



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

CONSTITUTIONAL PETITION NO 5 OF 2019

IN THE MATTER OF ARTICLES 10, 20, 21 (1), 40 (1), 40 (3), 40 (4), 47, 50, 60, 64, 67, 232 (1), 232 (2), OF THE CONSTITUTION OF THE REPUBLIC OF KENYA

AND

IN THE MATTER OF SECTION 14 AND 15 (2) (d) & (3) (e) OF THE NATIONAL LAND COMMISSION ACT, 2012

AND

IN THE MATTER OF SECTIONS 27 (a) AND 28 (a) OF THE REGISTERED LAND ACT

AND

IN THE MATTER OF SECTION 4 OF THE FAIR ADMINISTRATIVE ACTION ACT, 2015

BETWEEN

OLOOLOLO GAME RANCH LTD.....PETITIONER

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

IKAREKESHE GROUP TRUST.....2ND RESPONDENT

THE ATTORNEY GENERAL OF KENYA.....3RD RESPONDENT

AND

THE CHIEF LAND REGISTRAR.....1ST INTERESTED PARTY

THE MINISTRY OF LANDS.....2ND INTERESTED PARTY

THE DIRECTOR OF LAND ADJUDICATION

AND SETTLEMENT.....3RD INTERESTED PARTY

RULING

The Petitioner herein had filed a Petition dated 4th March, 2019 against the Respondent seeking for the following orders: -

1. That the application be certified as urgent and service thereof be dispensed within the first instance.
2. That pending the hearing and determination of the application interparties orders do issue staying the decision of the 1st Respondent contained in the Kenya Gazette dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to the suit property.

3. That pending the hearing and determination of this Application interparties conservatory orders do issue and be directed at the 1st Respondent the 1st, 2nd and 3rd Interested parties, their agents or anyone authorized by them respectively or acting under them- to stay the implementation of the 1st Respondent's decision contained in the Kenya Gazette notice dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to the suit property.
4. That pending the hearing and determination of this application interparties orders do issue and be directed at the 1st Respondent prohibiting it, its agents or anyone authorized by it or acting under it from issuing any subsequent notice/s in relation to the suit property.
5. That pending the hearing and determination of this Application interparties orders do issue and be directed at the 2nd Respondent prohibiting it, its agents or anyone authorized by it or acting under it from lodging, publishing or in any way commenting on the Petitioner's ownership of title in relation to the suit property.
6. That pending the hearing and determination of the petition orders do issue staying the decision of the 1st Respondent contained in the Kenya Gazette Notice dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to the suit property.
7. That pending the hearing and determination of the petition conservatory orders do issue and be directed at the 1st Respondent, the 1st, 2nd and 3rd interested parties, their agents or anyone authorized by them respectively or acting under them-to stay the implementation of the 1st Respondent's decision contained in the Kenya Gazette Notice dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to the suit property.
8. That pending the hearing and determination of the petition orders do issue and be directed at the 1st Respondent prohibiting it, its agents or anyone authorized by it or acting under if from issuing any subsequent notice/s in relation to the suit property.
9. That pending the hearing and determination of the petition orders do issue and be directed at the 2nd Respondent prohibiting it, its agents or anyone authorized by it or acting under it from lodging, publishing or in any way commenting on the petitioner's ownership of title in relation to the suit property.
10. Any such further relief be granted to the Applicant as the court deems fit.
11. Costs of this application be provided for.

The Petition was opposed by the respondents by way of replying affidavit.

I have considered the Petitioner's Notice of Motion dated 5th April, 2020 together with the submissions filed and the respondents' affidavit who have failed to file any submissions though they were granted leave and a number of chances and at this stage what is there for my determination is whether the petitioner have satisfied the conditions for the grant of conservatory orders pending the hearing and determination of the substantive petition.

Having considered the substantive petition, I have no doubt that it shall serve the interest of justice to ensure that the suit property is conserved pending the hearing and determination of the petition and in the circumstance I find that the notice of motion dated 5th March, 2019 is merited and I accordingly allow the same in the following terms:-

1. That pending the hearing and determination of the petition orders do issue staying the decision of the 1st Respondent contained in the Kenya Gazette Notice dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to the suit property.
2. That pending the hearing and determination of the petition conservatory orders do issue and be directed at the 1st Respondent, the 1st, 2nd and 3rd interested parties, their agents or anyone authorized by them respectively or acting under them-to stay the implementation of the 1st Respondent's decision contained in the Kenya Gazette Notice dated 1st March, 2019 or any other subsequent notice that may be issued by the 1st Respondent relating to the suit property.
3. That pending the hearing and determination of the petition orders do issue and be directed at the 1st Respondent prohibiting it, its agents or anyone authorized by it or acting under if from issuing any subsequent notice/s in relation to the suit property.
4. That pending the hearing and determination of the petition orders do issue and be directed at the 2nd Respondent prohibiting it, its agents or anyone authorized by it or acting under it from lodging, publishing or in any way commenting on the petitioner's ownership of title in relation to the suit property.
5. Costs of the application be to the petitioner.

DATED, SIGNED and DELIVERED in open court at NAROK on this 1st day of July, 2020

Mohammed Kullow

Judge

1/7/2020

in the presence of:

CA:Chuma

Mr. Kemboya for the petitioner

N/A for the respondents

Mohammed Kullow

Judge

1/7/2020