



IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)

Petition 697 of 2006

IN THE MATTER OF SECTION 84(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER SECTIONS 75, 82, 74, 70, AND 71 OF THE CONSTITUTION

BETWEEN

MUSA MOHAMMED DAGANE & 25 OTHERS..... APPLICANTS

V E R S U S

THE HON. ATTORNEY GENERAL..... 1ST RESPONDENT

THE DISTRICT COMMISSIONER GARISSA DISTRICT..... 2ND RESPONDENT

AND

THE KENYA NATIONAL COMMISSION OF

HUMAN RIGHTS 1ST INTERESTED PARTY

THE BOARD OF GOVERNORS, UMU SALAMA

SECONDARY SCHOOL..... 2ND INTERESTED PARTY

R U L I N G

This is a Chamber Summons dated 16th November, 2009 filed by Elisha Ongoya advocate for the applicants/petitioners, who were twenty six (26) in number. The respondent are named as **THE HON. ATTORNEY-GENERAL (1st respondent); THE DISTRICT COMMISSIONER GARISSA DISTRICT (2nd respondent)**. There are interested parties named as **THE KENYA NATIONAL COMMISSION ON HUMAN RIGHTS (1st interested party); THE BOARD OF GOVERNORS, UMU SALAMA SECONDARY SCHOOL (2nd interested party)**.

This application was filed after the applicants filed a **PETITION** on 21st November, 2008 alleging contravention of their fundamental rights and freedoms contrary to sections 75, 82, 74, 70 and 71 of the

Constitution.

The Chamber Summons application was purported to be filed under section 84(1) of the Constitution of Kenya and Rule 20 of the Constitution of Kenya (***Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual***) High Court Practice and Procedure Rules 2006-L.N. 6 of 2006. The orders sought in the application are as follows-

1. ***That this application be certified as urgent and service thereof be dispensed with in the first instance.***
2. ***That pending the hearing and determination of this application inter partes interim/conservatory orders be issued directed at the Respondents to ensure that there is no further eviction of the applicants from the land which they occupy at ADC farm Garissa.***
3. ***That pending the hearing and determination of this application inter partes interim/conservatory orders be issued against the Respondents to ensure that no developments are undertaken by any party on the land that the applicants used to occupy prior to their eviction on 15th August, 2003 near Umu Salama Girls Secondary School respectively.***
4. ***That pending the hearing and determination of the substantive Constitutional Petition interim/conservatory orders be issued directed at the Respondents to ensure that there is no further eviction of the applicants from the land which they currently occupy near the ADC farm Garissa.***
5. ***That pending the hearing and determination of the substantive Constitutional Petition interim conservatory orders be issued against the Respondent to ensure that no developments are undertaken by any party on the land that the applicants used to occupy prior to their eviction on 15th August, 2003 near Umu Salama Girls Secondary School.***
6. ***That pending the hearing and determination of the Constitutional Petition, this court does direct that the provincial survey officer does survey the land that was initially allocated to the Garissa Village Polytechnic and furnishes this Honourable Court with a report as to the current beneficiaries of the grabbing of the said parcel of land.***
7. ***That pending the hearing and determination of the substantive Constitutional Petition this Court does direct that this Honorable Court visits the locus in quo to ascertain the relative location of the land that the applicants were evicted from pursuant to an eviction notice issued in April, 2003 visa vis the land they were disguised to have allocated themselves unlawfully from the Village Polytechnic.***
8. ***In the alternative to prayer 7 above, pending the hearing and determination of the substantive Constitutional Petition this court does direct that the Kenya National Commission on Human Rights visits the locus in quo within such time as the court may direct and furnish the court with a report on the situation on the ground visa vis the reasons advanced by the Government of the Republic of Kenya constituting the reasons why the applicants have been evicted from their lands in August, 2003.***

The grounds of the application are on the face of the Chamber Summons. The application is also supported by the affidavit sworn on 16th November, 2006 by **IBRAHIM MOHAMED DAGANE**, one of the applicants.

The grounds of the application are, inter alia, that the petitioners have been threatened by eviction from the land parcel that they were dumped to by the Government in August, 2003 by some private developers; and that unless restrained by conservatory orders of this court, there was a likelihood that Umu Salama Girls Secondary School or some other developer as may be identified by the Respondent herein may commence developments on the land that lawfully belongs to the petitioners but from which the petitioners were evicted in August, 2003. The applicants also filed written submissions.

The application was certified as urgent and ordered to be served on the respondents for inter-partes

hearing. Prayer 1 was therefore spent. Mr. Bosire appeared for the Attorney-General on 27th September, 2007. On 5th February, 2008, Mr. Momanyi appeared for the 1st interested party. On 28th April, 2008 Mr. Ombwayo appeared for the Attorney-General. The 1st interested party actually filed their written report on the matter as was required of them. The other parties did not file any responses to the application.

On the hearing date, none of the respondents or interested parties appeared in court, though I was informed that they were served with hearing notice. Ms. Angote who appeared for the applicants/petitioners rightly pointed out that prayer 1 had been spent. Counsel also informed the court that prayers 2 & 3 had been spent. Counsel also informed the court that prayer 8 had been spent as the Kenya National Commission on Human Rights had supplied its report to the court. I will observe that I have myself seen that report.

Counsel went ahead to submit on prayer 4, 5, & 6. Counsel emphasized that currently, the applicants are living in temporary shelters on the land on which they were likely to be evicted any time.

This application is not opposed, as none of the respondents or interested parties has filed any response to challenge the orders sought. Under rule 20 of the Constitution of Kenya (***Supervisory Jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual***) High Court Practice and Procedure Rules, 2006, Legal Notice No. 6 of 2006, this court has jurisdiction to hear and determine an application for conservatory or interim orders. The said Rule 20 provides-

“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.”

Indeed, in our present case, a petition has been filed. This application is not opposed. It is also apparent from the Kenya National Commission on Human Rights that the evictions of the applicants by the 2nd respondent did not have any resemblance of civility or humanity or respect for property rights, even if those property rights have not yet been documented. In any event, if there were legal reasons to oppose the application, the Attorney-General was given an opportunity herein to respond on behalf of the respondents, but he did not oppose the application.

I will therefore grant the prayers sought as follows-

- 1. Pending the hearing and determination of the substantive Constitutional Petition interim/conservatory orders be and are hereby granted directed at the Respondents to ensure that there is no further evictions of the applicants from the land which they currently occupy near the ADC farm Garissa.***
- 2. That pending the hearing and determination of the substantive Constitutional Petition interim Conservatory orders be and are hereby issued against the Respondents to ensure that no developments are undertaken by any party on the land that the applicants used to occupy prior to their eviction on 15th August, 2003 near Umu Salama Girls Secondary School.***
- 3. That pending the hearing and determination of the Constitutional Petition, this court directs that the Provincial surveyor surveys the land that was initially allocated to the Garissa Village Polytechnic and furnishes this Honourable Court with a report regarding the current beneficiaries of the grabbing of the said parcel of land.***

It is so ordered.

Dated and delivered at Nairobi this 27th day of May, 2009.

George Dulu

Judge.