



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC MISC. APPL. NO. 3 OF 2021

CHRISTOPHER KURUTYON LONYALA.....1ST PETITIONER

WILFRED OGUTU.....2ND PETITIONER

VERSUS

CABINET SECRETARY

MINISTRY OF LANDS AND SETTLEMENT.....1ST RESPONDENT

DIRECTOR OF LAND ADJUDICATION.....2ND RESPONDENT

COUNTY LAND ADJUDICATION

TRANS-NZOIA.....3RD RESPONDENT

COUNTY COMMISSIONER TRANS-NZOIA.....4TH RESPONDENT

DEPUTY COUNTY COMMISSIONER

ENDEBESS SUB-COUNTY.....5TH RESPONDENT

POLICE COUNTY COMMANDER

TRANS-NZOIA.....6TH RESPONDENT

ADMINISTRATION POLICY COUNTY

COMMANDER-TRANS NZOIA.....7TH RESPONDENT

INSPECTOR GENERAL OF POLICE.....8TH RESPONDENT

HON. ATTORNEY GENERAL.....9TH RESPONDENT

TRANS NZOIA WOMEN REPRESENTATIVE.....10TH RESPONDENT

AND

FRANCIS KAPCHANGA.....11TH RESPONDENT

PETER CHAKALI.....12TH RESPONDENT

RULING

1. This is a Ruling on a Preliminary Objection dated 24/2/2021 and filed in court on 24/2/2021. The application is objected by the 11th and

12th respondents to the petitioners' miscellaneous application herein in its entirety on the following grounds:

- (1) **The applicants lack the requisite *locus standi*, to institute the instant application.**
- (2) **The orders sought cannot issue in the current proceedings.**
- (3) **There are no orders given against the Settlement Funds Trustee, Government and or the respondents.**
- (4) **The application is *res judicata*.**
- (5) **The application is a gross abuse of the court process.**
- (6) **The application lacks merit, is frivolous and vexatious and ought to be dismissed with costs.**

2. The 1st petitioner filed his replying affidavit in opposition to the respondents' notice of Preliminary Objection on 4/3/2021.

3. The main issues raised by the preliminary objection are whether the instant application lacks *locus standi* and whether the application is *res judicata*.

4. That background to the preliminary objection under consideration is that on 10/2/2021 the applicant brought the instant application which is the subject of the preliminary objection. That application sought the orders set out verbatim as hereunder:

(a)...spent

(b) **That the court be pleased to grant a temporary conservatory order of injunction to prevent and/or restrain the respondents (hereinafter called the Government) from issuing any administrative action orders which contradict the negative orders in Kitale ELC Petition No. 2 of 2014 in regard to the suit property and/or further or continued development of ADC Chepchoina Phase II Settlement Scheme Land in any manner and/or way, whatsoever, whether by themselves, agents, servants, employees, associates, assigns and/or any other person (s) from carrying out any activity including, disobeying and/or contradicting the subsisting negative court order issued and delivered in Kitale ELC Petition No. 2 of 2014 in regard to the disputed property stated in this matter and/or entering and/or evicting settlers on the ground, ploughing, planting, harvesting, shelling, erecting or constructing structures, houses, leasing, selling, demolishing, surveying, demarcating, beaconing and/or dealing with the ADC Chepchoina Phase II Settlement Scheme Land in any manner and/or way they wish, whatsoever, in the area of land that was first surveyed and planned by the Government through Corporation (herein called ADC) in 1997/1998 to ADC land allottees and/or from executing the estopped negative decree and/or order of this court issued and delivered in Kitale ELC Petition No. 2 of 2014 on 29/5/2020 and 29/9/2020 respectively in respect of the disputed property until the hearing and determination of this application.**

(c) **That there be made such other and/or further order(s) in this matter as the ends of justice may demand.**

(d) **Costs be in the cause.**

5. That application is premised on the grounds that the respondents lack any positive orders in this matter to execute; that in the judgment in **Kitale ELC Petition No 2 of 2014** this court issued a negative order; that the government is not the decree holder; that the respondents have not obtained any titles is; that the respondents have not applied for execution and that the government has not issued a notice to vacate to the persons in occupation of the suit land.

Submissions

6. The 10th and 11th respondents filed their submissions on 21/5/2021. The petitioners filed submissions on 31/5/2021.

DETERMINATION

7. I have considered the application and the response. The main issues raised by the preliminary objection are whether the instant application lacks *locus standi* and whether the application is *res judicata*.

8. As to whether the applicants the court finds that they were parties who expressed themselves as interested in the suit land in the petition and they can not be denied the right to file an application of their choice.

9. The application dated 23/6/2020 filed by the petitioners in the file record of the main petition that is **Kitale ELC Petition No 2 of 2014** sought a stay of execution pending appeal. The instant application does not seek stay pending appeal. The doctrine of *res judicata* applies not just to suits but also to applications.

10. Though in this case I find that the applicants are the same as those in the application dated 23/6/2020 and that the former application was determined on its merits, and that it sought orders of stay of execution, on a cursory perusal the instant application does not seem *res judicata*. A deeper inquiry into the *res judicata* aspect would have been necessary but for what I will state herein below.

11. The structure of the instant application deserves attention; there is no substantive long term prayer, **prayer no 2** being one that seeks an injunction only pending the hearing and determination of the application. The only other prayers are for certification of urgency (**prayer no (a)**) and any other orders at the discretion of this court (**prayer no (c)**) and costs (**prayer no (d)**). The instant application is therefore fatally defective as there is no substantive order sought meant to have effect even after the determination of the application.

12. Consequently, the application dated **1/2/2021** is hereby dismissed with costs to the respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 22ND DAY OF JULY, 2021.

MWANGI NJOROGI

JUDGE, ELC, KITALE.