



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Civil Case 255 of 2004

KIPTARUS TABOT AND 1192 OTHERS.....APPLICANTS/PLAINTIFFS

VERSUS

ATTORNEY GENERAL AND 6 OTHERS.....RESPONDENTS/DEFENDANTS

RULING

The over 1000 applicants/plaintiffs brought this claim by an originating summons for a declaration that they are lawful allottees and/or registered absolute owners of various parcels of land in Sururu Settlement Scheme, that the land comprised in their titles are no longer forest land and a further declaration that their violent eviction from their respective parcels of land by the respondents/defendants through their agents on 27th August, 2004 is a violation of **sections 75(i) and 82(2)** of the **Constitution**.

In the result they seek a perpetual order directed at the respondents/defendants restraining them from allocating or alienating the parcels of land in question and to allow the applicants/plaintiffs to return to their respective parcels of land. The summons was filed on 19th September, 2004. While the hearing of this matter is still pending, the applicants/plaintiffs have brought the instant motion on notice dated 28th October, 2009 for the following orders among others;

“ a.

- b. THAT this Honourable court be pleased to allow the applicants to pursue an alternative remedy of compensation for their parcels situated within Sururu, Mau complex area.
- c. THAT the applicants' names be considered by the Government during compensation of those affected by the Recommendations of its Taskforce on Mau Forest Complex Conservation.”

The applicants/plaintiffs state that after filing this suit, certain developments have taken place touching on the wider Mau Complex, including the appointment of the aforesaid Task Force whose report was adopted by the Cabinet and approved by Parliament and which has direct bearing to this suit. Among the recommendations in the report is that the settlers with title deeds would be relocated and/or compensated. That the applicants/plaintiffs as affected parties cannot qualify to benefit so long as this suit is pending in court; that should the court decline to grant the orders sought herein, the applicants/plaintiffs stand to be omitted in the compensation/settlement scheme and lose their parcels of land as well.

In reply, Deputy Director, Kenya Forest Services, on behalf of the respondents has sworn an affidavit in which he has challenged the applicants/plaintiffs' title; that until the legality of their titles are determined in this suit or any other, the applicants/plaintiffs cannot obtain that determination in this application.

I have considered these submissions. This court's jurisdiction is donated first and foremost by the Constitution. Although that jurisdiction is stated to be unlimited in both civil and criminal matters, that it can only be exercised in the terms provided by the Constitution or any other law. See **section 60(1)** of the **Constitution** and the **Judicature Act**. These limitations of the court's jurisdiction constitute justiciability doctrine, which dictates that real controversy must exist. It must be such a controversy recognized by the Constitution or any other law. It must not relate to a hypothetical or fanciful legal question. The decision of the court in such controversies must be based on

concrete facts and is final. The decision must have some effect. In any situation where the opposing party could ignore the decision then that decision lacks finality and cannot be enforced.

I have set out in the previous paragraph the relief being sought in this application. Do the applicants/plaintiffs require leave or authority of the court to pursue an alternative remedy? Or can this court compel the government, without appropriate application, to consider the names of the applicants/plaintiffs for compensation by the Mau Complex Task Force? The court cannot issue any of the orders sought in this application as they cannot be enforced.

For these reasons, the application fails and is dismissed with costs.

Dated, Signed and Delivered at Nakuru this 5th day of March, 2010.

W. OUKO
JUDGE