

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

CONSTITUTIONAL PETITION NO. 1 OF 2014

REUBEN LOTIM ANISOMUK & 7 OTHERS..... PLAINTIFF

VERSUS

THE DIRECTOR OF KENYA FOREST SERVICE

& 5 OTHERS DEFENDANT

R U L I N G

1. The petitioners herein filed an application dated 13.4.2015 in which they sought variation of the court's order of 26.2.2015. They also sought an order compelling the Director of Land Adjudication section to file in court all Registry Index Maps (RIM) for Kapsangar, Kapsait, Chepkono and Cheparia. They too sought an order compelling the Director Land Adjudication Section to file in court Index diagrams showing external boundaries of Tapach , Chebo, Sondany and Parua "B" adjudication sections.

2. The Petitioners contend that the court made an order that the survey fees be shared by the petitioners and the Kenya Forest Service. They argue that they cannot afford survey fees and that survey fees should be met by the Kenya Forest Service. The petitioners contend that they are apprehensive that if the surveyors go to the ground without first filing the RIMS and Index diagrams in court, they are likely to abuse the process. On the issue of fees, they contend that they paid for survey fees during demarcation and that they cannot again be asked to pay for survey fees.

3. The Petitioners' application was opposed by professor Sifuna for Kenya Forest Service on the ground that the application by the petitioners was brought to court belatedly and that it is only meant to delay the survey exercise. Professor Sifuna also argued that the Kenya Forest Service should not be made to shoulder the survey fees alone. That the petitioners should meet part of the costs. Professor Sifuna further argued that what the petitioners are seeking to do is trying to set aside a consent order when no grounds have been shown for variation of the same.

4. I have carefully considered the petitioners application as well as the opposition to the same by Professor Sifuna for Kenya Forest Service. A look at the court record shows that when this matter came up for mention on 26.2.2015, it is Professor Sifuna who suggested that there was need for surveyors to be engaged so that they can determine if there was any encroachment on to the forest land. He suggested that the costs of the survey be borne by the Kenya Forest Service and the Government . Mr. Ngumbi State Counsel agreed with him and suggested that the survey could be done in 90 days. However when the court reduced this into an order, it directed that survey fees be met by the petitioners and the Kenya Forest Service. This was clearly an error on the part of the court. A specific request had been made that the survey fees be shared between the Government and Kenya Forest Service. I therefore find that there is a good ground for varying the court's order. The court 's order of 26.2.2015 is hereby reviewed by removing the part which stated that survey fees be shared by Kenya Forest Service and the Petitioners and replacing the same with an order that the survey fees be shared between the Kenya Forest Service and the Government.

5. On the issue of filing the RIMS and index diagrams in court, I do not see the need for such an order. The Petitioners are merely apprehensive that the surveyors may abuse the process. The petitioners have no ground for their apprehension that the process may be abused by the surveyors. This is just speculation by the petitioners. The speculation has no basis I therefore reject the petitioners plea to court to compel the Director of Land Adjudication section to file RIMS and Index diagrams in Court. Costs shall be in the cause.

It is so ordered.

Dated , signed and delivered at Kitale on this 11th day of May 2015.

E. OBAGA

JUDGE

In the presence of Mr. Macharia for Mr. Naikuni for Petitioners / Applicants. Court clerk - Isabellah.

E. OBAGA

JUDGE

11.5.2015.