



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

PETITION NO. 3 OF 2018

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL

RIGHTS AND FREEDOMS UNDER ARTICLE 40 OF

THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER IF THE ARTICLES 22 AND 23 AND 68 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE LAND ACT NO. 6 OF 2012

BETWEEN

AKITHII RANCHING (DIRECTED AGRICULTURAL)

COMPANY LIMITED.....PETITIONER

AND

THE DISTRICT LAND ADJUDICATION AND SETTLEMENTS OFFICER

TIGANIA EAST & WEST DISTRICTS.....1ST RESPONDENT

MERU COUNTY GOVERNMENT.....2ND RESPONDENT

MERU COUTNY COMMISSIONER.....3RD RESPONDENT

THE HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. The 1st and 3rd respondent have raised a preliminary objection filed on 16.4.2018 and a similar one of 16.11.2018 where they state as follows:

1. That this suit is an abuse of court process.
2. That the suit is incompetent, fatally defective and ought to be struck out.
3. That the petitioner lacks locus.
4. That the Notice of Motion dated 19th September 2018 offends the provision of section 6 of the Civil Procedure Act.

5. That the suit does not raise any cause of action.

2. The 1st and 3rd respondents have submitted that this suit is similar to Meru Petition 23 of 2012, where the petitioners had sought similar prayers as in the present matter. It is averred that in the earlier suit, Judge Njoroge of Chuka ELC conclusively determined the matter.

3. The 1st and 3rd respondents contend that this suit was filed in violation of the provisions of section 7 of the Civil Procedure Act and hence, this suit should be dismissed. Finally, it is averred that the Petitioners rights were only protectable until June 2015 when their lease ended and they no longer have rights over the suit property capable of protection under Article 40 of the constitution.

4. The 2nd Respondents in their submissions stated that they are in support of the preliminary objection adding that the petitioner is complaining that the land which they had leased from the 2nd defendant's predecessor is being demarcated since the area in question was declared an adjudication area. They submitted that the petitioner should have followed the laid down procedures to claim land in the area as per the laid down provisions of the Land Adjudication Act, since the petitioners have not sought to quash the Kenya Gazette which advertised the area as an adjudication area. In support of their arguments, the 2nd Respondent relied on the case of **Peter Muturi Njuguna v. KWS [2017] eKLR.**

5. On the other hand the petitioners argued that they were granted 33 years lease beginning in 1982 which expired in the year 2014-2015. The respondents have however conspired with the interested parties and have interfered with the petitioner's use of the land since 1991. The petitioners in a bid to enforce their rights filed Meru ELC Petition No. 23 of 2012 and injunctive orders were granted in their favor. They further argue that this suit is not similar to the previous suit because in the present suit, the petitioner's lease on the suit property expired and is the subject of reallocation through the National Land Commission. The petitioners claim that they ought to get 1st priority in the event of renewal of the lease or the issuance of title.

6. The petitioners aver that the National Land Commission, is the only legitimate authority with powers to extend leases under the Guidelines for extension and Renewal of leases gazetted on 9th June 2017. However, the respondents declared their parcels the subject of adjudication and thereafter started allocation, subdividing and hiving it off to other persons among them being the interested parties. They stressed that the respondents are in violation of the aforementioned guidelines. Furthermore, the court ought to determine whether leased land or land which has been the subject of lease ought to undergo adjudication without the consent of the National Land Commission.

7. At the heart of the dispute at hand is the fact that the petitioners had filed another suit Meru Petition 23 of 2012. I have perused the aforementioned file and I find that the issues in the previous suit are almost similar to the ones raised in the present suit. In the previous suit, the present petitioners were claiming entitlement to 33,000 acres of land identified as Akithi Ranch on the basis of a lease. They had sought courts intervention because there was an attempt to have adjudication process undertaken in the area in question. In the court's ruling of 2.10.2013 and further clarified on 31.7.2017, Judge Njoroge stated that the orders of permanent injunction issued were to last until the expiry of the lease. The lease expired in 2015.

8. In the present suit, again the petitioners desire that the respondents be restrained from dealing with the suit land in any manner. However, this time round, the petitioners in paragraph 17 and 18 of their petition indicated that the issue of renewal of the lease is before the National Land Commission. That is why they want the land to be excluded from the process of adjudication.

9. I do agree that the National Land Commission indeed has the powers to grant leases in accordance with the provisions of Article 67 of the Constitution.

10. Thus the legal landscape in the two suits is not quite the same in that in the previous suit, the petitioners had a lease, while in the present suit, the petitioners have no lease but they have raised the issue of renewal of the lease before the National Land Commission. Thus circumstances have changed necessitating determination of new different issues.

11. I will say something about the application of 24.9.2018. The orders sought for are certainly similar to those sought in the earlier application of 6.4.2018. What I note is that the application of 6.4.2018 was not fully heard. The court had however been urged to grant interim orders of injunction on 16.4.2018. In my ruling thereof delivered on 25.4.2018, the court declined to grant any orders at that stage where 1 stated as follows;

“Petitioners claim that the court upheld their rights to claim the land is hence unfounded since such rights were limited to a certain period.....The issue of whether the lease should be renewed or not is one that should be canvassed either in the application or in the petition...”.

12. While the earlier application was live and in the process of being prosecuted, the petitioners brought forth the application of 24.9.2019, whereby I made an instant ruling on the same day of 24.9.2018 pointing out that the earlier application was in the process of being heard and that I had pronounced myself on the issue of interim orders earlier on 25.4.2018 regarding the interim prayers to halt the adjudication process. The petitioners should not convolute this matter by filing numerous applications. They have not advanced any plausible explanation as to why they filed the application of 24.9.2018.

13. Section 6 of the civil procedure act provides that:

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.

14. I am therefore in agreement with the respondent's contention that the application of 24.9.2018 offends the provisions of section 6 of the civil procedure Act and hence that application is not merited.

15. I find that on 8.11.2018, the interested parties were allowed to come on board this suit by consent, whereby the court gave directions on the hearing of the main suit. No directions were taken on how the interested parties were to participate in the earlier application of the petitioners and for that reason, the parties will have to take further directions to that effect.

16. The conclusion herein is that the Preliminary Objection partially succeeds whereby the application of the petitioners filed on 24.9.2018 is dismissed with no orders as to costs. The other prayers in the Preliminary Objection are hereby dismissed. Each party to bear its own cost.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 10TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Gikonyo for 1st, 3rd and 4th respondents

Ngugi holding brief for Patrick Ngunjiri for interested party

Muriera holding brief for Mwirigi Kaburu for 2nd respondent

HON. LUCY. N. MBUGUA

ELC JUDGE