



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**PETITION NO. 3 OF 2020**

**SAMWEL MOMBOSI & 449 OTHERS.....PETITIONERS**

**(SUING ON HIS OWN BEHALF, IN THE PUBLIC INTEREST, AND ON  
BEHALF OF THE AFFECTED RESIDENTS OF NAARLONG SUB-LOCATION,  
NDOINYO LOATION TRANSMARA WEST SUB COUNTY ON THE ILLEGAL  
AND FORCED RELOCATION OF THE NAAROLONG SUB-LOCATION  
BY THE RESPONDENTS)**

**VERSUS**

**THE CABINET SECRETARY, MINISTRY ON INTERIOR AND**

**CO-ORDINATION OF NATIONAL GOVERNMENT.....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**TRANSMARA WEST SUB-COUNTY COMMISSIONER.....3<sup>RD</sup> RESPONDENT**

**ASSIT. COUNTY COMMOSSIONER-KEIYIAN DIVISION.....4<sup>TH</sup> RESPONDENT**

**RULING**

**The case for the petitioners**

1. Pursuant to the provisions of articles 1 (1) (b), 1 (4) (b), 10 (1) (c) (2) (a) (b) & (c), 19 (1), 20, 21 (1), 22 (1) (2), 23, 27, 28, 47 (1) (2), 174, (a) (c) (d) & (e), 232 (1) (d) (e) and 258 of the Constitution of Kenya 2010, the Fair Administrative of Actions Act, No. 4 of 2015 Laws of Kenya and the National Government Co-Ordination Act 2013, the petitioners applied under a certificate of urgency for the following orders.

1) *spent*

2) the application and the petition be heard on priority basis.

3) Issuance of conservatory orders suspending the Gazette Notice number 2845 dated 21<sup>st</sup> June 2017.

4) Prohibitory orders to issue prohibiting the respondents from implementing the Gazette Notice Number 2845 dated 21<sup>st</sup> June 2017 which declared Naarolong sub-location as part of Kereto Division in Transmara West sub-county Narok county, pending the hearing and determination of the instant petition.

5) an order to declare as unconstitutional the relocation of Naarolong sub-location in Ndoinyo in Transmara west sub-county to Kereto Division of Transmara west sub-county, by the respondents.

6) To issue such further or other orders as the court may deem fit.

7) An order that costs be costs in the suit.

2. The application is supported by twelve grounds (12) that are set out on the face of the notice of motion, with the major grounds being the following. There exists Ilwuasinkishu clan that occupies the whole of Kiikat and Naarolong sub-locations all within Ndoinyo location in Keiyian Division. There are no good roads from Naarolong sub-location to Kereto Division. Additionally, there are two big rivers as one goes by road to Kereto Division from Naarolong sub-location, which often burst their banks, which renders the roads user unfriendly. The road to Kereto is infested with bandits which causes insecurity to the people of Naarolong sub-location and the transfer of Naarolong sub-location to Kereto Division exposes the petitioners to insecurity. There is tension between the petitioners, who are from the Ilwuasinkishu clan and the inhabitants of Kereto Division, who are from the Siria clan and the said transfer will accelerate the tension.

3. Furthermore, at the time the respondents decided to relocate Naarolong sub-location to Kereto Division, the people of Naarolong sub-location were not consulted and were not notified of the decision, which is against the Constitution of Kenya and the Fair Administrative Actions Act. The actions of the respondents were unlawful and the court is requested to declare the said decision as void for want of public participation. The petitioners did not request to be moved to Kereto Division. It is their wish to continue being with their friends and relatives within Ndoinyo location. Unless prohibitory orders are issued against the respondents, prohibiting them from implementing Gazette No. 2845, the petitioners are likely to suffer irreparable loss.

4. Additionally, the petitioners are aggrieved by the inaction of the respondents, which amounts to a blatant disregard of the law as set out in paragraph 1 of this ruling.

5. In addition to the grounds in support of the application, the 1<sup>st</sup> petitioner has deposed to a seventeen (17) paragraphs supporting affidavit, whose major averments are as follows. The 1<sup>st</sup> petitioner has deposed that he is a resident of Naarolong sub-location, wherein he has resided for over thirty (30) years. Government services are effectively delivered in Ndoinyo location, with Naarolong sub-location being part of Ndoinyo location. By virtue of Gazette Number 2845 Naarolong sub-location was illegally moved to Kereto Division from Keiyian Division, in regard to which the deponent has annexed the Kenya Gazette which is annex marked "SKM II." The said relocation has and will continue to affect the residents of Naarolong sub-location and Ndoinyo location in matters of accessing government services.

6. Furthermore, the area administrator of Ndoinyo location after the new administration if effected will get his mandate from two assistant commissioners namely Keiyian and Kereto Divisions, which will make it difficult for him to work. The petitioners had petitioned the Cabinet Secretary of Interior and Co-Ordination of the National Government in respect of this relocation and they did not get a response from him, a matter in regard to which the deponent has annexed a copy of the petition which is marked as annex "SKM III."

7. The deponent has deposed that under section 6 of the Fair Administrative Actions Act No. 4 of 2015, the petitioners were entitled to participate in the county policing and decision making through public participation.

8. Finally, the deponent has deposed to the same matters that are set out as grounds in support of the notice of motion, which I find unnecessary to repeat here.

### **The case for the respondents**

9. The respondents were served with the hearing notice of this application. This is clear from the two affidavits of service dated 14<sup>th</sup> July 2020. They did not participate in these proceedings with the result the instant proceedings were conducted in their absence. I find that the respondents had adequate notice.

### **Issues for determination**

10. I have considered the application. I have also considered the applicable law. As a result, I find the following to be the issues for determination.

1. Whether the petitioners have made out a case for the grant of interim conservatory orders.
2. Who bears the costs of this application?

### **Issue 1.**

11. Conservatory orders are granted to preserve the subject matter of the application from damage or loss, pending the final determination of the application. The burden of establishing that the orders sought should be granted lies squarely on the shoulders of the applicant. The applicant may discharge that burden by producing evidence either orally or by affidavit.

12. At this interlocutory stage, the court is only concerned with whether the applicant has produced evidence of real danger to the subject matter of the petition that may warrant intervention by the court through the issuance of conservatory orders.

13. I have considered the affidavit evidence of the petitioners. Their evidence is that there are no good roads from Naarolong sub-location to Kereto Division. Additionally, there are two big rivers as one goes by road to Kereto Division from Naarolong sub-location, which often burst their banks. The bursting renders the roads user unfriendly.

14. It is also their evidence that the road to Kereto is infested with bandits, which causes insecurity to the people of Naarolong sub-location and the transfer of Naarolong sub-location to Kereto Division exposes the petitioners to insecurity.

15. Furthermore, it is their evidence that there is tension between the petitioners, who are from the Ilwuasinkishu clan and the inhabitants of Kereto Division, who are from the Siria clan and the said transfer will accelerate the tension.

16. It is the contention of the petitioners that there is in existence tension between the Ilwuasinkishu clan and the Siria clan. The relocation of Naarolong sub-location, which is inhabited by the Ilwuasinkishu clan to Kereto Division which is inhabited by the Siria clan, will exacerbate the already existing tension. It is also their contention that access to Kereto Division by road is poor and is infested with bandits, which exposes them to insecurity. Finally, they also contend that the transfer of Naarolong sub-location was not preceded by public participation.

17. In short, first the petitioners case is that there was lack of public participation. Secondly, the case of the petitioners is that access to Government services (roads and security) will be inadequate if the transfer of Naarolong sub-location is implemented. It is also their case that there is tension between the two clans. The petitioners have not demonstrated that these matters singly or collectively disclose real danger that is likely to cause irreparable harm to the them that warrants the issuance of an interlocutory conservatory order.

18. Mr. Miruka urged the court to allow the application, since it was not opposed. Even in any application that is not opposed, it does not follow automatically that it ought to be allowed. It must still be demonstrated that the orders sought are warranted to preserve the status quo pending the hearing and determination of the application. The petitioners have failed to demonstrate that the subject matter of the petition is likely to suffer irreparable loss unless interlocutory conservatory orders are granted. They have not discharged the burden of proof to warrant the grant of the orders sought. In short, they have not made out a case for the grant of conservatory orders.

19. Furthermore, the issues raised are matters that ought to be canvassed during the *inter partes* hearing of the petition itself, which is the final stage of this petition.

20. The upshot of the foregoing is that the petitioners have not discharged the burden of demonstrating that there is real danger that warrants this court to intervene through the issuance of conservatory orders at this stage.

## **ISSUE 2**

21. This petition is at the interlocutory stage. It is therefore in the interests of justice that there be no order as to costs and I so order.

22. In the premises, the application fails and is hereby dismissed.

Ruling signed, dated and delivered in open court at Narok this 30<sup>th</sup> day of July, 2020 in the presence of Mr. Miruka for the Petitioners and in the absence of the Respondents.

**J. M. BWONWONG'A**

**JUDGE**

**30/07/2020**