



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT IN KERICHO

ELC CIVIL SUIT NO. 98 OF 2011(O.S)

JOHN KIPLANGAT CHEPKWONG

& 427 OTHERSPETITIONERS

MUNICIPAL COUNCIL OF KERICHO.....RESPONDENT

RULING

1. The **Franciscan Sisters of St Joseph and others** vide Chamber Summons dated **26th March, 2014** under **Order 40 rule 1, 2 (1) & 4 (1), Order 1 Rule 8(1), 10 (2), 14 & 25 of the Civil Procedure Rules, Section 1A & 1B of the Civil Procedure Act** and all other enabling Provisions of the Law seek the following substantive orders *inter alia*;

- i. **To be enjoined in this suit as interested parties (hereinafter referred to as “proposed interested parties”).**
- ii. **That once enjoined as interested parties they be allowed to file a defence appropriate to their interest in the subject parcel of land.**
- iii. **That pending the hearing and determination of the suit this honourable Court be pleased to issue an order of temporary injunction restraining the plaintiffs/applicants by themselves, agents, employees, servants or otherwise from offering for sale, assigning ,erecting structures thereon and or doing any other act which is prejudicial to the interested parties’ proprietary interest in their respective portion of Land.**
- iv. **That the order herein be served upon the OCS, Kericho to ensure compliance.**

2. The petitioners in their suit filed against the Defendant, **the Municipal Council of Kericho** have applied for the following declaratory orders:-

(i) A declaration that the allocation and issuance of letters of allotment to strangers leaving out the applicants at Chelimo Area under the jurisdiction of the Respondent is discriminatory.

(ii) A declaration that the actions of the Respondents to import strangers, powerful individual and monied individuals and issuing them with letters of allotment leaving out the Plaintiffs is unconstitutional.

(iii) A declaration that the plaintiffs are legal andlawful beneficiaries of Chelimo area and that the respondent be directed to allocate them with parcels of land since they have been occupying the Chelimo Area land since 1926 to date.

(iv) A declaration that the respondent is entitled to issue Lease Certificates to the Plaintiffs upon payment the requisite fees.

- v. **A perpetual order directed to the Defendant stopping them from demarcating, subdividing, allocating or alienating Chelimo area to third parties or strangers until orders of the court.**
- vi. **Costs be provided for.**
- vii. **Any other relief that this Honourable Court may deem it fit and just to grant in the circumstances.**

3. The proposed interested parties premise their application for joinder on the grounds that appear on the face of the application and *inter alia* contend that:-

- (i) **That the interested parties herein are the legal allottees of the subject parcel of land in their distinctive titles.**
- (ii) **That the Plaintiffs/applicants illegally trespassed onto the suit land forcefully occupied the Land whereby they have resisted any attempt to remove them from the land.**
- (iii) **That the Plaintiffs/Applicants have no colour of right to occupy the Land and their continued occupation of the Land is injurious to the interested parties.**
- (iv) **That unless the orders herein are granted the interested parties will suffer irreparable loss and damages which might not be adequately compensated by monetary terms.**
- (v) **That the Plaintiffs/Applicants have hoodwinked the unsuspecting public and are now subdividing the Land and selling to them and the new purchasers are busy constructing structures thereon.**

4. The application is further supported on the grounds contained in the annexed supporting affidavit sworn by **SR. Genevieve**, one of the sisters of Franciscan Sisters of St Joseph duly authorized to swear the affidavit on behalf of the church and other interested parties. **Mr. George Langat** on behalf of the other petitioners /respondents has sworn a replying affidavit dated **26th May, 2014** in opposition to the application.

5. In his replying affidavit Mr. George Langat avers that only prayers (d) and (e) are opposed. The prayers seek an order of temporary injunction restraining the plaintiffs/applicants by themselves, agents, employees, servants or otherwise from offering for sale, assigning ,erecting structures thereon and or doing any other act which is prejudicial to the interested parties' proprietary interest in their respective portion of Land and once issued the order be served upon the OCS, Kericho to ensure compliance.

6. The deponent denies that any of the petitioners had advertised the suit property for sale but instead allege that the applicants in cahoots with their agents had placed the said advertisement.

7. The law on the point of enjoining parties in a constitutional petition is donated by dint of the provisions of **The constitution of Kenya (protection of rights and fundamental freedoms) Practice and Procedure rules, 2013**(famously referred to as the Mutunga rules). **Rule 7** Provides:

“7. (1) A person, with leave of the Court, may make an oral or written application to be joined as an interested party.

(2) A court may on its own motion join any interested party to the proceedings before it.”

Such an application should be filed by way of notice of motion as provided for **under Rule 19.**

“A formal application under these rules shall be by Notice of Motion set out in Form D in the schedule and may be supported by an affidavit.”

To apply for interim or conservatory orders an applicant should follow the procedure laid out in **Rule 24 (1)** which states:

24.(1) An application under rule 23 may be made by way of Notice of Motion or by informal documentation.

8. The applicant has moved the court under the civil procedure rules instead of the Mutunga rules. Worse still even if this was a normal civil suit, instead of filing two applications that is a Chamber Summons seeking a prayer to enjoin parties under **Order 1 Rule 14** and a notice of motion seeking an injunction under **Orders 40 Rule (2) (1)**, the counsel has mixed all his prayers into the chamber summons application. Is this so critical that the prayers sought should be denied?

9. The overriding objective of this court is to do substantive justice. To achieve this, the court may make orders as may be necessary for the ends of justice and accessible resolution of disputes. See **Section 3 of the Environment and Land Court Act**. Further **Article 159 (2) (d)** of the Constitution urges courts when exercising judicial authority to administer justice without undue regard to procedural technicalities. To attain the overall objective of this court, I will invoke the inherent powers of the court and consider the application and the prayers sought therein on merit because of the nature of the suit before me and what is at stake.

10. The prayers to enjoin the interested parties are not opposed and the same are hereby allowed. The interested parties are hereby granted 21 days to file a reply to the petition. The prayers opposed by the respondent and which need determination are the granting of the injunction order and service of that order if granted upon the OCS Kericho.

11. The Interested parties sought an order for injunction while they were not parties in this suit. They therefore lacked the *locus standi* to file such an application. However bearing in mind the number of parties in this petition and that the suit land is in danger of being wasted, I am convinced an order of status quo needs to be in force. I therefore order status quo to be maintained as follows:

The petitioners, respondents and interested parties by themselves or through their agents, employees, servants are restrained from further allocating, offering for sale, assigning, transferring, erecting structures on the suit Land and/ or carrying out any other activity which will lead to the wastage of the suit land.

12. Costs to abide the outcome of the suit.

It is so ordered.

Ruling dated signed and delivered at Kericho 26th this day of June 2014.

L.N. WAITHAKA

JUDGE

PRESENT

N/A for the plaintiffs

N/A for the defendants

Mr Orina for Interested Party

L N WAITHAKA

JUDGE