



**REPUBLIC OF KENYA**

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

**CONSTITUTIONAL PETITION NO. E014 OF 2021**

**IN THE MATTER OF ARTICLES 22(1) 23 AND 162 (2) OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS OR FUNDAMENTAL  
FREEDOM UNDER ARTICLES 35, 40, 47 (1) 67 AND 68 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE COMMUNITY LAND ACT, ACT NO. 27 OF 2016**

**AND**

**IN THE MATTER OF THE LAND ACT (ACT NO. 6 OF 2012)**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF  
RIGHTS) AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

**BETWEEN**

LAWRENCE KANYI NDEWA.....1<sup>ST</sup> PETITIONER  
MWENDA THIRIBI.....2<sup>ND</sup> PETITIONER  
DR. THIAKUNU MWIRABUA.....3<sup>RD</sup> PETITIONER  
JEREMIAH KORONYA MAILUTHA.....4<sup>TH</sup> PETITIONER  
CHARLES MWITI MUGAMBI.....5<sup>TH</sup> PETITIONER  
RICHARD KIAMBI.....6<sup>TH</sup> PEITIONER  
VINCENT MURANGIRI.....7<sup>TH</sup> PETITIONER  
MURIITHI MARTIN KAINDIO.....8<sup>TH</sup> PETITIONER  
MUTEMBEI IKIAO.....9<sup>TH</sup> PETITIONER  
PHILIP IGWETA.....10<sup>TH</sup> PETITIONER  
BERNARD M. NJOGI.....11<sup>TH</sup> PETITIONER

SAMUEL GITILE.....12<sup>TH</sup> PETITIONER

PETER KABERIA.....13<sup>TH</sup> PETITIONER

**VERSUS**

KENYA DEFENCE FORCES.....1<sup>ST</sup> RESPONDENT

THE CABINET SECRETARY,

MINISTRY OF DEFENCE.....2<sup>ND</sup> RESPONDENT

THE CABINET SECRETARY, MINISTRY

OF LANDS AND PHYSICAL PLANNING.....3<sup>RD</sup> RESPONDENT

THE HON. ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT

THE COUNTY GOVERNMENT OF MERU.....1<sup>ST</sup> INTERESTED PARTY

NATIONAL LAND COMMISSION.....2<sup>ND</sup> INTERESTED PARTY

**RULING**

1. This matter came up on 26.5.2021 for the hearing of petitioner’s application dated 11.5.2021. While the court was in the process of giving directions on the prosecution of the said application, counsel for applicants made the following applications:

2. Firstly, that pending the hearing and determination of the application, prayer 3 and 4 thereof be allowed in view of the activities being undertaken by the 1<sup>st</sup> and 2<sup>nd</sup> respondents who are digging trenches in the suit land. Secondly, the applicants seek leave to amend their petition in order to bring on board two interested parties namely; the LAPSET Corridor Development Authority and Kenya National Highways Authority (KENHA). Thirdly, the applicants pray that they be allowed to amend their petition in order to include other issues particularly the claim on compulsory acquisition of land. The applicants contended that pleadings have not closed.

3. The 1<sup>st</sup> and 2<sup>nd</sup> respondents objected to the issuance of prayer no. 3 & 4 on the basis that this would amount to determination of the application. However, they have no objection to the extension of the interim orders. On the issue of amendment of the petition in order to bring in new parties (LAPSET and KENHA) and new issues, it was argued that no basis has been laid by the applicants to warrant the issuance of the said orders. That in the circumstances, the applicants ought to move the court via a formal application.

4. The other respondents more or less agreed with the averments advanced by the 1<sup>st</sup> and 2<sup>nd</sup> respondents.

5. I have perused the record and I find that when the application dated 11.5.2021 was placed before me for the first time on 12.5.2021, the court proceeded to grant prayer no. 2 thereof which is an order for “*maintenance of status quo*”.

6. The **Black’s Law Dictionary 8th Edition** states that “*status quo*” is a Latin word which means “*the situation as it exists*”. The effect of a status quo order was explained by Murithi J in **Mombasa Misc. Civil Application (JR) No.26 of 2010 Republic –vs- The Chairperson Business Premises Rent Tribunal at Mombasa (Bench Mochache) Exparte Baobab Beach Resort (Mombasa Limited) & Monica Clara Schriel** quoted in; **The Matter Of An Application By Saifudeen Abdullahai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition**[2013]eKLR where he stated that,

***“In my view, an order for Status quo to be maintained is ..... an ancillary order for the preservation of the situation as it exists in relation to pending proceedings before the hearing and determination thereof (emphasize added).***

***It does not depend on proof of right or prima facie case. .... An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint.***

7. I find that the order given on 12.5.2021 is appropriate in the circumstances since the main application is still pending determination. The issue of extension of the said orders should not arise since the orders are to subsist until the application is heard and determined.

8. On the amendment of the petition in order to bring in new parties and new issues, I make reference to the **provisions of Order 8 Rule 1 of the Civil Procedure Rules** which states that:

***“A party may, without the leave of the court, amend any of his pleadings once at any time before the pleadings are closed”.***

9. The provisions of **Order 2 rule 13 of the Civil Procedure Rules** stipulate that:

*The pleadings in a suit shall be closed fourteen days after service of the reply or defence to counterclaim, or, if neither is served, fourteen days after service of the defence, notwithstanding that any order or request for particulars has been made but not complied with.*

10. A perusal of the file reveals that none of the respondents have filed their defences to the petition. Indeed each respondent has prayed for more time (precisely 21 days) to file their responses. The pleadings have certainly not closed. In the circumstances, the applicants are at liberty to file an amended petition to bring in new parties and new issues.

11. The final orders are as follows:

**(1) The orders of maintenance of status quo given on 12.5.2021 are to remain in force until the application dated 11.5.2021 is heard and determined.**

**(2) The applicants are to file and serve their amended petition within 14 days from the date of delivery of this ruling.**

**(3) The respondents are to file and serve their responses to the pending application and the amended petition within 30 days from the date of delivery of this ruling.**

**(4) The applicants are at liberty to file and serve any further affidavits thereof within 14 days thereafter.**

**(5) This file is to be handled alongside file no. petition 13 of 2021.**

**(6) Application to be heard on 15.7.2021.**

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 27<sup>TH</sup> DAY OF MAY, 2021 IN PRESENCE OF:**

C/A: Kananu

Gichalo holding brief for Ruthugua for petitioners/applicant

Eric Muriuki for 1<sup>st</sup> interested party (county government of Meru)

Kiety for 3<sup>rd</sup> and 4<sup>th</sup> respondents

Wanyoike for 1<sup>st</sup> and 2<sup>nd</sup> respondents

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**