

IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
CONSTITUTIONAL AND HUMAN RIGHTS DIVISION

PETITION NO. 462 OF 2013

(ELC. CIVIL CASE NO. 870 OF 2012)

BETWEEN

MARIA KARAKI & 13 OTHERS.....PETITIONERS

AND

ATTORNEY GENERAL AND 9 OTHERS.....RESPONDENTS

RULING

1. By a petition dated 10th October 2012, the petitioner moved the court of what they claim is a violation of their property rights under **Article 40** of the Constitution. They claim that they are entitled to the property known as Land Reference No. 5173/R which was acquired by the respondents upon de-registration of Kasarani Farmers Cooperative Society Limited.

2. This matter came up for direction on 24th September 2013 and 18th March 2014 when I directed parties to file their replying depositions and written submissions. At the hearing today, counsel for the petitioners, sought to adjourn the matter but I rejected the same. He did not appear before the court when the matter was called out at 11.25 am.

3. A perusal of the replying affidavit reveals that the petitioners have filed another case being ***Nairobi HC ELC NO. 557 of 2009*** (previously ***HCCC 537 of 2009***) between ***Machetha Kariuki and 6 others suing on their own behalf and on behalf of the representatives of Kasarani Farmers Cooperative Society v Samuel Githengi Mbugua and 10 others***. In the amended plaint dated 10th January 2010, the plaintiffs seek nullification of any subdivision and transfer of LR No. 5173/R now known as LR No. 12825 (Grant IR 35930).

4. Mr Njagi, Counsel for the 6th to 10th respondents urged the court to strike out the petition as it is an abuse of the court process as it is in essence a suit for recovery of the same property under litigation in ***ELC No. 557 of 2009*** and between the same parties and the previous suit is still pending. This position was supported by the 1st – 5th respondents who noted that the Commissioner of Lands and Registrar of Titles are parties to the previous suit.

5. I agree with the respondents that this petition cannot survive being struck out. The parties in both cases are the same and where they are not, they represent the same interest and act in the capacity of agitating proprietary rights in respect of LR 5173/R (Now LR No. 12825). The result sought to be reached in the petition is the same result in the earlier suit that is cancelling the titles issued in favour of some of the respondents. I am satisfied that all the issues raised in the petition can be raised in the earlier suit as it is one filed in the High Court with jurisdiction to adjudicate over violations of fundamental rights and freedoms.

6. The court should always be circumspect in striking out cases but this is a case where I am not in doubt

that the petition filed is an abuse of the court process. The petitioners can seek the same reliefs in the previous suit. The petition is therefore struck out with costs to the 6th to 10th respondents.

DATED and DELIVERED at NAIROBI this 1st day of April 2014.

D.S. MAJANJA

JUDGE