



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

Where Legal Information is Public Knowledge

**Keitany & 8 others v Land Registrar, Uasin Gishu & 5 others; Changwony  
& 280 others (Interested Parties) (Environment & Land Petition  
E002 of 2024) [2024] KEELC 6750 (KLR) (15 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6750 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT ELDORET**

**ENVIRONMENT & LAND PETITION E002 OF 2024**

**EO OBAGA, J**

**OCTOBER 15, 2024**

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER  
ARTICLE 19, 20, 21(10, 22 AND 165 OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF VIOLATION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER ARTICLES 27, 40 47 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF INTERPRETATION AND/OR  
ENFORCEMENT OF ARTICLES 10, 60, 61, 62, 63, 64, 66,**

**67 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE GOVERNMENT'S COMPULSORY ACQUISITION OF LANDS  
IN AREAS FORMERLY KNOWN KEIYO NORTH DISTRICT FOR ESTABLISHING PUBLIC**

**INSTITUTIONS AND FACILITIES**

**AND**

**IN THE MATTER OF THE NATIONAL LAND TITLING PROGRAMME  
IMPLEMENTED ON SERGOIT HOLDING GROUNDS L.R NO.883/2**

**AND**

**IN THE MATTER OF ALL THOSE 273 PARCELS OF LAND  
RANGING FROM SERGOIT/KARUNA BLOCK 5(CROWN  
LAND)/1 TO SERGOIT/KARUNA BLOCK 5(CROWN LAND)/273**

**BETWEEN**

**YUSSUF KEITANY ..... 1<sup>ST</sup> PETITIONER**



FREDRICK CHEBET .....	2 <sup>ND</sup> PETITIONER
MAURICE CHEBET .....	3 <sup>RD</sup> PETITIONER
MILKA CHEBET CHEBELIENI .....	4 <sup>TH</sup> PETITIONER
PIUS KIMUTAI CEPTAIGET .....	5 <sup>TH</sup> PETITIONER
PHILIP C KIGEN .....	6 <sup>TH</sup> PETITIONER
SAMWEL CHERUIYOT .....	7 <sup>TH</sup> PETITIONER
BEBARD SEREM .....	8 <sup>TH</sup> PETITIONER
JOHN K LAGAT .....	9 <sup>TH</sup> PETITIONER

**AND**

LAND REGISTRAR, UASIN GISHU .....	1 <sup>ST</sup> RESPONDENT
DIRECTOR OF SURVEYS .....	2 <sup>ND</sup> RESPONDENT
NATIONAL LAND COMMISSION .....	3 <sup>RD</sup> RESPONDENT
MARTIN KOSGEI CHIRCHIR ALIAS SAVIMBI .....	4 <sup>TH</sup> RESPONDENT
MORRIS KIPRUTO KIPRONO .....	5 <sup>TH</sup> RESPONDENT
NATHANIEL KIBET CHEPKENER .....	6 <sup>TH</sup> RESPONDENT

**AND**

WILLIAM CHANGWONY & 280 OTHERS & 280 OTHERS & 280 OTHERS .....	INTERESTED PARTY
--	------------------

**RULING**

**Introduction;**

1. This is a ruling in respect of a Notice of motion dated 30.1. 2024 in which the Petitioners/Applicants seeks the following orders:-
  1. Spent
  2. Spent
  3. Spent
  4. Spent
  5. That pending the hearing and determination of the petition herein, all proceedings in the following matters be stayed:-
    - a. Eldoret CM’s ELC No. E026 of 2023 – Mark Cheruiyot v Philip Kigen and 5 others.
    - b. Eldoret CM’s ELC No. E027 of 2023 – Marcel Kimutai v Christopher Cheronon.
    - c. Eldoret CM’s ELC No. E029 of 2023 – Teresa Kipchumba and Wycliffe Biwott v Philip Kigen and 5 others.



- d. Eldoret CM’s ELC No. E030 of 2023 – Raymond Kirwa Kinja v Philip Kigen and 5 others.
  - e. Eldoret CM’s ELC No. E031 of 2023 – Gideon Sang v Philip Kigen and 5 others.
6. That pending the hearing and determination of the petition, there be a preservative order or injunction barring the Respondents and interested parties herein from dealing with, transferring, leasing, transacting in, or disposing of, or registering any such activities in respect of, all those parcels of land ranging from Sergoit/Karuna Block 5 (Crown land)/1 to Sergoit/Karuna Block 5 (Crown Land)/273 with the exception of plot No. 41.
  7. That pending hearing and determination of the petition, there be an order of injunction barring the Respondents and the Interested parties either by themselves or through their servants, agents or assigns, from cultivating, tilling, planting, or otherwise wasting all those parcels of land ranging from Sergoit/Karuna Block 5 (Crown Land)/1 to Sergoit/Karuna Block 5 (Crown Land)/273 with the exception of plot. No. 41.
  8. Spent.
2. The Petitioners had filed a Constitutional petition in which they sought the following reliefs:-
    - i. A declaration that the list of beneficiaries created by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents dated 7<sup>th</sup> September, 2016 was created illegally and is hence null and void ab initio.
    - ii. A declaration that the area list prepared by the 2<sup>nd</sup> Respondent from the list f 7<sup>th</sup> September, 2016 is null and void.
    - iii. A declaration that the national land titling process as applied to and implemented on Sergoit Holding Grounds LR. No. 833/2 violated the rights of the petitioners and the inhabitants of Sergoit Holding Grounds as well the various provisions of *the constitution* and statues and in particular:-
      - a. The right to public participation.
      - b. Legitimate expectation.
      - c. The right to property.
      - d. The right to fair administrative action.
      - e. Article 232 of *the Constitution*.
      - f. Article 10 of *the Constitution*.
      - g. Article 27 of *the Constitution*.
      - h. Article 42 as read with Article 69 of *the Constitution*.
      - i. Article 44 of *the Constitution*.
    - iv. A declaration that the entire process that led to the issuance of titles ranging from Sergoit/Karuna Block 5 (Crown Land)/1 to Sergoit/Karuna Block 5 (Crown Land)/273 except plot No. 41 was tainted with illegality and is hence null and void.
    - v. A declaration that all those titles ranging from Sergoit/Karuna Block 5 (Crown Land)/1 to Sergoit/Karuna Block 5 (Crown Land)/273 except plot No. 41 are illegal and are hereby cancelled.



- vi. Pursuant thereto, an order directing the 3<sup>rd</sup> Respondent to undertake a comprehensive audit of the beneficiaries entitled to compensation and/or settlement taking into account the occupation and land use established before the preparation of the list dated 7<sup>th</sup> September, 2016 and submit a report in that respect to this court within 60 days of the judgment.
- vii. Subject to order No. (iv) and upon application by either party and/or approval by the court, the 2<sup>nd</sup> Respondent be directed to forthwith carry out a survey and demarcation with a view to implementing the recommendations thereof and thereafter the 1<sup>st</sup> Respondent or other relevant office to prepare and issue relevant title documents.
- viii. Parties be at liberty to apply.
- ix. Any other appropriate relief that the court may in accordance with the circumstances of this case grant.
- x. Costs be borne by the 1<sup>st</sup> to 6<sup>th</sup> Respondents.

### **Background;**

3. Between the year 1972 and 1985, the government undertook a series of compulsory acquisitions within Keiyo North District (Now Keiyo North sub-county) for purposes of setting up various public institutions including schools, Police Station, Civil servant's quarters, coffee tree nursery among others. As compensation for the acquired land, those who were affected were settled on Land known as Sergoit Holdings Ground L.R No. 883/2.
4. A list of beneficiaries was prepared and those to benefit were settled on L.R No. 883/2. In the year 2015, the government of Kenya through the National Land Titling Programme identified the beneficiaries through vetting who were ultimately given their individual titles.

### **Applicants' contention;**

5. The Applicants contend that the process of ascertainment of the beneficiaries of Sergoit Holding Ground was hijacked by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents who prepared a new list of the beneficiaries dated 7.9.2016 which they forwarded to the 2<sup>nd</sup> Respondent who used it to prepare an area list which was finally used to generate titles.
6. It is the Applicants' further contention that the new list completely ignored the existing settlements and changed the initial map which dispossessed those who had been settled as part of the compensation for the acquired lands. They further state that the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents took the opportunity to allocate themselves, their friends and relatives huge chunks of land totaling to 170 acres while edging out those who had lived on the land since the 1970's.
7. The Applicants further allege that various public officers such as chief's sub-chiefs and their relatives were given land which they did not deserve. That even the surveyors who were involved in the Titling Programme benefited under circumstances which showed that they were being rewarded for their complicity with the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.
8. The Applicants state that there was no actual survey which took place as everything was done from Kitale where the officials of the National Titling Programme were based. The lands which were previously available to the community as wetlands, grazing lands and cultural sites were given out. The allocations ignored existing judgement of court which had barred the allocations of contested parcels. Their plea to public officers to look into the issue has been ignored.



9. They argue that the creation of 273 titles was tainted with fraud and that there are a number of cases pending before the lower court where new owners are seeking injunction orders against the previous owners. There was a taskforce which was appointed and it held a number of meetings until 2016 when a representative from Tambach area brought in a list containing members who were not entitled to benefit. The representative led a walkout and there were no further meetings held. Thereafter the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents arrogated themselves the role of chairman, secretary and treasurer respectively and overlooked the taskforce members.
10. The three Applicants then started dealing with the Kitale team of Titling Programme officers. The survey process was carried out at Kitale and not on the land in question. Some people who were not deserving got land including those who were involved in the survey exercise. As a result of these anomalies, there have been incidents of violence involving affected members.

#### **The 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents' contention;**

11. The Respondents opposed the Applicant's' application based on a replying affidavit sworn on 3.4.2024. The Respondents deny the allegations by the Applicants. They state that they never hijacked the process of titling and that all complaints over the allocation of land were dealt with and those who were not satisfied were asked to file suits in the Environment and Land Court. They further state that the 1<sup>st</sup> Applicant used his influence to have himself and his relatives allocated land yet he had not surrendered any land to the government.
12. The Respondents state that contrary to the allegations by the petitioners, it is the 1<sup>st</sup> Petitioner who has been violent to the owners of land in issue and that the 6<sup>th</sup> Applicant is facing a murder charge in Eldoret High Court Criminal Case No. 28 and 29 of 2023.

#### **Analysis and determination;**

13. I have carefully considered the Applicant's application, the opposition thereto by the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents as well as the submissions filed by the parties. There are two issues which emerge for determination in this application. The first is whether the Applicants have demonstrated that there is need to stay proceedings in the cases which are going on in the lower court. The second is whether the Applicants have met the threshold for grant of a conservatory order.
14. On the first issue, this court is alive to the process which led to the filing of this petition and application. The court has captured in brief the background of this matter. The process which led to titling was not an easy task. There was a taskforce which was set up which came up with a list of members who were to benefit. The National Titling Programme was brought on board which led to individuals getting their titles. There were complaints which came up and investigations were done and no one was found criminally culpable. Those who were dissatisfied were asked to agitate their grievances in the Environment and Land Court.
15. The Applicants are not parties in the cases before the lower court which they are seeking to stay. A look at the prayers in the petition shows that the Applicants are faulting the entire process which culminated into issuance of titles. Stay of proceedings is a drastic step which should only be taken in deserving cases. In the instant case, the Applicants have not demonstrated why the cases before the lower court should be stayed when complaints were made regarding those who were compensated, investigations were carried out and it was resolved that those affected were to move the court individually.
16. In the case of *Turbo Highway Eldoret Ltd -vs- Munuu (Civil) appeal E040 of 2021*, (2022) KEHC 10 197 KLR (30 JUNE 2022) Ruling), Justice Joel Ngugi (as he then was) set out the principles for



grant of stay of proceedings. One of the principles is that the Applicant must demonstrate that there are exceptional circumstances which make stay of proceedings necessary as opposed to having the case concluded and all arising grievances taken up on a single appeal. There has also to be demonstration that the application was made expeditiously.

17. In the instant case, the titling process was completed on or around 2016. The cases whose proceedings are sought to be stayed were filed in 2023. The present application was made in 2024. The main target of the Applicants are the resultant titles which were given in or around 2016. This is a period of over 8 years. The Applicants have not given any special circumstances why the proceedings should be stayed. I therefore find that there is no reason given why the proceedings in the cases before the lower court should be stayed.
18. On the second issue, it is clear that the Applicants are targeting the Respondents on the ground that they hijacked the process of the taskforce and generated an area list where they gave themselves and their families huge chunks of land. I have looked at the materials presented before the court. What the Applicants seem to be complaining about was subjected to investigations by the Directorate of Criminal investigations which found that there was no criminal element established. Those who were aggrieved were asked to approach the Environment and Land Court.
19. There were a number of meetings held to iron out any differences which may have arisen. Those who were given land have settled and seem to have no issues. Those who had issues were at liberty to ventilate them in court. From the nature of this case, the Applicants seem to be faulting the entire compensation process and they want it nullified in its entirety. They have however failed to demonstrate that they have a case which warrants them being given conservatory orders.
20. In Constitutional cases unlike in Civil cases, a party who wants the court to grant any interlocutory relief has to show that he has a case which looked at in totality will convince the court that there is indeed a case for grant of conservatory orders. In the instant case and given the history of the case which culminated in issuance of titles, granting any conservatory orders will not be interest of justice based on affidavit evidence. I therefore find that the Applicants have not demonstrated that they deserve conservatory orders.

**Disposition;**

21. From the above analysis, I find that the Applicants' application lacks merit. The same is dismissed with costs to the 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 15<sup>TH</sup> DAY OF OCTOBER, 2024.**

**E. O. OBAGA**

**JUDGE**

**In the virtual presence of;**

Mr. Oduor for Petitioners/Applicants.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

15<sup>TH</sup> OCTOBER, 2024

