



**REPUBLIC OF KENYA**

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

**PETITION NO. 7 OF 2017 ( formerly Milimani Petition No. 54 of 2017)**

**IN THE MATTER OF ARTICLES 19, 20 22, 23, 27 40, 47, 50(1), 64, 159 AND 165 OF THE  
CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS  
UNDER ARTICLE 40 AND 47 OF THE CONSTITUTION OF KENYA (2010)**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND  
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES 2013**

**AND**

**IN THE MATTER OF THE REGISTERED LANDS ACT (CAP 300 LAWS OF KENYA -  
REPEALED)**

**BETWEEN**

**JOYCE MUTHONI WACIUMA.....1ST PETITIONER**

**MARGARET WANJIRU WARUHIU.....2ND PETITIONER**

**ALICE WANGECHI GICHUKI AS PERSONAL REPRESENTATIVE**

**OF LT. COL.G.K.N. GICHUKI.....3RD PETITIONER**

**MARGARET WANGUI GITO.....4TH PETITIONER**

**HENRY MOSES THAIRU.....5TH PETITIONER**

**WILLIE LEWIS WANJOHI.....6TH PETITIONER**

**HANNAH WANGECI KINOTI.....7TH PETITIONER**

**MICHAEL MUTURI KARANJA AND EVA KARUNGARI**

**CHEGE.....8TH PETITIONER**

**ELIZABETH WANJIKU MATHARE AS THE PERSONAL REPRESENTATIVE OF**

JOHN WALLACE MATHARE.....9TH PETITIONER  
REBECCA NJERI KARANJA.....10TH PETITIONER  
ERIC CATO NOTTINGHAM.....11TH PETITIONER  
FAITH NJAMBI WACIUMA.....12TH PETITIONER  
JACQUELINE WAMBUI NOTTINGHAM .....13TH PETITIONER  
FIONA WANJIKU NOTTINGHAM.....14TH PETITIONER  
MONIQUE WANGUI MATU AND CHARLES MATHAI MATU.....15TH PETITIONER  
CHRISTOPHER GITHAIGA NOTTINGHAM.....16TH PETITIONER  
BRENDA WANJIRU NOTTINGHAM.....17TH PETITIONER  
PETER GICHEHA NJUGUNA AND NJOROGE NDEMBO.....18TH PETITIONER

**VERSUS**

NATIONAL LAND COMMISSION .....1ST RESPONDENT  
CHIEF LAND REGISTRAR.....2ND RESPONDENT  
HONOURABLE ATTORNEY GENERAL .....3RD RESPONDENT

**RULING**

The application before this court is a notice of motion dated the 25th January, 2017 brought pursuant to Rules 19, 23 and 24 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules and all the Enabling Provisions of the Law. The Petitioners are seeking for the following prayers:

- a) spent
- b) spent
- c) **THAT** pending the hearing of this Application *inter partes* or until further orders, this Honourable Court be pleased to issue a temporary injunction restraining and prohibiting the Respondents jointly and severally whether by themselves and/or through their servants and/or agents or any person howsoever from taking or effecting their decisions, proceedings, meetings, actions, activities and any further or attendant actions, including but not limited to procuring the Gazettement, de-registration, cancellation and re-allocation of the Petitioners' properties being Title Numbers KAJIADO/MOSIRO/202; 914; 74; 941; 168; 200; 145; 112; 153; 179; 203; 120; 172; 164 and 183 respectively.
- d) **THAT** pending the hearing and determination of this application *inter partes*, this Honourable Court be pleased to issue a temporary injunction restraining and prohibiting the Respondents jointly and severally whether by themselves and/or through their servants and/or agents or any person howsoever from acting on any decisions made in any meeting scheduled for the 26th and 27th January, 2017 at the 1st Respondent offices or elsewhere, and or thereafter, from reviewing the Petitioners' grants and dispositions being Title Numbers KAJIADO/MOSIRO/202; 914; 74; 941; 168; 200; 145; 112; 53; 179; 203;120;172;164 and 183 respectively or from taking any action including establishing their proprietary or legality as they were all duly adjudicated, registered,

demarcated and titles issued and settled pursuant to a Court of Appeal judgement dated 9th June, 1995 in C.A. No. 85 of 1992 Nairobi.

e) **THAT** pending the hearing and determination of the main suit, this Honourable Court be pleased to issue a temporary injunction restraining and prohibiting the Respondents jointly and severally whether by themselves and/or through their servants and/or agents or any person howsoever from taking or effecting their decisions, proceedings, meetings and actions and activities and any further or attendant actions, including but not limited to procuring the Gazettement, de-registration, cancellation and re-allocation of the Petitioners' properties being Title Numbers KAJIADO/MOSIRO/202; 914; 74; 941; 168; 200;145;112;153;179;203;120;172;164 and 183 respectively.

f) **THAT** costs of and occasioned by this Application be awarded to the Petitioners.

g) **THAT** such other or further orders as may be just, be made to meet the ends of justice and to safeguard and protect the Petitioner's and the dignity of this Honourable Court.

The application is based on some grounds and supported by the affidavit of JOYCE MUTHONI WACIUMA who is the 1st Petitioner herein. She avers that she is conversant with the case at hand and has been duly authorized to swear an affidavit on behalf of the 2nd - 18th Petitioners. She states that at all material times the Petitioners herein were the registered absolute proprietors of Title Numbers KAJIADO/MOSIRO/202; 914; 74; 941; 168; 200;145;112;153;179;203;120;172;164 and 183 respectively. Further that the suit property falls within Mosiro Sub location, Keekonyoike Land Adjudication Section of Kajiado District as known previously. She states that the Petitioners acquired the registered interest in their various properties, and were all issued with valid first registration Title Deeds under the Registered Land Act Cap. 300 (now repealed) at the Kajiado District Land Registry on diverse dates in January 1991. She further avers that the Notice of Completion of the Adjudication Section in which the suit property is situated was published on 5th September, 1990, but the said adjudication process was however challenged vide Nairobi HCCC Misc. No. 312 of 1991 (JR) and on 14th May, 1991 an order was issued by the High Court *inter alia* quashing the Certificate of Finality of the Mosiro Adjudication Action within Kajiado District. This decision was appealed and in a judgement by the Court of Appeal vide Civil Appeal No. 85 of 1992 Nairobi, on 9th June 1995 the Court declared the orders of the High Court granted on 14th May, 1991 a nullity and quashed the same. That despite the nullification of the High Court decision, the Petitioners who consider themselves free to deal with the land with their respective title deeds have been unable to do so as no registration to the suit property can be effected for reasons that the green cards containing the registration particulars of the said parcel of land have long been forwarded to and retained by the 2nd Respondent. She avers that the 1st Respondent in purported exercise of its mandate *inter alia* to review all grants and dispositions to public land in order to establish the legality, place a notice in the Daily Nation Newspaper dated the 6th October, 2016 calling for a public hearing on or about 12th and 13th October, 2016 at the Mosiro Primary School, Kajiado Sub County; however the Petitioners' felt the said Notice was too short, making it impossible for them to prepare for the hearing.

She further states that the 1st Respondent after the purported said public hearing issued a directive well captured in the Standard Newspaper dated 14th October, 2016 revoking the more than 100 title deeds, part of which title deeds are those of all the Petitioners. She further states that the 1st Respondent is about to issue the requisite notice in the official Kenya Gazette publishing and confirming the cancellation of the title deeds in Mosiro, Kajiado which include the Petitioners' respective title. Further that the 1st Respondent issued another notice in the local dailies on 16th January, 2017 and invited land owners in Kajiado/Mosiro Adjudication Section for public hearings on the 26th and 27th January, 2017 at their offices, when they publicly declared cancellation of the title deeds.

On the 12th April, 2017 when the Application was set down for hearing, the same proceeded unopposed as the 1st, 2nd and 3rd Respondents who were served failed enter appearance nor file replying affidavits. On perusal of the affidavit of service, the Court notes that the 1st, 2nd and 3rd Respondents were duly served on 5th April, 2017 at 12.30 pm, 12.35 pm and 3 pm respectively and the three offices appended

their official stamps on the hearing notice.

Ms. Mureithi who was counsel for the Petitioners stated that the application was seeking for conservatory orders as against the three respondents. She stated that the Petitioners were proprietors of Land Parcel Numbers KAJIADO/MOSIRO/202; 914; 74; 941; 168; 200;145;112;153;179;203;120;172;164 and 183 respectively having got registered as owners after an adjudication process. She stated that the Court of Appeal in Nairobi Civil Appeal Number 85 of 1992 nullified the Order of the High Court and held that the Petitioners were owners of the suit parcels of land. She further stated that this is a huge public interest matter as it involves a large group of people. Further that there is a real and imminent risk that the Respondents will gazette the cancellation of the titles and the whole substratum of the suit will be lost. She informed the court that it is in the interest of justice that the application is allowed and the Petitioners' right to property is protected. She prayed that the Court do grant interim orders in terms of prayers No. c and d of the motion dated 25th January, 2017 pending the outcome of the application.

### **Issues and determination**

Upon perusal of the Petition including the supporting affidavit of JOYCE MUTHONI WACIUMA and the annexed documents and upon hearing submissions from the Counsel for the Petitioners, it is noted that the Petition raised weighty issues which also touch on public interest and affect a large group of people. Based on the circumstances of the case and the fact that the matter had even been handled up to the Court of Appeal vide Civil Appeal No. 85 of 1992, way back in 1995, the Court deems fit that the substratum of the suit should be preserved pending the determination of this Petition.

Further, according to **Rule No. 32 of the Practice Directions On Proceedings In The Environment And Land Courts, And On Proceedings Relating To The Environment And The Use And Occupation Of, And Title To Land And Proceedings In Other Courts** which stipulates that

' During the *inter-partes* hearing of any interlocutory application, where appropriate, parties are encouraged to agree to maintain status quo. If they cannot agree, after considering the nature of the case or hearing both sides the Judge shall exercise discretion to order for status quo pending the hearing and determination of the suit bearing in mind the overriding interests of justice.'

In so far as this application was unopposed and bearing the circumstances of the issues at hand, and the overriding objective of the proceedings before this Court, I will rely on rule No. 32 of the ELC Practice Directions and make an order of status quo to be maintained pending the hearing and determination of the Petition.

I urge the parties to comply with order 11 and set the Petition down for hearing as soon as possible.

The costs will be in the cause.

**DATED, SIGNED AND DELIVERED AT KAJIADO THIS 14TH JUNE, 2017**

**CHRISTINE OCHIENG**

**JUDGE**

**REPRESENTATION.**

Mrs. Murithi for the plaintiff

No appearance for the respondent

Court Assistant -Mpoye