



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**PETITION NO. 19 OF 2019**

**IN THE MATTER OF ARTICLE 40(10) OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF VIOLATION OF RIGHTS AND FUNDAMENTAL FREEDOMS**

**UNDER ARTICLES 10,19,28,29,40,47 AND 258 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF VIOLATION OF THE RIGHT TO PROPERTY**

**UNDER ARTICLE 40 (3) AND 63(4) OF THE CONSTITUTION OF KENYA 2010**

**BETWEEN**

**JONATHAN KIPLANGAT BOR AND 524 OTHERS.....PETITIONERS**

**-VERSUS-**

**SUB COUNTY POLICE COMMANDER NAROK.....1<sup>ST</sup> RESPONDENT**

**INSPECTOR GENERAL NATIONAL**

**POLICE SERVICE.....2<sup>ND</sup> RESPONDENT**

**RULING**

***(On the preliminary objection dated 8<sup>th</sup> July, 2019)***

The Petitioner had a petition dated 27<sup>th</sup> May, 2019 together with a notice of motion of even date sought for orders of interim injunction restraining and prohibiting the respondents from continuing the process of evictions and demolitions taking place in Angata Baragoi ward within Trans Mara West District of Narok County. The Respondent had filed a Preliminary Objection on points of law against the Notice of Motion and the substantive petition on the grounds that the suit being a representative suit is incompetent as it violates the provisions of order 1 Rule 8 (I) and order 1 Rule 13 (I) and 2 of the Civil Procedure as the petitioners have not disclosed on behalf of whom the petition was filed and hence prayed that the petition and the notice of motion be dismissed with costs.

It is the Respondents contention that where a party bringing a suit on behalf of others the said party must first be authorized by the persons on whose behalf the suit is filed and further that the petitioners ought to have disclosed the names of the persons on whose behalf the suit is filed and hence in the absence of the above and the authority to plead then the petition and the notice of motion are an abuse of the process of the court. The Respondent further averred that in the absence of any signed authority the petitioners cant purport to file the petition.

The petitioners in reply to the preliminary objection avers that the actions of the respondents have subjected the petitioners to inhuman and degrading experiences and they are inhabitant of Angata Baragoi ward and hence the constitution gives them locus standi to bring the instant petition.

The Respondents further contend that the petition is not grounded on the Civil Procedure Rules as the same was brought under the provisions of the constitution of Kenya 2010 (Protection of Rights and Fundamental Freedom) Practice and Procedure rules 2013 otherwise known as

Mutunga Rules they further state that the substratum of their petition is the violation of the petitioners' rights and thus the same is properly before the court.

I have considered the Preliminary objection and the rival submissions with regard to the same. From the petition and the pleading it is correct as rightly pointed out by the respondents that the petitioners have not attached the names of the persons on whose behalf the petition is filed as required under the provisions of orders 4 Rule 8 (1) and 13 of the Civil Procedure Rules, however, I need to point out that the petitioners themselves are about 525 in number and even though the list is not provided the petition relating to the protection of fundamental right and freedom need not comply strictly with the provisions of the Civil Procedure Rules. This being a Constitutional Petition brought under Article 22 of the Constitution of Kenya 2010 the same needs to comply with the provisions of the Constitution of Kenya (Protection of Rights and Freedoms Practice and Procedure Rules).

Article 22 of the constitution of Kenya 2010 provides that: -

“Every person has the right to institute Civil proceedings claim that a right or fundamental freedom in the Bill of rights has been denied, violated or infringed or threatened”.

The substantive petition is premised on the respondent alleged violations of the petitioners' rights to property and the Mutunga Rules hereinabove referred to provides under Rule 4 that any person affected or likely to be affected to make an application to court and in view of the above provisions I find that the Civil Procedure Rules are strictly inapplicable when a suit/or Petition touches on rights, furthermore the failure of the petitioner to attach the list of persons in my mind is not fatal to the petitioners as this is a mere form and not of substance and the same can be cured under the provisions of article 159 (2) (d) of the constitution of Kenya 2010.

The supreme court of Kenya in Petition No. 23 of 2014 observed: -

**“We are clear that an appeal of this kind should not be held to final on mere account to form. Although the rules of this court give guidance on the form which an appeal should take, we are cognizant of the fact that Articles 159 (2) (d) of the constitution accords precedence to substance, over form”.**

From the foregoing therefore I find that the preliminary objection dated 8<sup>th</sup> July, 2019 is not merited as the same is pegged on procedural adherence over the rules which inhibits the right of a person to access justice and assist the court in the just and expeditious disposal of matter and I consequently find that the preliminary objection lacks merit and I dismiss it. Each party to bear its costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAROK ON THIS 20TH DAY OF MAY, 2020.**

**Mohammed Kullow**

**Judge**

**20/5/2020**

In the presence of:

CA:Chuma

Ms Karia holding brief for Bosek for the applicant

N/A for the respondent