



REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIROBI

MILIMANI LAW COURTS

CONSTITUTIONAL AND HUMAN RIGHTS DIVISION PETITION NO. 376 OF 2013

BETWEEN

STEPHEN MUNGANIA 1ST PETITIONER

ISAA MANGUSHIA 2ND PETITIONER

JOHN KAMAU 3RD PETITIONER

STANLEY MWATHA 4TH PETITIONER

RICHARD OKELLO 5TH PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION 1ST RESPONDENT

DIRECTOR OF CRIMINAL INVESTIGATIONS 2ND RESPONDENT

AND

ARTHUR MWANIKI GAKUYA 1ST INTERESTED PARTY

CHEGE MUGO T/A HARAKA TIMBER LTD 2ND INTERESTED PARTY

P.D. WACHIRA 3RD INTERESTED PARTY

RULING

1. I have given the parties the opportunity to resolve this matter but without avail.
2. I have considered the matter and in my view it arises from various land disputes concerning premises in Mutarakwa Road Jua Kali. The plots in these are subject to various suits existing in the ELC Division of this court particularly *HCCC 439 of 2013*, *HCCC 40 of 2012* and *HCCC 721 of 2006* and others which have not been identified. These cases have not been determined hence the parties are in a situation where their rights are yet to be determined conclusively by the court.
3. It is in this light that I see these proceedings. The petitioners seek orders to restrain the

respondents from arresting, summoning and or preferring criminal charges against them in relation to the matter concerning the suit properties.

4. Whereas I am alive to the fact that the Director of Public Prosecutions has the authority under **Article 157** to investigate and prosecute offences, **Article 157(11)** states that this discretion must be used in the public interest and with regard to ensuring that there is no abuse of the legal process.

5. It is not uncommon to find in the courts matters where there are land cases and criminal cases going on together but unless the underlying issues are resolved the allegations and counter allegations or criminal conduct will continue to consume the court's time and resources.

6. As a result I am inclined to exercise my jurisdiction to restrain the 1st and 2nd respondents from prosecuting and/or arresting any of the parties herein on account of the properties in dispute.

7. My reason is fortified by the fact that there are interim orders for and against the petitioners and interested parties in the High Court and whether there is disobedience of such orders, the Court should be able to take necessary action when moved appropriately.

8. In the circumstances, I make the following orders;

(i) The respondents are restrained from arresting and/or charging the petitioners and/or the interested parties and parties involved in civil disputes concerning Mutarakwa Road Jua Kali – Kariobangi South unless otherwise directed by the Court acting in the Civil Cases filed in relation thereto upon an appropriate application.

(ii) This ruling shall be brought to the attention of the Presiding judge in the ELC Division and in particular in ELC No. 439 of 2013.

(iii) The Deputy Registrar is directed to investigate the allegation contained in the letter dated 6th August 2013 from *Mutisya Ngala & Co. Advocates* and report to the Court in 21 days for directions/further orders.

(iv) There shall be no order as to costs.

DATED and DELIVERED at NAIROBI this 17th March 2014.

D.S. MAJANJA

JUDGE

Mr Kurauka instructed by Kurauka and Company Advocates for the petitioners.

Mr Orende instructed by Mbeya and Company Advocates for the 2nd interested party

Mr Ngala instructed by Mutisya Ngala and Company Advocated for the 1st and 3rd respondents.