



**Kironua & 8 others v Director Land Adjudication & Settlement & 2 others; Siamito & 7 others (Interested Parties) (Judicial Review Application E005 of 2023) [2024] KEELC 6318 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6318 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
JUDICIAL REVIEW APPLICATION E005 OF 2023  
LC KOMINGOI, J  
SEPTEMBER 26, 2024**

**IN THE MATTER OF AN APPLICATION BY MAILUA GROUP RANCH  
FOR ORDERS OF CERTIORARI, PROHIBITION AND MANDAMUS**

**AND**

**IN THE MATTER OF THE LAND GROUP REPRESENTATIVES ACT, CAP**

**287**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF ACT**

**AND**

**IN THE MATTER OF THE FAIR ADMINISTRATIVE ACTIONS ACT**

**BETWEEN**

**DANIEL KOIKAI KIRONUA ..... 1<sup>ST</sup> EXPARTE APPLICANT  
PARMERES NINA ..... 2<sup>ND</sup> EXPARTE APPLICANT  
SHAPAPA MPAPA ..... 3<sup>RD</sup> EXPARTE APPLICANT  
JOSHUA LENGETE SARBABI ..... 4<sup>TH</sup> EXPARTE APPLICANT  
KOILEKEN SEMPETA ..... 5<sup>TH</sup> EXPARTE APPLICANT  
MEIBUKO MOSILA ..... 6<sup>TH</sup> EXPARTE APPLICANT  
TOBIKO NKULANA ..... 7<sup>TH</sup> EXPARTE APPLICANT  
MASHIEPEI TIRATI ..... 8<sup>TH</sup> EXPARTE APPLICANT  
SINJALE OLE KANORE ..... 9<sup>TH</sup> EXPARTE APPLICANT**

**AND**



**THE DIRECTOR LAND ADJUDICATION & SETTLEMENT .... 1<sup>ST</sup>  
RESPONDENT**

**MR. STEPHEN G. MAYAKA, REGISTRAR OF GROUP REPRESENTATIVES IN  
THE DIRECTORATE OF LAND ADJUDICATION & SETTLEMENT OFFICE IN  
NAIROBI (IN PERSON) ..... 2<sup>ND</sup> RESPONDENT**

**THE KAJIADO LAND ADJUDICATION & SETTLEMENT 3<sup>RD</sup> RESPONDENT**

**AND**

**LESHOKO NKONERI SIAMITO ..... INTERESTED PARTY**

**SARUNI MPAPA NAKOYO ..... INTERESTED PARTY**

**JACKSON NTUYOTO MARASWA ..... INTERESTED PARTY**

**RAIGOT MASERI ..... INTERESTED PARTY**

**JOSEPH KARANKEI NKONYEK ONGUAN ..... INTERESTED PARTY**

**TOBIKO SHAANKWA ..... INTERESTED PARTY**

**LEKITONY SAITOTI ..... INTERESTED PARTY**

**SETEI LARMOI ..... INTERESTED PARTY**

### **RULING**

1. This is the Notice of Motion dated 15<sup>th</sup> February 2024 brought under; (Article 50 and 159 (2) of *the Constitution*, Order 9 rule 1 and Rule 5, Order 45 Rule 1, Order 53 Rule (1) (4) of the Civil Procedure Rules, Section 1A, 1B, 3A and 80 of the *Civil Procedure Act*, and all other enabling provisions of the law).
2. It seeks Orders;
  1. This Honourable Court be pleased to stay, vary and set aside the consent orders issued 26<sup>th</sup> October 2023.
  2. This Honourable Court be pleased to expunge from the record the proceedings of 26<sup>th</sup> October 2023.
  3. The costs of this Application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.
4. The Notice of Motion is supported by the Affidavit of Lesheko Nkoneri Siamito, the 1<sup>st</sup> Interested Party and Chairman of Mailua Group Ranch sworn on the 15<sup>th</sup> February 2024.
5. There is also an Affidavit of Samson Nyaberi Advocate sworn on the 20<sup>th</sup> February 2024.
6. There is also a Replying Affidavit sworn by Fredrick Ragui Kariuki senior state counsel, sworn on the 26<sup>th</sup> February 2024.
7. The Application is opposed.



There is a Replying Affidavit sworn by Daniel Koikai Kironua, the 1<sup>st</sup> Exparte Applicant sworn on the 4<sup>th</sup> June 2024. It is his case that Mr. Nyaberi was dully instructed and entered the consent with the blessings of Interested Parties.

8. The Notice of Motion was canvassed by oral submissions on the 11<sup>th</sup> July 2024 and on 23<sup>rd</sup> July 2024.
9. I have considered the Notice of Motion, the Affidavit in support, the responses thereto and the rival submissions. I have also considered the authorities cited. The issues for determination are;
  - i. Whether the consent Orders of 26<sup>th</sup> October 2023 ought to be varied and or set aside.
  - ii. Who should bear costs of this application?
10. On the 26<sup>th</sup> October 2024, Mr. Namada for the Exparte Applicants and Mr. Nyaberi for the Interested Parties appeared before court.

The Court was informed that the Status quo ought to be maintained and the sentencing in JR 968/2017 be suspended. The court then recorded the following consent;

“By Consent the leave granted on 18<sup>th</sup> October 2023 do operate as a stay. The Status quo be maintained that is to mean the certificate issued on 6<sup>th</sup> October 2023 stands suspended. The Interested parties are given 14 days to file responses. Parties to engage with a view to settlement. The sentencing in JR 968/2017 on 1<sup>st</sup> November 2023 is also vacated. For further directions on 5<sup>th</sup> February 2024 to serve the Respondents”.

11. It is this consent that the Interested Parties urge this Court to set aside on the grounds that they had not instructed Mr. Samson Nyaberi to appear on their behalf in this matter.
12. Order 9 Rule 1 of the Civil Procedure Rule, provides;

“Any application to or appearance or act in any court required or authorized by the law to be made or done by a party in such court may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf: Provided that—

- (a) any such appearance shall, if the court so directs, be made by the party in person; and
  - (b) where the party by whom the application, appearance or act is required or authorized to be made or done is the Attorney- General or an officer authorized by law to make or to do such application, appearance or act for and on behalf of the Government, the Attorney-General or such officer, as the case may be, may by writing under his hand depute an officer in the public service to make or to do any such application, appearance or act”.
13. I have gone through the court file and indeed no Notice of Appointment had been filed by Mr. Samson Nyaberi from 26<sup>th</sup> October 2023 and upto 15<sup>th</sup> February 2024.
  14. In his Affidavit sworn on the 20<sup>th</sup> February 2024 he depones in paragraph 10“ That I had not received full instructions from the Interested Parties and since Mr. Namada had informed the court, the matters were related, I took directions in the matter.”



In paragraph 12 he states;

“That the consent orders is entered and issued on the matter are thus devoid of instructions.”

15. On the 23<sup>rd</sup> July 2024, Mr. Samson Nyaberi appeared in court for cross-examination by Mr. Namada for the Exparte Applicants. Mr. Nyaberi maintained that he was appearing for the 3<sup>rd</sup> Interested Party though he had not filed any Notice of appointment. He sought time to regularize his position.

He told the court that he did not get instructions to appear for the Interested Parties.

16. From the foregoing, it is clear that Mr. Samson Nyaberi appeared without instructions. It can be said he was a stranger in these proceedings as stated by Musinga J in the case of Joshua T. Nyamache T. Omasere Vs. Charles Kinanga Maena (2008) eKLR.

17. In his supporting Affidavit Lesheko Nkoneri Siamito, the 1<sup>st</sup> Interested Party states that they did not instruct Mr. Nyaberi to appear on their behalf.

18. On the 26<sup>th</sup> October 2023 Mr. Namada for the Exparte Applicants did not inform the Court whether the Respondents had been served. Infact I have gone through the court file and I do not see any evidence of service upon the 1<sup>st</sup> to 4<sup>th</sup> Respondents. By the Notice of Motion dated 17<sup>th</sup> October 2023, the acts sought to be reviewed were done by the 1<sup>st</sup> to 3<sup>rd</sup> Respondents. They were not present in Court on the 26<sup>th</sup> October 2023 hence they were not parties to the consent orders granted on that date.

It can be said that the consent orders were irregular to that extent.

19. In summary, there is no Notice of Appointment filed by Mr. Samson Nyaberi or the firm of Omwoyo Momanyi Advocates. Mr. Nyaberi has admitted that on 26<sup>th</sup> October 2023 he had not filed any Notice of Appointment as he had no instructions. That he received a call from Mr. Namada who briefed him on the matter. He was therefore a stranger in the proceedings of 26<sup>th</sup> October 2023 as was held in Techno Service Ltd Vs. Nokia International OY Kenya & 3 Others (2020) eKLR.

20. The consent orders sought to bind the Respondents who were not represented then. It is unfortunate that the Court was put in this position.

I have no alternative other than to set aside the said orders on account of mis-representation.

21. Accordingly I find merit in this application and I grant the orders sought namely;

a. That the consent orders issued on 26<sup>th</sup> October 2023 are hereby set aside.

b. That the costs of this application do abide the outcome of main suit.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 26<sup>TH</sup> DAY OF SEPTEMBER 2024.**

**L. KOMINGOI**

**JUDGE.**

**In the presence:**

Mr. Namada for the Exparte Applicants.

N/A for the Respondents.

Ms. Kirisiet for the Interested Parties.

Court Assistant – Mutisya.

