



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

ENVIRONMENT AND LAND CONSTITUTIONAL PETITION NO.10 OF 2014

BETWEEN

WILFRED GISEBE GISEBE.....PETITIONER

VERSUS

1. THE LAND REGISTRAR TRANS-MARA SUB-COUNTY

2. THE HONOURABLE ATTORNEY GENERAL.....RESPONDENTS

AND

1. MOIKO OLOIPUTA MAROI

2. JULIUS OLE MOKITA

3. LENKAI OLE METETA.....INTERESTED PARTIES

RULING

1. The petitioner moved this court by way of a petition dated 25th March, 2014 seeking; a declaration that he is entitled to protection under the constitution, a declaration that the failure and/or refusal by the 1st respondent to supply and/or avail to him the reasons for declining to accept and register the Mutation over and in respect of **LR No. Trans-Mara Olorien/20** (hereinafter referred to only as the “**suit property**”) which is registered in his name amounts to a violation of Article 47 of the Constitution, 2010, a declaration that the actions and/or omissions of the 1st respondent aforesaid amount to a dereliction of public duty and abuse of office and, an order compelling and/or directing the 1st respondent to accept and register the Mutation over and in respect of the suit property.

2. The petition that was brought under Articles 20, 21, 22, 27 and 47 of the Constitution of Kenya, 2010 was brought on the grounds that the petitioner is the registered proprietor of the suit property. The suit property was registered in the name of the petitioner on 5th September, 2012 after the completion of the adjudication and demarcation process at Olorien Adjudication Section. Sometimes in the year 2013, the petitioner initiated the process of sub-dividing the suit property which measures 141.49 hectares into various portions. Towards this end, the petitioner applied for and obtained consent of the Land Control Board for that purpose. The petitioner also engaged a surveyor who surveyed the suit property, subdivided the same and prepared the necessary Mutation Form for registration. The survey work was completed on 25th February, 2014. The 1st respondent has since refused and/or declined to accept the said

Mutation Form for registration in accordance with the law. The 1st respondent has also refused to give reasons in writing for his failure to accept and register the said Mutation Form. The petitioner has contended that the 1st respondent's failure to accept and register the said Mutation Form has denied him his legal right to sub-divide the suit property without any lawful cause.

3. The petitioner has contended that when he visited the office of the 1st respondent to know the reasons why he had declined to register the said Mutation Form, the 1st respondent informed him that he cannot register the same because of pending disputes over the boundary of the suit property which must be resolved beforehand. The 1st respondent also claimed that Olorien Group Ranch which owns a neighbouring plot had also raised an issue regarding the bona fides of the petitioner's title over the suit property. The petitioner has contended that these reasons were given to him verbally and that the 1st respondent refused to put the same down in writing. The petitioner has contended that his constitutional right to information has been infringed. The petitioner has contended further that his constitutional right to fair treatment and freedom from discrimination has also been violated by the 1st respondent. It is on account of the foregoing that this petition was brought. The petition that was filed herein on 25th March, 2014 was served upon the respondents, who entered appearance through the Attorney General on 3rd April, 2014. The respondents have not yet responded to the petition.

4. After the respondents entered appearance as aforesaid, the petitioner listed the petition for directions on 24th November, 2014. Before directions were taken, the interested parties herein moved the court through an application dated 11th November, 2014 seeking leave of the court to be joined as parties in this petition. The interested parties' application was supported by the affidavit of the 1st interested party. The interested parties have claimed that they are members of the adjudication committee for Olorien Adjudication Section where the suit property is situated and as such they are well conversant with the land adjudication and demarcation process in that Section. The interested parties have claimed that they are aware and are seized of the facts surrounding all parcels of land within that section including the suit property. The interested parties have contended further that the reliefs sought by the petitioner herein are likely to affect several people who own land within Olorien Adjudication Section since the petitioner's claim is over a half of the land within Olorien Adjudication Section. The interested parties have contended that as persons who were appointed to steer the process of land adjudication in the Section, it is necessary that they join and participate in these proceedings so as to represent the interests of these people who are likely to be affected by the decision that would be made in these proceedings.

5. The interested parties' application was opposed by the petitioner through grounds of opposition dated 24th November, 2014. The application was opposed on various grounds. The petitioner contended that the interested parties have no personal or legitimate interest over and in respect of the suit property the subject of this petition and as such they have no *locus standi* in these proceedings. The petitioner contended further that Olorien Adjudication Committee is defunct and is non-existent and as such has no capacity to move the court for the orders sought herein. The petitioner contended that this petition that concern performance or execution of public duty does not require participation of the interested parties whose joinder in the proceedings is calculated merely to delay or obstruct the expeditious disposal of the petition. The petitioner termed the interested parties' application as devoid of any merit and an abuse of the court process.

6. When the interested parties' application came up for hearing on 24th November, 2014, Mr. Oguttu Mboya, advocate appeared for the petitioner, Mr. O. M. Otieno, advocate appeared for the interested parties while Miss. Chepkirui, Litigation Counsel appeared for the respondents. In his submission in support of the application Mr. Otieno reiterated the contents of the 1st interested party's affidavit in support of the application. Mr. Otieno submitted that the interested parties are likely to be affected by the outcome of this petition and as such should be allowed to participate in the same. Counsel submitted that the petitioner would suffer no prejudice if the interested parties are allowed to join these proceedings. Miss. Chepkirui on behalf of the respondents informed the court that the respondents had no objection to the interested parties being joined in this petition. For the petitioner, Mr. Oguttu relied on the petitioner's grounds of opposition and submitted that the interested parties have no interest whatsoever in the subject

matter of this petition and that in the absence of such interest the joinder of the interested parties in this petition would be an exercise in futility. Mr. Oguttu submitted further that the adjudication process at Olorien Adjudication Section was completed resulting in the issuance of titles to the property holders within the Section.

7. In the circumstances, the adjudication committee for the section which the interested parties have purported to represent is defunct. It stood dissolved with the completion of the adjudication process. Mr. Oguttu reiterated that the rules allow only people who have an interest in the subject matter of the petition to be joined in the proceedings but not any busy body such as the interested parties herein. In response to Mr. Oguttu's submission, Mr. Otieno submitted that most of the issues that were raised by Mr. Oguttu were factual and no basis was laid for the same since the petitioner did not file an affidavit in response to the application by the interested parties. Mr. Otieno submitted that the adjudication process at Olorien is not complete. He submitted that the process is still ongoing in some areas within the adjudication section. He submitted further that the interested parties are not busy bodies as claimed by the petitioner. He submitted that there is a dispute over the boundary of the suit property and as such the parcels of land in the neighbourhood would be affected by the orders sought herein by the petitioner if granted. Counsel submitted that the contribution of the interested parties herein would be invaluable on the determination of the question of the boundary of the suit property. Counsel submitted that, at this stage, the court is not supposed to concern itself with the merit of the petition but only with the issue as to whether the interested parties have sufficient interest in the subject matter of the petition.

8. I have considered the interested parties' application together with the affidavit filed in support thereto. I have also considered the petitioner's grounds of opposition. Finally, I have considered the submissions that were made before me by the advocates for the parties on 24th November, 2014 and the authorities cited in support thereof. The interested parties' application was brought under rule 7 (1) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 which provides that; **"7. (1) A person, with leave of the court may make an oral or written application to be joined as an interested party."** Under rule 2 of the said rules, an interested party is defined as **"a person or entity that has an identifiable stake or legal interest or duty in the proceedings before the court but is not a party to the proceedings or may not be directly involved in the litigation"**. What I need to decide in this application therefore is whether the interested parties have established that they are interested parties in these proceedings within the meaning set out above. The interested parties have claimed that they are members of the adjudication committee for Olorien Adjudication Section where the suit property is situated and as such they are interested in the outcome of these proceedings.

9. The interested parties have contended that the petition herein is intended to validate the petitioner's claim over 141.49 hectares of land within Olorien Adjudication Section while only 14.49 hectares of land was adjudicated and demarcated in favour of the petitioner. The interested parties have claimed that the petitioner's petition if allowed would affect several people owning land in the area. The interested parties have contended that as people who were appointed to assist in the adjudication process in the area, they are conversant with the manner in which adjudication was conducted in the area including how the suit property came into being. The interested parties have contended that their participation in this petition will help in clarifying the contentious issues surrounding the dispute herein between the petitioner and the respondents which actually revolves around the boundary of the suit property.

10. The petitioner did not file a replying affidavit. He opposed the interested parties' application mainly on points of law. There is no dispute therefore that the interested parties are members of the adjudication committee for Olorien Adjudication Section. The petitioner had contended that the adjudication process at Olorien was completed sometimes back and the committee that was presided over by the interested parties dissolved. Whether or not the adjudication process at Olorien Adjudication Section has been completed as claimed by the petitioner or is still ongoing as contended by the interested parties is a question of fact. The onus of proof lies with he who asserts. The petitioner did not swear an affidavit to challenge or contest the interested parties' claim that the adjudication process at Olorien is still ongoing and that the adjudication committee is still in place. In the absence of any evidence to the contrary, I would take it therefore that the adjudication process is still ongoing and that adjudication committee for

the area presided over by the interested parties is still in place. I do not think that the mere fact that the adjudication of the suit property was completed and a title issued is sufficient proof that the adjudication process has been completed in the entire Olorien Adjudication Section. Adjudication Committee is established under section 6 of the Land Adjudication Act, Cap. 284 Laws of Kenya. Under section 6(1) of the said Act, members of the Committee are appointed among the residents of the Adjudication Section. The functions of the committee is set out in section 20 of the Act and includes;

a. Safeguarding the interests of absent persons and persons under disability.

b. Determining disputes referred to it by the demarcation officer and,

c. Assisting generally in the adjudication process.

11. By virtue of the provisions of section 6(1) of the Land Adjudication Act aforesaid, the interested parties are residents of Olorien Adjudication Section. As I have stated above, there is no dispute that they were appointed as members of the adjudication committee for the Section. There is also no dispute that the suit property which is the subject of this petition falls within Olorien Adjudication Section and as such the interested parties participated in its adjudication and demarcation. According to the petitioner, one of the reasons that was put forward by the 1st respondent for its refusal to allow the sub-division of the suit property was, the alleged dispute over the boundary of the suit property and the neighbouring plots. It follows therefore that one of the issues that will come up for determination or consideration in this petition would be whether there is a boundary dispute involving the suit property and the neighbouring parcels of land.

12. As the persons who participated in the adjudication and demarcation of the suit property, the interested parties are privy to some information that may assist the court in the determination of some of the issues that would arise in this petition such as the one regarding the boundary of the suit property. As I have stated above, the statutory duties of the interested parties include assisting with the adjudication generally. The property in dispute in this petition was adjudicated and demarcated within the interested parties' area of jurisdiction. Since the adjudication process in the area is incomplete, I am of the opinion that the interested parties have a valid interest in this petition the outcome of which they claim may affect other parcels of land still under adjudication.

13. For the foregoing reasons, I am satisfied that the interested parties have a stake in these proceedings and as such qualify as interested parties under rule 2 of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. They are therefore entitled to be joined in these proceedings as interested parties under rule 7 of the said rules. I have considered the authorities that were cited by the petitioner. I am of the view that the same are not applicable as they relate to *locus standi* and joinder of parties in an ordinary civil suit under the Civil Procedure Rules.

14. The upshot of the foregoing is that, the interested parties' application dated 11th November, 2014 has merit. The same is hereby allowed in terms of prayers 2, 3 and 4 thereof. For the avoidance of doubt, **Moiko Oloiputa Maroi, Julius Ole Mokita and Lenkai Ole Mateta** are granted leave to join this petition as interested parties. They shall be at liberty to respond to the petition herein within 21 days from the date hereof.

Delivered, dated and signed at Kisii this 6th day of February, 2015.

S. OKONG'O

JUDGE

In the presence of:-

Mr. Bigogo h/b for Oguttu for the Petitioner

N/A for the Respondents

N/A for the interested parties

Mr. Mobisa Court Clerk.

S. OKONG'O

JUDGE