



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

ELC NO. 925 OF 2012

IN THE MATTER OF ARTICLE 22 OF THE CONSTITUTION

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER ARTICLES 40 OF THE CONSTITUTION OF KENYA**

BETWEEN

CHRISTOPHER KANAI KAMAU.....PLAINTIFF

AND

THE HON. ATTORNEY GENERAL.....1ST DEFENDANT

THE OFFICE OF THE PRIME MINISTER.....2ND DEFENDANT

THE CHIEF OF KYUNA LOCATION.....3RD DEFENDANT

THE OFFICER COMMANDING STATION

SPRING VALLEY POLICE STATION.....4TH DEFENDANT

RULING

This is a Chamber Summons application brought under *Article 22(1) (4), 23(1) (3), & 40 of the Constitution & all other enabling provisions of the Law*. The Applicant herein has sought for these orders.

- a. Spent
- b. Spent
- c. That pending the interparties hearing and determination of the petition, a conservatory order be and is hereby issued restraining the Respondents by themselves or through their agents, servants, employees, officers representatives from entering, trespassing, cutting trees, clearing vegetation and/or otherwise interfering with the Petitioner's quiet possession and use of all that private property known as LR No. 209/12056.
- d. Costs of the application be provided for.
- e. Any other order that this Honourable Court may deem fit and just to grant.

The application was supported by the annexed affidavit of **Christopher Kanai Kamau** and on the

grounds set out on the face of the application notably: -

- i. The Petitioner is the registered owner of all that property known as LR No. 209/12056.
- ii. That on 22/11/2012 a group of young men descended upon the said property and entered therein forcefully and began to fell trees and clear vegetation therein without the consent authority and even knowledge of the petitioner.
- iii. That the young men turned hostile and alleged they were deployed by the 3rd respondent.
- iv. The young men have continued to enter into the property and have continued to cut trees and clearing plants and vegetation therein.
- v. The young men who are allegedly from 'Kazi Kwa Vijana Initiative' have deprived the petitioner of the use and enjoyment of the said property.
- vi. The petitioner has been deprived of his constitutional right to own, use and/or enjoy the said property.
- vii. The petitioner stated that his title to the property remains unchallenged.
- viii. That petitioner stands to suffer immense injustice unless the court intervenes.

The petitioner in his supporting affidavit averred that at all material time, he has been the proprietor of all that piece of land known as L.R NO. 209/12056 as per the copy of title annexure *ck1*. He alleged that on 22/11/2012 his property was unlawfully invaded by several men who proceeded to destroy his property and fell trees without his permission. He further alleged that these men were from 'Kazi Kwa Vijana Initiative' who were directed to his property by the Chief of Kyuna Location. That the said invasion is contrary to the petitioner's constitution right to own property as provided by Article 40 of the Constitution. He therefore prayed for conservatory orders to preserve his said property.

The application herein is not opposed. On 17/4/2013 Ms. Kung'u from the office of Attorney General appeared in court and intimated that the office of the Attorney General intended to respond to the chamber summons. The application was adjourned to 4/6/2013 so that the Attorney General could respond.

However, on 4/6/2013, there was no representation from the office of the Attorney General and the application was therefore not opposed. I have perused the court records and I have not seen any grounds of opposition or replying affidavit. The application is therefore not opposed.

Even if the application is not opposed, is the same merited?

The applicant herein canvassed his application by way of written submissions which I have carefully considered.

There is no doubt that the applicant herein is the proprietor of the land parcel No. LR No. 209/12056 as evident from the copy of the Title CKI. The same was transferred to him on 7/8/2007.

There is no evidence that the applicant's title has been challenged, cancelled or that he has transferred the same to any other person.

Section 24 of the Land Registration Act vests absolute ownership to a registered proprietor. It reads as follows:

"The registration of a person as the proprietor of land shall vest in that person the absolute ownership of that land together with all rights and privileges belonging or appurtenant thereto".

The applicant herein is the registered proprietor of the suit land and so he has the absolute ownership.

The applicant's absolute ownership of the property is protected under the Constitution. Article 40(2)(a) of the Constitution 2010 provides that: -

"Parliament shall not enact a law that permits the State or any person -

(a) to arbitrarily deprive a person of property of any description or of any interest in or right over any property of any description.”

The applicant has stated that on 22/11/2012, a group of men unlawfully entered into his land and started to fell down trees and destroy his property. That the same was done under the direction of Chief of Kyuna Location ostensibly for a project dubbed. “*Kazi Kwa Vijana*” the said Chief was sued as the 3rd respondent. He did not turn up in court to rebut that allegation. The court finds no reason to doubt the applicant herein.

Even if the 3rd defendant had directed the said young men to enter the said parcel of land on assumption that it was a public land, the evidence on record is that the parcel of land in question is owned by the applicant herein. The applicant is therefore protected by Article 40(3) of the constitution which provides that

“The State shall not deprive a person of property of any description or any interest in or right over property of any description unless the deprivation.

- a. *Results from an acquisition of land or an interest in land or a conversion of an interest in land or title to land in accordance with chapter five.*
- b. *Is for a public purpose or in the public interest and is carried out in accordance with this Constitution and any Act of Parliament that: -*
 - i. *Requires prompt payment in full of just compensation to the person and*
 - ii. *Allows any person who has an interest in, or right over that property a right of access to a Court of Law.”*

There is no evidence herein that the applicant’s land has been acquired by the State and he has been promptly paid. The applicant is thus protected by the Constitution.

As has been rightly submitted by the applicant, right to property is a Human Rights issue and has been provided and protected by several International Conventions on Human Rights.

Article 14 of the African Charter on Human and People’s Rights provides that: -

“The Right to property shall be guaranteed. It shall only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws.”

The applicant having ***prima-facie*** proved that he is the registered proprietor of L.R No. 209/12056 has his right to ownership of property properly protected and the same should be upheld.

The applicant’s allegation was not rebutted. However the applicant has established that he has a ***prima facie case*** with high probability of success.

He is the registered owner of the suit land and if the encroachment and destruction is allowed to continue, he will suffer irreparable damages.

Having now carefully considered the pleadings herein and the written submissions, the court finds that the applicant’s Chamber Summons dated 25/11/2012 is merited. The same is allowed in terms of prayer No. 3.

Applicant is entitled to costs of this application.

However, the applicant/petitioner to ensure that he has set down the main Petition for hearing expeditiously for the issues herein to be resolved once and for all.

It is so ordered.

Dated this 29th day of August, 2013.

L.N. GACHERU

JUDGE