



**REPUBLIC OF KENYA**

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

**PET NO. 16 OF 2017**

**IN THE MATTER OF THE ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL  
UNDER ARTICLES 2,3,10,19,20,21,22,13,42 AND 56 OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE DEMARCATION AND SURVEY OF LAND SITUATED N LOITA DIVISIN OF NAROK SOUTH  
DISTRICT**

**BETWEEN**

**DAVID NTIYANI & 15 OTHERS.....PETITIONERS**

**-VERSUS-**

**HON ATTORNEY GENERAL & ANO.....RESPONDENTS**

**AND**

**CHARLES PANIN PARKISUA & 15 OTHERS.....INTERESTED PARTIES**

**JUDGEMENT**

The Petitioner on 11<sup>th</sup> May, 2011 filed the instant petition which is anchored under the provisions of Articles 2,3,10,20,21,42,56 and 259 of the Constitution of Kenya 2010. The Petitioner had presented the Petition on their own behalf and on behalf of all the members of Inkidongi sub-clan, a minority group living in Loita Division of Narok South District who co-exist with the Iloitai Community though they led their own unique lifestyle and history.

It is the Petitioners contention that Loita Division where they live is divided into 3 locations namely Olorte, Olmesutie, Entasekora, Morijo and Ilkren Locations and that during the creation of the division of the land though they had representatives to the land adjudication committee but their interests were not taken into account and they believe that their rights will be violated and hence the filing of the instant Petition.

The Petition was opposed by the Respondents who had filed a Replying Affidavit in answer to the Petition. It is the Respondents contention that Loita Division within Narok South District was declared as an Adjudication section on 25<sup>th</sup> March, 2011 and during the period after the said declaration the Narok South Land Adjudication Officer had held Public Barazas to sensitize the residents of the area and consequently, the Local Adjudication Committee was formed. He averred that the majority of the area residents have accepted the process of the Land Adjudication within the area.

The Respondent further contend that the petitioners have not complied with the provisions of Section 30 of the Land Adjudication Act to the extent that the Petitioners have not obtained the consent of the Land Adjudication Officer before filing of the Petition.

The Petition herein was disposed off by way of written submissions and it is the Petitioners contention that the decision making process was reached without consultations with the Petitioners cultural chiefs contrary to the provisions of Article 10 and 50 of the Constitution of Kenya. They further stated that the unit of the Adjudication process was in the administrative locations which discriminated against the petitioners as there are a minority in the said locations. The Petitioners further submitted that though they were represented in the Adjudication Committee, their contributions were neglected and in the circumstances they proposed that they be allocated their own Land Adjudication Sections.

The Respondents in their submissions stated that the petitioners do not own any identifiable property either jointly or in common and have not submitted any title to the land. They further submitted that the orders sought by the petitioners fall within the realm of a constitutional

remedy and therefore cannot be litigated before the Environment and Land Court. They further argued that the Petitioners have not demonstrated that they are an indigenous group but are the members of a group ranch whose individual rights will be realized when the group land will be sub-divided.

I have read the Petition before me and the submissions filed by the parties and in summary, the issue for determination before the court is whether the Petitioners' rights to ownership of land has been deprived off pursuant to the declaration of the respective adjudications sections and whether the Petitioners have discharged the burden of proof on the infringement of their rights to land.

From the pleadings filed, this Petition arose out of the declaration under Section 5 of the Land Adjudication Act pursuant to Notice issued by the Narok South Land Adjudication Officer on 10<sup>th</sup> August, 2011 in respect of Ikeriri Location, Loita Division and Merigo Location all within Narok County.

The purpose of the declaration and the issuance of the Notices were to pave way for the sub-division of land where individual titles could be issued. It is the Petitioners' contention that the process was not consultative and their interest as members of the Inkidongi sub-clan has not been addressed. The Respondents on their part contend that the process has been consultative and that among the Adjudication Committee were members of the Petitioners Community a fact which the petitioners admit but insist that their concerns and contributions have been neglected.

Under the Land Adjudication Act, the process of an adjudication exercise after the issuance of the relevant notices is to enable individual parcels demarcated and titles subsequently issued to the land owners. The Petitioners have not demonstrated to the court their individual rights to own their respective parcels have been infringed upon. In the entire petition they have not particularized nor stated which and what parcels of land they may loss or have lost. Furthermore, pursuant to the provisions of Section 26 of the Land Adjudication the petitioners had an avenue to raise objections to the particulars of demarcation and adjudication exercise an avenue that the Petitioners had but did not avail themselves and in view of the above, I find that the Petitioners having failed to particularize their own identifiable parcels of land and particulars of infringements thereon they have not established that their rights have been deprived off.

Having stated above a reading of the petition seems to address a communal issue on their identity and their place within other communities that are numerically more than them and it is my view that this is a matter that could best be litigated in the Constitutional and Human Rights Division of the High Court and not the Environment and Land Court as the facts of the petition though premised or arose out as adjudication process the underlying issue is for the demarcation of a distinct community land.

From the above it is my finding that the Petition lacks merit and I therefore strike off the same and since the Petitioners filed the Petition as a public interest matter I order each party to bear their own costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **2<sup>ND</sup>** day of **OCTOBER, 2019**

**Mohammed Kullow**

**Judge**

**2/10/19**

In the presence of: -

CA:Chuma/Kimiriny

Meingati holding brief for Ongoya for the Petitioners

N/A for Respondents & Interested parties

**Mohammed Kullow**

**Judge**

**2/10/19**