



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO.154 OF 2009 (O.S)

**IN THE MATTER OF:-AN APPLICATION BROUGHT UNDER SECTION 38 (1) OF THE
LIMITATION OF ACTION ACT (CAP 22) FOR AN ORDER THT THE PLAINTIFFS/APPLICANTS
BE REGISTERED AS PROPRIETORS OF L.R. NO.10068 LAIKIPIA ON ACCOUNT OF ADVERSE
POSSESSION**

AND

**IN THE MATTER OF:-AN APPLICATION BROUGHT UNDER SECTION 38(3) OF THE
LIMITATION OF ACTIONS ACT (CAP 22) FOR AN ORDER VESTING ON THE
PLAINTIFFS/APPLICANT THE EASEMENTS ENJOYED AND ACQUIRED ON L.R. NO.10068
LAIKIPIA**

BETWEEN

JOSEPH LEKAMARIOO & 248 OTHERS.....PLAINTIFFS

VS

AFRICAN WILDLIFE FOUNDATION.....1ST DEFENDANT

H.E. DANIEL TOROITICH ARAP MOI.....2NDDEFENDANT

KENYA WILDLIFE SERVICES.....3RD DEFENDANT

RULING

On 16th December 2013, this file was placed before me to give directions on the way forward. Mr. Ngige learned advocate for the Plaintiff urged this court to have the case heard by another Judge because his clients fear that they may not get a fair hearing and determination in view of the fact that one of them had previously lodged a complaint with the Judges and Magistrates Vetting Board against the presiding judge. Mr. Muthui, Mr. Kiplenge and Mrs. Wachira for the 1st ,2nd and 3rd Defendants respectively strongly opposed the application arguing that if the order is given serious delay may occur in concluding the matter. The other parties were comfortable with any directions this court will give.

I have carefully considered the rival submissions. I have also taken time to peruse the record. There is no dispute that one of the plaintiffs complained to Judges & Magistrates Vetting Board claiming the presiding judge did give them adequate time to prepare themselves for the hearing. That complaint was considered and found to be without merit. The plaintiffs aver that the fact that a complaint was made against the presiding judge, is good ground for the judge to recuse himself. Let me state from the outset that the application cannot succeed before any court which understands the operations of an adversarial system like ours. Aggrieved parties are always bound to complain of bias when they get unfavourable

decisions. This court has never expressed any conclusive opinion in this matter. Its sense of fairness has not been impaired by the plaintiffs' complaint to the Judges and Magistrates Vetting Board.

Perhaps the other serious issue which emerged is the fact that this court was transferred from Nyeri to Kericho. At the time of transfer all the evidence had been taken. Two things remained to be done, namely:

1. **Site visit and**
2. **Final submissions**

I appreciate the fact that the land in question is a huge piece of land measuring over 17,000 acres. The site visit requires a couple of days and most probably the use of an helicopter. It is obvious that those are logistical challenges which can only be dealt with by judges resident in Nyeri. I also note that all the proceedings relating to this case have been typed hence there will be no cause for delay if the case is taken over by any judge resident in Nyeri and particularly the Environment and Land Court judge.

For the above reasons, I direct that the case be heard by any other judge resident in Nyeri High Court.

Dated and signed this 16th day of January 2014.

J.K.SERGON

JUDGE

Delivered by Hon. James Wakiaga this 21st day of February 2014.

In the presence of:

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