



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA

ELC PETITION NO. E002 OF 2022

MARY KEREBI MOTURI.....1ST PETITIONER

GEORGE MORARA OBISA.....2ND PETITIONER

ERICK ONGAGA MOTURI.....3RD PETITIONER

ROBERT KABINGA MOTURI.....4TH PETITIONER

GEORGE ANARI ISABOKE.....5TH PETITIONER

VERSUS

DCIO NYAMIRA NORTH.....1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS.....2ND RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION.....3RD RESPONDENT

THE OFFICER COMMANDING STATION –

EKERENYO POLICE STATION.....4TH RESPONDENT

ASSISTANT COUNTY COMMISSIONER – EKERENYO DIVISION.....5TH RESPONDENT

CHIEF, BOISANGA 1 LOCATION.....6TH RESPONDENT

INSPECTOR GENERAL OF THE NATIONAL POLICE SERVICE.....7TH RESPONDENT

THE CABINET SECRETARY – MINISTRY OF INTERIOR & COORDINATION

OF NATIONAL GOVERNMENT.....8TH RESPONDENT

CHIEF MAGISTRATE – NYAMIRA CHIEF MAGISTRATES COURTS.....9TH RESPONDENT

GEORGE NYANUMBA ARASA.....10TH RESPONDENT

INDEPENDENT POLICING OVERSIGHT AUTHORITY (IPOA).....11TH RESPONDENT

RULING:

The Petitioners have moved this court vide Application dated 3/2/22 for the following orders: -

1. This Application be certified urgent and be heard *ex-parte* in the first instance.
2. Pending the hearing and determination of this Application, a conservatory or injunction order do issue to restrain the 10th

Respondent, his agents, servants, employees or any person authorized by the 10th Respondent to act on his behalf from further trespassing, entering, accessing, excavating, levelling, undertaking any construction works or activities, taking possession, alienating or in any other way dealing with all that property comprised in Title Number: NORTH MUGIRANGO/BOISANGA/6564 (the property) or any portion thereof or any other property owned by the 1st Petitioner or held by the 1st Petitioner in trust for the 2nd, 3rd, and 4th Petitioners.

3. Pending the hearing and determination of this Application and the Petition, a conservatory order or injunction do issue suspending the Requisitions to compel attendance dated 6th December, 2021 issued by the 1st Respondent to the Petitioners and their effects.

4. Pending the hearing and determination of the Petition, a conservatory order or injunction do issue to restrain the 1st, 2nd, 3rd, 4th and 6th Respondents or any of them by themselves, their agents, servants or employees from arresting and/or prosecuting of the Petitioners in any manner whatsoever, or summoning the Petitioners or any members of their family for questioning on any matters relating to any issue relating to the 10th Respondent.

5. Pending the hearing and determination of the Petition, an order be issued compelling the 2nd, 3rd, 7th, 8th and 11th Respondents to initiate and finalize investigations on the character of the 1st and 4th Respondents towards the Petitioners in relation to matters herein with an aim of punishing them within the next three months or as the court deems fit having had the file and all details since March 2021.

6. Pending the hearing and determination of this Application and the Petition, a conservatory order or injunction do issue suspending the proceedings of Criminal Case No. 84 of 2021, Nyamira Magistrates' Court.

7. A competent Court having heard and determined the beneficiaries of the property, and the 10th Respondent having been denied any share of the property in Succession 31 of 2017, this Honourable Court to issued eviction orders as per Eviction and Demand Notice (marked EOMS) or as it deems fit.

8. An order of prohibition be issued against the 1st, 2nd, 3rd, 4th, 5th and 6th Respondents against investigating, or commencing any prosecution of the Petitioners in respect to the facts that led to the institution of Nyamira Magistrates Criminal Case Number 84 if 2021 Republic V Robert Moturi and Others.

9. The court be pleased to grant any other orders that it may deem necessary in the interest of justice.

10. Costs of this Application.

The 1st and 10th Respondents filed their Responses on 14th February 2022 and 11th February 2022 respectively. In his Replying Affidavit sworn on 14/2/2022, the 1st Respondent depones that the 10th Respondent and One Evans Rioba Ongara a formal complaint at Ekerenyo police station vide OB No. 8/10/11/2021 and 17 and 18/11/2021 respectively to the effect that the 2nd and 3rd Petitioners jointly with others willfully and unlawfully damaged the 10th Respondent's property and threatened to kill him. Upon receipt of the complaint the officer commanding Ekerenyo Police Station delegated the case to the 1st Respondent to investigate and one Senior Sergeant Oluoch bore the blunt of investigating the same. He commenced the investigations and even visited the scene which disclosed the following cognizable offences:

- (i) Threatening to kill contrary to Section 223 (1) of the Penal Code.
- (ii) Malicious damage to property contrary to Section 339 (1) of the Penal Code.

The 2nd and 3rd Petitioners were then invited by the 1st Respondents' Office to record their statements on 06/12/2021 which request they have so far not headed to. They have instead moved to court for among others a prayer restraining the 1st Respondent together with the 2nd, 3rd, 4th, 5th, 6th and 7th Respondents from arresting the Petitioners or even summoning them for questioning on any matters relating to the 10th Respondent or in relation to the property in dispute. On his part, the 10th Respondent raised a Preliminary Objection to the effect that the Petition was authored and filed by the 1st Petitioner on behalf of the other 3 Petitioners in total disregard to Order 1 Rule 13 (2) of the Civil Procedure Rules without the other 4 Petitioners' written authority and that the Petition is *Res judicata* in that there are 3 other finalized cases i.e.

1. Kisii ELC No. 3 of 2017.
2. Nyamira Chief Magistrate's Court Succession Cause No. 31 of 2017.
3. Nyamira High Court Civil Appeal No. 17 of 2018.

He also went on to say that there are 2 other matters pending in court over the same issue i.e.

- (a) Nyamira Chief Magistrates' Court Criminal Case No. 516 of 2021.
- (b) Nyamira ELC Case No. 10 of 2021.

He argues that the Succession Cause has already dealt with all the issues raised in the Petition and that had they not been satisfied by the decision of the Succession Cause Court they ought to have appealed against that decision. He also says that there should not be no restraint by this court to investigations of any complaints filed with the police.

When the matter came before me under certificate of urgency on 7/2/22 I certified it urgent and ordered that the Application be served and the same be heard on 14/2/22 due to the weighty issues raised. On 14/2/2022 I ordered that all the parties involved (who had all been served but only 2 Respondents had responded) do file and serve their written Submissions within 4 days requested by the 2 Respondents who appeared in court in person and the Petitioners who asked for only 2 days. I have considered the rival Submissions filed in court.

I wish to combine Prayer Numbers 3, 4, 5, 6 and 8 in the Application on one hand and Prayer Numbers 2 and 7 as the second set of prayers.

On Prayers Numbers 2 and 7 of the Notice of Motion dated 3/2/22, I have looked at Nyamira Chief Magistrates' Court ELC Case No. 10 of 2021. The parties therein are George Nyanumba Arasa (the Plaintiff) and Mary Kerebi Moturi (the Defendant). The Plaintiff therein is the 10th Respondent herein and the Defendant is the 1st Petitioner herein. The claim in Nyamira Chief Magistrates' Court ELC Case No. 10 of 2021 is as follows: -

Paragraph 5.

That pursuant to a Succession Cause No. Nyamira 31 of 2017, the Defendant being a first priority that is wife of the Plaintiff's father was given a share of land **North Mugirango/Boisanga 1/ 6564 measuring 1.36 Acres** which she holds in trust for the Plaintiff as the Defendant is occupying land parcel No. **North Mugirango/Boisanga 1/3529** measuring approximately 2.5Ha which is enough for her children.

Paragraph 6.

That the Plaintiff was given by the family officially land parcel number **North Mugirango/Boisanga 1/6564** measuring 1.36 Acres which is being held in trust for the Plaintiff by the Defendant who has chosen to grab the same after getting title through first priority in Succession process as she stood for the step son (the Plaintiff).

Paragraph 7.

The Defendant had the knowledge that the land she got registered as the owner was belonging to the Plaintiff of the Defendant's husband who was the Plaintiff's father also.

Paragraph 8

The Plaintiff's claim against the Defendant is for a declaration that he (Defendant) is holding land parcel number **North Mugirango/Boisanga 1/ 6564** measuring 1.36 Acres in trust for the Plaintiff and had no capacity in any way to issue a demand notice to evict the Plaintiff from land parcel **North Mugirango/Boisanga 1/6564** measuring 1.36 Acres and/or anyway not dealing with the property in issue without the express consent of the Plaintiff and any transaction by her (Defendant) is null and void.

Paragraph 9:

That the Plaintiff's other claim against the Defendant is a declaration that she knows that the land she got registered of as the owner belonged to the Plaintiff, she has no better title than the Plaintiff and that the transfer should be declared in the name of Plaintiff, Defendant's title be rectified, Defendant's names be cancelled and orders transferred by the court forthwith the whole land be given to the Plaintiff. The Plaintiff has already her share with her children same being land parcel number **North Mugirango/Boisanga 1/3529** measuring 2.5 Ha which is quite enough for her children and herself.

The substantive Prayers that follow are: -

- (a) A declaration that the Defendant is holding Land Parcel No. **NORTH MUGIRANGO/BOISANGA/6564** measuring 1.36 Acres in that for the Plaintiff and any transaction thereto by the Defendant without the consent or authority is null and void.
- (b) THAT the land parcel **NORTH MUGIRANGO/BOISANGA/6564** measuring 1.36 Acres be registered in the name of the Plaintiff George Nyanumba Arasa and the name of the Defendant appearing on the Land Parcel Number be cancelled forthwith, the Defendant be allowed to retain her Land Parcel No. **NORTH MUGIRANGO.BOSIANGA 1/3529** measuring 2.5 Hectares.
- (c) The court to issue a permanent injunction against the Defendants to cross the river to and demolish the

The Prayers sought against the 10th Defendant (the Plaintiff in the lower court) are to be found under paragraphs (a), (c) and (g) as follows: -

- (a) **A declaration that the 10th Respondents trespass to the property with the assistance of the 1st, 3rd, 4th 5th and 6th Respondents is a violation of the Petitioners' constitutional rights to protection of rights to property as provided under Articles 40 of the Constitution of Kenya, 2010.**
- (c) **A permanent injunction to restrain the 10th Respondent, his agents, servants, employees or any persons**

authorized by the 10th Respondent to act on his behalf from trespassing, entering, accessing, excavating, levelling, undertaking any construction works or activities, taking possession, alienating or in any other way dealing with all that property comprised in Title Number: North Mugirango/Boisanga/6564 (the property) or any portion thereof or any other property owned by the 1st Petitioner or held by the 1st Petitioner in trust for the 2nd, 3rd and 4th Petitioners;

(g) A declaration that the 10th Respondent having trespassed on North Mugirango/Boisanga/6564 is liable to pay the 1st Petitioner a total sum of Kshs. 8,400,000.00 as follows: - Kshs. 2,400,000.00 (two million, four hundred thousand shillings as compensation) and Kshs, 6,000,000.00 (six million Kenyan shillings) income lost during illegal occupation.

What is the point of convergence?

Although in prayers No. (a) the Petitioner does not indicate the property he is talking about as having been trespassed, it is clear from paragraph (g) of the Petition Prayers that the same is L.R. No. NORTH MUGIRANGO/BOISANGA 1/6564. The 10th Respondent herein and the 1st Petitioner herein wrestled over the ownership of NORTH MUGIRANGO/BOISANGA 1/6564 measuring 1.36 Acres in Nyamira Chief Magistrates' Court No. ELC Case No. 10 of 2021. The Petitioner has now been joined by her sons in this case to have this court restrain the 10th Respondent from trespassing NORTH MUGIRANGO/BOISANGA 1/6564 because it belongs to the Petitioners without the latter's authority (who have "a Constitutional right to protection or right to property as provided for under Article 40 of the Constitution of Kenya, 2010.").

What is the fate of Nyamira Chief Magistrate Court ELC No. 10 of 2021?

The same is still pending in court.

There is also another Petition dated 29/3/2017 in the ELC Court at Kisii being Constitutional Petition No. 3 of 2017 where the court ruled that the matter was a Succession Cause issue and that the same do await the determination of Succession Cause Nyamira Chief Magistrate's Court Succession Cause No. 31 of 2017. The parties are the 1st Petitioner herein and the 10th Respondent among others. It has also been brought to my attention that there was Nyamira Chief Magistrate Court Succession Cause No. 31 of 2017 between the 3rd Petitioner herein and the 10th Respondent; the matter went on Appeal and Lady Justice E.N. Maina ruled on 18/7/19 in Nyamira High Court Civil Appeal No. 17 of 2018 that the matter ought to be determined in the Succession Cause once the grant is issued. The same was similar to the current Petition. In Nyamira Chief Magistrates' Court Succession Cause No. 31 of 2021 the court ruled that George Nyanumba Arasa (the 10th Respondent herein) is a beneficiary of the Estate of the late Moturi Ongaro, being a son to the late Moturi and the parties were ordered to file a Succession Cause since the issue before the court was citation proceedings.

The Petitioners herein are candid enough to explain to this court the conclusion made in Nyamira Chief Magistrate Court Succession Cause No. 31 of 2017, particularly who inherited what? I have been shown by the Petitioners the Ruling of the Court on rectification of the Grant meaning that the Grant has already been confirmed. I have also been shown the certificate of confirmation that reveals that the beneficiaries of the Estate of the late Moturi Ongaro, the proprietor of L.R. No. NORTH MUGIRANGO/BOISANGA 1/6564 are;

- 1. Aska Kerubo Onduko.**
- 2. Annah Basweti Ongaro.**
- 3. Mart Kerebi Moturi and**
- 4. Jemiah Nyaboake Ogwankwa.**

What is the Jurisdiction of the ELC Court in as far as Land is concerned?

Under Article 162 (2) (b) and (3) of the constitution of Kenya, 2010 parliament shall establish courts with the states of the High Court to hear and determine disputes relating to:

(b) the environment and the issue and occupation of and title to land.

(3) Parliament shall determine the jurisdiction and functions of the courts contemplated in clause (2).

Section 13 of the Environment and Land Court, No. 19 of 2011 provides that the Jurisdiction of the court is 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 disputes?

(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 contracts, choses in action or other instruments granting any enforceable interests in land; and
- (e) any other dispute relating to environment and land.

(3) Nothing in this Act shall preclude the Court from hearing and determining applications for redress of a denial, violation or infringement of, or threat to, rights or fundamental freedom relating to a clean and healthy environment under Articles 42, 69 and 70 of the Constitution.

(4) In addition to the matters referred to in subsections (1) and (2), the Court shall exercise appellate jurisdiction over the decisions of subordinate courts or local tribunals in respect of matters falling within the jurisdiction of the Court.

(5) Deleted by Act No. 12 of 2012, Sch.

(6) Deleted by Act No. 12 of 2012, Sch.

(7) In exercise of its jurisdiction under this Act, the Court shall have power

To make any order and grant any relief as the Court deems fit and just, including?

- (a) interim or permanent preservation orders including injunctions;
- (b) prerogative orders;
- (c) award of damages;
- (d) compensation;
- (e) specific performance;
- (g) restitution;
- (h) declaration; or
- (i) costs.

It is true the issues raised under prayers numbers 2 and 7 dated 3/1/22 have to do with occupation and Title to land. Unfortunately, the same have been examined and some are still ongoing in Nyamira CMCC No. 10 of 2021. Secondly, this court has already ruled in Kisii Constitutional Petition No. 3 of 2017 that the issues are more of a Succession nature. I can therefore not deal with a matter where my brother in Kisii Constitutional Petition No. 3 of 2017 has ruled as follows: -

It is clear that the Petition as brought cannot resolve the present dispute. The dispute is more of a succession issue. Until the question of succession is addressed, this court cannot determine the rights and interests of the parties. The court advises the petitioners to seek a full grant to the deceased estate so that any party who has any claims over the estate can have their claims determined within the succession proceedings. The court will grant an order for maintenance of the prevailing status quo whereby the 1st Respondent will not undertake any further construction and/or fencing of any portion of land parcel North Mugirango/ Boisanga/ 1266 pending the filing of a formal succession cause or further orders of the court. The order for status quo will remain in force for the next 120 days from today unless extended by the court. The instant petition stands withdrawn with no orders as to costs.

This order was never appealed on nor set aside. It therefore stands. When parties were advised to pursue their rights and interests in the Succession Cause and their claims determined therein the Honourable Judge had in mind trespass as well. I am not qualified to sit an appeal against justice. J. Mutungi's decision s. I therefore do not see where the Petitioners are heading to in this Petition in as far as seeking declaration of rights and interests which have already been determined in the Succession Cause.

The 4 prayers numbers (a), (b) (c) and (g) must therefore fail. Turning now to prayers numbers (d), (e) and (f) of the Petition, the Question is whether the prayers are sustainable. First, although there is a nexus between the trespass complained of and the involvement of the police in the same I am not sure the prayers are before the right Court. But due to the concept of the dominant issue, I will only deal with the matter touching on whether the police can investigate the aforesaid offences when the ELC court has been asked to give orders relating to the said Respondents' trespass to land.

Under Article 245 (4) of the Constitution;

“..... no person may give a direction to the Inspector-General with respect to: -

- (a) the investigation of any particular offence or offences;**
- (b) the enforcement of the law against any particular person or persons; or**
- (c) the employment, assignment, promotion, suspension or dismissal of any member of the National Police Service.”**

Under the National Police Service Act No. 114 of 2011 Section 10 (4) (b), the Inspector General is under a duty to uphold the national values, principles and objects set out under Article 10 of the Constitution some of which are spelt out under Sub Article 2;

- (a) patriotism, national unity, sharing and devolution of power, the rule of law, democracy and participation of the people;**
- (b) human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized;**

Under Section 10 (4) (a), the Inspector General of police shall have the necessary powers for the performance of his function set out under the Constitution.

Under Section 24 of the Act, the functions of the Police Service shall be: -

- (a) provision of assistance to the public when in need;**
- (b) maintenance of law and order;**
- (c) preservation of peace;**
- (d) protection of life and property;**

In addition, the Administration Police Service is mandated under Section 27 of the Act to perform the duty of collection of Criminal intelligence. Under Section 35 of the Police Service Act, the function of the Directorate of Criminal investigations is to:

- (a) collect and provide criminal intelligence;**
- (b) undertake investigations on serious crimes including homicide, narcotic crimes, human trafficking, money laundering, terrorism, economic crimes, piracy, organized crime, and cybercrime among others;**
- (c) maintain law and order;**
- (d) detect and prevent crime;**
- (e) apprehend offenders;**
- (f) maintain criminal records;**
- (g) conduct forensic analysis;**
- (h) execute the directions given to the Inspector-General by the Director of Public Prosecutions pursuant to Article 157 (4) of the Constitution;**
- (i) co-ordinate country Interpol Affairs;**
- (j) investigate any matter that may be referred to it by the Independent Police Oversight Authority; and**
- (k) perform any other function conferred on it by any other written law.**

The law goes on to give general powers of Police Officers Under Section 49 of the Act: -

- (1) Subject to Article 244 of the Constitution and the Bill of Rights, a police officer may exercise such powers and shall perform such duties and functions as are by law imposed or conferred on or assigned to a police officer.**
- (2) Where any duty, power or discretion is imposed or conferred by this Act or any other law on a police officer of any specified rank or holding any specified office, the police officer, shall, in the performance of such duty or the exercise of such power or discretion, and subject to the lawful orders and directions of any police officer to whom the police officer is directly subordinate, and any senior police officer, if the occasion arises where it is expedient to do so, perform any such duty or**

exercise any such power or discretion.

(3) Police officers shall make a report of all daily occurrences and incidents encountered and make it available to their superior.

Under Section 51 (1) of the Act a Police Officer shall: -

- (a) obey and execute all lawful orders in respect of the execution of the duties of office which he may from time to time receive from his superiors in the Service;**
- (b) obey and execute all orders and warrants lawfully issued;**
- (c) provide assistance to members of the public when they are in need;**
- (d) maintain law and order;**
- (e) protect life and property;**
- (f) preserve and maintain public peace and safety;**
- (g) collect and communicate intelligence affecting law and order;**
- (h) take all steps necessary to prevent the commission of offences and public nuisance;**
- (i) detect offenders and bring them to justice;**
- (j) investigate crime; and**
- (k) apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exists.**

Section 52 gives Police Officers power to compel attendance of witnesses at a police station as follows: -

- (1) A police officer may, in writing, require any person whom the police officer has reason to believe has information which may assist in the investigation of an alleged offence to attend before him at a police station or police office in the county in which that person resides or for the time being is.**
- (2) A person who without reasonable excuse fails to comply with a requisition under subsection (1), or who, having complied, refuses or fails to give his correct name and address and to answer truthfully all questions that may be lawfully put to him commits an offence.**

Under Section 53:

- (1) A police officer investigating an alleged offence (not being an offence against discipline) may require any person to execute a bond in such sum and in such form as may be required, subject to the condition that the person shall duly attend court if and when required to do so.**
- (2) A person who refuses or fails to comply with a requirement lawfully made under subsection (1) commits an offence.**
- (3) Notwithstanding the foregoing provisions, the powers conferred under this section shall be exercised in strict accordance with the Criminal Procedure Code (Cap. 75).**

From the above, it is clear that what the Petitioners are seeking is for me to outlaw the duties of the police service allowed by law to be carried out only subject to the following limitations under the Constitution of Kenya, 2010: -

- 1) Article 2 (2) of the Constitution of Kenya, no person may claim or exercise state authority except as authorized by this Constitution.**
- 2) Article 2 (4): - Any act or omission in contravention of this Constitution is invalid.**
- 3) The national values and Principles of governance must be applied by stated Public Officer under Article 10 of the Constitution.**
- 4) The Bill of Rights under Chapter 4 of the Constitution must be applied particularly Articles 19 (2), 3 (a) (b), and (c) of the Constitution, 20 (2), (3). (4) (a) and (b), Article 21 (1), Article 24 (1), (2), (3), Article 25, Article 26, Article 27 (1), (2), (3), (4), (5), Article 28, Article 29, Article 30, Article 31, Article 47 (2), Article 48, Article 49, Article 50 of Article 51 of the Constitution.**

To be granted the prayers in the Petition dated 3/1/2022, the Petitioners ought to show that any of the Constitutional guarantees shown above have been trodden upon. This has not been shown. The 2nd and 3rd Petitioners were informed by the 1st Respondent's Officer that some complaints have been made against them and that after investigations, the 1st Respondent was of the view that some cognizable offences were committed i.e.

1) Threatening to kill contrary to Section 223 (1) of the Penal Code.

2) Malicious damage to property contrary to Section 339 (1) of the Penal Code.

The investigating officer gave the aforesaid Petitioners time to give their side of the story but since 6/12/21 the 2 have failed and refused to do so. As shown above, the police have a duty to investigate any crime reported to them however baseless it could be. The suspect is on the other hand under a duty to assist the police and give his side of the story or even opt not to record any statement at all. But when called upon by the investigating officer(s) he has a duty to present himself under Section 52 of the Police Service Act. If the prayers sought for are granted, the parties herein would be jeopardized. Even the Petitioners themselves. Moreover, I have not been shown how the prayers relate to any dispute relating to the environment, the use and occupation of and/or title to land.

What would happen in case a court of law is asked to give orders barring the law enforcement officers from executing their duties because there is a suit in court touching on or related to the subject in court. Criminals will have a field day. No party in this case, not even the Petitioners themselves would be able to receive the 1st Respondents' protection and this court refuses to be used to gag the police officers from performing their Constitutionally imposed duties. They are therefore free to investigate any offence committed by any of the parties herein and charge any perpetrator notwithstanding the Succession Cause and other Civil suits pending in court as long the rights of the accused are taken care of. One of the complaints mentioned here is so grave i.e. threat to kill. Assuming the complaints are genuine, will the police officers wait until the commission of that offence is accomplished? These prayers are therefore unsustainable. The law enforcers would only be restrained from interfering with a matter that is the subject of court hearing. But crimes committed by any of the parties before the court are not immune from investigation by the police. This Honourable court and others mentioned above have been called upon to decide who owns what and who is infringing upon the others' rights and interests and who should occupy and have title to what. As long as the police confine themselves to ensuing law and order are kept without coercing, intimidating or inhibiting any of the parties herein from prosecuting their rights before the court, they are free to continue their investigations and taking further action but within the law. I would say no more. If the intention of the Constitution were otherwise the easiest this would have been to say so.

Due to the numerous cases filed in different courts the court wishes to warn the Petitioners that they stand the risk of being declared frivolous and vexatious.

The parties herein should confine themselves to the Magistrates' court Succession Cause in Nyamira Chief Magistrates' Court, Succession Cause No. 31 of 2017 which is competent enough and has jurisdiction to dispose of the matter to its finality.

This now leaves us with the prayer No. (e) in the Petition. The prayer is for a prerogative order of certiorari, to quash the charge sheet dated 22/1/21 and all proceedings against the Petitioners in Nyamira Magistrates' court **Criminal Case No. 84 of 2021, Republic -Vrs- George Morara and 3 Others**. The reasons given on prayer No. (f) above equally applies. Most importantly, the matter is not within my jurisdiction. My jurisdiction is limited to resolving issues relating to the Environment and the occupation of and Title to land. Not unless it touches on Environment and the occupation of and Title to land in a manner that infringes on the Petitioner's Bill of rights under Article 22 of the Constitution of Kenya, 2010. And whatever rights and fundamental freedoms the Petitioner wishes to have enforced, the same must be limited to the Environment and land use, occupation and Title to land. Not the fairness and/or otherwise of some ongoing Criminal proceedings. Such jurisdiction lies elsewhere.

Before penning off, I must commend the 1st Respondent, the District Investigating Officer, Nyamira North Mr. David K. Mursoy. Having been served with the Petition between 8th February 2022 and 14th February 2014, he rushed to the office of the Director of Public Prosecutions to prepare a Replying Affidavit which he filed in Court on 14/2/2022 explaining his part of the story and personally appeared in Court on 14/2/2022 for the Hearing of the Petition and on 21/2/2022 for the Judgment of the same.

Having said so, I give the following orders: -

(1) The Petition is hereby struck out in its entirety.

(2) The Respondents shall have the costs of the Petition, to be borne by the Petitioners.

These are the orders of the court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 21ST DAY OF FEBRUARY, 2022.

MUGO KAMAU

JUDGE

IN THE PRESENCE OF: -

COURT ASSISTANT: SIBOTA

PETITIONERS: ALL PETITIONERS SAVE PETITIONER NO. 1 PRESENT

RESPONDENTS: 1ST AND 10TH RESPONDENTS PRESENT IN COURT