



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC PET E008 OF 2020

IN THE MATTER OF ARTICLES 1, 2 (1), (2), (4), (5) & (6), 3(1), 10, 12 (1)(A), 19, 20, 21,22, 23(1) & (3) (27(1), (2), (4) & (5), 28, 29(C) & (F) 40(1) & (3), 47(1), 48, 50(1), 60(1), (B) 67(1) & (2) & (3), 165(5) (B), 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF VIOLATIONS OF ARTICLES 10, 19, 27, 2(C) & (F), 40(1) & (3), 47(1) OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF VIOLATION OF SECTION 13 (3) OF THE KENYA AIRPORTS AUTHORITY ACT

ADAN JIRMA DUBA & 188 OTHERS.....PETITIONERS

VERSUS

CABINET SECRETARY, LANDS & PHYSICAL PLANNING.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

THE NATIONAL LAND COMMISSION.....3RD RESPONDENT

THE KENYA AIRPORTS AUTHORITY.....4TH RESPONDENT

ISILOLO COUNTY GOVERNMENT.....5TH RESPONDENT

RULING

1. This matter was coming up for directions on various issues including whether the respondents have audience before this court, confirmation of service of petitioners' documents upon the National Land Commission, whether the respondents should be given time to lodge their responses in respect of petitioners' application dated 4.10.2020 and whether this matter should be handled alongside other related matters.

2. I have taken stock of all the issues raised herein. It is clear that this court was handling this file for the very first time on **20.5.2021**. On the said date of 20.5.2021, counsel for petitioners addressed the court as follows;

“I am seeing the same trajectory where this court handled petition 1 of 2019 in a very cavalier manner”.

3. The plain meaning of these utterances is that this court handled **Meru Petition 1/2019** with lack of proper concern. I have called for and perused the aforementioned file, **Meru Petition 1 of 2019** where it is clear that the subject matter therein is the same as in the present case. In both suits, the dispute relates to the expansion of the Isiolo Airport in the late 1990's which led to compulsory acquisition of land and the

resettlement thereof in places known as “Mwangaza”, “Chechele” and “Kiwanjani” of which the disputes therein are commonly referred to as “Mwangaza matters”.

4. I also note that this court dismissed the suit **Meru petition 1 of 2019** on the basis of a Preliminary Objection raised by one of the parties therein. It follows that the petitioners herein are already apprehensive that this court will not handle the current case properly.

5. Further, the petitioners have stated in no uncertain terms that this suit should not be handled alongside any other matters. That they are seeing an attempt to delay the case so that this petition does not reach the hearing stage. However, this court applies Active Case Management principles and techniques in order to meet the objectives set out under **Article 159 of the Constitution** and **Section 1 A and 1 B of the Civil Procedure Act**. Active Case Management is one of the best practices to combat case backlog and it is anchored on the courts ability to exercise Judicial control over the legal processes with a view to ensuring that the **overriding objective** is achieved. This not only enhances processing efficiency, but it ensures that cases are resolved fairly, promptly and economically as is reasonable in the circumstances of the case.

6. The petitioners are alive to the court and case management processes which were exercised by this court during the lifespan of **Meru petition 1 of 2019** where by the said file was being handled alongside other “Mwangaza matters” namely;

- Petition 6 of 2011
- Petition 30 of 2016
- ELC No. 31 of 2018
- and ELC 289 of 2013.

7. The petitioners endeavors to have this matter run separately and independently of other “Mwangaza matters” is not in tandem with this court’s directions given in the aforementioned matters. Further, the petitioners’ averments can be construed as an attempt to emasculate the mandate of this court as expounded under Article 159 of the Constitution of Kenya in that the petitioners have already cast aspersions on this court’s ability to apply procedural and substantive justice in this case.

8. Finally, this court has stumbled upon a letter in the court file dated 8.2.2021 addressed to the Deputy Registrar of this court where the petitioners are expressing their disapproval in the manner the file has been handled. In particular, they contend that the matter is not being handled speedily yet their application was filed under a certificate of urgency. This is another pointer to the magnitude of displeasure the petitioners hold for this court.

9. What resonates from the foregoing analysis is that the petitioners have imputed bias in this court. As already pointed out, this court was handling this case for the first time on 20.5.2021, hence the matter is at the infancy stage. The situation as I see it calls for this court to recuse itself from handling the case.

10. In the case of **Attorney General of Kenya vs Prof. Anyang Nyong’o & 10 Others (EACJ) Application No. 5 of 2007**, the East African Court of Justice held as follows:

“We think that the objective test of ‘reasonable apprehension of bias’ is good law. The test is stated variously, but amounts to this: do the circumstances give rise to a reasonable apprehension, in the mind of the reasonable, fair-minded and informed member of the public that the judge did not (will not) apply his mind to the case impartially.

The court, however, has to envisage what would be the perception of a member of the public who is not only reasonable but also fair-minded and informed about all the circumstances of the case.”

11. In the case of **Mohamud Iltarakwa Kochale & 5 others (Suing on behalf of the residents of Laisamis Constituency and Karare ward of Marsabit County) v Lake Turkana Wind Power Ltd & 4 others; Aaron Iltele Lesiantam & 4 others (Interested Parties) [2019] eKLR**, the court on its own motion proceeded to recuse itself in circumstances where one of the advocates for the parties had cast aspersions on the court’s ability to dispense justice impartially. In the aforementioned case, the court had observed as follows;

*“In our case, we find that the very strong language employed by Mr. Sagana in describing this court, casts aspersions on our impartiality to dispense justice to the plaintiffs. When counsel describes this court as a court for the interested parties, a court that acts as an investigator and a prosecutor, a court that acts at the behest of one party and a court that conducts serious business in a casual manner, the perception created in the minds of his clients is that they are unlikely to get justice in the court which they will now view, inter alia, as a court favouring the interested parties. **It is a cardinal principle that justice must not only be done, but also be seen to have been done (emphasize added)**”.*

12. Likewise in this matter, the remarks, innuendos and a letter emanating from the petitioners’ advocate lead to a conclusion that they are apprehensive of getting justice in this court. It is in this regard that I proceed to recuse myself from handling this case. For the record, I have seen the notice of appointment by the 5 respondent filed on 2.12.2020, while that of the 1st, 2nd, and 4th respondent was filed on 10.12.2020. I have not seen any affidavit of service of petitioners’ pending application upon the National Land Commission.

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

C/A: Kananu

Odhiambo for petitioners

Kiety holding brief for Ms. Kung'u for 1st, 2nd and 4th respondents

Muriuki for 5th respondents

Thomas Maiyo representing 2nd respondent

HON. LUCY. N. MBUGUA

ELC JUDGE