



THE REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ISIOLO

PETITION NO. 007 OF 2021

LERUK MURUSI.....1ST PETITIONER
LECHEKU ARIGELE.....2ND PETITIONER
HON. LEKONO BERNARD.....3RD PETITIONER
HON. LEADO STEPHEN LTERIAS.....4TH PETITIONER
LTETIAN LERUPES.....5TH PETITIONER
JIMMY LENEPEE.....6TH PETITIONER
JAMES MARLENI.....7TH PETITIONER
LPIRIKON NEEPE.....8TH PETITIONER
PATRICK KURAKI.....9TH PETITIONER
SAMUEL LOIBARBAN.....10TH PETITIONER
FRANCIS LEADUMA.....11TH PETITIONER
HON. DANIEL BURCHA.....12TH PETITIONER
HON. ASUNTA.....13TH PETITIONER
LENJODODO MAIDAT LOLBALANGA.....14TH PETITIONER
LETEYON NURE.....15TH PETITIONER
THE RENDILLE PROFESSIONAL ASSOCIATION.....16TH PETITIONER

VERSUS

THE COUNTY GOVERNMENT OF MARSABIT.....1ST RESPONDENT
TH CHIEF OF THE KENYA DEFENCE FORCES.....2ND RESPONDENT
THE CABINET SECRETARY MINISTRY OF DEFENCE.....3RD RESPONDENT
THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. This application has been brought to court under a certificate of urgency. It seeks the following orders:

- 1) **THAT** this Application be certified urgent and be heard on priority basis.
- 2) **THAT** ex-parte orders do issue, pending inter-partes hearing in terms of prayer 4 (i) herein.
- 3) **THAT** the 2nd and 3rd Respondent be cited for contempt of court in violating and continuing to violate court orders given on 26th May 2021.
- 4) **THAT** the 2nd and 3rd respondents do purge the contempt already committed inclusive of:-
 - i. Stopping any other and further construction, excavation, erection. Walling and or drilling by themselves, or through contractors, or agents or servants or any other parties whosoever pending other or further court orders, over the parcel in dispute.
 - ii. Remove structures and developments set up and constructed on the disputed parcel after 26th May 2021 when court orders were made.
 - iii. Written undertaking to abstain from further acts of commission and omission, in contempt of orders of 26th May 2021.
- 5) **THAT** orders do issue to deny the Court's audience to the 2nd and 3rd Respondents disallowing them permission of addressing and or making any representations to the court and or making filings on this case save as to this contempt application pending purging of the contempt and serving the penal sentence made and or paying the fine imposed on the contempt.
- 6) **THAT** the chief of Defence Forces (CDF) GEN ROBERT. K. KIBOCHI CBS 'ndc' (K) 'psc' (UK) and the cabinet secretary, ministry of Defence namely HON. EUGENE L. WAMALWA, EGH, be committed to civil jail for six (6) months and a fine of up to kshs. 200,000.00 or both, or such other punishment as the court may deem fit and just to grant.
- 7) **THAT** the court be pleased to issue any other or further orders it may deem fit and just to grant in the interest of justice.
- 8) **THAT** the Application be paid by the two (2) Respondents.

2. The application is supported by the affidavit of STEPHEN GAMBARE, a resident of Marsabit, sworn on 18th of February, 2022 and has the following grounds and other grounds to be adduced at the hearing:

- 1) This Application seeks to cite 2nd and 3rd Respondents for contempt of court orders issued on 26th May 2021 for maintenance of status quo in place as at 26th Mya 2021. Effectively the orders inter-alia prohibited fencing, construction and trenching and any other use of contested Community land pending hearing and conclusion of the case. The order stated that: ***"An order be and is hereby issued that the status quo be maintained on the ground."***
- 2) As at the time, 26th May 2021 one temporary road of access had been done, plus few accommodations, for about 20 people.
- 3) Since 26th May 2021 the contemnors, the 2nd and 3rd Respondent (sic) have gone ahead to set up a brick walls, and made more roads, dug towers, on the said disputed community land all after the orders were made.
- 4) They currently continue in earnest even as this application is being made, and even after the Petitioners pleaded for compliance in court, wrote a letter asking for compliance and will continue unless punished for contempt and ordered to purge the contempt.
- 5) In support of this application the petitioners crave to rely on, in support of their prayers on:-
 - a) Order of 26th May 2021 by Hon. Lady Justice L.N Mbugua.
 - b) Photographs taken overtime, since 26th May 2021 to the date to this Application showing the Fencing, Construction, road making and trenching of the parcel.
 - c) Admission made in Court 16th November, 2021 and 31st January, 2022 that works are going on, despite the orders of status quo of 26th May 2021. That they have been done within the space already taken and occupied by 2nd Respondent [hence is not contempt according to the 2nd, 3rd and 4th Respondent.]
 - d) Mpesa data on people engaged in the activities and works that amount to contempt.
 - e) Google scans and mappings showing the ongoing activities of fencings, constructions, trenching's, drilling, erections and

others.

f) Averments of people engaged in contemptuous works.

g) Filings made by the Petitioner requesting for orders of status quo and the responses by inter-alia 2nd and 3rd Respondents opposing prayers for the status quo. Filings eventually yielding the orders of 26th May 2021.

h) Letters dated 1st February 2022 and 26th July 2021 for the Petitioners asking the 2nd and 3rd Respondents (i) to halt further acts of contempt (ii) Engage on discussion on any possible interim situations. There have been no replies to the letters.

i) Service by M/S Nelima & Co Advocates.

6) The Petitioners otherwise aver that the 2nd and 3rd Respondents have mounted road-blocks, towers, surveillance, sentries and patrols that make it a lot harder to get more materials in support of the contemptuous construction and activities on the property. This is in addition to threats to people engaged, not to give out information, or report the works going on, otherwise they lose their jobs, tenders and sub-contracts by themselves or those held by their relatives.

7) All the parties through their counsels, including the 2nd and 3rd Respondents participated in the arguments and issuance of the ruling, ordering maintenance of status quo, on 26th May 2021. The 2nd and 3rd Respondents opposed the prayer for orders of maintenance of status quo.

8) In court appearance on 16th November 2021 and on 31st January 2022 the 2nd, 3rd and 4th respondents confirmed that they are doing the works complained about but maintain these works are not acts of contempt because the works are inside and within the space they already entered and occupied.

9) On account of the above contention by the 2nd, 3rd and 4th Respondent the issue for determination in this Application would then be whether or not works within the space already occupied amount to breach and contempt of orders of ***“status quo be maintained on the ground.”***

10) The orders of stay were granted so as to secure the substratum of the Petition. The issues in dispute that constitute the substratum of the case include questions as to:

(A) Whether the parcel seized by the 2nd and 3rd Respondents forcefully was properly obtained with due process of law followed including (I) Public participation (II) Environmental Impact Evaluation, (III) Discussion in Parliament to forfeit a wildlife conservancy space to KDF, (IV) Whether the parcel is community or public land, and the legal implications of the process towards their acquisition (V) Whether a colonial gazette notice of about 1947 declaring a land occupied and up to today by Rendile and Samburu, as wildlife conservancy is (a) oppressive (b) just (c) viable (d) enjoys recognition of the independent Kenya and the new Constitutions. (e) was varied by reality on the ground, publications, and other acts of commission and omission (f) oust the rights that the Rendille and Samburu have on the parcel.

(B) Whether the 2nd and 3rd Respondents could occupy the most environmentally and ecologic ally sensitive space, as opposed to other spaces and locations agreed by parties that the KDF could take and others.

(C) Whether the 2nd Respondents/KDF are above, and are authorized to act outside the Constitution, Court Orders, and statutes in place.

11) So far, owing to the forceful entry to the community land in breach of the order of status quo:-

(A) The Rendille and Samburu have been planning to take a demonstration to the said premises/barracks to urge the order, and protest the forced seizure and grip on their land but have been advised to exercise restraint.

(B) There has been increasing cases of improprieties between the communities nearby and Kenya Defense Forces that include:-

(i) Increased rates of teenage pregnancies.

(ii) Dropping out of school by students who are lured into casual employment monies granted by the KDF in the construction of the camp

(iii) Interference of the cultural and moral values of the Samburu and Rendille.

12) If the issues raised herein are admitted to hearing and determination as a priority, and at the earliest possible opportunity, the 2nd and 3rd will not suffer any irreparable damage as they will be afforded an opportunity to be heard. In the inverse, in the event of delay, or failure to address the Application the Applicants/Petitioners will suffer (i) compromise and damage to their cause in the Petition, (ii) Aggravation and damage to the relationship between the 2nd Respondent/KDF and the Petitioners/Rendille and

Samburu, (iii) continued interference, (iv) waste of resources, (v) deprivation of access to community land (vi) and the Court's reputation will continue to dissipate. The violation of the orders and interference will have been allowed to continue and to escalate within the court's open sight. (vii) The Cultural, social and economic value of the Samburu and Rendille will be seriously compromised.

13) The persons in charge of the 2nd Respondent, KDF, namely, the Chief of Defence Forces (CDF) GEN ROBERT. K KIBOCHI EGH CBS 'ndc' (K) 'psc' (UK) and the cabinet secretary, ministry of defence namely HON. EUGENE L. WAMALWA EGH, being the ultimate individuals responsible for the acts that now amount to contempt should be committed to 6 months jail or to pay kshs. 200,000.00 or both, or such other form of punishment as the court may deem fair and just.

14) The Petitioners wrote to the said in-charge of the 2nd and 3rd Respondents vide a letter dated 1st February 2022 and 26th July 2021 (a) to stop the contempt. In response, or by coincidence they escalated their activities (b) TO discuss if there is any possibility for any agreement and as advised by court on 31st January 2022. The two parties have not responded to the letter.

15) Further on the contempt the 2nd and 3rd Respondents should be disallowed from addressing the court, or making any filings on this matter, until they have purged the contempt and served the penal sentence and or paid fine imposed for the contempt committed.

16) The actions of the 2nd and 3rd Respondents are:

- (i) Conscious, deliberate and intentional acts of contempt, in defiance of the authority of the court, and the rule of law.
- (ii) An attempt at a coup and a design to ensure the parcel on trial is already taken away and seized, far away from the hands of the court, and petitioner communities before the court has had a chance to hear and decide on the petition, the very basis and reason for which orders of maintenance of status quo were granted on 26th May 2021.
- (iii) A scheme and attempt to defeat, compromise and render the substance of the Petition overtaken by events and void, and to frustrate the court and the Petitioners.

17) The 2nd and 3rd Respondents' actions violate the Petitioner's fundamental right including rights to property, to fair trial, and petitioners right to the rule of law. They are calculated, high handed and contemptuous of court and court's integrity. They are a violation of the obligations to fair administrative action from the 2nd and 3rd Respondents. They are prompted by malice and ill will. They violate the Petitioners legitimate expectations. The peril on their land is an affront to their right to quiet and peaceable enjoyment of their land, together with related corporeal and incorporeal, movable and immovable, quantifiable and unquantifiable benefits.

18) The actions of the 2nd and 3rd Respondents have outraged and thrown into disrepute the process of administration of justice. This application seeks to enforce the Honourable Courts Authority. The contempt motion should be heard as a matter of priority and urgency.

3. After perusal of the application and its annexures, at this exparte stage, the following orders are issued:

- a) The application is certified urgent and will be heard on priority basis
- b) The application is to be properly served upon the other parties.
- c) The application will be heard interpartes on 21st March., 2022.

WRITTEN AND DELIVERED IN CHAMBERS AT ISIOLO, THIS 1ST DAY OF MARCH, 2022 IN THE PRESENCE OF:

COURT ASSISTANT: BALOZI

PARTIES NOT PRESENT

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HON. JUSTICE P.M. NJOROGE

JUDGE