



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MAKUENI

ELC PETITION NO. 12 OF 2020

PIUS KALISA MBUVI & 61 OTHERS ..... PETITIONERS

-VERSUS-

THE CHIEF LAND REGISTRAR & 8 OTHERS...RESPONDENTS

RULING

1. The application for determination is the Notice of Motion dated 28<sup>th</sup> July, 2020 filed by the Petitioners/Applicants under certificate of urgency on even date. It is brought under Articles 10, 19, 20,21, 22, 27, 35, 40, 47, 50, 60, 61 and 63 of the Constitution in addition to other provisions of the law.

2. The Applicants seek the following Orders:

**i. Spent.**

**ii. THAT** pending hearing and determination of this application, the Respondents, their servants and/or agents be restrained from excluding the Petitioners/Applicants and/or in any way interfering with the land in dispute known as LR. No. 12134 (measuring 10,713 Ha/26,471 Acres) and LR. No. 12971 (measuring 2,976 Ha/7,353 Acres) totaling 13,689 Ha/33,825 Acres (hereinafter referred to as the suit land).

**iii. THAT** pending hearing and determination of this application a Conservatory Order by way of temporary injunction do issue restraining the 2<sup>nd</sup> Respondent by themselves, their agents and/or employees from entering into, trespassing on and/or in any other way interfering with the Petitioners/Applicants property known as LR. No. 12134 (measuring 10,713 Ha/26,471 Acres) and LR. No. 12971 (measuring 2,976 Ha/7,353 Acres).

**iv. THAT** pending the hearing and determination of this petition a conservatory order by way of temporary injunction do issue restraining the 2<sup>nd</sup> Respondent by themselves, their servants, agents and/or employees from entering into, trespassing on and/or in any other way interfering with the Applicants/Petitioners property known as LR. No. 12134 (measuring 10,713 Ha/26,471 Acres) and LR. No. 12971 (measuring 2,976 Ha/7,353 Acres).

**v. THAT** pending the hearing and determination of this application, an order do issue directed to the 2<sup>nd</sup> Respondent prohibiting themselves, their servants, agents and/or employees from continuing with the process of issuing title deeds of the suit property.

**vi. THAT** pending the hearing and determination of this application, an order directed to the 2<sup>nd</sup> Respondent by themselves, their servants, agents and/or employees do issue prohibiting them from any further dealings in the suit property pending hearing and determination of this application.

**vii. THAT** the costs of this application be in the cause.

3. The application is supported by the joint affidavit of Pius Mbuvi Kalisa, Jackson Kavoo Musoli, Paul Mwaniki Nzunga and James Mulumba Mumina sworn on 28<sup>th</sup> July, 2020 on their behalf and that of their Co-petitioners. They also filed a supplementary affidavit sworn on 14<sup>th</sup> December, 2020. They deposed that they are members of the Nguu Ranch Settlement Scheme and that together, they bought 13,689 hectares of the suit property known as LR. No. 12134 and LR. No. 12971. That in 1995, the Makueni District Selection Committee commenced an adjudication exercise wherein the suit property was surveyed and physical planning was done. That 3,813 plots were subdivided and allocated to members. That while some members took possession and settled in their plots, others got displaced by squatters resulting in the filing of complaints with the Ministry of Lands.

4. That the resolution exercise culminated in a report whose findings were that members of the Nguu Ranch Settlement Scheme be resettled in LR. No. 12134 whereas the squatters would be resettled in LR. No. 12971 after an adjudication exercise. That the decision was made unilaterally. That shortly after the report was published, an Arbitration Committee was constituted to conduct the adjudication process. That the continued issuance of title deeds by the 3<sup>rd</sup> Respondent to squatters has threatened the Petitioners with displacement and eviction from land they have occupied for more than 25 years. That the 3<sup>rd</sup> Respondent's actions are illegal and unconstitutional on the basis that the decision to subdivide the suit property and set aside one portion for the squatters was arbitral and without justification since the Petitioners were not aware nor did they give their consent. That the said land was not a settlement scheme for use by squatters.

5. Furthermore, it has been deposed that the adjudication process was convoluted and contrary to the Land Adjudication Act because no gazette notice was published for the intended adjudication process nor was the adjudication register made available for inspection. That there was no public participation in the exercise and the Petitioners were denied their right to access information. It is therefore the Petitioners' conviction that should this court fail to intervene, not only will their proprietary rights be infringed, but they will also suffer irreparable loss and damage.

6. The application has been opposed by the 2<sup>nd</sup> Respondent vide the Replying affidavit sworn by its Director, Paul K. Mwangi, on 23<sup>rd</sup> October, 2020. The affiant has deposed that on 3<sup>rd</sup> February, 1994 Nguu Cooperative Society Ltd surrendered its proprietorship as lessee over the suit property to the Government for purposes of settlement of the landless. That with the approval of the Government, the modalities of allocation were endorsed and the suit property was subdivided into smaller parcels in favour of members of the Nguu Society, displaced people and other squatters from the region. That soon thereafter, complaints arose regarding the allocation of LR. No. 12971 (also known as Wayani area). That on 3<sup>rd</sup> July, 2006 the Minister of Lands authorized the regularization of allocations and demarcation of boundaries at Wayani area. That the exercise culminated in the publication of the Nguu Settlement Scheme Local Verification Committee Report of 2006/2007. That the said Report faced challenges in implementation. That in a stakeholders meeting held on 22<sup>nd</sup> January, 2018 at Matutu Market, it was resolved that the Verification Report be fully implemented.

7. That a Select Committee was constituted to implement the Report and amongst its achievements, in Wayani area, 1012 parcels were realized and title deeds issued on 19<sup>th</sup> February, 2020 at Matutu Market in a public meeting attended by all stakeholders including Nguu residents. That in LR. No. 12134, verification and audit of documents was done between 28<sup>th</sup> June 2018 and 17<sup>th</sup> July, 2018 and a total of 2329 plots were identified. That the Select Committee's work is ongoing and therefore the issuance of the Orders which have been sought by the Petitioners herein will delay completion of the exercise and cause prejudice to residents who have not received their title deeds.

8. The 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Respondents also opposed the application vide the Replying affidavit of Alex Nthiwa sworn on 26<sup>th</sup> October, 2020. The affiant has deposed that he is a registered physical planner and the Chief Officer in the Lands Ministry of the Government of Makeni County. That following a survey of the Nguu Ranch Settlement Scheme in 1995, a total of 2,409 parcels resulted from LR. No. 12971 while 1,404 parcels resulted from LR. No. 12134 (Wayani area). That the District Settler Selection Committee allocated the parcels to their respective beneficiaries. That soon after allocations were done, there were protests by residents of Wayani area and in 2006 the Minister for Lands and Housing authorized the marking of boundaries between LR. No. 12971 and LR. No. 12134 so as to ascertain ownership rights. That in Wayani area, 1,019 parcels resulted from the exercise but titling could not be done because the area had already been gazetted as part of Nguu Ranch Settlement Scheme and some residents already held titles having purchased from the original allottees.

9. As a result, the affiant deposed, the Permanent Secretary in the Ministry of Lands constituted a local verification committee in October 2006 to sort out allocation problems in the Nguu Settlement Scheme. The local committee came up with its 2006/2007 Report which was then followed by a meeting of the District Settler Selection Committee to finalize on implementation mechanisms for the Report. That the said Report faced challenges in implementation owing to disagreements over both the said Report and parcel ownership. This led to an order of *status quo* being issued by the Government of Makeni County together with the National Land Commission to give way for further consultations with stakeholders.

10. He further deposed that in 2018, following stakeholder engagements, the Nguu Ranch Settlement Scheme Select Technical Committee was constituted to spearhead implementation of the 2006/2007 Report. That while conducting its mandate, the Committee discovered that some registered plots were occupied by squatters without the owner's consent and even public utility areas had been overran by squatters. That amongst its recommendations, the Committee proposed that registered parcels in Wayani area be separated from the unregistered ones so as to facilitate the amendment of existing maps and to regularize occupations as per ground boundaries. That since 2008, plenty of progress has been made towards resolution of the allocation problems. That the Government of Makeni County has endeavored to resolve ownership claims in Nguu Settlement Scheme with collaboration from the National Land Commission alongside other stakeholders. That the said consultations are ongoing and thus it is untrue for the Petitioners to claim that their demands have been sidelined. Accordingly, it is prayed that the Respondents be allowed to conclude their mandate as the Petition has been made belatedly and in total bad faith.

11. Directions were issued for the filing of submissions on 29<sup>th</sup> July, 2020. I have perused the Petitioners' submissions dated 14<sup>th</sup> December, 2020 wherein it was submitted that the Petitioners had established the threshold for the grant of a temporary injunction. In support thereof, they relied on the case of **Giella -Vs- Cassman Brown [1973] EA 358**. No submissions were filed on behalf of the Respondents.

12. The apparent question for determination is whether the Petitioners have demonstrated a prima facie case that their constitutional right to property is under threat of violation due to the ongoing issuance of title deeds by the Respondents. In an application for conservatory orders such as this, the Petitioners/Applicants must demonstrate with precision that they genuinely believe on the strength of the material that they have presented before this court that the ongoing titling exercise is being carried out irregularly, illegally and without justification or reason.

13. I have perused the Exhibits marked PKM 3 in the Petitioners' supporting affidavit. They are a raft of letters written by various representatives of the Nguu Ranch Settlement Scheme. They highlight the plight of their members with claims mainly ranging from their land being repossessed and reallocated to other individuals in arbitrary fashion. The Petitioners also bemoan the political and financial expediency that has marred the process of issuance of title deeds. Their complaints have been targeted towards the 2<sup>nd</sup> Respondent. These letters date way back to 2001 and seemingly, their complaints have elicited no plausible response. I have also seen that the Petitioners have

gone to great lengths towards highlighting their plight with several constitutional and state offices having been served with these letters.

14. I have also seen the Exhibit marked PKM 2 which is a brief done by the Director of the 2<sup>nd</sup> Respondent. The gist of the brief is that the 2<sup>nd</sup> Respondent has acknowledged irregularities in the allocation exercise and how the challenges have been resolved so far. Consequently, my finding is that indeed, the Petitioners have established a prima facie case and demonstrated that their proprietary rights are under threat on account of inertia in resolving their problems coming from the 2<sup>nd</sup> Respondent coupled by the subsequent issuance of titles by the 5<sup>th</sup> Respondent.

15. The irrepressible conclusion is that I find merit in the Petitioners' application. I hereby grant conservatory orders in favour of the Petitioners in terms of prayers 4 and 5 pending the hearing and determination of this Petition.

It is so ordered.

**SIGNED, DATED AND DELIVERED AT MAKUENI VIA EMAIL THIS 2<sup>ND</sup> DAY OF SEPTEMBER, 2021**

.....

**MBOGO C.G.**

**JUDGE**

**Court Assistant:** Mr. Kwemboi