



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VOI

PETITION NO. 5 OF 2019

ALFRED NJURUKA MAKOKO.....PETITIONER

VERSUS

COUNTY GOVERNMENT OF TAITA TAVETA.....RESPONDENT

RULING

The Petition

1. The Petitioner filed an undated petition on 3/04/2019, against the Respondent seeking the following orders:

a) A declaration that the continued implementation of the said project, devoid of consultation with me violates my rights under article 40(3) (b) (i) of the constitution of Kenya 2010.

The said article 40(3) (b) (i) provides “the state shall not deprive a person of property of any description, or of any interest in, or right over, property of any description, unless the deprivation-

Is for a public purpose or in the public interest and is carried out in accordance with this constitution and any act of parliament that; -

(i) Requires prompt payment in full, of just compensation to the person.

(ii) Allows any person who has interest in or right over, that property a right of access to a court of law.

b) An order for compensation for my land under article 23(3)(e) of the constitution of Kenya 2010.

c) An injunction stopping all activities on the said land pertaining the project in question until and unless the compensation is implemented in full, pursuant to article 23(3) of the same constitution.

The Application

2. Vide an undated Chamber Summons filed on 29/01/2020, the Petitioner seeks the following orders.

1. That am the petitioner herein seeking to file an injunction to the land suit in issue until the matter is settled (Petition No.5 of 2019 High Court Voi.)

2. That, I wish to draw the attention of Hon. Court to take notice that the county Government of Taita Taveta has dishonoured the court orders issued on 10/07/2019 and their own agreement made on 18/07/2017.

3. That the county Government of Taita Taveta is using delaying tactics and evading releasing payment of the said land as it is supposed to.

3. The instant application is not opposed and it is evident from the prayers in the petition that the petitioner is seeking compensation for his land that was compulsorily acquired and utilized as a public utility without compensating him.

The Determination

4. From the above prayers and in the undated petition, the question that this court must pose and answer on its own motion is whether it has

the requisite jurisdiction to hear and determine the issues raised in the petition.

5. The Petitioner contended that by virtue of Article 23 of the Constitution this Court has the jurisdiction to deal with this matter.

6. Jurisdiction is everything, without which a Court of Law acts in vain, as it has no power to make one more step. Once the Court is persuaded that it lacks jurisdiction to hear and determine a matter, or suit, it must down its tools. There would thus be no basis for the court that has no jurisdiction to continue proceedings pending other evidence. See **Owners of the Motor Vessel "Lilian 'S' v Caltex Oil (Kenya) Ltd [1989] KLR 1** per Nyarangi J.A.

7. Under Article 162(2) of the Constitution, two courts of the same status of the High Court are contemplated to be established to hear and determine specific disputes namely, Environment and Land and Employment and Labour Relations. Under clause 3, **Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).**

8. In addition, **Article 165(5) (b) of the Constitution** is clear that:

“(5) “The High Court shall not have jurisdiction in respect of matters-

(a) Reserved for the exclusive jurisdiction of the Supreme Court Under this Constitution; or

(b) Falling within the jurisdiction of the Courts contemplated in Article 162(2)”

9. The Courts contemplated in **Article 162(2) of the Constitution** are the **Employment and Labour Relations Court and the Environment and Land Court**. The latter Court is established Under **Section 4 of the Environment and Land Court Act, Chapter 12A of Laws of Kenya**. **Section 2 defines Court to mean the Environment and Land Court established Under Section 4 of the Act.**

10. Jurisdiction of the **Court** is provided for Under **Section 13(1) and (2) of the Act** which jurisdiction is both original and appellate in all disputes in accordance with **Article 162 (2) (b) of the Constitution** and provisions of the Act or any other Law applicable in Kenya relating to Environment and Land. **Under Section 13(2) of the said Act, the Court** is empowered to hear and determine disputes: -

(a) Relating to Environmental Planning and Protection, Climate issues, Land use Planning, Title, tenure, Boundaries, Rates, Rents, Valuation, Mining, Minerals and other Natural Resources;

(b) Relating to compulsory acquisition of Land.

(c) Relating to Land Administration and Management;

(d) Relating to Public, Private and Community Land and Contracts, Closes in action or other instruments granting any enforceable interests in land;

and

(e) Any other dispute relating to Environment and Land.

11. **Under Section 7 of the Act**, the **Court** in exercise of its Jurisdiction has power to make orders and grant reliefs as the Court deems fit and just including: -

(a) Interim or Permanent Preservation Orders including

Injunctions

(b) Prerogative (Judicial Review) Orders

(c) Award of damages

(d) Compensation

(e) Specific performance

(f) Restitution

(g) Declaration

(h) Costs.

12. It is noteworthy that the High Court has undisputed jurisdiction to hear and determine issues relating to protection of fundamental rights

to protection of property from arbitrary deprivation thereof. The High Court is specifically barred by the constitution under **Article 165 (5) (b)** from dealing with matters falling within the jurisdiction of the **Environment and Land Court**. Therefore, this means that where a petition contains in the prayer what this Court may call a **“mixed grill”**, it is upon the court to determine whether or not another court may have the best of the jurisdiction, that is, a jurisdiction which may take care of the entire **“mixed grill of prayers”**. In this case, this court is specifically barred from determining issues of **compulsory acquisition of land**. Yet, these are clearly prayers made in the undated petition before the Court and the dispute between the parties is the occupation and the use of **LR. No.473**. Vide the prayer (c) of the Petition, the Petitioner seeks to stop all activities on the suit property pertaining to the project in question, until and unless compensation is implemented in full.

13. It is to be noted that the Petitioner is an inmate at Voi Prison serving legal sentence and it is possible that he faced legal challenges in presenting his petition before this Court. It is however noted that the Respondent failed to present their position in the application and therefore denying this Court the chance to fully appreciate the issue before the Court. Be that as it may I perceive the issue to be a complaint about delay to compensation, or indeed failure to compensate the Petitioner for a land which the Respondent allegedly compulsorily acquired from the Petitioner.

14. I have noted also that proceedings have taken place in this matter leading to orders issued on 10/7/2019 and 19/9/2019 against the Respondent. What is clear to me is that there is a dispute regarding compensation of compulsorily acquired land. That land apparently belongs to the Petitioner, who is currently serving prison sentence. It is difficult for the Petitioner to mount an aggressive prosecution of his petition from behind the bar. Further, it appears that the Respondent is taking advantage of this fact to frustrate the Petitioner.

15. This Court cannot close its eye to the injustice the Respondent is causing to the Petitioner. Although this Court does not have the jurisdiction to entertain most prayers in the petition, this Court has the residual jurisdiction to do justice in all circumstances. And in any event this Court had issued orders earlier in this matter. The Respondent is using the Petitioner’s land, while at the same time the Respondent is reluctant to conclude the issue of compensation. Doing the best that I can under the circumstances, I make the following orders:

(1) This petition is hereby transferred to Environment and Land Court in Voi for hearing and determination thereof on PRIORITY basis.

(2) The Deputy Registrar is hereby directed to extract this order and have it served upon the Respondent’s advocate, with a copy given to the Petitioner who is currently in Voi Prison.

(3) Costs in the cause.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 3RD DAY OF AUGUST, 2021.

E. K. OGOLA

JUDGE

Ruling delivered via MS Teams in the presence of:

Petitioner absent

Mr. Chirchir for Respondent

Ms. Peris Court Assistant