



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC PET NO. 12 OF 2019

KIPTONUI ARAP LANGAT.....1ST PETITIONER

KIPKOSGEI ARAP NGWOLOMET.....2ND PETITIONER

CHEPKIYOK ARAP CHESIMET.....3RD PETITIONER

VERSUS

THE NATIONAL LAND COMMISSION.....1ST RESPONDENT

THE CHIEF LAND REGISTRAR.....2ND RESPONDENT

DIRECTOR OF SURVEYS.....3RD RESPONDENT

AND

KIPKETER OLE NGOITO.....INTERESTED PARTY

RULING

By a Notice of Motion dated 10th April, 2019 brought pursuant to sections 1A 1B 3 and 3A of the Civil Procedure Act the petitioner/applicant has filed a petition also dated 10th April, 2019. In the notice of motion, the applicant seeks conservatory orders to conserve the petitioners' titles and all resultant titles with regard to Plot No. 69 Olosakwana "B" area and a conservatory order to issue in respect to the petitioners' titles to land Trans Mara/Olosakwana "B", 289,242 and 274 and all resultant titles upon completion of the adjudication and registration process.

The Notice of motion is supported by grounds found on the face of the application and the supporting affidavit sworn by Chepkoyok Arap Cheshet the 3rd petitioner. It is the petitioners case that on March 18th, 2019 he learnt that a gazette notice had been published to the effect that all people who had obtained land parcels from the family of Ledama Ole Lekoko (Plot No. 69) will lose their various parcel of land. that the petitioner and several other families numbering over 3,000 stand to be deprived of their land rights.

The petitioner further alleged that the making process and determination by the 1st respondent encapsulated in gazette notice Vol CCXI-No. 27 of 1st march 2019 at page 882 is not in conformity with sections 4 and 5 of the fair and administrative Actions Act, 2015.

The 3rd petitioner in his affidavit in support avers that the 1st Respondent declined to furnish the applicants with the alleged complaint lodged with respect to the adjudication and registration process and selectively choose to merely serve the applicants with its determination and that the same was an affront to the applicant enjoyments of rights as provided under Article 50 of the constitution of Kenya 2010.

The 3rd applicant further depones that the issues canvassed and determined under the complaint NLC/HLJ017/2017 by family members of the interested party had already been determined in petition No. 32 at the Nakuru High Court and that lodging the said complaint amounted to forum shopping.

The Applicant prays that a conservatory order be issued to conserve the petitioners' titles as they together with over 3,000 other families stand to be deprived of their rights land (property).

The 1st Respondent filed a replying affidavit on 25/6/19 and sworn by Samuel Odari who is the Deputy director, Adjudication of the 1st Respondent. he asserted that the 1st respondent is mandated under Article 67 (1) (e) of the constitution to initiate investigation on its own initiations or on a compliant into present or historical land injustices and recommend appropriate redress.

That in forturance of the above provisions section 15 (2) of the 1st Respondents Act, a historical land injustice means a grievance occasioned by a violation of right in land on the basis of any law, policy, declaration, administration practice treaty or agreement, resulted in displacement from their habitual place of residence, which occurred between 15th June, 1895 when Kenya became a protectorate under the British East African protectorate and 27th August, 2010 when the constitution of Kenya was promulgated and one which has not been sufficiently resolved and subsists upto the period specified above.

That pursuant to the above provisions the 1st Respondent constitutionary received and admitted a complaint by Kiptergeh Ole Ngortoi for Ledman Lekoto family as a historical land injustice Ref No. NLC/HLI/017/2017.

The 1st Respondent depones that parties identified as having an interest were invited to hearing which was held on the 10th May, 2018 at the 1st respondents officer grounds and that all parties were duly served with notices of the investigative which were held on 16th April, 2018 and 4th September, 2018 and therefore complied with provisions of Article 49,47,50,60,64 and 232 of the constitution of Kenya 2010.

The 1st Respondent state that after extensive investigations and parties' submissions and scrutiny of documents they produced a well-informed determination dated 7th February, 2019 and gazette vide gazette notice VOL CXXI NO. 27 of 1st March, 2019.

The 1st Respondent states that they were not aware or made known by either parties of the matter being in High Court Nakuru JR Petition No. 32 of 2011 and judgement, decree and order issued on the subject property at of the time of making of the recommendation and that both the 1st Respondent and interested party were not party to such proceedings in court.

The interested party filed a replying affidavit sworn by Kiptengech Ole Ngutoi on 20th June, 2019 producing among other things the determination by the 1st Respondent dated 7th February, 2019 in relation to a complaint lodged in respect to parcel Olesakwana B declared an adjudication section on 20th July, 1978 and that parcel 69 was recorded under the name of Ledama Ole Lokoto family members.

That due to the clashes between maasai and the Kipsigis in 1978/79 the family members of Lekano family relocated leading to other people occupying their parcel 69 and todote it has been impossible for the family to access their ancestral land. Also attached is a copy of the complaint lodged dated 20/5/2018 and a letter of receipt of the said complaint by the 1st respondent dated 27th July, 2018. The interested party seeks to have the applicants petition plus application fail as the same is unfounded.

The 2nd respondent did not file any affidavit

The petitioner/applicants filed their submissions dated 6th July, 2019.

The test for the grant of conservatory orders is now well settled. The court considers whether the applicant has an arguable case or prima facie for the claim in the petition whether the injury is threatened. Loss is irreparable and the petition if successful, would therefore be rendered a nugatory and the balance of convenience with regard to public interest concerns in the matter subject to the dispute.

The emerging principles for the grant of injunction or conservatory orders in that first the applicant must demonstrate an arguable case. In this case the petitioners as the registered proprietors have legal rights protected under section 25 and 26 of the Land Registration Act 2012.

Having perused the application herein together with the Petition and the submissions filed by the petitioners the only issue for determination is whether or not the petitioner has made out a case for grant of conservatory orders pending the hearing and determination of this petition. The dispute here is as to how the 1st respondent arrived at its determination for cancelation of the petitioners' titles and all other titles arising from parcel plot 69 as the said dispute was allegedly determined in petition 321 Nakuru High court and that the 1st Respondent should not have entertained the said complaint. It is important to note that the petitioners title to the said property is absolute and can only be impeached by following the due process of the law, since the 1st Respondent and the interested party allege that they were not parties to the said suit the issue of whether the question of historical injustice was addressed or not need to be canvased at the hearing of the petition since it has a bearing on the determination reached to by the 1st respondent.

My finding on the issue of public interest is that it would better be served by upholding the petitioners' titles until all issues as to ownership and how the titles were obtained are settled during the hearing of the petition. In the circumstance I hereby order that the status quo be maintained by all the parties and for avoidance of doubt that the conservatory order issued on 16th day of April, 2019 remains in force pending the hearing and determination of the petition.

Each party shall bear its cost.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **29th** day of **October, 2020**

Mohammed N. Kullow

Judge

29/10/2020

in the presence of:-

CA:Chuma

Mr Kilele holding brief for Nyamurongi for the petitioners

Interested party-present

N/A for the respondents