



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**PETITION NO. 17 OF 2017**

**IN THE MATTER OF SIYIAPEI COMMUNITY LAND UNDER ARTICLES 40 AND 63 OF THE CONSTITUTION AND IN THE MATTER OF THE UNLAWFUL ALIENATION AND APROPRIATION OF SIYIAPEI COMMUNITY LAND WITHOUT PROMPT, ADEQUATE OR EFFECTIVE COMPENSATION**

**IN THE MATTER OF THE ILLEGAL MINING AND EXTRACTION OF ROAD BUILDING MATERIALS FROM SIYIAPEI COMMUNITY LAND WITHOUT COMPENSATION**

**-AND-**

**IN THE MATTER OF ENVIRONMENTAL DEGRADATION AND ENFORCEMENT OF ENVIRONMENTAL RIGHTS UNDER ARTICLE 70 OF THE CONSTITUTION**

**-AND-**

**IN THE MATTER OF ARTICLES 22,23,40,48,60,67,70,159,258 AND 259 OF THE KENYA CONSTITUTION 2010**

**AND IN THE MATTER OF BREACH OF ARTICLE 17 OF THE UNIVERSAL DECLARATION ON HUMAN RIGHTS (1984)**

**-AND-**

**IN THE MATTER OF BREACH OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)**

**-AND-**

**IN THE MATTER OF BREACH OF THE RIO DECLARATION ON ENVIRONMENT AND DEVELOPMENT AGENDA 21(1992)**

**IN THE MATTER OF BREACH OF THE REPORT OF THE INTERNATIONAL CONFERENCE ON POPULATION AND DEVELOPMENT**

**LAWRENCE TATIYIA OLE SEMPELE (Suing on his behalf and on behalf**

**of the Members of Siyiapei Community Group..... PETITIONERS**

**VERSUS**

**THE NATIONAL LAND COMMISSION AND 7 OTHERS.....RESPONDENTS**

## RULING

1. The petitioners are seeking an order of compensation in the sum of Ksh. 2,850,000,000/= against the Respondents for compulsorily acquiring their parcel of land and having the same registered as the property of the Ilmashariani Community. They are also seeking Shs.1,906,902,000/= as compensation being the value of the extracted hardstone and laterites for use in road construction of the Maai Mahiu – Narok road. Additionally, they are seeking general damages against the Respondents for environmental degradation of their parcel of land in which the 2<sup>nd</sup> respondent has been extracting hard stone soil/sand for road construction purposes. Finally the petitioners have sought orders for declaration in respect of violation of their land rights.
2. All respondents have not filed any response to the petition. I was satisfied that they had adequate notice of the hearing of this petition and that they were properly served. The facts giving rise to this claim are as follows. The petitioners lodged their claim during the land adjudication process against Ilmashariani Community who are members of the Purko clan of the maasai ethnic group. In the course of the land adjudication process, the Ilmashariani community were awarded land reference No. Ilmashariani/Marijo 1/Narok. As a result the petitioners raised an objection before the Land Adjudication Officer, who had ruled in favour of the Ilmashariani Community Group. The petitioners filed an appeal in *“Minister’s Appeal Case No. 102 of 1972 and the appeal was heard by the District Commissioner Narok (Peter Ndemo) by virtue of powers then conferred upon him by L. N. 73/78. Upon hearing the parties, the said District Commissioner returned a judgement on 14<sup>th</sup> April 1995 in which the disputed land was divided between the two groups with Ilmashariani getting 200 acres more. In consequence, the Siyapei Community Group was to get 32- 4.2 Hactares or 7,915 acres of the disputed land. The District Commissioner’s decision included a detailed map of the demarcation of the two parcels of land for the petitioner community and the Ilmashariani respectively.”*
3. Furthermore, the Ilmashariani community group applied for Judicial Review of the Minister’s decision in the High Court in ***Misc. Civil Case No. 319 of 1985 (Ilmashariani group vs. In the matter of Land Adjudication Act and the District Commissioner and Narok District)***. The High Court declined to quash the decision of the District Commissioner in the Minister’s Appeal No. 102 of 1972 because they did not find sufficient grounds upon which to quash the said decision.
4. As a result, the Ilmashariani Community Group appealed against the decision of the High Court to the Court of Appeal in Civil Appeal No. 10 of 1989 (Ilmashariani Group Ranch vs. District Commissioner – Narok District). The Court of Appeal struck out that appeal for being incompetent. As a result, the decision of the High Court became final in respect of the land dispute.
5. Following that decision of the High Court having become final, the Attorney General as the Principal Government Legal Advisor, advised the Director of Land Adjudication and Settlement that the said director should proceed to implement the Minister’s decision and issue title deeds. As a result, the petitioners paid Sh.91,400/-to the District Surveyor to survey and sub divide the disputed land in accordance with the decision of the District Commissioner in the Minister’s Appeal Case No. 102 of 1972. The Director of Land Adjudication and Settlement wrote to the District Surveyor, Narok district directing him to implement the decision of the court. The said letter was copied to the District Commissioner, Provincial Surveyor and the District Land Adjudication and Settlement Officer, Narok. The decision of the court was never implemented.
6. Subsequently, it came to light that the Director of Land Adjudication and Settlement, the Director of Survey and the District Land Registrar ignored the decision of the court and the advice of the Attorney General and then proceeded to survey and subdivide the disputed land and cause titles to be issued to members of the Ilmashariani Community Group.
7. It is in view of the foregoing that the petitioners are seeking compensation and general damages for the environmental degradation upon their parcel of land arising out of extracting hardstones for road construction.

## **8. Issue of jurisdiction**

It is clear from the foregoing paragraphs that this is a claim that is based on the compulsory acquisition of land. It is also clear that the orders for declarations are sought in respect of the environmental degradation of their land is a matter that touches on the environment of the subject land. In the circumstances, I find that the proper forum for litigating this claim is the Environment and Land Court. The reason being that it is the right to user of land and interference of land rights of the petitioners that are in issue. This is clear from section 13 (1) and (2) of the Environment and Land Court Act No. 19 of 2011 which provides as follows

*(1) “The court shall have original and appellate jurisdiction to hear and determine all disputes in accordance with Article 162(2)(b) of the Constitution and with the provisions of this Act or any other law applicable in Kenya relating to environment and land.*

*(2) In exercise of its jurisdiction under Article 162(2)(b) of the Constitution, the court shall have power to hear and determine dispute –*

*(a) relating to environmental planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, valuations, 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 contrast, choses in action or other instruments granting any enforceable interests in land; and*

*(e) any other dispute relating to environment and land.”*

It is clear from the provisions of section 13(2) (a) and (b) that the Environment and Land Court Act is the proper forum to adjudicate in matters of both environment and compulsory acquisition of land, which are the very issues raised in this petition.

9. Furthermore, it is now settled law that jurisdiction of any court is conferred by statute. The authority for this proposition is the case of *Owners of the Motor Vessels “Lillian S” v. Caltex Oil (Kenya) Ltd. (1989) KLR 1* in which it was held that the question of jurisdiction may be raised by a party or by a court on its own motion and must be decided forthwith on the evidence before the court.

10. In the circumstances, it is clear that the issue of jurisdiction may be raised by a party or by the court on its own motion. In the instant petition, I raised this issue of jurisdiction on my own motion (Suo motu) because it is a fundamental issue in this case I find that this court has no jurisdiction to entertain this petition. I therefore decline to exercise jurisdiction in the matter.

11. The petition is hereby transferred to the ELC court for hearing and determination. This is in the spirit of the efficient disposal of the business of the court and the efficient use of the available judicial and administrative resources in terms of section 1B (1) (b) and (c) of the Civil Procedure Act (Cap 21) Laws of Kenya.

**Ruling delivered in open court this 31st day of July 2017.**

In the presence of

Mr. Simiyu for petitioners and in the absence of the Respondents.

**J. M. Bwonwonga**

**Judge**

**31/7/2017**