



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CONSTITUTIONAL PETITION NO. 2. OF 2015

IN THE MATTER OF ARTICLES 22 AND 23 OF THE CONSTITUTION OF KENYA 2010

AND

**IN THE MATTER OF PROTECTION OF THE RIGHTS TO PRIVATE PROPERTY UNDER
ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010**

**AND IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND
FREEDOMS UNDER ARTICLES 19, 20,22,23,40, AND 159 OF THE CONSTITUTION OF
KENYA 2010**

SOLOMON KIRERA MUTUNGI1ST PETITIONER

PETER MWONGERA.....2ND PETITIONER

JAMES MUTHURI M'MUNGANIA3RD PETITIONER

FREDRICK MUGAMBI MAIRUKI.....4TH PETITIONER

FRIDAH GACHERI.....5TH PETITIONER

CORNELIUS MUTHURI KIRERA.....6TH PETITIONER

ISAAC M'MBOGORI M'ITIMITU.....7TH PETITIONER

STEPHEN MWORIA8TH PETITIONER

NJAGI NGETU.....9TH PETITIONER

PATRICK GAKUUBI M'KIRINYA T/A PAKELEX DRY CLEANERS...10TH PETITIONER

PAUL GITONGA11TH PETITIONER

JUSTUS MBAYA MUGAMBI.....12TH PETITIONER

VERSUS

THE MERU COUNTY GOVERNMENT.....RESPONDENT

R U L I N G

This application is dated 13/01/2015 and seeks orders:-

1. ***THAT*** this application be certified urgent and service be dispensed with in the first instance.
2. ***THAT*** this Honourable Court be pleased to issue temporary conservatory orders to restrain the respondents, the County Minister of Lands and any other employee or agent of the Respondent from fencing off or interfere with the Petitioners rights over their leasehold properties namely L.R. No MERU MUNICIPALITY BLOCK 11/736, 719, 738, 732, 728, 725, 729, 730, 722, 735 and 737 pending the hearing and the determination of this application interparties.
3. ***THAT*** this Honourable Court be pleased to issue temporary conservatory orders to restrain the respondents, the County Minister of lands and any other employee or agents of the Respondents from fencing off or interfere with the petitioners rights over their leasehold properties namely L.R. No. MERU MUNICIPALITY BLOCK 11/736, 719, 738, 732, 728, 725, 729, 730, 722, 735 and 737 pending the hearing and determination of this petition.
4. ***THAT*** this Honourable Court be pleased to issue conservatory orders directed at the respondent to remove the bill board declaring the petitioners leasehold properties as the property of the Meru County Government pending the hearing and determination of this application and the main petition.

It is supported by the Affidavit of James Muthuri the 3rd Petitioner and has the following grounds:-

- a) ***THAT*** the petitioner are the lawfully registered owners of their respective leasehold properties and the respondent is threatening and has started to fence off and block the petitioners from accessing their private property.
- b) ***THAT*** the respondent's predecessor relinquished its rights over the petitioners leasehold properties and the respondent has no legal capacity to interfere.
- c) ***THAT*** the Petitioner's have paid dearly for their respective properties whose certificates of lease were granted by the Government of Kenya which has never been revoked or compulsorily acquired.
- d) ***The Petitioners have paid the requisite rents and rate to the respondent for the said properties and their predecessor the Municipal Council of Meru.***

On 02/11/2015 the parties proffered a Consent dated 2/11/2015 which asked the Court to adopt as its order. The Consent is in the following terms:-

“By Consent”

1. ***THAT*** the application by the Petitioners dated the 13th day of January, 2015 be allowed in terms of Prayer 3 pending the hearing and determination of the Petition.
2. ***THAT*** there be no orders as to costs.
3. ***THAT*** the Petitioners be granted 30 days leave within which to file a Supplementary Affidavit to the Petition and leave to the Respondents to respond if need be.

The Consent is duly signed by the Advocates representing the parties.

The Consent is adopted as an order of this Court.

It is so ordered.

Delivered in open Court at Meru this 2nd day of November, 2015 in the presence of:-

CC: Lilian/ Daniel

Gikunda Anampiu for Petitioners

Laichema for Respondent.

P. M. NJOROGE

JUDGE