



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

PETITION NO. 5 OF 2019

THE MUTHARA NJURI NCHEKE COUNCIL OF ELDERS1ST PETITIONER

THE AMUTHUMBA/NGAREMARA PASTORALIST COMMUNITY BASED

ORGANIZATION2ND PETITIONER

VERSUS

THE COMMITTEE OF NGAREMARA/GAMBELLA ADJUDICATION SECTION

THROUGH

THE CHAIRMAN CYPRIAN KAUME MUKIRA.....1ST RESPONDENT

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER TIGANIA

EAST SUB-COUNTY2ND RESPONDENT

THE HON. ATTORNEY GENERAL3RD RESPONDENT

RULING

1. Vide the application dated 1.7.2019, the Mula community through their chairman one Ngolua Mwaine is seeking to be enjoined in these proceedings as an interested party.

2. The grounds in support of this application are:

i. That on 8.4.2019, the petitioners filed this petition secretly without involvement of the intended interested party.

ii. That the intended interested party being the indigenous people of Muthara, Amuthumba/Ngaremara Ranching areas are entitled to the protection of constitution and that by extending this adjudication process to include the Ranching area which they occupy without first establishing it as an adjudication section and public participation and intended interested party is tantamount to alienating their land and defrauding them as a community which could offend their fundamental rights under the bill of rights.

iii. The intended interested party/applicant may lose all their lands unless they are enjoined in this case.

iv. That the honourable court has issued orders of conservatory and the matter is set for pre-trial conference and if allowed to proceed without enjoining the intended interested parties in the suit, the applicants stand to suffer irreparable loss and damages.

3. Ngo'lua Mwaine has also sworn two affidavits in support of his application averring that the intended adjudication will result in alienation of their lands which is situated in Lithira location. He avers that Ngaremara Community and Mula Community forms Amuthumba division.

4. This application was not opposed by the respondents. However, the application has been opposed by the petitioners through the affidavit of one Justus Mugaa who identifies himself as chairman of the 2nd petitioners. He contends that Mula community does not exist and that it is but a creation of Ng'olua Mwaine who is pursuing his own personal interests. It is also contended that Ng'olua was a member of the

committee formed by the DLASO which committee has been sued. Mugaa Justus is praying that the application be dismissed.

5. I find that on 4.11.2019, the court gave directions that application be canvassed by way of written submissions. No such submissions were filed.

6. I find that the 2nd petitioners have identified themselves as a community based organization registered in year 2011 while the interested party identifies themselves as the indigenous people on the suit land. This court is not in a position to make a finding at this stage of the suit as to who has a right to pursue the interests of the residents in the area where the suit land is situated.

7. It is only when a party is on board this suit can they be able to fully bring out their claims. In the circumstances, I allow the application with no orders as to costs.

DATED, SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF APRIL, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE