



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

ELC CONST PET. CASE NO. 102 OF 2017

(FORMERLY MILIMANI ELC NO. 1238 OF 2013)

IN THE MATTER OF ARTICLES 19, 70 (c), 74 (1), 75 (1) & 2, 84 (1) & (2) (a) AND 118 (2) (b) & 4 (b) OF THE CONSTITUTION OF KENYA, 2008 AND

IN THE MATTER OF RULES 11, 12, 13 & 14 OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006

AND

IN THE MATTER OF SECTIONS 3, 6, 17, 18 & 19 OF THE LAND ACQUISITION ACT, 1968

AND

IN THE MATTER OF PARTY IV OF THE TRUSTLAND ACT, CAP 288

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT

AND

IN THE MATTER OF COMPULSORY ACQUISITION OF 460 ACRES ON LAND

PARCEL NO. 184 – GICHIECHE ADJUDICATION SECTION IN MBEERE DISTRICT

AND

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 70 (c), 74 (1) & (2) AND 118 (4) (b) OF THE CONSTITUTION OF KENYA, 2008

BETWEEN

JOSPHAT NGUYU NGARI.....PETITIONER

VERSUS

ATTORNEY GENERAL.....1ST RESPONDENT

KENYA ELECTRICITY GENERATING COMPANY (KENGEN)...2ND RESPONDENT

AND

HARRISON NJOKA NDOGORA.....INTENDED INTERESTED PARTY

RULING

1. By a notice of motion dated 26th January 2018 the Applicant sought the following orders;

a) Spent.

b) That the Applicant herein Harrison Njoka Ndogora be and is hereby admitted in this suit as an interested party.

c) That upon grant of prayer 1, the interested party be granted 14 days to file the requisite application seeking consolidation of this petition with Embu ELC Petition No. "2B" of 2015: Harrison Njoka Ndogora Vs Kengen & 2 Others.

d) That pending the hearing and determination of this application, the honourable court be pleased to stay any other proceedings in this petition.

e) That costs of this application be in the cause.

2. The said application was based upon the grounds shown on the face of the motion and supported by the affidavit of the Applicant sworn on 26th January 2018 together with the various annexures thereto. It was contended that there existed two petitions before court relating to the same subject matter and the instant petition was filed by an imposter who was no longer the leader of Nditi clan on whose behalf the petition was purportedly filed.

3. Neither the Petitioner nor the Respondents filed any written response to the said application. When the said application was listed for hearing on 12th March 2018, the Petitioner and the 1st Respondent were not represented. The advocate for the 2nd Respondent did not oppose the said application. In fact, she informed the court that the 2nd Respondent supported the said application.

4. The court has considered the Applicant's said application together with the supporting affidavit and annexures thereto. The court is satisfied that the Applicant has a stake in the subject matter of the petition hence he should be joined as an interested party. The Applicant's averments in the supporting affidavit were not challenged or controverted.

5. The upshot of the foregoing is that the court finds merit in the notice of motion dated 26th January 2018 and the same is hereby allowed in terms of prayer Nos. 2, 3 and 5 thereof.

6. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 4TH day of OCTOBER, 2018.

In the presence of Mr Njiru Mbogo holding brief for Ms Maitai for the 2nd Respondent, the interested party in person and in the absence of the Petitioner and the 1st Respondent.

Court clerk Muinde.

Y.M. ANGIMA

JUDGE

04.10.18.