



Sironka (Suing on His own Behalf and on Behalf of All Members of Ilpartimaru Group Ranch) v Murre & 4 others (Environment & Land Case 679 of 2017) [2024] KEELC 6192 (KLR) (24 September 2024) (Judgment)

Neutral citation: [2024] KEELC 6192 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 679 OF 2017
MN GICHERU, J
SEPTEMBER 24, 2024**

BETWEEN

**NTOYAN OLE SIRONKA PLAINTIFF
SUING ON HIS OWN BEHALF AND ON BEHALF OF ALL MEMBERS OF
ILPARTIMARU GROUP RANCH**

AND

**TUPET OLE MURRE 1ST DEFENDANT
SAKITA OLE NAROK 2ND DEFENDANT
LEMOMO OLE NTENKESE 3RD DEFENDANT
DAVID SOPON MBATI 4TH DEFENDANT
STEPHEN OLE SEPERE 5TH DEFENDANT**

JUDGMENT

1. The 2nd to the 31st plaintiffs seek the following reliefs against the defendants.
 - i. A declaration that the refusal to execute the requisite transfer documents is oppressive and unjustifiable.
 - ii. An order compelling the defendants to execute all the transfer documents of Title No. Kajiado/Lorngusua/63 in favour of the plaintiffs.
 - iii. That the deputy Registrar be directed to execute all the requisite transfer documents for the suit land in lieu of the defendants and the Land Registrar Kajiado do register the transfer and issue title deeds to the plaintiff upon payment of the requisite charges.



iv. Costs of the suit.

This is as per the plaint dated 25/4/2006.

2. The plaintiffs' case is as follows. The original members of Ipartimaru Group Ranch were 435 in number. Out of this number 268 members were issued with title deeds for their respective parcels. Many of them proceeded to develop, subdivide, sell, charge, bequeath or otherwise deal with their land as they please. The plaintiffs are amongst the 167 members who have not been issued with title deeds. In addition to the 435 members of the group ranch, there are thousands of other people who have acquired proprietary interest in the land that used to be part of the group ranch due to sales, subdivisions, bequests charges and other dispositions. These other people are not parties in this case or other related cases yet they have a stake in the suit land and any orders made in this suit will affect them directly. No restriction has ever been placed against their land.
3. According to the plaintiffs, the decree issued on 19/7/2000 in Nairobi HCCC 561 of 2000 which the 4th and 5th defendants rely on only required the revision of the area list so that the members were allocated land that is equal to that of other members either in terms of acreage or the value thereof. The Ipartimaru Group Ranch covers a vast area of land and it measures close to 50,000 acres with significant variations as to value and economic or agricultural potential. In allocating land to members of the group ranch, the general membership of the group ranch took into account several factors. They included the following.
 - i. whether a member already had other land including family land,
 - ii. the number of members of one family were listed as members,
 - iii. the value of the land in terms of estimated market value and its farming potential,
 - iv. the accessibility of the land,
 - v. the infrastructural development of the land,
 - vi. the topographical development or otherwise of the land including whether it was hilly, rocky, flat or arable,
 - vii. the role and personal sacrifice in time and effort made by a given member in matters pertaining to the group, e.t.c.

This is why all the members of the group ranch could not equal acreage from the group ranch.

4. The 5th defendant was allocated 7 acres in the group land because his father owned L.R. No. Kajiado/Lorngusua/7 measuring 800 acres out of which the 5th defendant inherited 200 acres. The land is highly priced because it is next to the main Namanga Road and has all the amenities including electricity and water. It is the plaintiffs' case that there are members with large but remote parcels who have offered to swap their land with that of the 5th defendant but he has declined. Since the death of the 4th defendant, it is only the 5th defendant who is opposed to the orders sought by the plaintiffs and conceded to by some of the defendants. There is an order issued in HCCC 561/2000 by Ransley Judge dated 10/07/2004 to the effect that no orders would be issued affecting third parties who are registered owners of some of the parcels resulting from the suit land when they have not been joined in the suit. the Learned Judge went on to hold that the only remedy available to dissatisfied members of the group ranch was to appeal to the Registrar of Group Representatives as provided in the 3rd schedule of the Land (Group Representatives) Act, Cap 287.
5. In support of their case the plaintiffs filed the following evidence.



- i. Witness statement by Kayie Ntasikoi.
 - ii. Witness statement by Lemomo Ole Ntekese.
 - iii. Authority to appear, plead and act signed by all the plaintiffs.
6. The 4th and 5th defendants through counsel on record filed a written statement of defence and counterclaim dated 25/9/2007. In the defence, they state as follows. Firstly, it is denied that this suit is brought on behalf of the embers of Ilpartimaru Group Ranch. Secondly, it is denied that the 1st, 2nd and 3rd defendants were secretary, treasurer and chairman respectively of Ilpartimaru Group Ranch. Thirdly, it is contended by the 4th and 5th defendants that the subdivisions referred to as 966 to 1415 were disproportionate, unfair and oppressive to the 4th and 5th defendants and a large number of members of the group ranch precipitating in filing of HCCC 561/2000 (Nairobi) in which the court ordered that the process of subdivision and allocation be repeated or rectified such that the 5th defendant and other group members get equal shares in the group land. Fourthly, the 4th and 5th defendants deny that the 1st and 3rd defendants refused to execute the transfer documents to enable transfer of the land and aver that the reasons why the subdivision process and issuance of title deeds was halted is because of the decree in HCCC 561/2000 restraining the group representatives of the group ranch from executing the transfers. Fifthly, it is not true that there are no other pending suits because HCC No. 233/2001 Nairobi and HCCC No. 1098 of 2001, Nairobi are pending before court over the same subject matter Kajiado/Lorngusua/63. Sixthly, in HCCC No. 561/2000, the court ordered that the process of subdivision and allocation of the suit land be repeated and rectified such that the 5th defendant and other members of the group ranch get equal shares in the group land. This suit is therefore *res judicata*.
- Finally, the plaintiffs' suit does not disclose a reasonable cause of action against the defendants and it is untenable in law, misconceived and incurably defective.
7. In the counter claim the 4th and 5th defendants seek the following orders against the plaintiffs.
- a. An order cancelling the registration of the plaintiffs and other respective proprietors of parcels of land known as Kajiado/Lorngusua/966 to 1415 as per the area list annexed to the plaintiffs' chamber summons dated 25/4/2006 and an order cancelling all registrations effected on the basis of the order issued by this court on or about 18/5/2006.
 - b. An order of inhibition inhibiting the registration of any dealing with the parcels of land known as Kajiado/Lorngusua/966 to 1415 until the hearing and determination of this suit and order compelling the plaintiff to surrender to the Land Registrar Kajiado the original title deed pursuant to the order issued by this court on 18/5/2006 for cancellation.
 - c. Costs of the suit.
 - d. Any other order of direction that this court may deem fit to safeguard the interest of justice.
8. In support of their case, the 4th and 5th defendants filed the following evidence.
- i. Witness statements by Joseph Sosio, Lenku Ole Paigoni, Ndena Siopar, Taporu Ole Masaine, David Sopon, Hezron Orket, Moses Shipo Njenga and Koirishishe Ole Kekai.
 - ii. Copy of register for the suit land.
 - iii. Copy of certificate of incorporation of Ilpartimaru Group Ranch dated 23/3/2000.
 - iv. Copy of pleadings in Nairobi HCCC 561 of 2000.



- v. Copy of decree dated 19/7/2000 issued in HCC 561 of 2000.
 - vi. Copy of pleadings, rulings and orders issued in HCCC 233 of 2001.
 - vii. Copy of pleadings, rulings and orders in Nairobi HCCC 1098/2001.
 - viii. Ilpartimaru Group Ranch subdivision of Parcel No. Kajiado/Lorngusua/63 area list.
 - ix. Pleadings, rulings and order in Machakos HCCC 177 of 2008 (formerly HCC 418 of 2006 – Nairobi).
9. The 1st and 3rd defendants through counsel on record filed notice of admission of the plaintiffs’ case and a defence to the counterclaim by the 4th and 5th defendants dated 22/11/2007. They state as follows. Firstly, they deny the claim against them by the plaintiffs and the 4th and 5th defendants generally. Secondly, they aver that the 2nd defendant is dead. Thirdly, they do not object to the members of the group ranch getting title deeds for their parcels. Fourthly, they say that they are ready to execute the transfer documents so that the group ranch members may get their title documents.
10. In regard to the counterclaim, the 1st and 3rd defendants aver as follows. Firstly, they are the bonafide secretary and chairman respectively of the group ranch. Secondly, the 4th and 5th defendants cannot admit that paragraphs 4 and 5 of the plaint are correct and then purport at paragraph 6 that the resultant subdivision was improper. Thirdly, the subdivision of the ranch was accepted by all the parties in 1989 and in 1992, all survey work was concluded and nobody complained. The acreage of each member was decided upon by all ranch members and it is not correct to say that the subdivision was inequitable and the counterclaim has taken an inordinate time to be raised. Fourthly, the parties in HCCC 561 of 2000 were happy with the subdivision and some of them collected their title deeds and it is only the 5th defendant in this case who remains. Fifthly, the order in HCC 561 of 2000 was complied with. Sixthly, the group ranch members have accepted that it is not possible to have an absolutely equal land subdivision as different members occupying different parcels must get acreages that are equitable (not equal). Those in rocky areas and cliffs would get bigger parcels than those in fertile, moist and flat areas. Seventhly, the 1st and 3rd defendants who were parties in HCCC 561/2000 have taken their title deeds. Eighthly, nine out of ten group ranch representatives have collected their title deeds. Out of the 435 group ranch members, 268 have taken their title deeds and a further 108 have paid for them and are waiting collection. It is only 59 members who are yet to collect their title deeds. They have dealt with their land as they have pleased and it is impossible to expect to repeat and rectify the subdivision of the ranch as prayed for by the 4th and 5th defendants. Ninthly, the decree in HCCC 561/2000 is in vain and void for the reason that the suit had been instituted against a non cognizable entity. Finally, the perceived grievance of the plaintiffs does not affect the rights of the 1st and 3rd defendants or any other members of the ranch.

For the above stated reasons, the 1st and 3rd defendants pray for the following orders.

- a. The plaintiffs’ suit be allowed.
 - b. The 4th and 5th defendants’ counterclaim be dismissed.
 - c. The 4th and 5th defendants do pay the costs.
11. At the trial that took place on 26/2/2019, 9/4/2019, 10/12/2019, 21/9/2020, 24/5/2023 and 9/9/2023 a total of eight witnesses testified. They included the 2nd plaintiff Kayie Oel Ntasikoi, the 5th defendant Stephen Ole Sepere, Moses Njenga, Lenku Paisoni, Hezron Orket, Lemomo Ole Ntekese, the third defendant and Rosemary Mwangi, Land Registrar Kajiado. After the testimony of Kayie Oel



Ntasikoi, the plaintiffs case was closed. The plaintiffs' witness testimony, just like the case was about why they have not been issued with title deeds for their respective land parcels.

On the part of the 5th defendant his testimony was to the effect that the land was distributed in a very unfair manner where he got only 7 hectares whereas some members like Kereto Ole Mbiti and Lemomo Ole Ntekese, the 3rd defendant got 192 and 181 hectares respectively. His evidence was corroborated by Moses Njenga, Lenku Paigon, Taponi Ole Masaine and Hezron Orket. The evidence by Lemomo Ole Ntekese was in support of the plaintiffs' case. The evidence of the Land Registrar is to the effect that the suit land was subdivided on 27/3/2001 and it has 966 – 1415 units.

12. Counsel for the parties were to file written submissions by 29/7/2024. The only written submissions that I have seen on record are those by the 2nd to 131st plaintiffs. They are dated 14/5/2024. For the 4th and 5th defendants, I have seen a bundle of authorities without the submissions themselves. Counsel for the plaintiffs has identified two issues for determination.

- i. Whether the court can order the revocation of title deeds issued and repeat of subdivision and parcelling of the ground land.
- ii. Whether this court can be called upon to enforce the decree in Nairobi HCCC 561 of 2000.

13. I have carefully considered the evidence adduced in this case by both sides including the witness statements, documents and testimony at the trial. I have also considered the pleadings and the available written submissions. I identify the following as the issues for determination.

- i. Whether the court can compel any person to execute transfer documents in favour of the plaintiffs.
- ii. Whether, from the evidence adduced, the court can determine the genuine officials of the group ranch.
- iii. Whether the decree in HCCC 561 of 2000 dated 19/7/2000 directing the 5th defendant and others be allocated equal portions of land with other members can be wished away.
- iv. Whether the court can ignore other suits such as HCCC 233/2001 and HCCC No. 1098/2001, Nairobi, relating to the suit land said to be pending before court.
- v. Whether the plaintiffs' claim is proved.
- vi. Whether the 5th defendant's counter claim is proved.

14. On the first issue, I find that this court cannot compel any person to execute any instrument to transfer any portion of the suit land to the plaintiffs. The reason for this finding is that the plaintiffs have not preponderated their case against the defendants to the required standard. They have not proved that the process that led to their being allocated the land that they claim, was fair and equitable. No minutes have been produced as evidence from the group ranch proving the criteria adopted in allocating land to the group ranch members. It has been stated, that the land allocated to the 5th defendant which measured only 7 hectares while other members got 192 hectares, was prime land. Who determined the value of the land allocated to each person. Was there any balloting? The court can only approve a process that is both egalitarian and criteria based. No criteria and no equality has been proved.

Section 15(6) of the *Land (Group Representatives) Act*, Cap 287 provides as follows.

6. "No business shall be transacted at a meeting of a group unless at least 60% of the members of the group are present at the meeting".



7. “A resolution at a meeting of a group supported by the votes of not less than 60% of the group present at the meeting shall be treated as the decision of the group”.

The resolutions of the group meetings are the tangible evidence that the plaintiffs and the 1st and 3rd defendants failed to adduce.

15. No group records were filed in this case. Such records would reveal the group officials, when they were elected and for how long they would remain in office. No constitution was produced. Yet vide paragraph 2 of the defence and counterclaim, it is denied by the 4th and 5th defendants that the 1st, 2nd and 3rd defendants were the secretary, treasurer and chairman of Ilpartimaru Group Ranch. The 1st, 2nd and 3rd defendants ought to have filed evidence to prove that they were the group’s officials. They did not do so.

When Moses Shipo Njenga testified on 9/4/2019, he had to say while under cross examination by Mr. Kanchori, “The last general election for the group ranch was done two years ago. Our faction was defeated”. See page 51 line 7 of the typed proceedings. This would mean that the elections were held in the year 2017. There is no evidence of who the new officials are. It was necessary to prove all this so that in case the plaintiffs’ suit was successful, then those officials would be the ones to implement the orders issued by the court.

16. The plaintiffs have to prove that the decree in HCCC 561 of 2000 was complied with to the letter. It required the 5th defendant and others to be allocated equal portions of land with other members. Had this order been complied with, there would be no further dispute. It is because of the disobedience of this order that this dispute continues to range more than 24 years later. There was no way of circumventing the order other than to obey it or have it set aside by the trial court. That order stands in the way of the plaintiffs and any other person who did not comply with it.
17. This court cannot ignore the suits such as HCCC No. 233/2001 and 1098/2001 said to relate to the suit land and to be pending. It is a requirement of Order 1 rule 1(1) (f) for a plaint to contain the following particulars.

“An averment that there is no pending suit, and that there have been no previous proceedings, in any court between the plaintiff and the defendant over the same subject matter and that the cause of action relates to the plaintiff named in the plaint”

The existence of the previous suits ought to have been pleaded so that this court would know of the pending or concluded suits and the orders issued therein so that no orders would be issued by this court that contradict those issued by other courts. The 5th defendant has also failed in counterclaim to plead sufficiently on the status of the two cases namely HCCC No. 233/2001 and HCCC 1098/2001. The 4th and 5th defendants have not adduced sufficient evidence to entitle them to any of the orders that they seek in the counterclaim because we do not know what orders have been issued in the other related suits.

18. In conclusion, I find no merit in the plaintiffs’ suit and no merit in the defendants’ counterclaim. I dismiss both with no order as to costs.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 24TH DAY OF SEPTEMBER 2024.

M.N. GICHERU



JUDGE

