REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC NO. 12 OF 2021

TANA RIVER COUNTY GOVERNMENT....................................... PLAINTIFF/APPLICANT

VERSUS

IDA-SA GODANA RANCHING

CO-OPERATIVE SOCIETY..1ST DEFENDANT/RESPONDENT

KENYA NATIONAL LAND COMMISSION ....2ND DEFENDANT/RESPONDENT

THE CHIEF LAND REGISTRAR....................................3RD DEFENDANT/RESPONDENT

THE ATTORNEY GENERAL ....4TH DEFENDANT/RESPONDENT

RULING

This ruling is in respect of two applications by the plaintiff applicant dated 22nd February 2021 and 20th September 2021 respectively seeking for the following orders:

1. ***That the Honourable Court be pleased to order the vacation of the 1st Respondent from the suit property as the community has been subjected to unnecessary suffering, being an outcome of an arbitrary process undertaken by the Respondents and as a result the livelihood of the members of the community has been unfairly taken away.***

2. ***Spent.***

The second application was for leave to amend the plaint.

Counsel for the applicant filed submissions and relied on the grounds on the face of the application together with the supporting affidavit of Isaiah Ndisi Munje, the Plaintiff/applicant's legal advisor who deposed that the 1st Defendant/respondent failed to adhere to the procedure for the renewal of lease.

Mr. Munje deposed that the certificate of lease L.R No. 13597 (suit property) was irregularly issued to the 1st Defendant/respondent in 1971 and expired in 2015. That subsequently, the local communities through Ndera Gasa elders lodged a complaint to the Transition Authority, which in turn wrote a letter dated 17th June 2015 to the National Land Commission requesting them to engage the local communities before extending the lease. That despite all the above, the communities were overlooked and did not participate in the extension of the lease. As a result, the 1st Defendant/Respondent has continued to utilize and occupy the suit property carrying out ranching activities to the detriment of the local communities who require the same for their pastoral activities.

Counsel therefore urged the court to allow the applications since they are unopposed.

ANALYSIS AND DETERMINATION

The Defendants neither filed a response nor submission to the application despite being served. The fact that an application is unopposed does not mean that the court will automatically allow it. The court has to look at the merit of the application before allowing such.

The orders that the applicant is seeking is for are essentially eviction orders in an interlocutory application before hearing the other parties. The wording of the application that *"the community has been subjected to unnecessary suffering, being an outcome of an arbitrary process undertaken by the Respondents and as a result the livelihood of the members of the community has been unfairly taken away."* Is in itself an issue that cannot be granted without hearing the case. This kind of allegation requires proof.

In the case **Faith Karimi Muchangi & 2 others v Peter Njeru Mvungu [2017] eKLR** the court held that;

> ***"A scrutiny of the plaint and application reveals that the Plaintiffs are seeking essentially the same reliefs in both. The only difference is that whereas the orders in the suit are sought on a permanent basis, the ones in the application are sought on a temporary basis pending the hearing and determination of the suit. The danger of granting such orders as sought in the application is that they may essentially dispose of the entire suit at the interlocutory stage."***

Allowing such an order will amount to granting final orders in an interlocutory application. I therefore find that even though the application is unopposed, the same lacks merit and is dismissed with no orders as to costs.

On the second application for amendment of plaint is unopposed and that the Defendants were served with the plaint but have not yet filed any response. The same is allowed as prayed. Applicant to file and serve the amended plaint within 7 days.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 26TH DAY OF JANUARY, 2022.

M.A. ODENY

JUDGE

NB: IN VIEW OF THE PUBLIC ORDER NO. 2 OF 2021 AND SUBSEQUENT CIRCULAR DATED 28TH MARCH, 2021 FROM THE OFFICE OF THE CHIEF JUSTICE ON THE DECLARATIONS OF MEASURES RESTRICTING COURT OPERATIONS DUE TO THE THIRD WAVE OF COVID-19 PANDEMIC THIS RULING HAS BEEN DELIVERED ONLINE TO THE LAST KNOWN EMAIL ADDRESS THEREBY WAIVING ORDER 21 [1] OF THE CIVIL PROCEDURE RULES.