



**REPUBLIC OF KENYA**

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

**ELC (JUDICIAL REVIEW) NO. 71 OF 2017**

**CHRISANTUS AYIEKO SIDENG**

**JACK OWIDDO ORARO**

**PARTRICK OKECH ORANGA**

**NASHON OIRO OSIR**

**EARNEST ONDU ORWA**

**(Suing for and on behalf of themselves and for and on behalf of KOGONY LAND**

**COUNCIL OF ELDERS WELFARE).....PLAINTIFFS**

**VERSUS**

**THE KENYA AIRPORTS AUTHORITY.....1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....2<sup>ND</sup> DEFENDANT**

**THE COMMISSIONER OF LANDS.....3<sup>RD</sup> DEFENDANT**

**RULING**

Chrisantus Ayieko Sideng, Jack Owiddo Oraro, Patrick Oketch Orange, Nashon Oiro Osir and Earnest Ondu Orwa suing for and on behalf of themselves and for and on behalf of Kogony Land Council of Elders welfare have sued the Kenya Airports authority and the Attorney General and the National Land Commission and have accompanied the suit with an application for:

**a) An order directing the Kenya Airports Authority (the 1<sup>st</sup> respondent’s herein) to open up the road opposite the Kisumu Kenya Pipeline Depot and leading into Usoma Village forthwith so as to restore the applicants’ rights of access and passage through the disputed parcel of land into and from Usoma Village.**

**b) A temporary order of injunction do issue restraining the Kenya Airports Authority (the 1<sup>st</sup> Respondent’s herein) by themselves or their servants or agents or proxies or any of them from blocking or barricading the road opposite the Kisumu Kenya pipeline Depot and/or from levying any toll charges or ‘Airport Entry Fees” from anyone using the said road and/or from infringing upon or curtailing the Applicants’ right of access into or passage through the disputed piece of land and/or denying the Applicants access into Usoma Village through the disputed parcel of land pending the hearing and final determination of this suit.**

The Petitioners claim that the disputed suit belonged to their forefathers and that the issue of ownership has not been resolved and that part of the disputed land is a community road that serves 300 people. The same land has been used as a parking bay for Kenya Pipeline Company. That from 18<sup>th</sup> April, 2020, the 1<sup>st</sup> Respondents (the Kenya Airports Authority) have blocked and barricaded part of the parcel of land which is the subject matter of this suit on which there is a public road opposite the Kenya Pipeline Depot and directed all the drivers of the petrol tankers parking in the area to pay levies or toll charges to the Kenya Airports Authority which are labelled as ‘Airport Entry Fees.” The 3<sup>rd</sup> Respondents (National Land Commission) have themselves already conceded in this suit that compensation has never been paid to the Applicants, and this is clear from the record in this case, and in the premises the 1<sup>st</sup> Respondent’s’ title (if any) s not absolute as at present.

The Applicants’ complaint is that while the dispute over compensation is still pending in court, part of their community residing within Usoma Village, comprising more than 300 families, have now been denied their right to freedom of movement as well as the right to enter,

remain in and reside within Usoma Village, contrary to Article 39 of The Constitution of Kenya, 2010.

The respondents on their part, through Selina Gor, the Airport Manager in affidavit dated 12/5/2020 state that the land in dispute belongs to the Respondents and the Kenya Airport Authority. The land was legally acquired by the Government. The issue is only compensation and they ought to produce title deeds.

I have considered the application, submissions on record and do find that the land in dispute belongs to the Government and precisely to the Kenya Airport Authority having been acquired far back in 1948. The petitioner's forefathers were to be compensated for the acquisition. It is not clear whether they were compensated but this will come out during hearing of the main petition. This court is required to consider some salient points before granting temporary injunctions.

The 1<sup>st</sup> point is that there must be a prima facie case with a likelihood of success. On this issue, I do find that the portion of land is Government land having been legally acquired and therefore this court can't direct the Government to open up a road in the said land. Moreover, the petitioners in their application have not demonstrated irreparable loss if the injunction is not granted as they can use alternative roads to access the city of Kisumu.

The upshot of the above is that the application for injunction is dismissed. Costs in the cause.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 30<sup>TH</sup> DAY OF SEPTEMBER, 2021**

**ANTONY OMBWAYO**

**JUDGE**

*This Ruling has been delivered to the parties by electronic mail due to measures restricting court operations due to the COVID-19 pandemic and in the light of the directions issued by his Lordship, the Chief Justice on 15<sup>th</sup> March 2020.*

**ANTONY OMBWAYO**

**JUDGE**