



**REPUBLIC OF KENYA**

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

**PETITION NO. 7 OF 2017**

**IN THE MATTER OF ARTICLE 22(1)**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF ARTICLE 10, 60, 63, 189 &**

**THE SCHEDULE OF THE CONSTITUTION OF KENYA 2010**

**THE COUNTY GOVERNMENT OF MERU.....1ST PETITIONER**

**HON. PETER GATIRAU MUNYA .....2ND PETITIONER**

**VERSUS**

**THE DISTRICT LAND ADJUDICATION &**

**SETTLEMENT OFFICER TIGANIA EAST SUBCOUNTY.....1ST RESPONDENT**

**THE HON. ATTORNEY GENERAL .....2ND RESPONDENT**

**AND**

**CYPRIAN KAUME M'MUKIRA & 16 OTHERS.....1ST INTERESTED PARTIES**

**M'MWIRIA M'THARANJA & 9,980 OTHERS.....2ND INTERESTED PARTIES**

**RULING**

The Petition was filed along with a Notice of Motion on 5.4.17. The Petitioner obtained temporary orders of Injunction Exparte on the same day. The matter was then scheduled for interparties hearing on 17.7.17.

In the Course of the proceedings, it was agreed that the main petition should be pursued instead of the application of 5.4.17. The matter was scheduled for hearing on 20.6.17. The matter however did not proceed and the Interim Orders of Injunction were vacated.

On 10.7.17, this Court was receiving submissions in respect of the main motion. It is then that Petitioner's Counsel requested for the restoration of the Interim Orders of Injunction until the matter is fully heard and determined.

It was argued for the Petitioner that unless the Petition is finalized in the shortest period possible, or if Interim Orders are not reinstated, then the Petition will be rendered nugatory and a mere academic exercise,

For the 1st interested party, it was argued that the application has to be presented formerly and that the Principles set, out in **Giella Vs. Cassman** Brown have to be followed. The Court was further told that Adjudication process is already under way and much of financial and human Resources have been put in the program whereby over 500 parcels of land have been covered.

Further, the Court was told that the Petition cannot be rendered nugatory because in the adjudication processes, there are dispute resolution mechanisms. The 1<sup>st</sup> interested party also states that titles are not about to be issued and that even if the adjudication process is completed, the outcome there of can still be challenged.

The 1st and 2nd Respondent who are the District Land Adjudication Settlement Officer Tigania East Sub County and Attorney General respectively associated themselves with the position taken by 1st Interested Party. The 2nd Interested Party too took the same position.

The issue for the Court to consider is whether the orders of injunction sought for are meritorious at this stage. I am alive to the fact that the application of 5.4.17 was not argued as it was agreed that the main Petition be heard instead.

### **Determination;**

**Discretion criteria;** I find that a prayer for injunction is a discretionary remedy. It is not granted as a matter of right. In **Charter house investment Ltd vs Simon K. Sang & 3 Others (2010) Eklr the court of appeal** had observed that;

***“Injunction is an equitable and discretionary remedy.....the award of temporary injunction by a court of equity has never been guaranteed as a matter of right”.***

It is incumbent upon the Petitioner to demonstrate that the conservative orders of injunction are really necessary otherwise by the time the suit is finalized the Petition will be rendered nugatory.

**What is at stake in terms of the rights and interests of the Petitioners???.** Petitioners aver that the continuation of the Adjudication process means that the trusteeship set out in the Constitution in respect of Trust Land will be transferred to the National Government from the County Government. However one of the issues set forth by Petitioners for determination highlighted as issue No. 2 is **whether the Suitland is Trust Land?** . The Attorney General too would like this Court to determine the law applicable in this matter.

The question as to which category the land falls under is one that invites arguments. At this interlocutory stage, this court is not seized of the full facts as appertains to the matter at hand. The pronouncement of the rights and interests of the Petitioners would therefore have to be determined in the main hearing and not at the interlocutory stage.

**What is being preserved ?.** The Court has not been told whether there is any wastage or wanton destruction that is occurring at the moment. Petitioner has not demonstrated that there is irreparable damage being occasioned by the Adjudication Process. In the case of **Nguruman Limited versus Jan Bonde Nielson & 2 others, (Court of Appeal Civil Appeal No. 77 of 2012 NBI )** it was stated that;

***“the very foundation of the jurisdiction to issue orders of injunction vests in the probability of irreparable injury, the inadequacy of pecuniary compensation and the prevention of multiplicity of suits, and where the facts are not shown to bring the case within these conditions , the relief of injunction is not available”.***

**How will the Petition be rendered nugatory if the injunction is not granted?.** The Adjudication process is a rather lengthy exercise. There is the process of ascertainment of rights captured in Part 111 of the Land Adjudication Act and there is the process of preparation of the register ( Part 4) amongst other stages.

However, even if the Adjudication process is completed before the Judgment is delivered, it doesn't mean that the process cannot be challenged. The final chapter of adjudication is the crystallization of rights and interest in communal land to individual parcels by way of issuance of Title deeds. In the event, that the process is found to be unlawful, then such titles can still be impeached under article 40 (6) of this Constitution.

From the foregoing I find that the prayer for injunction sought for is not meritorious and the same is hereby dismissed.

**DELIVERED, DATED AND SIGNED AT MERU THIS 26TH DAY JULY, 2017 IN THE PRESENCE OF:**

C:A Janet

Atheru h/b Okong'o Omogeni for Petitioners present

Ashaba for 1st Interested Party

Ashaba h/b for 2nd Interested Party for Mbugua

Janet Kungu AG for the Respondent

**HON. L. N. MBUGUA**

**ELC JUDGE**