



REPUBLIC OF KENYA

High Court at Kitale

Petition 2 of 2010

TRANS NZOIA CHINGANO GRAIN

FARMERS CO-OPERATIVE SOCIETY LTD. PETITIONER

AND

HON. ATTORNEY GENERAL.....}

COMMISSIONER OF LANDS}

GUTONGORIO FARM LTD.}

CLEMENT SOLOMON MUNA}

SAMUEL NG'ANG'A MUNGA.....} RESPONDENTS

RULING

The Petitioner Trans-Nzoia Chingano Grain Farmers Co-operative Society Limited filed this Petition against the Respondents claiming the following reliefs:-

That the Honourable Court be pleased to grant a declaration that the constitutional rights of the Petitioner have been breached by the Respondent herein purporting to be the registered owners of land parcel No. LR 1800/4 measuring 1695 acres subdivided land Parcel No. LR 1800/5 and 28.

- i. That the Respondents be ordered to transfer Land Parcel No. LR 1800/4 measuring 1695 acres subdivided into land Parcel No. LR 1800/5 and 28 and registered as Vol H 16/200/H27/204 file number 2402 measuring 1695 acres in Trans-Nzoia failure to which the Deputy Registrar of the Court be ordered to sign all the transfer papers on behalf of the Respondents.*
- ii. That a declaration be given declaring that the Respondents be evicted from the suit land and hand over vacant possession of the suit land herein to the Petitioner.*
- iii. That costs be provided for in favour of the Petitioner in any event.*

The Petitioner contends that its members were the original land owners of Parcel No. LR 1800/4 measuring 1695 acres sub divided into Land Parcel No. LR 1800/5 and 28 registered as Government Land Vol. H16/200/H27/204 File Number 2402 measuring 1695 acres in Trans-Nzoia District which I shall hereinafter refer to as “the suit land”. The Petitioner contends that during the colonial era, members of the Petitioners were forcibly evicted from their own homes and land by the colonial government and made squatters. They were forced to provide cheap labour to the colonialists. After independence, the

colonialists left the suit land in the hands of the members of the Petitioner who in the year 1988 formed a co-operative society known as Trans-Nzoia Chingano Farmers Co-operative Society Limited. The Petitioner contends that the 3rd, 4th and 5th Respondents claim to own the land by virtue of purchase but the Petitioner contends that there was no such purchase and that if there was any purchase, the purchase is null and void for want of Land Control Board consent.

The Petitioner in the alternative contends that if there was a valid purchase by the 3rd, 4th and 5th Respondents and have valid title, then that title was extinguished by way of adverse possession long before the year 1984. The Petitioner therefore contends that the Respondents are holding the title in trust for the Petitioner and that the trust should be terminated and the land registered in the name of the Petitioner.

The 1st Respondent is the Attorney General, the 2nd Respondent is the Commissioner of Lands, the 3rd Respondent is Gutongorio Farm Limited, the 4th Respondent is Clement Solomon Muna and the 5th Respondent is Samuel Ng'ang'a Munga. The Petition was opposed by the 3rd Respondent through its Director Appollos Hiram Muna through an Affidavit sworn on 10th February, 2012. The deponent contends that the suit land was registered in the names of his late father Appollos Mwangi Muna. His late father had employees on his farm and after their employment was terminated they refused to move out of the suit land. The refusal by the employees prompted filing of Eldoret High Court Civil Case No. 61 of 1984. A consent judgment was recorded on 05/07/1985 whereby the Defendants and all those claiming under them agreed to vacate the suit land upon payment of an ex-gratia payment of Khs. 35,000/-. It was a term of the consent that the Defendants were to move out of the suit land by 10/09/1985 and in default thereof, they were to be evicted. The Defendants failed to move out and they were forcefully evicted.

In 1995, a group calling itself Chingano Farmers Co-operative Society filed a claim in the Land Disputes Tribunal where they claimed that its members had collected money and wanted to buy the suit land from Appollos Mwangi Muna. The Tribunal ruled in favour of the claimants holding that the Government should sell the suit land to avoid the dispute. The late Appollos Mwangi Muna challenged the decision of the Tribunal by way of Judicial Review in Eldoret Miscellaneous Civil Application No. 70 of 1997. In a ruling delivered on 28/07/1997, the High Court quashed the Tribunal's findings as well as the adoption of the same as judgment vide Kitale Senior Principal Magistrate's Court Land Case No. 1 of 1997.

In 1999 the Petitioner filed Nairobi Miscellaneous Application No. 358 of 1999 in which it sought transfer of the suit land into its name. Before the application could be heard, Orders were forged in the Applicant's favour and the file went missing without trace. This was confirmed by the Deputy Registrar who disowned the said Orders and confirmed that the filed had gone missing. The Petitioner then filed another application being Nairobi Miscellaneous Application No. 1113 of 2000 which application it withdrew on 15/02/2001.

The 3rd Respondent contends that the present Petition is an abuse of the process of Court which is brought after the Petitioner has lost all its claims in various Courts. The 3rd Respondents contends that there are no constitutional issues raised in the Petition and urges the Court to dismiss the Petition.

I have carefully considered the Petition herein as well as the opposition to the same by the 3rd Respondent. It is clear from the Petition that the ground upon which it seeks prayers is a claim on adverse possession. One cannot bring a claim of adverse possession in a constitutional Petition. The Civil Procedure Rules clearly provide for the manner in which a claim for adverse possession can be brought. A right to acquire title by adverse possession is granted by Section 38 of the Limitation of Actions Act Cap 22 Laws of Kenya. Order 37 Rule 7(1) of the Civil Procedure Rules 2010 provide that an application under Section 38 of the Limitation of Actions Act shall be made by originating summons. Sub Section 2 provides that the Summons shall be supported by an Affidavit to which a certified extract of the title to the land in question shall be annexed. This is a special procedure provided if one is to invoke Section 38 of the Limitation of Actions Act where adverse possession is sought. This process cannot be brought by way of a constitutional Petition. It is therefore clear that the Petitioner herein has no claim to the suit land and cannot therefore claim to have had its rights violated. The Petitioner in support of the claim relied on a number of authorities. I must say that all the authorities cited

are not relevant and do not assist the Petitioner's case. For instance in Kitale High Court Civil case No. 4 of 2006 between Pentecostal Assemblies of God (Bahati P. A. G. Church) and three others Vs Peter Gathungu & 8 others, the Plaintiff had been allocated half an acre by Kitale Municipal Council but when it had its allocated land registered in its name, what appeared on the title was 2 ½ acres. This meant that it had had part of the Defendant's land registered in its name. When it sued the Defendants for Orders of eviction on ground that the Defendants had trespassed on to its land, the Defendants mounted a defence and counter-claim in which they contended that they had been allocated each ½ an acre as was the Plaintiff but that the Plaintiff had had itself registered as owner of 2 ½ acres instead. The Defendant's also pleaded adverse possession and the Court found in their favour and held that the Plaintiff was entitled to ½ an acre and not 2 ½ acres.

In Petition No. 107 of 2010 between Kuria Green Ltd Vs Registrar of Titles & Another, the Registrar had issued a Gazette Notice revoking titles on grounds that it had come to the notice of the Government that the Plots in issue had been allocated to individuals in respect of land reserved for Public purposes. The Petitioner who was one of those affected moved to Court and it was held that his constitutional rights to property had been violated in that he was not given an opportunity to be heard and that the title was cancelled in an improper manner.

Unlike in the above two cases where the Defendants and the Petitioner respectively showed that they had valid claims and their rights had been violated, in the present case, the Petitioner has not shown that any of its rights have been violated.

It is clear from the 3rd Respondent's Replying Affidavit that the Petitioner has lost a number of application in various Courts. There have been no appeals from the said Orders. To keep on filing more proceedings will not assist the Petitioner. The current Petition amounts to an abuse of the process of Court. There is no basis at all for the Petitioner to claim adverse possession when its own members had entered into a consent for its members to move out of the suit land only to remain on the land until they were evicted. The Petitioners are not living on the land after eviction pursuant to a consent order recorded giving them time to move out by a given period.

The Petitioner has tried various methods including others which are not acceptable like forging Orders in their favour. Having failed in all its efforts, the Petitioner cannot seek solace in a constitutional Petition which has no basis. I find that the Petition herein lacks merit. The same is hereby dismissed with costs to the 3rd Respondent.

It is so ordered.

Dated, signed and delivered in Open Court on this 29th day of April, 2013.

E. OBAGA

JUDGE

In the presence of Mr. Kiarie for 3rd, 4th and 5th Defendants.

CC: Joan.

E. OBAGA

JUDGE

29/04/2013