



REPUBLIC OF KENYA

High Court at Nyeri

Petition 1 of 2011

GATARAKWA FARMERS CO. LTD1ST PETITIONER

SIRIMA LTD.....2ND PETITIONER

GIANNI LTD.....3RD PETITIONER

NGOBIT ESTATES LTD.....4TH PETITIONER

NGUNDU GICHERU.....5TH PETITIONER

KIIRU CHAGUIGA.....6TH PETITIONER

versus

**ATTORNEY GENERAL..... 1ST RESPONDENT
DISTRICT COMMISSIONER,**

KIENI WEST DISTRICT 2ND RESPONDENT

DISTRICT OFFICER GATARAKWA DIVISION3RD RESPONDENT

ASST. CHIEF. LAMURIA SUBLOCATION..... 4TH RESPONDENT

**REBECA NYANGUI MUHANG'IA
DISTRICT COMMISSIONER LAIKIPIA CENTRAL5TH RESPONDENT**

CHIEF THIRIMA LOCATION

CHARLES NDERITU WAHOME.....6TH RESPONDENT

ROBERT MATHENGE RUHENI.....7TH RESPONDENT

RULING

1. This ruling is in respect of Chamber Summons dated 14th December 2010 brought under Rule 20 in the matters of alleged contravention of fundamental rights and freedoms of the individuals as then provided under section 72, 75, 77(a) and 82 of the Old Constitution.
2. The Petitioner for the purposes of this ruling seeks the following orders:
 - a. ***That District Commissioner Kieni District (2nd Respondent) and Assistant Chief Lamuria sub location (4th Respondent) be restrained by themselves, their servants and agents from interfering with the petitioners quite enjoyment of Gatarakwa/Gatarakwa/Block IV/282 and that they further be restrained from entering into or remaining on the said land.***
 - b. ***That the District commissioner Laikipia Central district (5th Respondent) area Chief Thirima Location (6th Respondent) be restrained by themselves their servants and agents from entering into or remaining on or from continuing constructing on Uasonyiro/Sugurio/Block v/674 the headquarters of Laikipia Central District.***
 - c. ***Cost of the application.***
3. The application is supported by the affidavit of KIIRU GACHUIGA the 6th Petitioner and a member of the Board of Directors of 1st to 4th Petitioners in which the same deponed that the Government of Kenya has set out to evict the petitioners from the subject matter of this petition and to develop the same as it pleases.
4. That the Government is using a stratagem of so called local committees to evict the petitioners from the parcels of land and without following the due process of the law.
5. That between 1978 and 30th October 2010 15 acres of Gatarakwa/Block iv/282 were let to Mrs. Gell Johnson who subsequently surrendered back her lease on 30th November 2010 upon which the 1st petitioner appointed Mr. Kinini Wangondu as a caretaker and that the 1st Respondent has allowed the local community to use 13 acres of the said property for a hospital or other health facilities .
6. That four (4) years ago the Local Community built a dispensary on the said four acres and that the government through the District Commissioner Nyandarua Central and Laikipia Central and Laikipia County council started to interfere with the petitioners possession of parcels of land in the petition herein.
7. That on 7th December 2011 the agents of the 1st and 3rd Respondents broke to the house formerly occupied by Mrs. Johnson and started using it as a dispensary which it has been so used to date.
8. That the government has started constructing the district headquarters of Laikipia Central District on Uasonyiro/Suguroi/674 and have caused 2 acres thereof to be registered in the names of the government. That since 1980 the government of Kenya has disrespected the property rights of the petitioners.
9. On 17th June 2011 one ROBERT MATHENGE RUHENI made an application to be enjoined into this petition on behalf of SIRIMA COMMUNITY who are stakeholders and shareholders of 1st and 2nd petitioners and sought an order that the petitioners by themselves their servant or otherwise be restrained from entering, using interfering with selling, trespassing on pledging or remaining on LR No. Gatarakwa/Gatarakwa/Block IV/282 and Uasonyiro/Sugurio V/674 and Uasonyiro/Sugurio/Block V/648 which application was allowed on 20th June 2011.
10. The application is opposed by the respondent and on behalf of 7th Respondent Laikipia County

Council through a replying affidavit by Joseph Mwangi in which he deponed that the 1st – 4th petitioners were land buying companies and that their mandate was extinguished after they distributed the land to members.

11. He further deponed that LR Gatarakwa/Gatarakwa/Block IV/282 and Uasonyiro Sugorio/Block V/674 are registered in the names of the Government of Kenya and therefore injunction cannot be issued against the same and that there are two cases Nyeri HCCC No. 75 of 2003 and Nyeri HCCC No. 20 of 2002 where some of the petitioners have been sued seeking to restrain them from grabbing public properties.

12. The 2nd Respondent has also filed a replying affidavit through ABDI MOHAMED the District Commissioner in which he deponed that the 1st – 4th Petitioners were public companies registered under the Companies Act carrying out among others objects the business of land buying and that following public complaint by shareholders a probe committee was formed on 10th June 1986 by the then President and that the said committee took over the running of the affairs of the 1st petitioner.

13. That during a meeting of 25th June 1986 the shareholders resolved and mandated the probe committee to ensure that adequate provision is made during allocation process for public utility plots and forest and water catchment areas to be aside for surrender to the government and that the following plots were subsequently set aside for public utility and duly registered with the government of Kenya as a government properties:

Gatarakwa/Gatarakwa/Block 11/393 - nursery school

Gatarakwa/Gatarakwa/Block 11/17 - Cattle dip

Gatarakwa/Gatarakwa/Block 1/199 - Nursery school

Gatarakwa/Gatarakwa/Block 1/186 - Cattle dip

Gatarakwa/Gatarakwa/Block 1V/282 - Health centre

14. Following the creation of Kieni West District it became necessary that government facilities be constructed in the area to cater for the increased deployment of civil servants and during a meeting held on 29th June 2011 it was resolved as follows:

Gatarakwa/Gatarakwa/Block 11/393 - District commissioners office/other ministerial offices.

Gatarakwa/Gatarakwa/Block1/199 - Residence

Gatarakwa/Gatarakwa/Block 1/186 - Residence

15. I must point out that at this stage the court is not looking at the merits of the petition herein but as to whether the petition has made out a case for the grant of the conservatory orders pending hearing of the petition herein.

16. It was submitted on behalf of the petitioners that they are enforcing their property rights and that before 10th June 2006 they were the registered owners of the suit lands and that thereafter the former president announced that the Board of Directors of the petitioners had been dissolved and a committee formed to run its affairs and that following the said order the Provincial Administration took over the said farms and the committee allotted the said land.

17. It was submitted that the conservatory orders sought are to preserve the status quo as the applicant has a prima facie case since the applicants rights to property have been violated and in support thereto replied upon the case of METHODIST CHURCH IN KENYA TRUSTEES REGISTERED VS THE AG AND OTHERS HIGH COURT OF KENYA AT MERU PETITION No. 4 OF 2010.

18. It was therefore submitted by Mr. Gicheru that the petition had made a prima facie case for grant of conservatory order.

19. On behalf of the Respondents Miss Gathangu submitted that the government is registered as proprietors of the suit properties and that the petitioners have never been in possession of and that the order sought is against the government from carrying out development and urged the court to look at the public interest.

20. Mr. Macharia on behalf of the 7th and 8th Respondent submitted that the government has been in actual occupation and active use since the property is registered in its name and that the land herein serves public interest. He further submitted that the petitioner has been guilty of hiches.

21. It is upon the said affidavit and submissions that the court is called upon to make a ruling as to whether the petitioners have made a prima facie case for grant of the orders sought.

22. To my mind the following facts are not disputed:

- a. The Petitioner were originally registered as proprietors of the disputed property.*
- b. The disputed properties are currently registered in the name of the government of the Republic of Kenya.*
- c. The petitioners are challenging the registration of the Government as proprietor of those land.*
- d. There has been previous litigation in respect of the suit properties between the petitioners and the 7th Respondent.*
- e. The court is called upon to decide between the right of petitioners and public interest as represented by the respondents.*
- f. The court is not at this stage dealing with the merits of the petitioners.*

23. To enable the court decide in favour of the petitioners they must demonstrate to court that they have a prima facie case with a probability of success and that damages might not be an adequate compensation to the petitioners and further the court needs to look at the balance of convenience.

24. I have looked at the submissions herein and the affidavit evidence and is of the considered opinion that the balance of convenience is against granting the orders sought by the petitioners at this stage on the following grounds.

- a. There is evidence that the government is the registered expropriator of the suit land and that the same through the respondents have carried out extensive development on the same.*
- b. The court has to balance the private rights of the petitioner and the public interest as represented by the Respondent and it will not be in the interest of the public if the orders sought are granted.*
- c. The petitioners petition is in respect of violation of their rights to property and this court takes the view that if the same succeeds in the petition herein the petitioners can be adequately compensated by way of damages.*
- d. There is the issue of previous litigations between the 1st Respondent and the petitioners which the petitioners seeking equity did not disclose to the court.*
- e. There is the fundamental issue raised by the 7th Respondent that the 5th and 6th Petitioners have brought up the petition with the sole motive to grab public land and to enrich themselves which can only come out of the full hearing hereof and which if true will affect the petition herein.*

25. By reason of the matter stated herein I am of the considered opinion that the petitioners have not made up a case for the grant of orders sought at this stage and therefore dismiss the application for injunction on conservancy with cost in the cause.

26. Since the Petition herein raises fundamental constitutional issues as regards the petitioners right to land I direct that the petition be placed before the Land and Environmental Court for directions on 14th March 2013.

Dated and delivered at Nyeri this 14th day of February 2013.

**J. WAKIAGA
JUDGE**

Mr. Muhoho for Miss Gathangu for 1st – 6th Respondent.

Mr. W. Macharia for 7th Respondent.

Mr. Kimunya for J. Mwangi for 8th Respondent.

N/A By advocate for the petitioner.

**J. WAKIAGA
JUDGE**