



**Osam & 164 others v Northern Rangelands Trust & 8 others (Environment & Land  
Petition 006 of 2021) [2023] KEELC 21792 (KLR) (13 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21792 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISILO  
ENVIRONMENT & LAND PETITION 006 OF 2021  
PM NJOROGE, J  
NOVEMBER 13, 2023**

**BETWEEN**

**ABDIRAHMAN OSAM & 164 OTHERS ..... PETITIONER**

**AND**

**NORTHERN RANGELANDS TRUST & 8 OTHERS ..... RESPONDENT**

**RULING**

1. This application is dated 27/9/2021 and seeks orders;
  1. That this application and the annexed petition be certified as extremely urgent, service of the same be dispensed with in the first instance and the same be heard on priority basis;
  2. That pending the hearing and determination of this Petition, this Honourable Court be pleased to grant an ex- parte interim injunction stopping, prohibiting and forbidding all the activities including establishing and management of conservancies on unregistered community land, whether by themselves, their agents, servants, assignees licenses, umbrella bodies or any other person working under their authority or contract of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, within Cherab ward and Chari Ward of Merti Sub-County, and within the rest of Isiolo County.
  3. That pending the hearing and determination of this Petition, this Honourable Court be pleased to grant an ex- parte interim injunction stopping, prohibiting and forbidding all the activities of the employed personnel engaged by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, including Rangers, drivers and other staff, without a valid license from the relevant authorities.
  4. That pending the hearing and determination of this Petition, this Honourable Court be pleased to issued an interim order compelling the 7<sup>th</sup> Respondent, to take up all the activities relating to establishment and management of community conservancies within Cherab and Chari Wards, and the rest of Isiolo County, to wit that all licenses or authority granted to



the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondent or any of its affiliates and/or umbrella bodies or their Community Based Organization be revoked immediately.

5. That pending the hearing and determination of this petition, this Honourable Court be pleased to grant an ex-parte interim injunction stopping, prohibiting and forbidding the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, whether by themselves, their agents, servants, assignees, licences, umbrella bodies or any other person working under their authority, instruction or contract, from entering, mapping, surveying, delineating or in any way disposing the unregistered community land, carrying out conservancy operations, evicting and intimidating community members, within Cherab Ward and Chari Ward of Merti Sub County and within the rest of Isiolo County.
  6. That pending the hearing and determination of this petition, this Honourable Court be pleased to grant interim orders compelling the 2<sup>nd</sup> Respondent to execute its trust mandate relating to the management of the unregistered community land in Cherab and Chari Wards, as well as the rest of Isiolo County, to wit all licenses or authority granted to the 1<sup>st</sup> Respondent or any of its affiliates and umbrella bodies be revoked immediately (sic).
  7. That pending the hearing and determination of this petition, this Honourable Court be pleased to grant an interim injunction against the advertisement, hiring, recruitment, employment or any other form of contractual engagement for or of services of Rangers, Drivers or other conservancy personnel by the Community Based Organization run by the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents or any other conservancy or Community Based Organization under the management or patronage of the 1<sup>st</sup> Respondent either by themselves or through anyone acting under their authority or contract;
  8. That pending the hearing and determination of this petition, this Honourable Court be pleased to grant an interim injunction against the 1<sup>st</sup> Respondent either by themselves or through anyone acting under their authority or contract stopping, prohibiting them from erecting any structures on the unregistered community land.
  9. That pending the hearing and determination of this Petition, the County Commissioner Isiolo and the Isiolo County Police Commandant do oversee the implementation of the orders sought herein and to ensure that peace and order is maintained.
  10. That the Honourable Court be pleased to certify the matter to be placed before the Honourable Chief Justice or such other person duly authorized to act in such capacity for the appointment of a Three Judge bench as it raises substantial questions of law.
  11. The costs of this application be provided for;
2. The application has the following grounds;
1. Article of the *Constitution of Kenya*, 2010 gives an obligation for every person to respect, uphold and defend the *Constitution*.
  2. The applicants herein are members of the indigenous pastoralist community, residing in Chari and Cherab Ward, Merti sub county of Isiolo County living and conducting their daily activities on the community land which is jointly and severally owned by them.
  3. The 1<sup>st</sup> Respondent, working with umbrella groups and without any opposition from the authorities purports to establish conservancies in the said regions without involving the Petitioners and the Community at large. The Applicants' efforts to register the community



and the Community Land (sic) have been met with untold frustration occasioned by the authorities and therefore, in so far as the registration is pending then any attempt to establish a conservancy in the region is premature and ought to be stopped.

4. The 2<sup>nd</sup> Respondent is mandated by the Constitution and the Community Land Act to be the Trustee for all unregistered Community Land and to hold in trust and help manage the land until the community and such land is registered. Further section 6(8) of the Community Land Act bars the County Government from disposing in any way of unregistered community land, which is held in trust. In utter and flagrant disregard of this mandate and in sheer negligence, it has allowed the 1<sup>st</sup> Respondent and its umbrella bodies to establish and run conservancies in unregistered community land, without participation or involvement of the community.
5. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents Chair and run community Based Organizations, the 3<sup>rd</sup> Respondent Chairs Cherab Community conservancy. The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents are co-founders of Bulesa Biliqo conservancy and under the patronage of the 1<sup>st</sup> Respondent herein have gone ahead to advertise for vacancies to be filled in a purported conservancy that they intend to establish. The 3<sup>rd</sup> and 4<sup>th</sup> Respondents chair and run community Based Organizations that are purporting to represent the community, which is an actual misrepresentation of facts, and entirely untrue as the Applicant/Petitioners decry lack of public participation in any dealings in the community land.
6. In the operation of the conservancies, the 1<sup>st</sup> Respondent has armed Rangers whose presence in the county elicits tension which in several instances has resulted in violence and loss of life and forced disappearances as was the case during the establishment of the Biliqo-Bulesa Conservancy. Further, the armed rangers are a private army for the 1<sup>st</sup> Respondent and are used to quell any opposition by the community which in effect has led to a rise in the proliferation of small arms in the region as the community tries to defend themselves.
7. The 7<sup>th</sup> Respondent is the uniformed and disciplined Service established under the Kenya Wildlife Conservation and Management Act, 2012 which is mandated to provide security and offer advisory (sic) relating to conservation of wildlife as well as establishment of Wildlife conservancies and sanctuaries. The 7<sup>th</sup> respondent has abdicated its statutory mandate relating to conservation and without any structure or proper regulation has let the 1<sup>st</sup> Respondent herein take up the same.
8. The 1<sup>st</sup> Respondent, despite protest and objection from the community, continues to make plans in preparation for the establishment of conservancies.
9. The 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents, continue with these operations devoid of any kind of public participation.
10. The establishment of the conservancy, which is in its advanced stages, will disenfranchise the community as the same will render them homeless and with no grazing land and will extinguish their important sites including graveyards in Ires Roba Senthoo, Ires Kira, Ires Saku, Ires Wadha, Ires Ture and Ires Buuna, being graves named after deceased prominent community members.
11. The 1<sup>st</sup> Respondent's actions, the complacency of the 2<sup>nd</sup> and 7<sup>th</sup> Respondents, the involvement of the 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup> Respondents purporting to represent the community is creating a risk of wildlife-human conflict thereby threatening the right to life, right to property ownership, human dignity, economic social and cultural rights, rights to a clean and healthy environment and land use as there are clear plans on the establishment of the conservancy and no clarity on the relocation of the community.



12. The 2<sup>nd</sup> Respondent's inaction is in violation of its constitutional responsibility to hold in trust all unregistered community land in the county.
13. The 1<sup>st</sup> Respondent, well-muscled with rangers and with the backing of the local administration, continues to use intimidation and coercion as well as threats upon the community leaders, where the community leaders attempt to oppose any of their plans. This is an outright violation of the community's right to security and human dignity.
14. There has been no disclosure of any approvals from the relevant bodies, for the 1<sup>st</sup> Respondent to establish a conservancy. There is no environmental impact assessment, socio-economic impact assessment, or any feasibility study done on the establishment of the said conservancy. This is despite the fact that the establishment will interfere with the community's ability to continue with the socio-economic life as they are pastoralists. This is a violation of their social, economic and cultural rights granted under the Constitution and in various international conventions.
15. There has been direct and calculated discrimination against any disenfranchisement of the youth, women and persons with disability in all the activities by the 1<sup>st</sup> Respondent. The community, being an indigenous community, does not allow for joint forums for men and women during public participation. As such, it behooves the 1<sup>st</sup> Respondent herein, ought to have set up separate public participation for the men, women and youth, and in each instance, the persons with disability ought to be involved, since the purported establishment of a conservancy, will have different effects of each group of people that ought to be taken into consideration;
16. There has been a lack of involvement of the community elders and the duly elected members of the community in the decision taken by the respondents. The community herein has elders to whom they go to get guidance on various issues affecting the community. Failure to involve them is an affront to the cultural ways of the community and a violation of their cultural rights, herein;
17. The 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents chair and run Community Based Organizations (sic) they are not in any way the representatives of the community herein and therefore have no authority to act for the community;
18. That the Petitioners have engaged various authorities seeking information on the legality of the 1<sup>st</sup> Respondent's operation in Chari ward and Cherab ward of Merti sub county and the entire Isiolo County, such information has been insufficient to address the community concerns.
19. The applicants registered their complaints with various authorities including the commission on the Administration of Justice (Office of the Ombudsman), where the community presented its complaint which office referred the applicants to the County Coordinator, National Land Commission (NLC) to address the complaint.
20. To this end, the NLC explained to the office of the Ombudsman that the process of setting up the purported conservancy was suspended. The applicants plead that this however did not solve the impasse as the Respondents are actively proceeding with plans to establish conservancies.
21. The Petitioner/Applicants also reported their complains to the office of the County Commissioner, the Deputy County Commissioner, Merti sub county (sic) responded to the 1<sup>st</sup> Respondent herein explaining the complaints of the community in the proposed conservancy



and invited parties for negotiations. The applicants plead that the negotiations bore no fruits and were a sham as it did not in any way address the dispute. In the same letter the deputy County Commissioner lauds the 1<sup>st</sup> Respondents for their support in security and promised to continue with the partnership, this indicated that the said office cannot be taken as a genuine neutral arbiter to the dispute. The Applicants seek orders directed to the 9<sup>th</sup> Respondent to bar authorities under his/her instruction from interfering with community land.

22. The said office of the County Commissioner directed all Assistant County Commissioners and Chiefs to fully support officers from the 1<sup>st</sup> Respondents' office in their operations.
23. Hitherto, the authorities have not offered any solutions to the dispute between the Applicants/ Petitioners and the 1<sup>st</sup> Respondent.
24. That albeit under frustration, the community is working towards registering the property, and as such purporting to establish a conservancy is putting the cart before the horse, the land ought to be held in trust by the 2<sup>nd</sup> Respondent and should not be interfered with in anyway.
25. The applicants plead that the 1<sup>st</sup> Respondent is a stranger as far as the community land in the area is concerned and since the land is still unregistered should be held by the county government of Isiolo in trust.
26. The Kenya National Commission on Human rights (KNCHR) penned an advisory opinion presented to Isiolo County Assembly dated 21<sup>st</sup> April, 2021 on an impugned bill, seeking to enhance establishment and recognition of community conservancies in Isiolo County, to wit the Isiolo County Community Conservancy Bill, 2021. The advisory highlights fundamental violations of the Constitution and relevant statutory provisions by the impugned Bill.
27. Through the proposed enactment of Isiolo County Community Conservancy Bill, 2021, the County Government intended to pass a law to legalize the illegally existing conservancies in the County while also creating a pathway for NRT to unilaterally create more conservancies on the community land without following due processes of the law. The actions of the County Government being the trustee of the community land in allowing third parties such as Northern Range Trust and its conservancies to operate in Community Land contravenes the relevant provisions of the Constitution and the Community Land Act.
28. The applicants, through their Petition dated May 14, 2021, petitioned the National Land Commission (NLC), Nairobi requesting the said office to address the stalemates. The NLC has not responded to the petition to date.
29. It is an established fact that the 1<sup>st</sup> Respondent is actively working and marshalling support from authorities, they launched two land cruiser vehicles that are currently used within Merti area to intimidate and harass those opposed to its project. Additionally, it is believed that the security is used to appease the government administration and the security apparatus to fully accept its activities.
30. The Applicants thus plead that this Honourable Court be pleased to grant the orders prayed for in the annexed petition owing to the fact that if the aforementioned violations go unaddressed and un-remedied the Petitioners will have fundamental rights and freedoms infringed upon without redress and the Respondents will be setting an unconstitutional precedent and be acting without the law and in contravention of the Constitution.
31. The actions of the Respondents, if unchecked and unstopped, will lead to dispossession of indigenous community's ancestral land, destruction of the community land and the eco-



system within the area. This will be a violation of environmental rights under Article 42 of the Constitution, which requires the protection of the environment for the benefit of present and future generations.

32. It is in the interests of justice that this Honourable Court be pleased to certify this matter as extremely urgent and admit it for hearing immediately, and orders sought herein be granted.
  33. The Applicants plead that the Honourable Court be pleased to certify this matter as extremely urgent and admit it for hearing immediately.
  34. This Honourable Court has the jurisdiction, power and duty to grant the Orders sought herein as vested under article 23 of the Constitution.
  35. The Applicants/Petitioners plead that they will abide by orders issued by this Honourable Court.
3. At the outset, I wish to point out that this is an interlocutory application. A court of law must always take into account issues that can only be determined after the parties have been heard in the main suit. Considering that the petitioners seek 8 prayers, I am constrained at this stage to examine if or if not any of the 8 prayers can or can't be granted at the interlocutory stage.
4. Prayer 1 spent.
5. Prayer 2 seeks an injunction stopping the respondents from activities, including establishment and management of conservancies on unregistered community land, whether by themselves, their agents, servants, assignees, licences, umbrella bodies or any other person working under their authority or contract of the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, 5<sup>th</sup> Respondents within Cherab Ward and Chari Ward of Merti Sub-County or within the rest of the County.
- Indubitably this is a prayer that goes into the finality of the determination of this suit. It goes beyond the 2 wards mentioned in this petition. Any order issued is to be applied to the whole of Isiolo County where many others not in this suit will be affected and therefore condemned without being heard. I find that this prayer is not amenable in an interlocutory application.
6. Having found that prayer No. 2 is not a prayer meriting a grant at this stage, I decline to grant prayer No.3.
7. Prayer No. 4 extends beyond the apposite suit land and extends to the whole of Isiolo County. As I said in relation to prayer No. 2, I find that it does not merit granting at this Interlocutory stage.
- I similarly find that prayer 5 and 6 cannot be granted at this Interlocutory stage. I also so find regarding prayer No. 7.
8. Regarding prayer No. 8, I find that the litigants compromised this prayer on May 15, 2023. On this date, Miss Nyasani the advocate holding brief for the 1<sup>st</sup> Respondents told the court that the Respondents' Advocate had told her that there were not any constructions going on at the site. This matter was canvassed and as a result, this court delivered a ruling which granted prayer No. 8. This being the case, pending the hearing of the Petition the order granting prayer No. 8 shall remain extant.
9. Having made the above findings, I decline to grant prayer No. 9 in the application regarding police involvement in this matter.
10. I will come back to prayer No. 10 for the empanelment of a 3 Judge Bench, by the Honourable the Chief Justice, shortly.



11. In arriving at my decision as contained in the previous paragraphs, I have fully considered the pleadings, authorities and submissions filed by the parties to buttress their veritably incongruent assertions proffered in support of their diametrically opposite assertions.
12. In their submissions, the Petitioners submit they have established a prima facie case warranting the grant of Interim injunctions. They question the role of the respondents in the establishment of conservancies and feel that whatever they were doing infringed upon the existing law. Hence the need to safeguard the applicants from suffering irreparable harm if the orders they seek are not granted.
13. The Applicants say that they have established the need for the court to recommend the empanelment of a 3 Judge Bench as the attendant issues raise a substantial questions of law and particularly;
  - a. The right to property ownership as enshrined in article 4 of the Constitution of Kenya as relates to Community Property ownership.
  - b. Issues concerning recognition of unregistered community land held in trust by the County Government and how a County Government should handle or execute such trust and the extent of authority vested in the County Governments Control and utilization of Community Land held in trust as envisioned by article 63 of the Constitution of Kenya 2010.
  - c. The issue of public participation with regard to community Land. The appellants urge this court to recommend the empanelment of a 3 Judge Bench by the Honourable the Chief Justice.
14. The 1<sup>st</sup> Respondent avers that this matter has public interest connotations especially as regards to protection of Wildlife, Creation of employment for the residents of the concerned area and benefits brought by its Corporate Social Responsibility (CSR) including provision of water storage facilities and promotion of security.
15. The Respondents say that the Petitioners application has not satisfied the principles enunciated in the Classic Case of *Giella v Cassman Brown & Co. Ltd* (1975) EA 358 regarding prima facie Case, irreparable harm and Balance of Convenience. They urge this court to dismiss the application on its entirety.
16. As I have already stated, I have carefully considered the pleadings, the authorities and the submissions proffered by the parties in articulation of their incongruent positions. All the proffered authorities are proper authorities in their facts and circumstances. I have taken into account the facts and circumstances of this matter. Indeed no two cases are congruent to a point of Mathematical exactitude in their facts and circumstances.
17. In the circumstances, I issue the following orders;-
  - a. Prayers 2, 3, 4, 5, 6,7and 9 in the application are dismissed.
  - b. Prayer 8, as granted in my ruling delivered on 15/5/2023, remains extant pending the hearing and determination of the Petition in this case.
  - c. Prayer 10 in the application is allowed and therefore, this court certifies this matter as raising substantial questions of law and recommends that the Honourable Chief Justice empanels a 3 Judge Bench to hear and determine this Petition.
  - d. Costs shall be in the cause.



**DELIVERED IN OPEN COURT AT ISIOLO THIS 13<sup>TH</sup> DAY OF NOVEMBER, 2023 IN THE PRESENCE OF:**

Abdullahi holding brief for Makeka for the Petitioners

Kimathi present for the 8<sup>th</sup> Respondent.

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

