



IN THE HIGH COURT OF KENYA

AT NAKURU

PETITION NO. 3 OF 2011

IN THE MATTER OF SECTION 84(1) OF THE CONTITUTION OF KENYA

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS
AND FREEDOMS UNDER SECTION 75 OF THE CONSTITUTION**

BETWEEN

PAUL KIPKEMOI RONO.....1ST PETITIONER

**JOSEPH KURGAT
.....2ND PETITIONER**

**JOHN NJENGA GACHAHI.....
.....3RD PETITIONER**

**DAVID KIPRONO KILEL.....
.....4TH PETITIONER**

**DAVID KIMELI
NGETICH.....5TH PETITIONER**

**PAULINE MORAA ARASA.....
.....6TH PETITIONER**

**S.N. ARASA.....
.....7TH PETITIONER**

**ANNA NDUTA
KUNGU.....8TH PETITIONER**

**MARY WANJIKU
NJENGA.....9TH PETITIONER**

**JOHN NJENGA
GACHAHI.....10TH PETITIONER**

JOSHUA ELDUMBEI CHEMAWACHI.....

.....11TH PETITIONER

WILSON LEITICH.....

.....12TH PETITIONER

AND

THE MINISTER FOR LANDS.....

.....1ST RESPONDENT

COMMISSIONER FOR LANDS.....

.....2ND RESPONDENT

THE MINISTER FOR ROADS AND PUBLIC
WORKS.....3RD RESPONDENT

EGIS ROUTE-
SCETAUROUTE.....4TH RESPONDENT

THE ATTORNEY
GENERAL.....5TH RESPONDENT

CLR . JOSHUA CHEPKWONY.....
.....6TH RESPONDENT

AND

COUNTY COUNCIL OF NAKURU.....PROPOSED
INTERESTED PARTY

RULING

The 12 applicants in the instant chamber summons dated 3rd June, 2010 have filed this petition for a declaration that the respondents' commencement of acquisition of the applicants' parcels of land at Salgaa area is illegal and unconstitutional. The said chamber summons brought pursuant to **section 84(1)** of the repealed **Constitution** and **Rules 12, 13, 20, 21 and 32** of the **Constitution of Kenya** (Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2006, (the Gicheru Rules) seeks that all activities on the following parcels of land, in so far as those activities appertain to the acquisition of the said parcels for purposes of construction of a lorry park be stopped pending the hearing and determination of the Petition; Nos.32, 33, 36, 51, 52, 53, 54, 56, 61, 62, 63, 64 and 65 SALGAA.

The applicants have averred that they are the lawful allottees of the suit premises upon which they have carried out developments and that they have been paying land rent; that a French Construction Company, Egis Route-Scetauroute has been surveying the suit plots with a view to constructing a parking lot for trucks and have issued notices to the respective owners of the plots; that no clarification has been given on this project by either the Ministry of Lands or that of Roads; that the Attorney General, has also not said anything.

However, belatedly, the Commissioner of Lands has issued Gazette notice No.3278 purporting to give notice of intention to acquire certain parcels of land for Lanet-Njoro Turnoff-Timboroa Road project.

It is useful to indicate that the following are named as respondents in the petition and in the application:

- The Minister for Lands
- The Commissioner of Lands
- The Minister for Roads and Public Works
- Egis Route-Scetauroute
- The Attorney General and and
- Councillor Joshua Chepkwony

It is instructive to note two developments.

First on 28th February, 2011, the County Council of Nakuru's application to be joined as interested party in these proceedings was allowed by consent. Second, on 10th February, 2010 Hon. Musalia Mudavadi, the Deputy Prime Minister and Minister for Local Government wrote in response to one of the applicant's (Paul Kipkemoi Rono) letter and categorically indicated that the ministry had no plans for the project in question. The respondents and even the interested party have not responded to the application.

Rule 20 of the **Gicheru Rules**, provides that:

“20. Notwithstanding anything contained in these Rules a judge before whom a petition under rule 12 is presented may hear and determine an application for conservatory or interim orders.”

The applicants moved the court immediately they were served with a letter addressed to all of them by Egis Route-Setauroute International – the 4th respondent intimating to them that their plots have been earmarked for acquisition and warning them that no new developments on the plots will attract compensation. That letter is dated 14th October, 2009. Subsequently on 11th March, 2010 the Commissioner of Lands published in Gazette Notice No.3278 an addendum to Gazette Notice Nos.65 and 66 of 2008, Gazette Notice No.3279 a corrigendum to Gazette Notice. Nos. 65 and 66 and Gazette Notice No.3280 a Regazettement of Gazette Notice Nos.65 and 66. The applicants have deposed that they were not aware of the earlier Gazette Notices, namely Nos.65 and 66 and do not know their contents. That their attention was drawn to the intended acquisition by the aforesaid letter from the 4th respondent.

I have considered the application and submissions filed by learned counsel for the applicants and for the interested party. It is clear to me from the averments of the applicants that the parcels in question were allotted to them and further that the elaborate procedure set out **under section 3** to 13 (both inclusive) of the **Land Acquisition Act Cap 295** for compulsory acquisition of private property has not been followed in this exercise.

That being the case, there will be conservatory orders in terms of paragraph 1 of the chamber summons dated 3rd June, 2010 pending the hearing and determination of the petition.

Dated, Signed and Delivered at Nakuru this 13th day of June, 2011.

W. OUKO

JUDGE