



**REPUBLIC OF KENYA**

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

**PETITION NO. E001 OF 2020**

**IN THE MATTER OF**

**ARTICLES 40 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF**

**THE ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS**

**AND**

**IN THE MATTER OF**

**VIOLATION AND/OR INFRINGEMENT OF THE PETITIONERS CONSTITUTIONAL RIGHTS UNDER**

**ARTICLE 19, 20, 21, 22, 23, 35, 40, 47 AND 165 PF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

SIMON MURUNGI ..... 1<sup>ST</sup> PETITIONER

LIVINGSTONE MAWIRA..... 2<sup>ND</sup> PETITIONER

PURITY NGAITI .....3<sup>RD</sup> PETITIONER

HARMSHELD MUTHOMI ..... 4<sup>TH</sup> PETITIONER

OWEN MUGAMBI ..... 5<sup>TH</sup> PETITIONER

ANTHONY MURIITHI.....6<sup>TH</sup> PETITIONER

PURITY MWENDWA.....7<sup>TH</sup> PETITIONER

KELVIN GIKUNDI ..... 8<sup>TH</sup> PETITIONER

WITHFORD MWIRIGI ..... 9<sup>TH</sup> PETITIONER

PHYLIS GATWIRI .....10<sup>TH</sup> PETITIONER

NONFACE GITUMI ..... 11<sup>TH</sup> PETITIONER

ARMSTRONG KIOGORA..... 12<sup>TH</sup> PETITIONER

ERA KIARUTHI ..... 13<sup>TH</sup> PETITIONER

PATRICK MWENDA.....14<sup>TH</sup> PETITIONER

CUTIS BUNDI .....15<sup>TH</sup> PETITIONER

PHINEAS KITHINJI ..... 16<sup>TH</sup> PETITIONER

VERSUS

THE LAND ADJUDICATION OFFICER

RUIRI/RWARERA ..... 1<sup>ST</sup> RESPONDENT

COUNTY GOVERNMENT OF MERU .....2<sup>ND</sup> RESPONDENT

HON. ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT

JAPHET KAIH ..... INTERESTED PARTY

**RULING**

1. By a notice of preliminary objection dated **12.10.2020**, the 2<sup>nd</sup> respondent attacks the petition dated 30.8.2020 first for misjoinder, and secondly as an abuse of the court process and thirdly that it raises no reasonable cause of action against it.
2. The 2<sup>nd</sup> respondent is a creature of **Articles 6, 186, 187, 188 Schedule I (1) of the Constitution**. The roles and functions of 2<sup>nd</sup> respondent are clearly spelt out in **Schedule 4** thereof vis a vis those of the 1<sup>st</sup> respondent and the National Government.
3. The 1<sup>st</sup> respondent is described in paragraph 11 of the petition as an employee of the National Government and not of the 2<sup>nd</sup> respondent. The petition at **paragraph 11, 13, 14** is clear on the nexus between the petitioners and the subject in issue on one hand, and the alleged infringement of the petitioners' rights and freedoms by the 1<sup>st</sup>, 3<sup>rd</sup> and the interested party on the other hand.
4. The nearest the petitioners have pleaded anything against the 2<sup>nd</sup> respondent is in **paragraph 35** of the petition alleging there has been compromise of the petitioners rights as to protection of private properties and fair administration.
5. Coming to the prayers, in the petition prayer 1 seeks a permanent injunction restraining the respondents and the interested party from hiving off the petitioner's **Parcel No. Ruiri/Rwarera/816** and allocating it to the interested party and secondly a declaration that the petitioners constitutional rights and freedoms have been contravened on account of collusion to subdivide the suit land into **Parcels No's 5254 and 5015**.
6. As observed above, the power to adjudicate land is granted to the 1<sup>st</sup> respondent as per the **Land Adjudication Act Cap 284 and Land Consolidation Act Cap 283 Laws of Kenya**. The 1<sup>st</sup> respondent is not an employee or agent of the 2<sup>nd</sup> respondent. The 2<sup>nd</sup> respondent cannot therefore be held liable or answerable for alleged constitutional infringement of the petitioners land registration rights by the 2<sup>nd</sup>, 3<sup>rd</sup> and the interested party.
7. **Rule 5 of the Constitution of Kenya) Protection of Rights and Freedoms) Practice and Protection Rules 2013** grants the court powers to strike out parties who are wrongly joined to a petition. The petitioners have not particularized with a reasonable degree of precision their constitutional complaint against the 2<sup>nd</sup> respondent as held in ***Anarita Karimi Njeru -vs- Republic No. (1) (1979) KLR 154 and Mumo Matemu -vs- Trusted Society of Human Rights Alliance (2014) eKLR***.
8. In the premises I find the preliminary objection merited. The 2<sup>nd</sup> respondent is hereby struck out of these proceedings. There will be no order as to costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 27<sup>TH</sup> DAY OF OCTOBER, 2021**

**In presence of:**

Miss Nyaga for the petitioners

Maranya for 2<sup>nd</sup> respondent

Kiety for 1<sup>st</sup> & 3<sup>rd</sup> respondents

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**