



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC PETITION NO. E009 OF 2021

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLE 10, 19, 20, 22, 23 (1), 40 AND 47 OF THE CONSTITUTION OF KENYA, 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS
AND FUNDAMENTAL FREEDOMS) PRACTICE RULES, 2013**

AND

IN THE MATTER OF ARTICLES 165 (1, 2, 3, 4) OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF SECTION 8(2), SECTION 17 & SECTION 20 OF THE CHIEF'S ACT CAP 128

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND
PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL)**

HIGH COURT PRACTICE AND PROCEDURE RULES, 2006, RULES 11-24

AND

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF RIGHTS AND FUNDAMENTAL
FREEDOMS AND BILLS OF RIGHTS UNDER CHAPTER 4 ARTICLE 40 (3) OF THE**

CONSTITUTION OF KENYA, 2010

BETWEEN

LANGATA JUA KALI MUUNGANO SELF HELP GROUP.....PETITIONER

- VERSUS -

THE COUNTY GOVERNMENT OF NAIROBI.....1ST RESPONDENT

THE CABINET SECRETARY, THE MINISTRY OF LANDS,

HOUSING & URBAN DEVELOPMENT.....2ND RESPONDENT

THE NATIONAL LAND COMMISSION.....3RD RESPONDENT

KENYA RAILWAYS CORPORATION.....4TH RESPONDENT

THE HON. ATTORNEY GENERAL.....5TH RESPONDENT

RULING

1. This is the Notice of Motion dated 11th March 2021 brought under Articles 22, 23, and 40(1) of the Constitution and any other provisions of the law.

2. It seeks orders:-

1. Spent.

2. Spent.

3. Spent.

4. That upon hearing this application interpartes, this honourable court be pleased to issue and make a declaration restraining the 1st Respondent, 2nd Respondent, 3rd Respondent, 4th Respondent by a temporary injunction from in any way intimidating and without any justifiable reasons or charges preferred disturbing the petitioner's rights, safety and peace and its property in Mombasa-Mulolongo Road pending the hearing and determination of this suit.

5. That the costs of this application be provided for.

3. The grounds are on the face of the application and are set out in paragraphs (a) to (g).

4. The application is supported by the affidavit of Councillor John Okoth Apiyo, the elected Chairman of Langata Jua Kali Muungano Self Help Group sworn on the 11th March 2021.

5. The application is opposed. There is a replying affidavit sworn by Erick Odhiambo Abwao, County Secretary of the 1st Respondent sworn on the 29th March 2021.

6. There is also a replying affidavit sworn by Christine Macharia, Legal Officer of the 4th Respondent sworn on the 27th May 2021.

7. It appears the 2nd, 3rd and 5th Respondents did not file any response.

8. On the 27th April 2021 the court with the consent of the parties directed that the application be canvassed by way of written submissions.

9. I have considered the notice of motion, the affidavit in support and the annexures. I have also considered the responses thereto, the written submissions filed and the authorities cited. The issues for determination are:-

i. Whether the Petitioners'/Applicants' application meets the threshold for grant of temporary injunction.

ii. Who should bear costs of this application?

10. In an application for injunction, the onus is on the Application to satisfy the court that that it should grant an injunction . The principles were laid down in the precedent setting case of **Giella vs Cassman Brown & Co. Ltd [1973]**. In the case of **Mrao Ltd vs First American Bank of Kenya Ltd & 2 Others [2003] KLR 125**, the Court of Appeal stated what amounts to a prima facie case. I am guided by the above authorities.

11. In the case of **Kenleb Cons Ltd vs New Gatitu Services Station Ltd & Another [1990] KLR 557 Bosire J (as he then was)** held that:-

“to succeed in an application for injunction an applicant must not only make a frank and full disclosure of all relevant facts to the just determination of the application but must also show that he has a right, legal or equitable, which requires protection by injunction.”

12. It is the Petitioner's case that they are in occupation of the land located on Mombasa-Mlolongo Road since 1992. They said they were given the land by the late president Daniel Toroitich Arap Moi. They however attached no documents.

13. I find that the Petitioners have not demonstrated that they deserve this court's protection.

14. The Petitioners/Applicants have not provided the proper description of the parcel of land they occupy. They have failed to demonstrate they have any proprietary interest over the suit land. I find that they have not established a prima facie case with probability of success at the trial.

15. I find that the Petitioners/Applicants have failed to demonstrate that they were allocated the suit land.

16. I find no merit in this application and the same is dismissed. The costs do abide the outcome of the Petition.

It is so ordered.

DATED, SIGNED AND DELIVERED IN NAIROBI ON THIS 25TH DAY OF NOVEMBER, 2021

.....

L. KOMINGOI

JUDGE

In the presence of:-

Mr. Okengo for the Petitioner

Mr. Nyakoe for the 1st Respondent

No appearance for the 2nd & 3rd Respondent

Mr. Andati for Mr. Nyaanga for the 4th Respondent

No appearance for the 5th Respondent

Steve - Court Assistant