where there was evidence that it was brought for use as leverage in plaintiff’s personal lawsuit;
- d. Whether the Plaintiff is acting in good faith;
- e. Whether the action taken by the Plaintiff is consistent with one a faithful director acting in adherence to the duty to promote the success of the company would take;
- f. The extent to which the action complained against - if the complaint is one of lack of authority by the shareholders or the



company - is likely to be authorised or ratified by the company in the future; and

- g. Whether the cause of action contemplated is one that the Plaintiff could bring as a direct as opposed to a derivative action’.”

19. In the present suit, the Plaintiffs have particularised the facts setting out the acts/omissions of the directors of the company regarding the suit property. The main complaint is that the list of shareholders used by the Surveyor in preparing his report on the intended subdivision only lists 155 members instead of the full membership of the company, and that some members were clearly left out. The Plaintiffs also allege that some among their membership have been assigned less acreage than the shares they paid for, and the 1<sup>st</sup> Plaintiff deponed that he was allocated 7.125 acres instead of 10 acres that he is claiming. There is a complaint that some members who purchased from original shareholders have not been included in the list as it instead still shows the names of the original members who sold to them.
20. The Plaintiffs clearly have an issue with the Defendants’ general reluctance to abide by the terms of the consent order made on 5<sup>th</sup> February, 2020. The 1<sup>st</sup> Plaintiff in the supporting Affidavit deponed that he was indicated as deceased while he was evidently still alive. I have gone through the list annexed by the Plaintiff and marked KK3. As deponed by the Defendants, this list indeed shows the names of the members, their plot numbers, ID numbers and acreages as well as beneficiaries. However, the Plaintiffs’ allegation that the said list is full of anomalies might have some truth to it. For instance, I note that while the name Barngetuny Kiptoo does in fact appear at No. 38 of the said list of shareholders, he is in fact indicated as deceased.
21. The second consideration is whether the Plaintiffs have made any efforts to bring about the action they desire from the directors or from the shareholders. The desired end-result in this suit is the sub-division and transfer of the resultant portions into the names of the shareholders in the shares they purchased from the company in terms of the consent order. The Defendants themselves have admitted that there have been several suits from the shareholders seeking this same outcome. Eldoret ELC Case No. 943 of 2012 is an example of one of such cases, which resulted in the aforementioned consent order. At paragraph 14 (b) and (c) of their Replying Affidavit, the Defendants list another suit being Eldoret ELC No. E044 of 2022. It is on the basis of these suits that the Defendants raised an objection that the suit herein is res-judicata.
22. Notably, despite the consent order of 5<sup>th</sup> February, 2020 the suit property herein is yet to be transferred to the shareholders. In the process of sub-dividing the land however, the Plaintiffs have raised the concerns regarding the manner in which the exercise is being undertaken. I see no proposal by the Defendants to try to resolve these concerns, instead the Defendants have rushed to deny the interests of the Plaintiffs herein hence the frustration on the part of the Plaintiffs. At paragraph 17 of the Replying Affidavit, the Defendants deponed that there is a list with the full membership of 170 and the members have been notified, but they failed to exhibit this list.
23. The court is also to determine whether the Plaintiffs fairly and adequately represents the interests of the shareholders similarly situated or the corporation. The court in the Isaiah Waweru Njumi Case (Supra) explained that a shareholder seeking to bring a derivative suit in order to pursue a personal vendetta or private claim should not be granted leave. The Plaintiffs’ annexure marked KK4 is a list of the Company’s shareholders with grievances/complaints. The list names 14 individuals and lists their specific grievances towards the sub-division exercise. The Defendants did not deny that the names appearing on that list are shareholders of the Company, or that the signatures appended thereon are genuine signatures of their members. Going by this, and the fact that the other suits named herein were by different shareholders from the Plaintiffs herein, I am convinced that the issues raised herein



are not pertinent to only the Plaintiffs in this suit, but are a fair representation of the position other shareholders of the company find themselves in. In the above case, the court held with respect to similarly situated shareholders that:-

“The Respondent and Interested Party invited the Court to take judicial notice of the fact that we are dealing with 3 Plaintiffs in a Company that has more than 300 shareholders. The test, however, is not the number of complaining shareholders vis-à-vis the total number of shareholders; the test is the representativeness of the claims to other similarly situated shareholders or the corporation itself. Indeed, derivative actions are a form of remedy for minority shareholders against oppression - so the sheer fact of minority cannot be a ground for disqualifying a would-be derivative action plaintiff.”

24. In opposing the Application, the 4<sup>th</sup> Defendant deponed that the application was brought in bad faith. I do not however see any circumstances that reveal any bad faith on the part of the Plaintiffs. The court is further required to inquire into whether the action taken by the Plaintiff is consistent with one of a faithful director acting in adherence to the duty to promote the success of the company would take. This being a company that was incorporated to buy land for the shareholders and transfer it to them, it is not wild to presume that in fact any faithful and reasonable director would have undertaken the Plaintiffs' proposed actions to fulfil the company's objective of giving the members their land.
25. The next consideration is the extent to which the action complained against is likely to be authorised or ratified by the company in the future. This court has no intention of reviewing or in any other manner sitting on appeal of the Consent order. What this suit seeks is to have the Directors act on the said consent order, which is yet to be complied with to date, to the detriment of the Company and the Plaintiffs. It is noteworthy that the order was made on 5<sup>th</sup> February, 2020 and it is almost 4 years 6 months since the consent was recorded on the sub-division of the land, yet the same has not been finalized.
26. The final consideration is whether the cause of action contemplated is one that the Plaintiff could bring as a direct as opposed to a derivative action. While there is no dispute that the Plaintiffs could very well bring the suit directly as opposed to a derivative suit, I note that the shareholders have at least twice attempted this route as evidenced by the previous suits listed herein, and their efforts bore no fruits. It is for this reason that the Plaintiffs sought to come by way of a derivative suit.
27. There was an argument advanced that the Plaintiffs had exhibited no authority to plead for other shareholders in the company. The Defendants faulted the Plaintiffs for not specifically naming the other shareholders whom they allege to represent. The Defendants also alleged that the instant suit was not sanctioned by the Company's Directors as there is no resolution to institute these legal proceedings. By their very nature, derivative suits do not require the permission of the board of directors. On this issue, this court is once again guided by the words of Lord Denning in *Moir vs Wallerstainer* (1975) 1 All ER 849 at pg. 857, where he stated that:-

“...But suppose (the company) is defrauded by insiders who control its affairs - by directors who hold a majority of the shares - who then can sue for damages? Those directors are themselves the wrongdoers. If a board meeting is held, they will not authorize the proceedings to be taken by the company against themselves. If a general meeting is called, they will vote down any suggestion that the company should sue themselves. Yet, the company is the one person who is indemnified. It is the one person who should sue. In one way or another some means must be found for the company to sue. Otherwise the law would fail in its purpose. Injustice would be done without redress...”



28. I further noted in my ruling of 29<sup>th</sup> April, 2024 in this suit that:-

“Going by the reasoning in the Moir Case (Supra), there would be nothing to stop the Defendants, who in this case are the alleged wrongdoers, from using this as a loophole to defeat the derivative suit instituted against them for the wrongs they are alleged to have committed.”

29. I still stand by this sentiment, as to hold otherwise would be to go against the very spirit and essence of derivative suits.

30. In the end, the Plaintiffs have demonstrated prima facie, the issues raised that they would like addressed in this suit against the Defendants who are the directors of the company. This court finds therefore that the Plaintiffs have pleaded sufficient material to permit the derivative suit to proceed. For this reason, I hereby grant the requisite leave to proceed with suit as a derivative suit.

**b. Whether the Plaintiffs are entitled to an order of injunction pending hearing and determination of this suit**

31. The leading case on injunctions is still *Giella vs Cassman Brown & Co Ltd* (1973) EA 358, in which the court set the following conditions for the grant of a temporary injunction:

“The conditions for the grant of an interlocutory injunction are now, I think, well settled in East Africa. First an applicant must show a prima facie case with a probability of success. Secondly, an interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury which would not adequately be compensated by an award of damages. Thirdly if the court is in doubt it will decide an application on the balance of convenience.”

32. The requirement for a prima facie case with a probability of success has been held to be so paramount that it must be established first before considering the second condition. This court has already considered this requirement and found that the Plaintiffs have in fact established a prima facie case. Nevertheless, even where a prima facie case is established, an injunction will not be granted if the injury or damage to be suffered is not irreparable or is capable of compensation. The *Halsbury’s Laws of England*, 3<sup>rd</sup> Edition Volume 21, Paragraph 739 page 352 which defines irreparable injury as;

“... injury which is substantial and could never be adequately remedied or atoned for by damages, not injury which cannot possibly be repaired and the fact that the plaintiff may have a right to recover damages is no objection to the exercise of the jurisdiction by grant of injunction, if his rights cannot be adequately protected or vindicated by damages. Even where the injury is capable of compensation in damages, an injunction may be granted, if the injury in respect of which relief is sought is likely to destroy the subjected matter in question.”

33. The Plaintiffs have indicated that if the Defendants are allowed to proceed with the sub-division and intended transfers with the list of shareholders as it is, the suit property will be destroyed. Since one of the issues raised is that some members’ names are missing from the list, it appears that if the injunction is not granted pending hearing and determination of this suit, these members will be locked out from the land they purchased from the company. This is a loss that is substantial in terms of the above passage. Notably, this suit is aimed at determining the membership and shareholding with respect to the suit land herein. It is thus necessary for the subdivision exercise to be halted until the appropriate



membership and shareholding of the company has been established before the exercise can be allowed to proceed. In addition, this will prevent further hardship and added expense of further suits with regard to the land aimed at challenging the division thereto.

34. For those reasons, I find merit in the Plaintiffs' application. The same is allowed in the following terms:-
- i. Leave is hereby granted to the Applicants to continue the claim herein as a derivative claim.
  - ii. An order of injunction is hereby issued restraining the Defendants/Respondents by themselves and their agents or anyone acting under their authority from pursuing and causing the preparation the preparation and issuance of title deeds to the shareholders or persons claiming under them or at all in respect of parcel of land number 1866/4 known as KIMOROK FARM measuring 1936 Acres pending hearing and determination of this suit.
  - iii. The costs of this application shall be in the cause.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17<sup>TH</sup> DAY OF JULY 2024.**

.....

**J.M ONYANGO**

**JUDGE**

In the presence of;

1. Kipnyekwei for Mr. Esikuri for the Applicant
2. No appearance for the Respondent

Court Assistant: Brian

