



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC PET NO. E007 OF 2021**

**MERIAPEI MOONKA.....PETITIONER/APPLICANT**

**-VERSUS-**

**CHAIRMAN, NAROK SOUTH**

**SUB COUNTY LAND CONTROL BOARD.....1<sup>ST</sup> RESPONDENT**

**LAND ADMINISTRATION OFFICER.....2<sup>ND</sup> RESPONDENT**

**LAND ADMINISTRATION OFFICER**

**NAROK WEST & SOUTH SUB COUNTY.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. What is before this court for ruling is the Notice of Motion application dated 1<sup>st</sup> October, 2021 and filed in court on 6<sup>th</sup> October, 2021 under a certificate of urgency. The application is expressed to be brought under **Articles 1,2,3,10,19,20,21,22(i), 23(i),(3),25,27(i) and (2), 28,29(d) and (f), 35(i), 40(i), (2) and (3), 47,48, 159,258 and 259 of the constitution of Kenya and Rules 3,4,23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure Rules 2013)** section 1A,1B and 3a of the Civil Procedure Act and any other enabling provisions. It seeks the following orders:-

**1.Spent**

**2.This Honourable court be pleased to issue an order against the 1<sup>st</sup> to 3<sup>rd</sup> respondents jointly and/or severally requiring them to issue the petitioner with certified copies of Narok South District Land Control Board minutes of that meeting held on 25<sup>th</sup> July, 2013 pending the hearing and determination of this petition.**

**3.That cost of this application be provided for.**

2. The application is predicated on the grounds on its face and is further supported by the affidavit of Meriapei Moonka, the petitioner/applicant herein, sworn at Narok on the 1<sup>st</sup>, October, 2021.

3. The application is opposed by the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents vide their grounds of opposition dated 11<sup>th</sup> November, 2021 and filed in court on 22<sup>nd</sup> November, 2021. What is relevant to this application is ground 4 wherein the respondents have stated that the application is frivolous and same ought to be dismissed with costs to them.

4. The application was canvassed by way of written submissions.

5. The petitioner/applicant filed his submissions on 14<sup>th</sup> December, 2021 while the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents indicated on the 3<sup>rd</sup> February, 2022 that they would instead rely on their grounds of opposition.

6. In his supporting affidavit, the petitioner/applicant has deposed inter alia that prior to the joint registration with a third party, he was the absolute sole registered proprietor of all that parcel of land known as Cis Mara/Olkinyei/293 which is located in Narok West Sub county, that he intends to rely on the subject Land Control Board minutes of that meeting held on 25<sup>th</sup> July, 2013 in defence of a suit against himself i.e. Narok ELC 40 of 2020 Oltetia Lemein Versus Meriapei Moonka and he is apprehensive that should the same be withheld from him he is

likely to suffer great prejudice and injustice, that despite confirming to being in possession of the said Land Control Board minutes, the 1<sup>st</sup> respondent unreasonably directed him to pick the same from his then secretary, Mary Njonjo, whom upon reaching out to she claimed not to have any authority from the 1<sup>st</sup> respondent, that in further disregard to the petitioner's/applicant's request, the 1<sup>st</sup> respondent vide his letter dated 23<sup>rd</sup> April, 2021, indicated that he had no jurisdiction with respect to the subject matter which he claimed that it falls within the jurisdiction of the 2<sup>nd</sup> respondent and he directed the applicant to reach out to the 3<sup>rd</sup> respondent and/or Narok District Land Registrar and that despite numerous further efforts vide letters dated 26<sup>th</sup> May, 2021, 16<sup>th</sup> April, 2021 and 21<sup>st</sup> September, 2021, addressed to the 2<sup>nd</sup> respondent, the Narok District Land Registrar and the 3<sup>rd</sup> respondent respectively, the said minutes have never been supplied to him.

7. In his submissions the petitioner identified the following issue for determination.

*(a) Whether the petitioner is entitled to the prayers sought in the application dated 1<sup>st</sup> October, 2021.*

In answer to the aforementioned issue, the counsel for the petitioner/applicant submitted that the respondents have not only refused to furnish the petitioner with the Land Control Board minutes but they have also neglected him thus subjecting him to psychological torture and apprehension of losing his property vide CMCC ELC No. 40 of 2020 Oltetia Lemein Versus Meriapei Moonka.

8. The counsel went on to submit that the respondents do not have any reasonable grounds as to why the Land Control Board minutes cannot be granted and thus the application should be allowed with costs.

9. They relied on the case of **Andrew Omtatah Okoth versus Attorney General & 2 others (2011)Eklr** where Musinga J (as he then was)stated thus:

**“Before an application is made to court to compel the state or another person to disclose any information that is required for the exercise or protection of any right or fundamental freedom, the applicant must first demonstrate that a request for the information required was made to the state or to the other person in possession of the same and the request was disallowed”. The court cannot be the first port of call. The petitioner herein did not demonstrate that he requested the JSC to avail to him any information that he considered necessary and the same was not granted. In that regard, prayer 4 of the applicant’s application is rather premature.”**

The counsel further relied on the case of Saniako N. Kibiwot versus Land Control Board, Marakwet Division & 2 others (2019)eKLR where Mwangi Njoroge J held as follows:-

**“violation of right of access to information cannot therefore be deemed to have occurred unless first a request for information is shown to have been made and refused or neglected by the respondents. The request must accord with Section 8(1) of the Access to Information Act which provides that: “an application to access information shall be made in writing in English or Kiswahili and the applicant shall provide details and sufficient particulars for the public officer or any other official to understand what information is being requested.” In my view the letter dated 10<sup>th</sup> November, 2016 amounts to a proper request under that section. The respondents have not denied having received that letter.”**

10. Having read the application, together with the supporting affidavit, the grounds of opposition and the submissions filed by the counsel for the petitioner/applicant, there is no doubt that the petitioner/applicant has on several occasions sought from the respondents for the minutes of the meeting of the Land Control Board held on 25<sup>th</sup> July, 2013.

11. There is no justification as to why the respondents could not supply the aforementioned minutes of the Land Control Board to the petitioner/applicant as is provided for under **Article 35(1)** of the Constitution. In my view, therefore, the respondents cannot be heard to term the application as frivolous since the petitioner/applicant had reasonable expectation that his request would be acceded to by the respondents. In the circumstances, my finding is that the application has merits and I proceed to allow it as hereunder:-

**2. An order against the 1<sup>st</sup> to 3<sup>rd</sup> respondents jointly and/or severally requiring them to issue the petitioner with certified copies of Narok South District Land Control Board minutes of that meeting held on 25<sup>th</sup> July, 2013 pending the hearing and determination of this petition.**

**3. costs of the application are provided for.**

**DATED, SIGNED AND DELIVERED VIA EMAIL ON 28<sup>th</sup> April, 2022.**

**MBOGO C.G**

**JUDGE**

In the presence of: -

CA: Timothy Chuma