



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Misc Civil Appli 49 of 2002 (OS)**

**STANLEY K. MOSONIK & OTHERS ..... APPLICANTS**

**AND**

**ST. MARK CATHOLIC CHURCH, LITEIN ..... INTERESTED PARTY**

**VERSUS**

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

**2. THE PERMANENT SECRETARY,**

**(OFFICE OF THE PRESIDENT) INTERNAL SECURITY**

**& PROVINCIAL ADMINISTRATION ..... 2ND RESPONDENT**

**3. THE PERMANENT SECRETARY, MINISTRY**

**OF ENVIRONMENT AND NATURAL RESOURCES ..... 3RD RESPONDENT**

**4. THE CHIEF CONSERVATOR OF FORESTRY ..... 4TH RESPONDENT**

**5. THE PERMANENT SECRETARY, MINISTRY**

**OF CULTURE AND SOCIAL SERVICES ..... 5TH RESPONDENT**

**6. THE PROVINCIAL COMMISSIONER,**

**RIFT VALLEY PROVINCE ..... 6TH RESPONDENT**

**7. THE DISTRICT COMMISSIONER**

**, NAKURU PROVINCE ..... 7TH RESPONDENT**

**8. THE DISTRICT COMMISSIONER,**

**BURET DISTRICT ..... 8TH RESPONDENT**

**9. THE DISTRICT COMMISSIONER,**

**KERICHO DISTRICT ..... 9TH RESPONDENT**

## RULING

This is a constitutional reference stated to be brought under Sections 60 (1), 70, 71, 78, 81, 82 and 84 of the Constitution of our Republic, Section 3 (1) of the Judicature Act (Cap 8) and all enabling provisions of the law. In it, the Applicants who are 2,807 in number seek the following orders:

***“1. A declaration that the right to life protected by Section 71 of the Constitution of every applicant has been contravened and is being contravened by forcible eviction from their parcels of land in Kipsaongon, Kusumek, Arouvet and Chematich villages in Embomus location, Konoin Division in Bureti District***

***2. A declaration that such eviction as stated above, is in contravention of their right to protection of the law, their right not to be discriminated against and their right to reside in any part of the country and that it is ultra vires the Forestry Act and Agriculture Act and is null and void***

***3. An order compelling the Respondents to settle all the Applicants on their parcels of land they had already been living and farming and areas more particularly covered by the Gazette Notices No. 890 and 891 of 16th February, 2001 or such other or further area or areas as may be determined by this court***

***4. (Costs).”***

The Reference was based on four grounds which I find important to the decision of the case. I, therefore, also reproduce them here as follows:

***“(a) The Applicants knows (sic) no other home apart from the areas specified above from which they were evicted***

***(b) That the area was earmarked for settlement and has been degazetted from South – Western and Western Mau Forest by Gazette Notices Nos. 890 and 891 dated 16th February, 2001***

***(c) That there were no valid notices issued to the applicants before the evictions***

***(d) The eviction of the Applicants infringed their constitutional rights protected under Chapter V of the Constitutional (sic) and thus illegal null and void.”***

The Reference was supported by an affidavit of Jeremiah Sitonik Sitienei sworn on 1st March, 2002. In the Affidavit, Mr Sitienei deponed that he and his Co-Applicants had resided and carried on farming on the land from which they were evicted from in January 2002 since 1941. The same land, he said, had been degazetted for settlement by the Gazette Notices I have already mentioned. He said that the eviction was an infringement of their constitutional rights.

The matter was directed to be heard before me by the Honourable the Former Chief Justice, His Lordship Justice B Chunga on 19th March, 2002. Hearing of the same commenced in Nakuru on 15th April, 2002 but along the way the parties to it at the suggestion of the court agreed to attempt an out of court settlement. It went into a lull and was only revived this year – when it appeared that no agreement could be reached out of court.

I heard Counsel who argued the Reference on behalf of the contending parties and I took the following view of the matter.

The Applicants claim to reside and possess the land in dispute but did not lay and credible foundation to that claim. The only document they placed before the court to support their claim was what was described as “The fact finding Report of Mr Cheruiyot Kiplangat dated 15th and 16 February, 2002”. The said

person is not known to this court and the court was not told what authority he had nor his competence to make the Report.

As was argued by Mrs Kajwang for the Respondents, one can presume that the Report which was only prepared on the eve of the action may have been tailor-made to assist the Applicants in the prosecution of this Reference. I agree with Mrs Kajwang that the Report has no legal basis and ought to be rejected as I hereby do. As the Reference was substantially based on the fact that the Appellants had wrongly been evicted from the land to which they purported to lay a stake the same would automatically fail based on the finding I have already made above. There is therefore no purpose for me to go into the other matters which were urged as nothing useful would be achieved thereby.

Accordingly, I dismiss the Applicants' Originating Summons dated 1st March, 2002 but make no order as to costs.

Dated and delivered at Nairobi this 28th day of July, 2005.

**ALNASHIR VISRAM**

**JUDGE**