



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**CONSTITUTIONAL PETITION NO. E013 OF 2021**

**JOSHUA KATHAWE & 150 OTHERS.....PETITIONERS**

**VERSUS**

**THE CABINET SECRETARY MINISTRY OF LANDS.....1<sup>ST</sup> RESPONDENT**

**THE CABINET SECRETARY MINISTRY OF DEFENCE....2<sup>ND</sup> RESPONDENT**

**THE CHIEF OF THE KENYA DEFENCE FORCES.....3<sup>RD</sup> RESPONDENT**

**THE DISTRICT LAND AND SETTLEMENT**

**OFFICER TIGANIA EAST DISTRICT.....4<sup>TH</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....INTERESTED PARTY**

**RULING**

1. “*Whatever can go wrong will go wrong*” so goes the Murphy’s law. The Gambella Ngaremara conflict is unfolding in all manners wrong if the avalanche of litigation emanating from that area is anything to go by. This court dealt with **Meru ELC Petition 7 of 2017 County Government of Meru & another vs DLASO Tigania East sub district & 18 others (2018) EKLr** in which I allowed adjudication to proceed in Gambella/Ngaremara Adjudication area in line with the declaration made there in. That was in February 2018. Little did I know that conflicts of great magnitude would ensue out of the aforementioned adjudication process.

2. This court is privy to the existence of many suits relating to the area in question of which some of the matters include **petition 10 of 2019, petition 5 of 2019**, the current suit and the latest one being **petition 14 of 2021**, all in Meru Environment and Land Court. Most of these matters have been listed for mention for directions on 15.7.2021.

3. The current suit was contemporaneously filed with an **application dated 28.4.2021**, where the petitioners who are 151 in number are seeking conservatory orders restraining the 1<sup>st</sup> – 4<sup>th</sup> respondents and the interested parties from evicting the petitioners acquiring, alienating, disposing of or in any other way interfering with the petitioners’ peaceful possession or occupation and utilization of petitioners’ land situated in Gambella/Ngaremara adjudication area within Tigania East District Meru County until the application and the suit are heard and determined.

4. The prosecution of the said application is at the infancy stage whereby the respondents and the interested parties are yet to file their respective responses.

5. When the application came up for hearing on 4.5.2021, counsel for petitioners urged the court to grant the conservatory orders in the interim basis averring that the 2<sup>nd</sup> and 3<sup>rd</sup> respondents are digging trenches round the area in question yet the area is occupied by petitioners. That there are school going children who are unable to access schools while the animals belonging to the petitioners cannot freely access water points. Further, there is intimidation and threats directed upon the petitioners by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent’s. To this end, the court was urged to see the attached photographs.

6. In response, counsel for 2<sup>nd</sup> and 3<sup>rd</sup> respondents averred that the 78 battalion land consists of 8003 hectares of land of which allotment was done in year 2000, survey was done in year 2004 and the military acquired a certificate of lease in year 2018. That the land is vast and not all

of it is built up. That the trenching is being done for security reasons and this is being undertaken in the area where the military has its built up facilities. It is averred that no prejudice will be occasioned upon the petitioners if the process continues.

7. In rejoinder, counsel for petitioners avers that it is surprising for the military to claim to have title when the land is undergoing adjudication. He therefore contends that the title is a fraud of which they are using the said title to evict the petitioners. The petitioners aver that the military's land is 720 acres in the adjudication area, but they have left that land and encroached upon petitioner's land.

8. Counsel for 1<sup>st</sup>, 4<sup>th</sup> and 5<sup>th</sup> respondents averred that she is not privy to any of the issues raised and would therefore prefer to address the court in their response to the application.

9. As I have already stated herein, the application for issuance of conservatory orders is at the early stages of prosecution, where the respondents are yet to file their responses. However, counsel for petitioners has raised an issue, that the petitioners, the children and the animals are adversely affected by the trenching being undertaken by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents.

10. Firstly, the 2<sup>nd</sup> and 3<sup>rd</sup> respondents have not denied that they are digging trenches. The court has also seen the photographs of the aforementioned trenches. The reasons advanced by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents in respect to the trenches is that they own the land and also for security reasons. However, this is not a case whereby the trenches have been in existence. They are just in the process of being dug.

11. The petitioners have contended that there are schools in the area of which the trenches will adversely affect the accessibility to the schools. There are also animals which need to reach water points. As pointed out by both parties, the area is expansive. However, the court is not in a position to ascertain where the built up areas are particularly whether the trenches have affected only the military. The bottom line is that the court needs to ascertain these facts in the course of the trial. It is only fair and just that in the meantime status quo be maintained in order to preserve the substratum of the matter.

12. The 2<sup>nd</sup> and 3<sup>rd</sup> respondents appear to base their interests on the fact that they have a title to the land. However, the issue of ownership is a subject for determination both in the application and the suit. This court does not wish to deal with disputed facts at this stage of the trial.

13. In light of the foregoing, prayer 2 in the application dated 28.4.2021 is allowed.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

M/s Nyange holding brief for Mr. Mugiira for 2<sup>nd</sup> and 3<sup>rd</sup> respondent

Maranya D. for petitioners

Kiety for 1<sup>st</sup> – 4<sup>th</sup> respondents

Nandi (NLC) for 5<sup>th</sup> respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**