



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

CONSTITUTIONAL PETITION NO. 4 OF 2020

**IN THE MATTER OF ARTICLE 63 (1), (2), (b), (d) (3) and (4) ARTICLES 62 (1), (g), ARTICLE 10, 258 AND ARTICLE 10 OF
THE CONSTITUTION OF KENYA**

AND

IN THE MATTER OF SECTION 6 (6), (8) AND SECTION 26 OF THE COMMUNITY LAND ACT 2016

AND

IN THE MATTER OF THE WILDLIFE AND CONSERVATION ACT 2013

AND

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

BETWEEN

LERUK MURUSI1ST PETITIONER
LECHEKU ANGELE2ND PETITIONER
LRADO STEPHEN LTERIOS3RD PETITIONER
LTETIAN LERUPES4TH PETITIONER
STEVE TIMBOR5TH PETITIONER
LENDODODO LOLBALANGA.....6TH PETITIONER
JIMMY LENEPE.....7TH PETITIONER
STEPHEN LESOROH GAMBARE.....8TH PETITIONER
JAMES MARLENI9TH PETITIONER
LPIRIKONI NEEPE10TH PETITIONER
PATRICK KURAKI11TH PETITIONER
SAMUEL LOIBARBAN12TH PETITIONER
FRANCIS LEADUMA13TH PETITIONER

AND

THE COUNTY GOVERNMENT OF MARSABIT1ST RESPONDENT

THE CHIEF OF THE KENYA DEFENCE FORCES2ND RESPONDENT

THE CABINET SECRETARY MINISTRY OF DEFENCE....3RD RESPONDENT

THE HON. ATTORNEY GENERAL4TH RESPONDENT

RULING

1. This court is in the process of hearing and determining the application dated 24.3.2020. The applicants however pray for conservatory orders in the interim. They contend that the petitioners are challenging the whole process of acquisition of the land since the provisions of the constitution and the community land Act were not followed.

2. The respondents particularly the 2nd and 3rd respondents contend that no prima facie case has been established at this stage and that petitioners are only challenging the process of public participation. They aver that any error can be remedied by way of compensation and that the military is acquiring the land for a public purpose.

3. I find that conservatory orders are usually granted on the inherent merits of a case, bearing in mind the aspect of public interest and constitutional values. – *See Gatirau Peter Munya vs Dickson Mwendwa Kithinji and 2 others (2014) eKLR.*

4. In the present case, the matter is at the infancy stage, whereby the respondents are yet to file their responses to the application. The court needs to be seized of the full facts appertaining to the dispute before the issuance of any orders.

5. In the circumstances I decline to grant any orders at this stage.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF JULY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given to the parties on 1.7.2020 in the virtual presence of advocates for the parties. 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