



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ELDORET

ELC PETITION NO.3 OF 2021

JOHN NYARANGI1ST PETITIONER

CHRISTOPHER KARIUKI.....2ND PETITIONER

ROSEMARY ACHANDO.....3RD PETITIONER

ERAH HASSAN.....4TH PETITIONER

ESTHER NJOKI.....5TH PETITIONER

BONFACE MWALE.....6TH PETITIONER

JOSEPH KANGAI.....7TH PETITIONER

VERSUS

COUNTY GOVERNMENT OF UASIN-GISHU.....1ST RESPONDENT

HILLARY TOROREI.....INTERESTED PARTY

RULING

1. This is a ruling in respect of Notice of Motion dated 1st November, 2020 in which the Defendant/Applicant seeks the following orders:-

1. Spent

2. Spent

3. THAT pending the hearing of this petition a conservatory order of injunction do issue restraining the Respondent, its agents, employees and/or assigns from evicting, alienating, reallocating, allocating or in any other manner, interfering with the Applicants use and occupation of their portions of land comprised in what's known as Kambi Mawe or Kambi Miwa Settlement Scheme.

4. THAT the costs of this application be provided for.

2. The Applicants are residents of Kambi Mawe or Kambi Miwa Settlement Scheme within Turbo township in Uasin-Gishu County. The Applicants contend that they have been residing on land which is clearly marked on the ground but has not been adjudicated hence has no titles. The Applicants state that they have lived on the said land which I shall herein after refer to as the (suit land) since 1950's.

3. The Applicants have their small business on the suit land and have been paying for business permits to the County Government of Uasin-Gishu. On the 7th February, 2021, the area Ward Administrator brought a stranger to the suitland. Part of the suitland was fence off by a private developer whom they later learnt was the Interested party in this Petition.

4. The Respondent then moved in and demolished the Applicants' structures on the suitland. The Applicants learnt that the suit land had been allocated to the Interested Party. It is on this basis that the Applicants seek for conservatory orders to preserve the suit property as they

pursue the Petition herein in which they contend that their constitutional rights have been violated.

5. The Applicants' application was opposed by the Respondent through a replying affidavit sworn on 20th April, 2021. The Respondent contends that the suitland is public land which was reserved for the construction of County Council of Wareng Residential Houses. The Respondent further contends that the suitland being Public land can never be allocated and that the suit land has not been allocated to the Interested Party as the Applicants allege.

6. The Respondent states that the structures which were demolished was because they were built without approvals as required under the Physical and Land Use Planning Act No.113 of 2019. The Respondent further argues that the mere fact that the County Government of Uasin-Gishu had issued business permits to the Applicants does not confer ownership upon them.

7. The interested party opposed the Applicants, application through a replying affidavit sworn on 27th April, 2021. The Interested Party contends that part of the land being claimed by the Applicants belong to him and that it borders the public land which is occupied by the Applicants. He contends that the Applicants are his tenants and that they have been paying rent to him.

8. The interested party purchased the suitland from Rajab M.Kipkosgey and inherited his tenants. He allowed the 1st Applicant to occupy the land. He states that the area being demolished was the area which had encroached on the road reserve and that the Applicants are complaining yet he is the one who has suffered more because of the demolitions.

9. The parties were directed to dispose of the application by way of written submissions. The Applicants filed their submissions dated 11th May, 2021. The Respondent filed submissions dated 20th April, 2021. The Interested Party filed submissions dated 10th May, 2021. I have considered the Applicants' application as well as the opposition to the same by the Respondent and the Interested Party. I have also considered the submissions by the parties herein. The only issue for determination is whether the Applicants have made out a case for grant of conservatory orders.

10. The Applicants allege that the Respondent has allocated the suitland to the Interested Party. Contrary to the Applicants' allegations, the Respondent has demonstrated that the suitland is public land and that it has not allocated it to the interested party. On the other hand, the interested party has demonstrated that he is the registered owner of LR NO.6938/118 which he purchased from Rajab Kipkosgey.

11. In the case of *Centre for Rights Education and Awareness (CREW) & 7 others =vs= Attorney General [2011] eKLR, justice Musinga* (as he then was) stated as follows:-

“At this stage a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with likelihood of success and that unless the court grants the conservatory order there is a real danger that he will suffer prejudice as a result of the violation or threatened violation of the constitution”.

12. The Applicants contend that the Respondent should have given them priority in the allocation. They contend that the alleged allocation was done inconsideration of tribal considerations. As I have said hereinabove the Respondent had demonstrated that the suitland is public land which has not been allocated to any party and will never be allocated. The Interested Party has also demonstrated that he has title over his own property which is adjacent to the public land.

13. In the case of *Peter Munya =vs=Dickson Mwenda & 2 others [2014] eKLR* the court stated as follows regarding conservatory orders:-

“Conservatory orders bear a more decided public-law connotation; for these are orders to facilitate ordered functioning within public agencies, as well as to uphold the adjudicatory authority of the court, in the public interest.

Conservatory stay orders therefore are not, unlike interlocutory injunctions, linked to such private party issues as “the prospects of irreparable harm’ occurring during the pending of a case; or ‘high probability of success’ in the Applicant’s case for orders of stay.

Conservatory orders consequently should be granted on the inherent merit of a case bearing in mind the public interest, the constitutional values, and the proportionate magnitudes, and priority levels attributable to the relevant causes”.

14. It is apparent that the Applicants are litigating over the suitland which is private property. It is not the Interested Party who demolished the Applicants structures. It is therefore clear that the Applicants have not demonstrated that they have a *prima facie* case to warrant issuance of conservatory orders. The upshot of this is that the Applicants' application fails and the same is dismissed with no order as to costs because the Applicants appear to be litigating on behalf of many families affected by the demolitions.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF NOVEMBER, 2021

E.O. OBAGA

JUDGE

In the virtual absence of Counsel for the Interested Party who was aware of date of delivery of ruling.

Court Assistant – Mercy

E.O. OBAGA

JUDGE