



**REPUBLIC OF KENYA**

**IN THE HIGH OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS**

**Petition 266 of 2012**

**DR. KIMPEI MUNEI & 59 OTHERS**

(SUING ON THEIR OWN BEHALF AND ON BEHALF OF  
THE MAA COMMUNITY AND OTHER MINORITY AND  
MARGINALISED GROUPS IN KENYA

AND IN THE GENERAL PUBLIC INTEREST)..... **PETITIONERS**

**AND**

**THE NATIONAL LAND**

**COMMISSION SELECTION PANEL.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**RULING**

1. The petitioners in this matter have sought conservatory orders to restrain the National Land Commission Selection Panel from forwarding or submitting any names to the president of the Republic of Kenya for appointment to the position of Chairperson and Members of the National Land Commission.
2. The application for conservatory orders dated 20<sup>th</sup> June 2012 came up on 22<sup>nd</sup> June 2012 *ex-parte* when the applicants were directed to effect service. It thereafter came up for inter-partes hearing on 27<sup>th</sup> June 2012 but despite service there was no attendance on the respondents' part. The matter was adjourned for mention on 4<sup>th</sup> July 2012.
3. On 4<sup>th</sup> July 2012, there was no appearance or representation on the respondents' part. At that attendance, Hon. Lady Justice Ngugi disqualified herself and directed that the matter be mentioned before me on 11<sup>th</sup> July 2012. On that date I was not sitting hence the matter was fixed for hearing on 19<sup>th</sup> July 2012. On 19<sup>th</sup> July 2012, I directed the respondent to file and serve the replying affidavit on or before 30<sup>th</sup> July 2012 and fixed the matter for directions on 31<sup>st</sup> July 2012 for directions.

4. Today despite my orders the respondents have not filed the Replying Affidavit as directed. Ms Makori, counsel for the respondent informs the court that the documents necessary to file the reply are not available as the Panel for Selection constituted under the **National Land Commission Act, 2012 (Act No. 5 of 2012)** has been disbanded. She states that she has contacted the public service commission to no avail.

5. Mr Saitabao draw the court's attention to the provisions of **paragraph 15** of the **1<sup>st</sup> Schedule** to the **National Land Commission Act, 2012** which states that, "**The selection panel shall stand dissolved upon appointment of the Chairperson and members of the Commission under paragraph (8).**" **Paragraph 16** goes on to state that, "**Where the provisions of paragraph 10 apply, the selection panel shall continue to exist but shall stand dissolve upon the requisite appointments being made.**" According to Mr Saibatao, it is not clear whether there have been appointments and if so the information should be availed through the replying affidavit to enable the petitioner consider its options.

6. I take a very dim view of the manner in which the respondents have conducted themselves in this matter. The Constitution of Kenya gives every citizen a right to challenge any action exercised by any person pursuant to the Constitution and the law. The petitioner's have elected to utilise this right which is part of the cherished value of the rule of law articulated in **Article 10**. The High Court has jurisdiction to adjudicate on this matters that are brought to it without delay to ensure that the machinery of justice works.

7. The appointment of Commissioners of the National Land Commission under the Act is time limited and it is perhaps the intention of the respondents to run the clock on the petitioners so that they are met with a *fait accompli*.

8. This court cannot countenance such a situation. The replying affidavit would enable the petitioners decide whether it wants to answer or proceed with the action. It is also not lost to this court that the petitioners have a right to information from the State under **Article 35**. The reason advanced by the respondents fall far short of the responsibilities placed on State institutions to support the rule of law and justice.

9. In order to ensure that the course of justice is brought on track, I now direct as follows;

**(1)The respondents shall file and serve a Replying Affidavit on or before 3<sup>rd</sup> August 2012 when this matter shall be mentioned for directions.**

**(2) In the meantime, a conservatory order is issued restraining the appointment of the Chairperson and members of the National land Commission from taking office, carrying on with duties if they have been appointed or in any manner dealing or conducting the business of the National Land Commission until 2<sup>nd</sup> August 2012 or until further orders of the Court.**

**DATED and DELIVERED at NAIROBI this 31<sup>st</sup> day of July 2012**

**D.S. MAJANJA**  
**JUDGE**

Mr Saitabao instructed by Kanchory and Company Advocates for the petitioner.

Ms Makori , Litigation Counsel, instructed by the State Law Office for the respondent.