



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT KILGORIS**

**JUDICIAL REVIEW CASE NO.1 OF 2021**

**IN THE MATTER: ARTICLE 165 (6), 169 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF: AN APPLICATION BY MATAMPASH OLE SAIRE & SITATO OLOLMAMPULI**

**IKOLET FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION**

**AND**

**IN THE MATTER OF: SECTION 8 AND 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA**

**AND**

**IN THE MATTER OF: THE LAND ADJUDICATION, CAP 284 LAWS OF KENYA**

**AND**

**IN THE MATTER :FAIR ADMINISTRATION ACTION ACT**

**AND**

**IN THE MATTER OF : ORDER 53 OF THE CIVIL PROCEDURE RULES 2010**

**REPUBLIC.....APPLICANT**

**BETWEEN**

**MATAMPASH OLE SAIRE & SITATO OLOLMAMPULI IKOLET.....EX-PARTE APPLICANTS**

**VERSUS**

**LAND ADJUDICATION OFFICER, TRANSMARA EAST.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**THE DIRECTOR OF LAND ADJUDICATION & SETTLEMENT.....3<sup>RD</sup> RESPONDENT**

**AND**

OTUMA OLE SANINGO.....	1 <sup>ST</sup> INTERESTED PARTY
PAREYIO OLE MOITA.....	2 <sup>ND</sup> INTERESTED PARTY
KOKWET OLE KUNINI.....	3 <sup>RD</sup> INTERESTED PARTY
TATUR OLE KILOYIAN.....	4 <sup>TH</sup> INTERESTED PARTY
YIANTO OLE SEYIO.....	5 <sup>TH</sup> INTERESTED PARTY
DAVID PASEI SIMPIRI.....	6 <sup>TH</sup> INTERESTED PARTY
SOITANAE OLE KINANTA.....	7 <sup>TH</sup> INTERESTED PARTY
SOIPEI VINCENT KISEET.....	8 <sup>TH</sup> INTERESTED PARTY
OLOIMUTIE OLE MAMAYIO.....	9 <sup>TH</sup> INTERESTED PARTY
JOEL LETUYA RAKITA.....	10 <sup>TH</sup> INTERESTED PARTY
MAKUTIT JOEL MELUBO.....	11 <sup>TH</sup> INTERESTED PARTY
LENKIYIEU OLE NAIDUYA.....	12 <sup>TH</sup> INTERESTED PARTY
OLEUNUA OLE TONKEI.....	13 <sup>TH</sup> INTERESTED PARTY

#### RULING

The Application for determination before this Honourable Court is dated 14<sup>th</sup> July 2021 and filed by the Interested Parties/Applicants herein.

The Notice of Motion Application dated 14<sup>th</sup> July 2021 seeks mainly two Orders which are:-

A) Pending the hearing and determination of the instant application, the Honourable Court be pleased to grant an Order of Stay, staying the implementation and/or enforcement of the Orders of Status Quo granted by this Honourable Court on the 23<sup>rd</sup> of September 2020, pertaining to and/or concerning the declaration of KIMINTET “E” as an adjudication Section (hereinafter referred to as “the suit property”).

B) The Honourable Court be pleased to discharge, vary, vacate and/or set aside the Orders of Status Quo issued herein on the 23<sup>rd</sup> September 2020, pertaining to and /or concerning the declaration of KIMINTET “E” as an Adjudication Section.

The Notice of Motion Application dated 14<sup>th</sup> July 2021 has been supported by the Affidavit of Oleunua Ole Tonkei who is the 13<sup>th</sup> Interested Party/Applicant thereof.

The Grounds contained in the Supporting Affidavit of Oleunua Ole Tonkei attached to the Notice of Motion Application 14<sup>th</sup> July 2021 are as follows:-

1. The Ex-parte Applicants/Respondents were members of the Adjudication Committee appointed in the year 1989 to be in charge of the Adjudication Section known as KIMINTET “B”.
2. The deponent therein namely Oleunua Ole Tonkei is the chairman of the Adjudication Committee appointed on the 7<sup>th</sup> of July 2020 to be in charge of two Adjudication Sections namely KIMINTET “E” AND “F”.
3. On the 30<sup>th</sup> of July 2020, the Ex-parte Applicants/Respondents herein filed a Judicial Review Application seeking to challenge the 1<sup>st</sup> Respondent’s decision to gazette and/or declare the KIMINTET “E” as an Adjudication Section made on 6<sup>th</sup> February 2020 and also the decision to Appoint the Interested Parties/Applicants herein as members of the Adjudication Committee made on the 7<sup>th</sup> July 2020.
4. Upon exchanging of pleadings and submissions thereof between the parties, the Honourable Court made a pronouncement on the 23<sup>rd</sup> of September 2020 directing as follows:-

“ i. THAT LEAVE be and is hereby granted to the Respondent to file their Repling Affidavit within 21 days.

ii) THAT Status Quo be maintained by the parties pending the hearing and determination of this matters.

- iii) THAT the Applicant to have corresponding leave to file and serve a further affidavit if need be together with supplementary submissions within 14 days upon service by the Respondents.
- iv) THAT the Respondents to file their Replying Affidavit together with their submissions.
- v) THAT mention on the 12/11/2020 to confirm compliance.”

5. The interpretation of the Status Quo Order issued on the 23<sup>rd</sup> of September 2020 has been insinuated by the Ex-parte Applicants/Respondents to be a declaration that the 1<sup>st</sup> Respondent herein is not to carry out any further adjudication as provided for in Notice dated 6<sup>th</sup> February 2020 and the Interested Parties/Applicants are also prohibited from conducting any business as provided for in their letter of appointment dated 7<sup>th</sup> July 2020.

6. The Interested Parties/Applicants submit that the Status Quo orders issued on the 23<sup>rd</sup> of September 2020 are premature, ambiguous, unlawful, illegal and annulity.

7. The Interested Parties/Applicants plead that the Status Quo Orders issued on the 23<sup>rd</sup> of September 2020 have attracted collateral advantage to the Ex-parte Applicants/Respondents through the interpretation that the 1<sup>st</sup> Defendant is prohibited and/or stopped from implementing the gazette notice of 6<sup>th</sup> February 2020 in toto.

8. As a result of the interpretation of the Status Quo Order issued on the 23<sup>rd</sup> of September 2020 as outlined in Paragraph 7 above, the general community in the declared Adjudication Section known as KIMINTET “E” have been frustrated and denied the right to own property as provided in the Constitution.

9. Consequently therefore, the Interested Parties/Applicants are seeking for the Status Quo Order issued on the 23<sup>rd</sup> September 2020 to be lifted and/or discharged thereof.

On the Order hand, the Ex-parte Applicants/Respondents in this Application dated 14<sup>th</sup> July 2021 filed a Replying Affidavit on the 4<sup>th</sup> of October 2021 opposing the Application.

The Summary of the Grounds relied upon in the Replying Affidavit filed by the Ex-parte Applicants/Respondents on the 4<sup>th</sup> of October 2021 are as follows:-

1. That it is true the Ex-parte Applicants filed an application seeking leave to file a Judicial Review Application amongst other Prayers.
2. That indeed, a Status Quo order was issued on the 23<sup>rd</sup> September 2020 pending the hearing and determination of the Judicial Review Application before Court.
3. The Ex-parte Applicants/Respondents state that the Interested Parties/Applicants present Application dated 14<sup>th</sup> July 2021 is full of false facts and misleading to the Honourable Court.
4. The Ex-parte Applicants/Respondents state that on 29<sup>th</sup> October 1986, the Senior Land Adjudication/Settlement Officer, Narok District declared the area known as KIMINTET SUB-LOCATION IN SIRIA EAST AREA LOCATION OF TRANSMARA SUB-DISTRICT, NAROK DISTRICT to be an Adjudication Section.
5. The Ex-parte Applicants/Respondents plead that shortly thereafter, the entire area was divided into Four (4) Sections namely KIMINTET “A” “B” “C” AND “D”.
6. According to the Ex-parte Applicants/Respondents, KIMINTET “A”, “B” AND “C” have been duly adjudicated and community members given their title documents.
7. The Ex-parte Applicants/Respondents state that as their Adjudication Committee was dealing with KIMINTET “D”, the 1<sup>st</sup> Respondent without regard to the law, declared new Adjudication Sections namely KIMINTET “E” AND “F” and started allocating portions thereof to unknown people who are not members of the Community hence resulting to the filing of the Judicial Review Application herein.
8. The Ex-parte Applicants/Respondents allege that the Sections known as KIMINTET “D” AND “E” are one and the same Section that the 1<sup>st</sup> Respondent has re-declared as Adjudication Sections and the Interested Parties/Applicants herein are purporting to allocate to other people which is illegal.
9. The Ex-parte Applicants/Respondents are also seeking to bring it to the attention of the Honourable Court that what the Interested Parties/Applicants are seeking to allocate is land that has already been allocated to other people who have valid titles and stand to suffer from the actions of the Respondents and the Interested Parties/Applicants herein.
10. In conclusion therefore, the Interested Parties/Applicants Application dated 14<sup>th</sup> July 2021 should be dismissed and the Status

Quo orders issued on the 23<sup>rd</sup> September 2020 retained.

The Interested Parties/Applicants filed their Submissions on the 10<sup>th</sup> November 2021 and on the same day, the Ex-parte Applicants/Respondents also filed their submissions on the same day.

In this Application dated 14<sup>th</sup> July 2021, the Respondents did not file any Response and/or Submissions as required by law.

### **ANALYSIS OF THE FACTS & THE LAW.**

Having outlined the facts as pleaded by the Interested Parties/Applicants as well as the Ex-parte Applicants/Respondents, this Honourable Court shall strive to identify the core issues and apply the law in its determination of the disputes.

Nevertheless, the Honourable Court is alive to the fact that the Application before it is an interlocutory one in nature and therefore, the merits and demerits of the substantive Judicial Review Application pending for hearing and determination should not be tempered with.

The Application presently before the Honourable Court dated 14<sup>th</sup> July 2021 has been brought Under Order 40 (2),(3) ( 4) and (7) of the Civil procedure Rules, 2010, Sections 1A , 1B , 3, 3A & 63 ( e) of the Civil Procedure Act, Cap 21 , Sections 13 (7) , 19 & 26 of the Environment and Land Act, 2011 and lastly Article 27,40 (6), 47,50 (1) & 159 (2)(d) of the Constitution.

Section 40 (7) as follows:-

***“Provides that An Order for an injunction may be discharged, or varied, or set aside by the Court on application made thereto by any party dissatisfied with such an Order.”***

Section 13 of the Environment And Land Court Act provides the Jurisdiction of the Environment and Land Court.

Section 19 of the Environment and Land Court provides that courts should deal with disputes expeditiously, without undue regard to technicalities of procedure.

Section 26 of the Environment and Land Act provides that the Court shall ensure reasonable and equitable access to its services in all Counties.

The Prayers pleaded in the Notice of Motion Application dated 14<sup>th</sup> July 2021 are as follows:-

“ 1. Pending the hearing and determination of the instant application, the Honourable Court be pleased to grant an Order of Stay, staying the implementation and/or enforcement of the Orders of Status Quo granted by this Honourable Court on the 23<sup>rd</sup> of September 2020, pertaining to and/or concerning the declaration of KIMINTET “E” as an adjudication Section (hereinafter referred to as “the suit property”).

2. The Honourable Court be pleased to discharge, vary, vacate and/is set aside the Orders of Status Quo issued herein on the 23<sup>rd</sup> September 2020, pertaining to and /or concerning the declaration of KIMINTET “E” as an Adjudication Section.”

At the centre of the Interested Parties/Applicants application dated 14<sup>th</sup> July 2021 is the Status Quo Order issued on the 23<sup>rd</sup> September 2020.

The Interested Parties/Applicant in summary state that this Status Quo Order dated 23<sup>rd</sup> September 2020 has been interpreted and/or insinuated by the Ex-parte Applicants/Respondents as a stay Order restricting, limiting and/or hindering implementation of the Gazette Notice dated 6<sup>th</sup> February 2020 and the Appointment of the Interested Parties/Applicants herein dated 7<sup>th</sup> September 2020 as Adjudication Committee members.

The Ex-parte Applicants/Respondents have indeed stated that the Status Quo order issued on the 23<sup>rd</sup> September 2020 was meant to safeguard the rights of the Community and in particular keeping in mind that the 1<sup>st</sup> Respondent and the Interested Parties/Applicants were determined to continue with the adjudication of the two Adjudication Sections namely KIMINTET “E” and “F”.

As a result of the above conflicting interpretation of the Status Quo Orders, the Interested Parties/Applicants filed this Application to Stay the said Status Quo Order and conclusively have it discharged, varied, vacated and/or set-aside.

On the other hand, the Ex-parte Applicants/Respondents have filed A Contempt of Court Application dated 29<sup>th</sup> October 2021 on the grounds that the Interested Parties/Applicants have issued a notice to convene a meeting on the 28<sup>th</sup> January 2021 at Pusanki Centre to conduct the adjudication exercise.

It is important to bring out the history of this Litigation and how the current impasse on the Status Quo order dated 23<sup>rd</sup> September 2020 has developed.

The Ex-parte Applicants/Respondents herein filed an Application seeking Leave to Institute Judicial Review Proceedings of Certiorari and Prohibition against the 1<sup>st</sup> , 2<sup>nd</sup> and 3<sup>rd</sup> Respondents under The Fair Administrative Action Act, 2015 and the Civil Procedure Rules, 2010.

Order 53 Rule 1 (4) of the Civil Procedure Rules provides as follows;-

***“The grant of leave under this Rule to apply for an Order of prohibition or an order of Certiorari shall, if the judge so directs operate as a stay of the proceedings in question until the determination of the Application or until the judge orders otherwise.”***

However, when the Application for Leave was placed before the Learned Court, Leave to institute Judicial Review Proceedings was granted but the Order of whether or not the Gazettement dated 6<sup>th</sup> February 2020 and the Appointment of the interested Parties/Applicants herein dated 7<sup>th</sup> July 2020 should be stayed was not pronounced clearly.

Instead, the Learned Court directed that the Status Quo be maintained pending the hearing and determination of the Judicial Review Application.

Unfortunately, there was no consensus by all or any of the Parties in the proceedings as to what was the Status Quo as at 23<sup>rd</sup> September 2020.

The Ex-parte Applicants/Respondents presumption was that the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents Gazette Notice dated 6<sup>th</sup> February 2020 as well as the Appointment of the Interested Parties/Applicants as members of the Adjudication Committee had been stayed by the Status Quo Order of 23<sup>rd</sup> September 2020 even though no such direction was issued expressly.

The Interested Parties/Applicants in their understanding was that the Status Quo Orders issued on the 23<sup>rd</sup> September 2020 had not stayed either the Gazette Notice dated 6<sup>th</sup> February 2020 establishing KIMINTET “E” as an Adjudication Section by the 1<sup>st</sup> Respondent or the Appointment of the Interested Parties/Applicants from being members of the Adjudication Committee of the Adjudication Section known as KIMINTET “E” hence proceeded to make invitations for a meeting on the 28<sup>th</sup> January 2021 at Pusanki Centre to conduct the adjudication exercise.

Clearly, this above scenario has created confusion and misunderstanding over the area known as KIMINTET generally and in particular the Adjudication Sections known as KIMINTET “D” and KIMINTET “E”.

Similarly, the confusion created by the Status Quo Order dated 23<sup>rd</sup> September 2020 has also sneaked into the Court file with various Applications being filed either to cite for Contempt or Discharge the said Status Quo Order dated 23<sup>rd</sup> September 2020.

This Honourable Court is therefore of the View that the Status Quo Orders issued on the 23<sup>rd</sup> September 2020 do not assist in the administration of Justice and maintenance of Peace within the Adjudication Section known as KIMINTET “D” and “E”.

In conclusion therefore, the Honourable Court invokes the Provisions of Section 1, 1A, 1B, 3 & 63 of the Civil Procedure Act, Section 19 of the Environment and Land Court No. 19 of 2011, Article 47, 50 and 159 of the Constitution and do hereby Order as follows;-

1. The Status Quo Order issued on the 23<sup>rd</sup> September 2020 be and is hereby set-aside and/or vacated forthwith.
2. The Parties herein do file their written submission on Prayer Number 9 of The Chamber Summons dated 29<sup>th</sup> July 2020 within Seven (7) Days from today’s date to enable the Honourable Court make proper determination on the issue of stay.
3. Each party to bear its own costs of this Application.

**DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 2ND DAY OF DECEMBER, 2021.**

**HONOURABLE EMMANUEL.M.WASHE**

**JUDGE**

**In the Presence of:-**

1. Court Assistant – Matiko
2. Ms Katana for the Exparte Applicant/Respondent
3. Ms Mireri for the Interested Parties/Applicants