



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC PETITION NO. 4 OF 2020

IN THE MATTER OF ARTICLE 63(1), (2),(b),(d),(3) and (4), 62(1)(g) OF ARTICLE 10 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF SECTION OF THE COMMUNITY LAND ACT 2016

AND

IN THE MATTER OF THE WILDLIFE AND CONVERSATION ACT 2013

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS
PRACTICE AND PROCEDURE RULES

BETWEEN

LERUK MURUSI.....1ST PETITIONER
LECHEKU ARIGELE.....2ND PETITIONER
HON.LEKONO BERNARD3RD PETITIONER
HON. LEADO STEPHEN LTERIOS.....4TH PETITIONER
LTETIAN LERUPES5TH PETITIONER
JIMMY LENEPE 6TH PETITIONER
JAMES MARLENI7TH PETITIONER
LPIRIKON NEEPE.....8TH PETITIONER/APPLICANT
PATRICK KURAKI9TH PETITIONER/APPLICANT
SAMUEL LOIBARBAN 10TH PETITIONER/APPLICANT
FRANCIS LEADUMA.....11TH PETITIONER/APPLICANT
HON. DANIEL BURCHA12TH PETITIONER/APPLICANT
HON. ASUNTA 13TH PETITIONER/APPLICANT

LENJODODO MAIDAT LOLBALANG.....14TH PETITIONER/APPLICANT

LETEYON NURE.....15TH PETITIONER/APPLICANT

THE RENDILLE PROFESSIONAL ASSOCIATION.....16TH PETITIONER/APPLICANT

AND

THE COUNTY GOVERNMENT OF MARSABIT.....1ST RESPONDENT

THE 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 ruling regards an application for maintenance of status quo made on 22.4.2021 by M/s Katwa Kigen advocate for the 9th-16th petitioners. He avers that the Kenya Defence Forces are on the ground having put up a temporary camp and an initial road of access and he prays that this status quo be maintained without further expansion in the area they are occupying pending the hearing of the application for empanelment of a bench.

2. The 2nd and 3rd respondents opposed the application averring that the issue had been canvassed and no conservatory orders were issued and if the applicants want conservatory orders they can file a proper application. The 4th respondent and the 2nd interested party, joined issues with the 2nd and 3rd respondents in opposing the application.

3. The 1st -8th petitioners are not opposing the application.

4. I have perused the record of this file and I find that this court did deal with the issue of interim conservatory orders relating to the application filed in court on 24.3.2020 vide a ruling dated 14.7.2020. It is clearly discernible in the body of that ruling that the issue at hand was not dealt with conclusively. The court had noted that the matter was at the infancy stage. More than a year down the line (from the time the application dated 24.3.2020 was filed), the application is yet to be prosecuted due to myriad factors including emerging effects of the covid 19 pandemic, amendments of pleadings through a court initiative and the latest being an application for empanelling a bench.

5. The latest directions given by the court through consensus with the advocates for the parties on 22.4.2021 are that all pending applications have been put on hold for the court to hear and determine the application dated 25.2.2021 relating to empanelling of a bench in this matter. Against this background, I find that it was quite in order for the petitioners' advocates to revisit the issue of status quo seeing that the initial application for conservatory orders is still pending.

6. The Blacks Law dictionary 8th Edition states that "*status quo*" is a Latin word which means "*the situation as it exists*". Status quo order effect has been 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 Abdullabhai & 4 Others For Leave To Apply For Judicial Review And For Orders Of Certiorari And Prohibition**[2013]eKLR where he states,

“In my view, an order for Status quo to be maintained is different from an order of injunction both in terms of the principles for grant and the practical effect of each. While the latter is a substantive equitable remedy granted upon establishment of a right, or at interlocutory stage, a prima facie case, among other principles to be considered, the former is simply 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. In its effect, an injunction may compel the doing or restrain the doing of a certain act, such as, respectively, the reinstatement of an evicted tenant or the eviction of the tenant in possession. An order for status quo merely leaves the situation or things as they stand pending the hearing of the reference or complaint (emphasize added). In its negative form, however, an injunction may have the same effect as an order for status quo.”

7. Taking into account the overall nature of the dispute and the ensuing proceedings herein, I find that it is in the interests of justice for orders sought by the petitioners to be issued albeit on temporary basis pending the hearing and determination of the pending applications or until further orders are given by the court. **As such the court hereby issues an order that status quo be maintained on the ground.**

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

C/A: Kananu

M/s Waweru holding brief for Mr. Katwa for 8th – 16th petitioners

Mugiira for 2nd and 3rd respondents

Kiety for 4th respondent

HON. LUCY. N. MBUGUA

ELC JUDGE