



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CONSTITUTIONAL PETITION NO. 21 OF 2015

**IN THE MATTER OF ALLEGED CONTRAVENTION OF THE RIGHT TO OWN AND ENJOY
PROPERTY UNDER ARTICLE 40 OF THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF THE RIGHT TO COMPENSATION INCASE OF LOSS OF PROPERTY

BETWEEN

ALI GUYO SORCHA.....PETITIONER

VERSUS

NOOR MUHIDIN.....1ST RESPONDENT

COUNTY GOVERNMENT OF MARSABIT.....2ND RESPONDENT

LAND REGISTRAR, MARSABIT/ISIOLO.....3RD RESPONDENT

ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. The Preliminary Objection has been filed by the County Government of Marsabit (2nd Respondent) through its advocates. The grounds set out there in are;

1. That the dispute in question does not fall within the High Court's Constitutional jurisdiction.
2. That the issues raised by the Petitioner do not meet the requirements of a Constitutional Petition.
3. That the dispute over the subject matter is one of ownership of land and not a violation of Constitution Rights.
4. That this dispute falls within the jurisdiction of the Environment and Land Court as directed under the Practice Directions on Proceedings relating to the Environment and the Use and Occupation of, and title to Land, Gazette Notice No. 13573 and the Environment and land Court

Act, No. 19 of 2011.

5. That this Court does not have jurisdiction to issue interim and permanent preservative orders in the nature of temporary injunction or otherwise.

6. THAT this Application and the Petition is an abuse of the process of this Court.

7. THAT the Notice of Motion Application and the Petition should be struck out and dismissed with costs for lack of jurisdiction.

2. On 9th September, 2015 directions were given for the Preliminary Objection to be canvassed by way of written submissions.

3. I have considered all the arguments raised herein. In the P.O, it is averred that this should be a matter before an ELC. This matter has always been handled in ELC.

4. On the issue that this should not be a Constitutional Petition, reference is made to article 22 (1) of the constitution;

“Every person has the right to institute court proceedings claiming that a right or fundamental freedom in the bill of rights has been denied, violated, infringed or threatened.”

Article 22 (3) (a) provides;

“the court while observing the rules of natural justice shall not be unreasonably restricted by procedural technicalities.”

Further under article 23 (3);

“in any proceedings brought under article 22, a court may grant appropriate relief including:-

a) A declaration of rights

b) Injunction

c) Conservatory order

d) A declaration on invalidity of any law that denies violates, infringes or threatens a right or fundamental freedom in the bill of rights and is justified under article 24.

e) An order for compensation.

f) An order of judicial relief.”

5. In *Mohammed Said V. County Council of Nandi & Another E & C Petition No. 2/2013, Sila J.* stated that:-

“The jurisdiction of the ELC court was not restricted only to hearing petitions falling under articles 43, 69 and 76. It could hear any constitutional petition under any provision of the constitution, so long as the matter related to the environment, and use and occupation of and title to land.”

6. The prayers sought for in the present matter include:-

- Declaratory orders
- Compensation
- Judicial review orders
- Injunctions.

7. I find that the petition is properly filed. The 1st Respondent appears to support the Preliminary Objection while no response was filed by 3rd and 4th Defendant. In the circumstances, the Preliminary Objection is dismissed with costs to petitioner.

DELIVERED, DATED AND SIGNED AT MERU THIS 30TH DAY OF MAY, 2017 IN THE PRESENCE OF:-

CA: Janet

Kiango for 3rd & 4th Respondent

Kiome Miss h/b for Abdi Hassan for 2nd Respondent.

Mwanzia h/b for Ondari for Petitioners

HON. L. N. MBUGUA

JUDGE