



Huko & 28 others v Ministry of Lands and Settlement & another (Constitutional Petition E006 of 2024) [2024] KEELC 13495 (KLR) (3 December 2024) (Ruling)

Neutral citation: [2024] KEELC 13495 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
CONSTITUTIONAL PETITION E006 OF 2024
MAO ODENY, J
DECEMBER 3, 2024
IN THE MATTER OF ARTICLES 22, 23, 40, 47
AND 50 OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ALLEGED VIOLATION OF THE RIGHT TO
PROPERTY, FAIR ADMINISTRATIVE ACTION, AND FAIR HEARING**

BETWEEN

KARANJA HUKO & 28 OTHERS PETITIONER

AND

THE MINISTRY OF LANDS AND SETTLEMENT 1ST RESPONDENT

THE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 2nd July, 2024 by the Petitioners seeking the following orders:
 - a. Spent
 - b. Pending the hearing and determination of this Petition, the Honourable Court be pleased to issue a conservatory order restraining the Respondents, their agents, servants, and any other person acting under their authority from further transferring, leasing, charging, or in any other way interfering with the parcels of land known as Chapakundi Settlement Scheme, Olenguruone, Nakuru County.
 - c. Pending the hearing and determination of this Petition, the Honourable Court be pleased to issue an order compelling the Respondents to provide security to the Petitioners to enable them to access and utilize their parcels of land in the Chapakundi Settlement Scheme.



- d. Pending the hearing and determination of this Petition, the Honourable Court be pleased to issue an order directing the Respondents to undertake an immediate investigation and provide a report on the illegal occupation and transfers of the Petitioners' parcels of land in Chapakundi Settlement Scheme since 1992.
 - e. The Honourable Court be pleased to issue any other orders it deems just and fit in the circumstances.
 - f. Costs of this application be provided for.
2. The application was supported by the affidavit of Francis Gakero Karanja sworn on 2nd July, 2024 where he deponed that the Government made a decision to re-settle those affected by the post-election violence and the scheme was declared a forest with a caveat placed in 1992 which was lifted early this year. He deponed that the Kalenjins were to be settled in Kiptagich Settlement Scheme and none Kalenjins were taken to Elburgon and Molo Kapsita Settlement Scheme.
 3. The Applicant further stated that the Kalenjins did not move and instead forcefully occupied their land and continued picking their tea while they were settled in Kapsita within Mau Forest. Further that the Ministry of Environment and Forestry placed a caution on the land that was given to them since it was not degazetted as a forest and hence have not been able to access the land in Chepakundi since 1992.
 4. It was the Applicant's case that they have learnt that the Land Registrar has been requesting subdivisions and transfers during the subsistence of the Government caveat. He deponed that all efforts to conduct a search on the parcels of land in Chepakundi have proved difficult and it is only fair that they be restored to their lands and all those in occupation of the lands be removed.

Applicant/petitioners Submissions

5. Mr. Gakinya, counsel for the Applicants filed submissions dated 9th October, 2024 and submitted that the Applicants constitutional rights have been trampled upon by the Respondents who are legally charged with the responsibility of defending life and property of Kenyans.
6. Counsel relied on Article 40 of the *Constitution* and the case of *Charles Murigu Muriithi & 2 others v A.G* [2015] eKLR and submitted that there is a possibility that during the existence of the government caveat there were transfers and sub-divisions that were registered illegally and urged the court to grant conservatory orders as prayed.

Analysis and Determination

7. The issue for determination is whether the Petitioner/Applicants are entitled to conservatory orders restraining the Respondents from interfering with the parcels of land known as Chapakundi Settlement Scheme, Olenguruone, Nakuru County.
8. The principles for grant of conservatory orders are well settled as was held in the Supreme Court Case of *Gatirau Peter Munya v Dickson Mwenda Kithinji & 2 others* [2014] eKLR as follows:

“Conservatory orders” bear a more decided public-law connotation: for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the Court, in the public interest. Conservatory orders, therefore, are not, unlike interlocutory injunctions, linked to such private-party issues as “the prospects of irreparable harm” occurring during the pendency of a case; or “high probability of success” in the supplicant’s case for orders of stay. Conservatory orders, consequently, should be granted



on the inherent merit of a case, bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes.”

9. Similarly, in the case of *Wilson Kaberia Nkunja v The Magistrate and Judges Vetting Board & others*, (2016) eKLR the court summarized three main principles for consideration on whether to grant conservatory orders as follows:
 - a. An applicant must demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order, there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of the Constitution.
 - b. Whether, if a conservatory order is not granted, the petition alleging violation of, or threat of violation of rights will be rendered nugatory; and
 - c. The public interest must be considered before grant of a conservatory order.
10. There are several Petitioners in this petition who have neither sworn any affidavit nor indicated that they have given the deponent authority to swear the affidavit on their behalf. It is incumbent upon the Petitioners to show a prima facie case with a likelihood of success and if conservatory orders are not granted they are likely to suffer prejudice.
11. From the onset, the court notes that Francis Gakero Karanja who is not among the Petitioners swore the affidavit supporting both the Petition and this Application. He deponed that he is a beneficiary of the estate of Karanja Huko (Deceased) his father who owned Plot Number 279 in Olenguruone scheme registered as Nakuru/Olenguruone/Chepakundi/275 but did not show whether he has capacity to sue on behalf of the estate of his deceased father. This alone is a red flag.
12. The Petitioners have pleaded that a government caveat was placed on the land in 1992, yet the titles were transferred and registered to other individuals. There is no evidence placed on record to show the allegations that transfers and titles have been issued during the existence of the caveat. Mere mention that titles have been issued without any proof either by annexure of a search or copies of titles is not enough evidence to show a prima facie case.
13. There are further allegations that the Land Registrar has been requesting for subdivisions and transfers without any proof of such requests. In the case of *Board of Management of Uhuru Secondary School v. City County Director of Education and 2 others* (2015) eKLR, where the Judge stated that for grant of conservatory orders the application must meet the following conditions:
 - “a) First, an Applicant must demonstrate an arguable prima facie case with a likelihood of success, and to show that in the absence of the conservatory orders, he/she is likely to suffer prejudice.
 - b) The second principle is whether the grant or denial of the conservatory relief will enhance the constitutional values and objects of a specific right or freedom in the Bill of Rights.
 - c) Thirdly, the Court should consider whether, if an interim conservatory orders is not granted, the Petition or its substratum will be rendered nugatory.
 - d) The final principle for consideration is whether the public interest will be served or prejudiced by the decision to exercise discretion to grant or deny a conservatory order.



14. It is the Petitioners' case that they have suffered significant losses due to the failure of the government to protect them and their properties. The Petitioners have not met the threshold for the grant of a conservatory order, as the substratum of the petition will not be rendered nugatory if the order is not granted. There will be no prejudice caused to the Petitioners if the order is not granted.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 3RD DAY OF DECEMBER 2024.

M. A. ODENY

JUDGE

