



**Sanoe & 2 others v Mara Ripoi Conservation Trust & 3 others (Civil Case E009 of 2024) [2025] KEHC 2228 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2228 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAROK  
CIVIL CASE E009 OF 2024  
CM KARIUKI, J  
FEBRUARY 27, 2025**

**BETWEEN**

**WILLIAM OLE SANOE ..... 1<sup>ST</sup> PLAINTIFF  
VERONICA SENEWA MAYONE ..... 2<sup>ND</sup> PLAINTIFF  
ALEX SITAKA PARMUAT ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**MARA RIPOI CONSERVATION TRUST ..... 1<sup>ST</sup> DEFENDANT  
MARA RIPOI CONSERVATION LEASE HOLDING COMPANY .... 2<sup>ND</sup>  
DEFENDANT  
KINANDA OLE SURUR ..... 3<sup>RD</sup> DEFENDANT  
TEKETI ANTONY RINKA ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. Vide a Plaint dated 05/12/2024 the plaintiff prayed for judgment against the defendants jointly and severally for;
  - a. A determination on who are the members of Mara Conservation Trust by this honourable court.
  - b. A declaration that the formation of the Mara Ripoi Conservation Trust without land owners signing the lease agreements and or consents of the land control board consent is incomplete.
  - c. An order compelling the respondent jointly and severally to disclose and produce all lease agreements signed by members of Mara Ripoi Conservation Trust and the consents of land control board approving such lease.



- d. An order of mandatory injunction compelling the respondents jointly and severally to produce for inspection by the plaintiff and all land owners' books of accounts.
  - e. An order of mandatory injunction compelling the respondent to convene an annual general meeting of the members who shall have been determined by this court, within thirty (30) days of such determination and election of trustees be done on that day.
  - f. An order of injunction restraining the defendant by themselves, their agents and or servants from leasing out, receiving money or in any other manner dealing with all that parcel of land which is within Mara Ripoi Conservancy.
  - g. Any other relief this court may deem fit
  - h. Costs of the suit.
2. The plaintiff vide notice of motion dated 05/12/2024 sought orders;
- a. That this application be certified urgent, heard on a priority basis and service of the same be dispensed with in the first instance.
  - b. That pending the hearing and determination of this application, this honourable court be pleased to issue an order of temporary injunction restraining the defendants/respondents by themselves, their agents, servants, employees, and anybody whosoever from leasing out, receiving money or in other manner dealing with all that parcel of land which is within the Mara Ripoi Conservancy and specifically Block Cis Mara/Siana 'A' and specifically leasing to a new investor by name Kerry & Downey safaris ltd.
  - c. That [ending the hearing and determination of this suit, this honourable court be pleased to issue an order of temporary injunction restraining the defendants/respondents by themselves, their agents, servants, employees, and anybody whosoever from leasing out, receiving money or in any other manner dealing with all that parcel of land which is within the Mara Ripoi Conservancy and specifically block Cis Mara/Siana 'A' and specifically leasing to a new investor by name Kerry & Downey safaris ltd.
  - d. That this honourable court be pleased to order that the suit filed by the plaintiffs/applicants proceed as a representative suit under order 1 rule 8(1) of the civil procedure rules 2010.
  - e. That pursuant to order 1 rule 8(2) of the civil procedure rules 2010, this honourable court be pleased to issue a notice of the filing of a representative suit to all interested parties that any person who has land or claim over Mara Ripoi Conservancy that is Cis Mara/Siana 'A'.
  - f. That the costs of this application be borne by the defendants/respondents.
3. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants have raised a preliminary objection to the plaintiff's suit on the ground that the suit being and matter contravened article 162(2) of the That *constitution* of Kenya (2010) and the *Environment and Land Court Act* of 2011(section 13), hence this court has no jurisdiction to entertain the same and it should be struck out with costs.
4. The notice of preliminary objection dated 13/01/2025 is the subject of this ruling.

**Directions of the court.**

5. The preliminary objection was canvassed by way of written submissions.



## **The Plaintiffs' Submissions**

6. The plaintiffs submitted that the defendants' claim that this court lacks jurisdiction to hear and determine the suit is far-fetched as it is evident from the plaintiffs' pleadings that the predominant issue in dispute is based on the mismanagement of the trust by the defendants and not the ownership of the land. The plaintiffs contend that the main bone of contention is grounded on the management of the trust. The plaintiffs contend that where a matter brings forth various issues some of which fall within the jurisdiction of ELC and yet such dispute cannot be severed for the different issues to be heard in different courts then the predominant test ought to apply. The plaintiffs prayed that if the court disagrees and finds that the environment and land court is the proper court in the interest of justice, the court issue an order transferring the suit to the environment and land court. The plaintiffs relied on *Mukhisa Biscuit Manufacturers Ltd Vs West End Distributors Ltd* [1969] E.A. 696 Cited In *Martha Akinyi Migwambo Vs Susan Ongoro Ogenda* [2022] eKLR, *Lydia Nyambura Mbugua Vs Diamond Trust Bank Kenya Limited & Another* [2018] eKLR, *Suzanne Achieng Butler & 4 Others Vs Redhill Heights Investments Limited & Another* [2016] eKLR, *Co-Operative Bank Of Kenya Vs Patrick Kangethe Njuguna & 5 Others* [2017] eKLR Cited In *Jeruto Tapkili Tengekyon & Another Vs Agricultural Finance Corporation & 2 Others* [2018] eKLR

## **The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> Defendants Submissions.**

7. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> defendants submitted that this court lacks jurisdiction to handle this matter, and the notice of motion application and plaint should be struck out and not transferred. They contend that the dispute before this court leasing which is a form of land tenure and therefore a question and dispute related to land tenure is within the jurisdiction of the environment and land court. They relied on section 13(2) of the *Environment and Land Court Act*, Article 162(2)(b) of the *That constitution*, the case of *Owners of The Motor Vessel 'Lilian S' V Caltex Oil (Kenya) Ltd* [1989] eKLR, and *Phoenix Of E.A Assurance Company Limited V M. Thiga T/A Newspaper Service* [2019] eKLR.

## **Analysis and Determination.**

8. This court considered the Pleadings, and the submission by the respective parties.

### **Issues**

9. The main issue for determination: -
  - i. Whether this court has jurisdiction to hear this suit.

### **I. Whether this court has jurisdiction to hear this suit.**

10. A brief look at the plaint reveals that the main issue in contention by the plaintiffs is the failure to actualize trust membership by not signing a lease signed by land owners and obtaining consent on the same. The plaintiffs allege that despite the trust not becoming operational, the defendants have been running the trust illegally by leasing out private land to third parties. Further, the prayers sought by the plaintiffs pertain to the leasing of land to the form of trust by land owners of Mara Ripoi Conservancy. The question therefore this court is called to determine is that of leasing of land, be it to the trust itself or the trust leasing out the same to third parties. The orders the plaintiffs are seeking are to stop the leasing of land by the respondent to a new investor by the name of Kerry and Downey Safari Ltd.
11. The subject of the suit is a dispute on the use of land. Article 260 defines "land" to include:
  - a. the surface of the earth and the subsurface rock



- b. anybody on water or under the surface
  - c. marine waters in the territorial sea and exclusive economic
  - d. natural resources completely contained on or under the surface and
  - e. The airspace above the surface.
12. This definition of land is replicated under the [Land Act](#), 2012 which states “land” has the meaning assigned to it under Article 260 of the [Thatconstitution](#). “Lease” under the [Land Act](#) 2012 is given the meaning as:
- a. a lease or sublease, whether registered or unregistered of land or
  - b. a short-term lease or agreement to lease.”
13. The application of the [Land Act](#) 2012 is given in Section 3 that is:
- a. registration of interests in all public land as declared by Article 62 of the [Thatconstitution](#)
  - b. Registration of interests in all private and as declared by Article 64 of the [Thatconstitution](#).
14. Further Section 36(1) of the Said Act states that:
- “(1) a Lease charge or interest in land shall not be disposed off or dealt with except in accordance with this Act, and any attempt to dispose of any lease, charge or interest in land otherwise than in accordance with this Act or any other law, shall not extinguish transfer vary or affect any right or interest in that land or in the land lease or charge.”
15. Against the backdrop of the above legal provisions, it is important to determine the basis of a Court’s jurisdiction.
16. In the Supreme Court decision in Samuel Kamau Macharia & Another v KCB & 2 Others application No. 2 of 2011 the Court held that:
- “a Court’s jurisdiction flows from either the [Thatconstitution](#) or Legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the [Thatconstitution](#) or both or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.”
17. The Jurisdiction of the High Court is provided for in Article 165(3) of the [Thatconstitution](#) that, subject to Clause 5 the High Court shall have:(a)Unlimited original jurisdiction in criminal and civil matters. Section 65(5) States that:
- The High Court shall not have jurisdiction in respect of matters(b)Falling within the jurisdiction of the Courts contemplated in Article 162(2).”
18. The Court’s contemplated under the said Article 162(2) are (a) the Employment and Labour Relations and (b) the Environment and Land Court with regards to the use and occupation of, and title to land.
19. The [Environment and Land Court Act](#) Chapter 12A was established to hear and determine the following matters: Section 13 (2) (d) relating to public land, private and community land and contracts, choses in action or other instruments granting any enforceable interest in land.



20. In the case *Karisa Chengo & 2 other v Republic Court of Appeal at Malindi Criminal Appeal Nos. 44, 45 and 76 of 2014*, the Court rendered itself, on the issue of jurisdiction of the High Court, that:

“.....It is therefore clear that the High Court no longer has original and unlimited jurisdiction in all matters as it used to have under the repealed constitution. It cannot deal with matters set out under Section 12 of the ELRC Act and Section 13 of the ELC Act ---”

21. It is therefore obvious that the High Court cannot deal with matters specifically preserved for the Environment and Land Court.

22. The court will, therefore, assume jurisdiction where it has and eschew jurisdiction where none exists. The next question is what to do with the suit. There are limited cases where a matter is to be transferred if there is a predominant question. See the case of *Mohamed Ali Baadi And Others V Attorney General & 11 Others [2018] eKLR*

23. In this matter, the dispute is purely a land dispute. It is not fair to strike it out as we will be punishing the parties for a situation which was not obvious. The plaintiffs may have time to approach the relevant court for redress, but it was not obvious.

I. Consequently, the court finds that the instant suit herein is wrongly before the High court and is transferred to ELC at Narok for the interest of justice. The preliminary objection is found to be meritorious and the same is hereby allowed with costs to the defendants in any event.

II. Orders accordingly.

**DATED, SIGNED, AND DELIVERED AT NAROK THROUGH TEAMS APPLICATION, THIS 27<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**CHARLES KARIUKI**

**JUDGE**

