



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

CONST. PETITION NO. 15 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) and (3) (e)

OF THE NATIONAL LAND COMMISSION ACT, 2012

AND

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

BETWEEN

KIPTESOT ARAP KENDUIYWO.....1ST PETITIONER

MUSEE ARAP KELONG.....2ND PETITIONER

CHEPNGETICH BOROR.....3RD PETITIONER

KIPTANGUS ARAP MASITID.....4TH PETITIONER

GRACE CHEPKOECH KENDUIWA.....5TH PETITIONER

KIPKELONG ARAP CHEPKULUL.....6TH PETITIONER

JOHN CHELULE TOWEITT.....7TH PETITIONER

ROBERT KIPKEMOI YAGONG.....8TH PETITIONER

WILLIAM CHERUIYOT.....9TH PETITIONER

-VERSUS-

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

NDOROBO GROUP RANCH.....2ND RESPONDENT

THE CHIEF LAND REGISTRAR.....3RD RESPONDENT

THE MINISTRY OF LANDS.....4TH RESPONDENT

RULING

By a Notice of Motion dated 6th May, 2019 and brought under Rule 24 (1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms Practice and Procedure Rules the Applicants sought for the following orders: -

1. Spent
2. Spent
3. That pending the hearing and determination of this application inter partes conservatory orders do issue and be directed at the 1st, 2nd, 3rd, 4th and 5th respondent 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 CIS MARA/LEMEK/40 THE SUIT PROPERTY.
4. That pending the hearing and determination of this application inter partes 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 CIS MARA/LEMEK/40 the suit property.
5. That pending the hearing and determination of this application inter partes 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 petitioners' ownership of titles in relation to CIS MARA/LEMEK/40 the suit property.
6. That pending the hearing and determination of this application inter partes orders do issue and be directed at the 2nd respondent prohibiting it, its agents or anyone authorized by it from lodging, publishing or in any way commenting on the petitioners' ownership of titles in relation to CIS MARA/LEMEK/40 the suit property.
7. 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 CIS MARA/LEMEK/40 the suit property.
8. That pending the hearing and determination of the petition conservatory orders do issue and be directed at the 2nd, 3rd, 4th and 5th respondents, 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 CIS MARA/LEMEK/40, the suit property.
9. 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 it from issuing any subsequent notice(s) in relation to the suit property.
10. That pending the hearing and determination of the petition orders do issue and be directed at the 2nd respondent prohibiting it, its agent or anyone authorized by it or acting under it from lodging, publishing or in any way commenting on the petitioners' ownership of titles in relation to the suit area.
11. Any such further relief be granted to the petitioners as the court deems fit.
12. Costs for this application be provided for.

The Application is based on the grounds that they are the registered owners and proprietors of various parcels of land situated within the Lemek Registration Section but by a Gazette Notice dated 1st March, 2019 the 1st Respondent caused to publish a Notice to Revoke the petitioners' titles and ordered for the re-adjudication of the area to accommodate the 2nd respondent. The petitioners contend that the said notice was published ultra-vires to the mandate of the 1st respondent as the 2nd respondent has no powers to cancel the registered titles of the petitioner arising out of the adjudication and sub-division of land parcel Cis Mara/Lemek/40 carried out in 1997.

The application is further grounded on the grounds that the previous adjudication process was recognized by the High Court in Nairobi Misc. Civil Application No. 799 of 2007 in which the court had issued orders of certiorari and prohibition against the 2nd Respondent and therefore the 1st Respondent can't purport to exercise its powers in the light of the above decision of the High Court. The petitioners further argued that the 1st Respondent had issued the contentious notice without according the petitioners unheard and consequently breaching the provisions of Articles 40, 47(1) 50,60,64,232(1) and (2) of the constitution of Kenya and they hence refused to accord the petitioners the right to be heard and right to fair administration action and more particularly section 14,15(2) (d) and (3) € of the National Land Commission Act and section 4 of the Fair Administration Action Act.

The Application was further supported by the affidavit of Kiptesot Arap Kenduiywo which he averred that he was the previous chairman of

the 2nd Respondent before its dissolution. He averred that the suit land was part of Lemek registration section and registered in the name of the 2nd Respondent in which the petitioners were members thereof. He states that the group was dissolved in 1996 by a resolution of the members and the consent to dissolve issued by the Director of Land Adjudication and Settlement on 16th January, 1997 and to facilitate the said dissolution the registrar of group issued them with a certificate of incorporation on 13th January, 1997.

The deponent further averred that they had complied with register of members to commence the exercise to sub divide the land among the members and consequently they obtained the consent to sub divide the land on 23rd August, 2012 and later mutations and survey work started and upon completion an area beneficiaries list prepared to the land registrar for the issuance of certificate of title but various complaints arose culminating in the lodging of complaints within the Narok Land Disputing Tribunal and later an appeal to the Provincial land Disputes Appeal tribunal and the high Court which overturned the domain of both tribunals.

The application was opposed by the 1st and 2nd Respondents. The 1st Respondent by a replying affidavit sworn on the 9th July, 2019 contends that it is mandated to investigate and redress historical injustice which took many forms such as illegal takeover of community land, public and private land trust lands in which members of specific clans were made to benefit from settlement schemes at the expense of others and in pursuance of its mandate aforesaid it received a complaint from the Ndorobo Group Ranch as a historical injustice and that it had invited the parties on 8th March, 2018 at its National Office and Notices served upon all of them.

The 1st Respondent averred that it had conducted extensive investigations and produced a well-informed determination that was communicated in Gazette Notice Volume CXXI of 1st March, 2019 and that in making its determination it had complied with the provisions of Articles 40.47.50.60.64 and 232 of the Constitution of Kenya and Nairobi Civil Appeal No. 799 of 2007 did not address the issue of historical injustices.

On the petitioners' assertion that they were condemned unheard the 1st respondent stated that it acted fairly judiciously and with due regard to the law and that the issue of indecisive land owners is yet to be determined by any court.

The 2nd respondent had also opposed the application by way of a replying affidavit sworn by Samuel Bosinei Kelong sworn on 24th July, 2019. The 2nd Respondent stated that sometimes in the year 2007 they approached the National Land Commission to get assistance so that they could move to the land which was in the custody of the petitioners however, the petitioners had refused and they were forced to file a reference at the Narok Land Disputes Tribunal which later culminated into an Appeal at the Provincial Land Disputes Tribunal.

I have considered the notice of motion dated 6th May, 2019 together with the affidavit in support of the same and the 1st and 2nd Respondents replying affidavit and the submissions filed by the parties. It is clearly evident that this is a matter in which various allegations and counter allegations are being made by the parties which in my mind can clearly be determined at a full hearing where evidence will be tendered and veracity of each allegations will be put to test, however, this being an interlocutory application the issues for determination before me is to ascertain whether the applicants have met the threshold for the grant of conservatory orders pending the hearing and determination of the petition. I have considered the submissions of the petitioners', the 1st and 2nd respondents in framing the above issue for determination the petitioners contend that they are the registered owners of the suit property and to the affidavit in support of the notice of motion they have attached various certificates of titles to the suit land and it is clear from this they have a legitimate claim and interest in the land and if the orders they seek are not granted there is a possibility that their title could be revoked and before the determination of the petition and hence suffer loss and damages.

By looking at the documents annexed to the application am satisfied that since the suit land emanates from an adjudication section it shall serve the interest of justice if the land is preserved and pending the hearing and determination of the petition and in the circumstances I find that the petitioners have satisfied the grounds for grant of conservatory orders and injunction as prayed and I will consequently allow the Notice of Motion dated 6th May, 2019.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 11th day of June, 2020.

Mohammed Kullow

Judge

11/6/2020

In the presence of:

CA:Chuma

Mr Kamwaro for the Petitioners/Applicants

N/A for the Respondents

Mohammed Kullow

Judge

11/6/2020