



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

PET NO. 28 OF 2019

IN THE MATTER OF ARTICLE 10 (2), 22 (1), (2) (B) (C), 61 OF THE COSNTITUTION OF KENYA

AND

IN THE MATTER OF CONTRAVENTION OF RIGHTS AND FUNDAMENTAL FREEDOMS UNDER ARTICLE (40) (1), 47, 60(1), 63, 68(C) (II), 232 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE COMMUNITY LAND ACT, 2016

AND

IN THE MATTER OF LEGAL NOTICE NO. 150 OF 2019

BETWEEN FATUMA ADAN DULLO.....1ST PETITIONER/APPLICANT

HON. REHEMA JALADESA.....2ND PETITIONER/APPLICANT

HON.ABSHIRO SOKA HALAKE3RD PETITIONER/APPLICANT

HON. ABDI KOROPU TEPO5TH PETITIONER/APPLICANT

VERSUS

CABINET SECRETARY MINISTRY OF LANDS AND PHYSICAL PLANNING...1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

COUNTY GOVERNMENT OF ISIOLO.....INTERESTED PARTY

RULING

1. This matter is at the infancy stage. Both the petition and the application of the petitioners are yet to be heard. The petitioners pray that in the interim period, prayer NO. 3 in the application dated 14.11.2019 be allowed. The extract of the aforementioned prayer is as follows:

“That pending the determination of this application, this honourable court be pleased to grant a conservatory order restraining the respondents, their servants, agents, representatives, adjudication officers, surveyors and/or any other person whomsoever or anyone acting under their authority howsoever from commencing, undertaking and/or continuing with adjudication, survey and demarcation of the community land in Isiolo county pursuant to Legal Notice number 150 of 2019 dated 27th August, 2019”.

2. The applicants contend that the adjudication process being carried out in reference to the legal notice No. 150 of 2019 dated 27.8.2019 is illegal as it affects the entire county. It has been argued that no prejudice will be occasioned if the process is halted for public participation to be undertaken. This court has also been urged to look at the element of use of public resources.

3. The Attorney General has opposed the issuance of prayer no. 3 averring that the process of survey and demarcation has not kicked off though it is intended to.

4. The county government of Isiolo has also opposed the issuance of the said order averring that they were not even aware of this petition, until Judge Okong'o directed that they be served of which they became aware of the matter on 28.11.2019. It was argued for the county government of Isiolo that the notice has been amended, changing the character of the petition as filed and hence there is no petition challenging the amended notice.

5. I have considered the issues raised herein. Firstly, I take Judicial notice that there are conflicts of great magnitude afflicting the rights and interests in land in Isiolo county as manifested in the myriad of cases filed in courts. I have also previously mentioned that I am privy to the existence of some petitions touching on adjudication of land in Isiolo county though parties herein claim that the other petitions are not concerned with this matter. However, as late as 18.2.2020, I do recall having delivered a ruling appertaining to **Meru ELC Petition 9 of 2019** touching on the ongoing adjudication process in some areas of Isiolo county. It is therefore paramount that this court should not issue conflicting orders.

6. The court will strive to ensure that matters touching on adjudication process in Isiolo county run concurrently in order to maintain a harmonious resolution of the disputes.

7. I also take Judicial notice that adjudication process as outlined in the relevant statutes (The Land Consolidation Act, The Land Adjudication Act and Community Land Act) entails an extremely elaborate and rigorous process which takes a considerable period of time to be completed.

8. I do recall that in year 2017, I dealt with an almost similar matter in **Meru Petition no. 7 of 2017; County Government of Meru & Another vs. District Land Adjudication and Settlement Officer Tigania East Sub County & 18 Others (2018) Eklr**, where I was dealing with a situation in which the petitioners, (the then Governor of Meru County and the County Government itself) had wanted the adjudication process stopped in an area known as Ngaremara. In that petition issues of public participation, Jurisdiction and Applicable law arose at the initial stage where the petitioners had sought conservatory orders pending the hearing and determination of the application under a certificate of urgency. In my ruling of 26.7.2017 I stated as follows;

“At this interlocutory stage this court is not seized of all the full facts as appertains the matter at hand. The pronouncement of rights and interests of the petitioners would therefore have to be determined in the main hearing and not at the interlocutory stage”.

9. Likewise, in this petition, the court needs to be seized of the full facts of the dispute. In particular, an averment has been made by the County Government of Isiolo that the notice has been amended of which the petitioner's response was that there was deliberate confusion between County Assembly and Community Assembly. The court needs to grasp the nature and extent of the amended notice and this is an issue which ought to be canvassed in either the application or the petition.

10. I note that the parties have already taken directions on how the application shall be canvassed. In the circumstances, I decline to grant prayer 3 in the application at this stage.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26TH FEBRUARY, 2020 IN THE PRESENCE OF:-

C/A: Kananu

Abubakar for petitioners and also holding brief for Gitonga for Gitonga M for petitioners

Thuranira holding brief for Jirma for the interested party

HON. LUCY. N. MBUGUA

ELC JUDGE