REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MALINDI

J.R MISCELLANEOUS CIVIL APPLICATION NO. 30 OF 2010

REPUBLIC.....APPLICANT

VERSUS

THE DISTRICT LAND ADJUDICATION OFFICER TANA DELTA DISTRICT.....1ST RESPONDENT

THE COMMISSIONER OF LANDS.....2ND RESPONDENT

PAUL MARIGA AND 192 OTHERS.....EX-PARTE APPLICANTS

J U D G M E N T

Introduction:

1. The 193 *Ex-parte* Applicants (the Applicants) were granted leave by this court to commence Judicial Review proceedings against the Respondents.

2. The substantive motion dated 31st December, 2010 is seeking for the following Judicial Review orders;

> **(a) THAT an order of Mandamus do issue to compel the District Land Adjudication Officer, Tana Delta District and the Commissioner of Lands to cause their decision to deny allocating the applicants their parcels of land they are owning in Kipini Settlement Scheme – Scheme 879 Tana Delta District and cause to deliver it for quashing.**
>
> **(b) THAT an order of certiorari do issue to quash the said decisions made by the District Land Adjudication Officer Tana Delta District and the Commissioner of Lands.**
>
> **(c) That costs be provided for.**

3. The Applicants' Application is premised on the grounds that the Respondents allocated the Applicants' land to other people who were not staying or living on the land thereby denying the them their parcels of land in Kipini Settlement Scheme – Scheme 879 (the suit property) and that the Government has now sought to sub-divide the land and issue title deeds to all residents in the scheme.

The Applicants' case

4. According to the 1st Applicant's Verifying Affidavit, he was authorized by the other 192 Applicants to swear the Affidavit on their behalf.

5. The Applicants deponed that they are among the people who were to benefit by being allocated and issued with title deeds in respect to the portions of land within the Kipini Settlement Scheme; that the government appointed the 1st Respondent to survey and demarcate all areas in Kipini Settlement Scheme with a view of issuing to the residents with allotment letters and that the 1st Respondent held a meeting with all the residents and that it was agreed that the land within the scheme was to be allocated according to what each resident was occupying.

6. However, it was deponed, when a list of the beneficiaries was released, the Applicants' names were missing and the Respondents went ahead and issued letters of allotment to undeserving people.

7. It is the Applicants' case that the adjudication process was not done openly and that some places like Shauri Moyo have been excluded from adjudication process on the ground that the area is reserved for government officials and rich people.

The Respondents' case

8. The Tana Delta District Land Adjudication officer swore a Replying Affidavit and deponed that the Applicants never owned land in the Kipini Settlement Scheme in the Tana Delta District and that the land in question was owned by the Settlement Fund Trustees.

9. It is the 1st Respondent's deposition that a vetting sub-committee was elected at the local level comprising a member from each village in the scheme in line with the Government directive. In addition, it was deponed, the village Headman of each village was involved in the identification of the genuine squatters.

10. According to the 1st Respondent, the Applicants were vetted by the sub-committee and it was on the basis of the said vetting that they were not allocated any land in the Scheme.

11. For one to be allocated land in the Scheme, it was deponed, one had to establish that: he has a permanent structure or development on the land occupied; he has permanent crops on the land; whether the squatter had other land; the length of time the person had continuously lived on the land and the size of the family on the land.

12. According to the 1st Respondent, the list of people annexed on the Verifying Affidavit was merely a working list of all the claimants who were later subjected to vetting by the sub-committee and that the Applicants were not arbitrarily or unjustly denied the land they are claiming.

13. The 1st Respondent finally deponed that it is normal to plan for the inclusion of public amenities in any scheme and that plot numbers 609 and 640 were reserved for a trading centre and a primary school respectively.

The Applicants' Further Affidavit

14. The 1st Applicant, on his own behalf and on behalf of the other 192 Applicants deponed in the Further Affidavit that the vetting sub-committee counted them and visited them on their respective plots and that as squatters in Kipini, they are poor people who entirely depend on farming and cannot afford to have permanent structures on the land.

15. The Applicants annexed on their Further Affidavit the photographs showing what they stated was their houses and land.

16. The Applicants filed another Affidavit of 16th June, 2011 in response to the Respondents' Supplementary Affidavit filed on 9th June, 2011 which I have considered.

17. Due to the nature of the claim by the Applicants, this court, *suo moto,* directed for viva voce evidence to be adduced alongside the affidavit evidence.

The Applicants' viva voce evidence

18. The 1st Applicant, Pw 1, informed the court that he started staying in Kipini in the year 2003 and that he knew all the Applicants who are also residents of Kipini. It was his evidence that the Respondents took away his land and gave it to somebody else. It was the evidence of Pw 1 that when the Kipini Settlement Scheme was established in the year 2007 he was already occupying the land he is claiming and which was allocated to him by the village elders.

19. Having been allocated the land by the village elders, he cleared the bush, put up a home and planted crops like coconuts and mangoes.

20. It was the evidence of Pw 1 that the first survey that was done by the Ministry of Lands within the Scheme was in the year 2007. During the said survey, the officials from the Ministry of Lands were accompanied by the headmen of the various villages together with other committee members. They asked him for his identity card and if he had a wife and children which he answered in the affirmative.

21. Pw 1 further stated that the said officials from the Ministry, using an electronic gadget, identified the boundaries of his land and recorded the details. However, the District Officer later on called them for a meeting and informed them that the vetting process had been cancelled because it had been realised that the people who were claiming for land in the Scheme were more than those who were residing therein.

22. According to the evidence of Dw 1, the issue of vetting the squatters in the Scheme went into a lull until the year 2010 when the second vetting process commenced. The process took the same format as the first one. It was his evidence that the committee members visited him where he was staying, took a copy of his identify card, identified the extent of his land and noted the developments he had made on the land.

23. Pw1 informed the court that all the Applicants went through this vetting process. A meeting was then held in the year 2011chaired by the D.C who informed them to proceed to the D.O`s office and check on the names of the people who had been allocated land within the Scheme.

24. On checking the list, Pw 1 realized that his name was not amongst the 1,009 beneficiaries. The list of people who were allocated land in the scheme was produced in evidence as PEXB1.

25. It is upon perusing PEXB 1 that the Applicants realized that their names were missing and the time within which they were supposed to file an appeal had lapsed. Pw 1 produced the list of the names of the people who were entitled to land in the scheme but were not allocated as PEXB2.

26. Pw 1 denied the contents of the vetting report annexed on the Replying Affidavit. According to Pw 1, he has a house on the land he is claiming. He denied that he was not staying with his mother as at the time of vetting as alleged in the report. Pw 1 produced the photographs showing his house and family as PEXB3.

27. Pw 1 stated that his mother was allocated plot number 923. However, according to Pw 1, that land belongs to his mother and father.

28. Pw 1 stated that he knows that Applicant number 3 stays in Shauri Moyo and not in Witu II as claimed by the 1st Respondent.

29. It was the evidence of Pw 1 that Applicant number 10 stays in Kipini, Mtangani village. He does not stay with this father as alleged in the 1st Respondent's vetting report.

30. It was the evidence of Pw 1 that Applicants number 14, 24, 39 and 59 are all known to him and they stay in the Scheme, and so are Applicants number 42 and 43. Although the two Applicants were allocated land in the Scheme, according to the letter of allotment they were only allocated 2.0Ha.

31. Pw 1 finally stated that he was allocated 10 acres of land within the settlement scheme by the wazees.

32. In cross-examination, Pw 1 stated that plot number 923 belongs to his mother. Pw 1 confirmed that there was a vetting committee in every village and that every village was represented by one member. It was the evidence of Pw 1 that his village was represented by Mr. Mohammed Sheikh who was present during the vetting process.

33. Pw 1 denied that during the vetting process, he was staying in Mr. Christopher's house, his uncle.

34. According to Pw 1, it is his mother who called him in the year 2003 and told him that there was land in the settlement scheme. That is when he travelled to Kipini from Mombasa and was allocated the land by wazees.

35. Although Pw 1 was aware that the land in question belonged to the Government, he was not aware how the Government acquired the said land or the acreage of the whole land. Pw 1 was also not aware of the number of squatters who were staying on the land.

36. It was his evidence that the first vetting was cancelled because it was muddled up by corruption allegations and that the second vetting was to address that problem.

37. The evidence of PW2, PW3, PW4, PW5 and PW6 was similar to that of PW1 on the issue of how the first and 2nd vetting was conducted within the Scheme and how they came to occupy the pieces of land they are claiming within the Scheme.

38. All the five Applicants testified that they have been living with their families on the land situated in the Kipini Settlement Scheme and that they are entitled to the land. They all disputed the contents of the vetting report that was attached on the Replying Affidavit.

39. PW2-PW6 produced photographs to show their respective houses and families. It was the evidence of PW2-PW6 that the people who were claiming land in the settlement scheme were many. None of the Applicants however knew the extent of acreage of the Settlement Scheme or how the same was acquired by the government.

40. PW2-PW6 stated that the headmen of their respective villages were amongst the people who conducted the vetting exercise. It was the evidence of PW2 - PW6 that they should be allowed to continue staying in their portions of land.

The Respondents' viva voce evidence

41. The Tana River Principal Land Adjudication and Settlement Officer, DW1, informed the court that he was deployed in Tana River in the year 2006.

42. It was the evidence of DW1 that the Settlement division within the Ministry of Lands deals with the land reserved by the Commissioner of Lands pursuant to the provisions of the Agriculture Act (repealed) or land purchased by the Settlement Fund Trustees (SFT).

43. According to DW1, the Kipini Settlement Scheme was purchased by SFT in 1998 from a company known as Nairobi Ranch. As at the time of the purchase, the land was known as L.R. NO.12217 measuring 13,000 acres. DW1 produced a letter dated 17th August 1998 which is a communication

between the Director of Land Adjudication and Settlement and Nairobi Ranching Company Limited in respect to the purchase of L.R. NO.12217 which was produced as D EXB1.

44. It was the evidence of DW1 that the suit property was purchased by SFT for the purpose of settling people who were to be moved from the Tana River Primate Reserve. The first phase of relocation was in respect to 247 families who were settled on 6,000 acres. That Settlement Scheme was known as Witu II and the relocation of people to the Scheme was funded by the World Bank under the Kenya Wildlife Service relocation programme.

45. The second phase of resettlement of people on the remaining 7,000 acres was delayed due to the lack of funds. DW1 informed the court that people started invading the land for speculative purpose. In the year 2006, the Government, together with the Provincial Administration agreed to carry out a squatter audit exercise to establish where the people who had invaded the 7,000 acres had come from and their number.

46. DW1 stated that the Government agreed to resettle the people who were already on the land that was named Kipini Settlement Scheme. DW1 informed the court that the Government decided that each squatter was to be allocated 5 acres and a committee was formed to identify the genuine squatters.

47. The evidence of DW1 was that the Scheme was divided into four blocks and each block had committee members duly elected by the squatters. DW1 narrated to the court the list of the members of each of the four blocks.

48. According to DW1, the committee members for each of the blocks were appointed by the squatters.

49. DW1 stated that a perimeter survey was then done and the District Physical Planner thereafter prepared a scheme plan for the 5 acre plots and other public utilities like roads, schools, hospitals amongst others in compliance with the provisions of the Physical Planning Act. After the scheme plan was prepared, 1,252 plots were created. The maps were produced as DEXB 2 and 3.

50. It was the evidence of DW1 that 9 plots were reserved for religious purposes, 6 plots were considered to be wetlands, 3 plots were reserved for boreholes, 1 plot was to be used to put up a hospital while two plots were reserved for a school and a market respectively.

51. The evidence of DW1 was that the Part Development Plan for the scheme was then advertised by affixing it at the County Council Offices and the Ministry of Lands. The PDP was also published in gazette notice no.10801 of 2nd November 2007. According to DW1, none of the Applicants raised any objection when the scheme plan was advertised.

52. DW1 informed the court that at the expiry of 60 days from the date of the advertisement, the settlement officers, in the company of the surveyors and the committee members went to the ground and started geo-referencing each squatter with the use of the Scheme Plan (the PDP) from 19th April 2010 until 21st May 2010.

53. It was the evidence of DW1 that during the identification of the squatters, it was discovered that some of the claimants fell outside the boundaries of the Settlement Scheme while others were within the plots reserved for public utilities and wetlands.

54. A criterion on how to identify the genuine squatters had been developed in accordance with the government policy. This criterion included evidence of development on the land, and evidence that one has continuously lived on the parcel of land with his family. The criterion, according to DW1, was explained to the squatters in a baraza that was held on 21st April 2010.

55. The other criterion that had to be complied with, according to DW1, was that 60% of the people to be resettled had to be residents of the District. In this case, the residents of the district were the Pokomos,

Ormas, Wardis, Warta, Weboris and Bajunis. A formula was then formulated to come up with how several ethnic interests had to be balanced during the allocation of the land to the squatters. The formula that was agreed upon on how the allocation was to be done was as follows: Kikuyus 25%, Pokomos 22%, Giriamas 17%, Kambas, Merus, Luos and others 13% and Bajunis 22%.

56. The evidence of DW1 was that the final list of the people they considered to be genuine squatters after the vetting process was forwarded to the Director of Land Adjudication and Settlement who approved it with the concurrence with the then Minister for Lands. That is when the letters of allotment were issued to the squatters.

57. DW1 informed the court that although they found 1,751 people on the ground, it is only 1,252 people who were settled. It was his evidence that while on the ground, they realised that some of the claimants already had land somewhere else or were occupying public utilities.

58. DW1 then took the court through the vetting report which explains why each of the 193 Applicants was not allocated land within the scheme.

59. DW1 denied that the people who were allocated land were outsiders and that none of the Applicants ever complained after they finished the exercise.

60. DW1 produced the list of the people that qualified to be allocated land in the Scheme. According to DW1, the list was signed by the Locational Committee Chairman, the Secretary, the District Commissioner and himself. He produced the list as DEXB 5. It was the evidence of DW1 that the Commissioner of Lands has since issued letters of allotment to all the people on that list.

61. In cross-examination, DW1 stated that he was present in five villages when the vetting exercise commenced and that the 1st Applicant represented his uncle Christopher. DW1 denied that some of the village elders' individual families were allocated land in the Scheme.

62. It was the evidence of DW1 that each individual was allocated land according to the Scheme plan and that ten (10)Applicants are part of the people who are on the list of beneficiaries.

63. One of the residents of Kipini, DW2, informed the court that the land in question is owned by the Government after it purchased it to settle people from Tana River.

64. According to DW1, the DC called a meeting in the year 2006 and informed the residents that the government had agreed to allocate the 7,000 acres piece of land to the residents.

65. It was the evidence of DW2 that each village had a representative and a committee of 11 people who were selected for each of the four blocks. DW2 represented Kipini, Daniel Charo represented Matangani, Margaret Ngira represented Ziwani while Gatundu was represented by John. Pauline Mande represented Shauri Moyo and Bora Imani, Mohammed sheikh represented Kaloleni, Ngombo Tinga represented Umandeni while Charles Nyawira represented Kibaoni

66. It was the evidence of DW2 that the committees also incorporated the village elders of their respective areas who assisted in the identification of the genuine squatters. Out of the 1,751 people on the ground, they identified 1,251 as genuine squatters.

Submissions

67. The Applicants' counsel submitted that if each person who was staying on the land was considered and each was allocated 3 acres, then the land in question would have been adequate for everyone; that the decision to allocate 5 acres to each squatter is the root cause of the current problem and that that decision is not supported by the directive from the Ministry.

68. According to counsel, this court should intervene and help the Applicants to be allocated land of their

own; that the Applicants have developed the land in question and that the Applicants acquired their land by sheer hard work.

69. On the other hand, the Respondents' counsel submitted that the Applicants have confused land adjudication which is ascertainment and recording of rights and interest in Trust land under the Land Adjudication Act with land settlement. Counsel submitted that the suit property is land that is governed by the provisions of the Agriculture Act and not Land Adjudication Act.

Analysis and findings

70. This is an Application for an order of *mandamus* and *certiorari* filed pursuant to the provisions of Order 53 of the Civil Procedure Rules.

71. The Application is principally supposed to be heard and determined by way of affidavit evidence. However, the court, invoking its inherent jurisdiction, allowed parties, in addition to the affidavits on record, to tender viva voce evidence in view of the serious allegations that had been raised by the Applicants in respect of the allocation of the 7,000 acres within the Kipini Settlement Scheme.

72. Indeed, the issue of allocation of public land in Tana River and Lamu Counties has in the recent past been volatile and one that has to be addressed with circumspection and after due consideration of all the available evidence. However, the law relating to the issuance of the writs of mandamus and certiorari has to be complied with and applied notwithstanding the emotive question of land arising in those two regions.

73. The efficacy and scope of an order of mandamus and prohibition was set out by the Court of Appeal in the case **Kenya National Examination Council –Vs- Geofrey Gathenji Njoroge & 9 others, Civil Appeal No. 266 of 1996**. The court quoted with approval **Halsbury's Laws of England, 4th edition, volume 1** at page 111 from paragraph 89 as follows:

> **"The order of mandamus is of a most extensive remedial nature, and is, in form, a command issuing from the High Court of Justice, directed to any person, corporation or inferior tribunal, requiring him or them to do some particular thing therein specified which appertains to his office and is in the nature of a public duty……. The order must command no more than the party against whom the application is made is legally bound to perform. Where a general duty is imposed, a mandamus cannot require it to be done at once. Where a statute, which imposes a duty leaves discretion as to the mode of performing the duty in the hands of the party on whom the obligation is laid, a mandamus cannot command the duty in question to be carried out is a specific way. If the complaint is that the duty has been wrongly performed, i.e that the duty has not been performed according to law, then mandamus is a wrong remedy to apply because, like an order of prohibition, an order of mandamus cannot quash what has already been done…"**(emphasis mine).

74. For one to be granted an order of mandamus by the court, one has to show that he has a legal right and the Respondents have a legal duty to perform.

75. On the other hand, the writ of certiorari deals with the legality of decisions of bodies and persons. As was held by the Court of Appeal in the case of **Mexner & Another –vs- AG (2005) 2 KLR 189**, a decision of a body or person can be upset through certiorari on a matter of law if on the face of it, it was made without jurisdiction or in consequence of and error in law.

76. The case of **Pastoli Vs Kabale District Local Government Council & Other (2008) 2 EA 300** quoted with approval the case of **R V Commissioner of Lands (2013) eKLR** where it was held as follows:

> **"In order to succeed in an application for judicial review, the applicant has to show that the decision or act complained of is tainted with illegality, irrationality and procedural**

impropriety..... Illegality is when the decision making authority commits an error of law in the process of taking or making the act, the subject of the complaint. Acting without jurisdiction or ultra vires, or contrary to the provisions of a law or its principles are instances of illegality.....irrationality is when there is such gross unreasonableness in the decision taken or act done that no reasonable authority, addressing itself to the facts and the law before it, would have made such a decision...Procedural impropriety is when there is a failure to act fairly on the part of the decision-making authority in the process of taking a decision. The unfairness may be in non-observance of the rules of justice or to act with procedural fairness towards one to be affected by the decision. It may also involve failure to adhere and observe procedural rules laid down in a statute or legislative instrument…."

77. The above pronouncement by the Court of Appeal summarises instances where an order of certiorari may issue.

78. It is not in dispute that the government through the then Settlement Fund Trustees (SFT) purchased L.R.No.12217 from a company known as Nairobi Ranching Company in 1998. It was the evidence of the Tana Delta District Land Adjudication and Settlement Officer that the said land was to settle the people who were to be displaced from the Tana River Primate Reserve. This position was collaborated by a resident of Kipini, DW2 and by the letter dated 17th August 1998 authored by the then Director of Land Adjudication and Settlement and addressed to the Director of Nairobi Ranching Company Ltd.

79. The total acreage that was purchased was 13,000 acres. According to DW1, the people who were moved from Tana River Primate were settled on 6,000 acres of the land while 7,000 acres remained unoccupied. However, people from within and without invaded the said 7,000 acres.

80. Indeed, the 1st Applicant informed the court that before 1999, he was working in Mombasa. However, in 1999, he was informed by his mother that land was available in Kipini and that is how he ended up there.

81. It is therefore not in dispute that before the government acquired the land in 1999, none of the Applicants were staying on the suit property. The suit property was private land before the said purchase.

82. Although the first vetting exercise to identify the people who deserved to be allocated land on the 7,000 acres piece of land, otherwise known as Kipini Settlement Scheme, was done in the year 2007, that process was cancelled because of impropriety. The exercise commenced afresh in the year 2010 after all the residents were informed in a public baraza by the District Commissioner of what was required for one to be considered for the land.

83. According to the evidence produced in this court, one had to show that he had continuously stayed on the portion of land that he was claiming and the developments made thereon.

84. The evidence that was produced in this court was that before the vetting process commenced, a Part Development Plan for the entire area was prepared by the District Physical Planner. It was agreed that each family was to be allocated not more than 5 acres of the land that it was occupying. The said PDP also provided for public utilities and was prepared pursuant to the provisions of the Physical Planning Act.

85. Section 16 (1) of the Physical Planning Act provides that a Physical Development Plan may be prepared by the Director with reference to any Government land, trust land and private land for the purpose of improving the land and providing for the proper physical development of such, and securing suitable provision for transportation, public purposes, utilities and services.

86. That is what the Respondent did when it prepared the scheme plan for the Kipini Settlement Scheme. That plan was produced as DEXB 3. The said Settlement Scheme was published in the gazette notice as required under the law. The scheme plan created 1,252 plots with some plots reserved for public utility purposes.

87. Although a total of 1,751 people claimed during the vetting process that they were squatters on the suit property, it is only 1,252 who could be settled on the land. The evidence of the Applicants was that they are genuine squatters and that had the acreage of the land that was being allocated been reduced to 3 acres per family, then they would have all been settled.

88. The Applicant did not dispute the Defendant's evidence that all the villages in the scheme had a committee selected by the squatters to identify the genuine people to be allocated land in the Scheme. It was also not in dispute that the village elders of each village were also co-opted in the selection committees and that the committees went around and geo-referenced the squatters who were on the ground.

89. The Defendant annexed on the Replying Affidavit a report which gives the reasons why the Applicants were not allocated land in the Scheme. The reasons were varied and ranged from the failure by the Applicant to show the developments they had made on the land, existence of other parcels of land in their names, their other family members having been allocated land either in the same Scheme or in Witu II Settlement Scheme amongst other reasons. Ten of the Applicants are said to have been allocated land in the Scheme and should not be complaining.

90. The Defendant produced in evidence a list of about 1,275 people who succeeded in being allocated land in the Kipini Settlement Scheme. The list is signed by the Locational Committee chairman and the secretary respectively. It was the Respondent's evidence that the letters of allotment of those individuals have since been issued and they are awaiting the issuance of title deeds.

91. The evidence by the 1st Respondent was that the issue of balancing the different ethnic communities staying in the scheme also had to be considered. It was the evidence of DW1 that people were settled as follows: Kikuyus 25%, Pokomos-22%, Giriamas 17%, Bajunis- 22%, Kambas, Merus, Luo's and others 13%.

92. Before the enactment of the Land Act, the law that mandated the Government to establish Settlement Schemes was the Agriculture Act. Other than providing for the establishment of the Settlement Fund Trustees and its jurisdiction, the Act did not provide how people were supposed to be identified for the purpose of being settled by SFT.

93. The law did not impose any obligation on the State or SFT to settle all people who were found staying on government land. However, as a policy decision and practice, people who were found on land that was meant to settle the landless were given the first priority during the identification of beneficiaries of land purchased by SFT for that purpose.

94. The practice that was developed by SFT in settling the landless people under the previous regime was as follows: the Settlement Fund Trustees would acquire land for settlement then prepare a scheme plan. The process of identifying beneficiaries and verification of squatters would then commence, followed by allocation of land by issuance of letters of offer. The land would then be charged by SFT. The beneficiaries were either required to make full payment or at least 10% of the required amount. The title document would then be prepared in favour of the beneficiary upon making the full payments required by the SFT.

95. The above practice, as I have already stated, was not governed by any law. It therefore follows that the Respondents cannot be compelled by an order of mandamus to issue to the Applicants the letter of allotments or any other documents in respect of the land they are claiming considering that the Respondents were not under a legal duty to allocate the Applicants land in the year 2010. An order of mandamus, as I have already stated, can only compel a public servant to do that which the law requires him to do. The court cannot compel such a person to do that which the law has not provided for or where he has discretion.

96. The Applicants have also asked the court to quash the decision of the Respondents of refusing to allocate them land within Kipini Settlement Scheme- Scheme 879 Tana Delta District.

97. That order can only issue if the Applicants prove that the Respondents, in refusing to allocate them land acted illegally, irrationally, unprocedurally or without jurisdiction.

98. The evidence before this court shows that the Respondents, through SFT acquired the suit property for the purpose of settling the landless people. As at the time of the acquisition, none of the Applicants was staying on the land. The Applicants only occupied the land after the same was purchased by SFT from Nairobi Ranch Company Limited.

99. The Respondents came up with the criteria on how they were going to identify the genuine squatters and in fact appointed a committee in every village to conduct that exercise. The squatters were involved in the establishment of the said committees, which included the headman of every village.

100. The Respondents' decision to form those committees, whose membership was constituted by the squatters themselves, to identify the genuine squatters cannot be said to have been illegal, irrational unprocedural or ultra vires. Indeed, the involvement of the committee members and the village elders shows that the Respondents acted fairly and the rules of natural justice were adhered to when each and every person who was claiming land in the Scheme was interviewed.

101. The whole process was participatory and the reasons as to why the Applicants did not succeed in their quest to be allocated land in the Settlement Schemes was prepared and given by the committee members.

102. The Government, through SFT, having acquired the suit property, it was entitled to decide the acreage that each squatter was to be allocated. The SFT was not under any obligation to reduce the acreage of the land that it had decided to allocate to the squatters from 5 acres to 3 acres for the purpose of benefiting everybody who claimed land in the scheme.

103. I am satisfied, on the basis of the evidence placed before me, that the squatters could only be settled in the 1,252 plots captured in the Settlement Scheme that was duly gazetted. The Respondents were not under any legal obligation to settle all the people who were claiming the land in the Scheme. In any event, it was wrong for the Applicants and the beneficiaries to have invaded the suit property in the first place after the same was purchased by SFT.

104. Having missed out on land in Kipini Settlement Scheme, It is upon the Applicants, pursuant to the provisions of the Land Act, to petition the National Land Commission to settle them on any other land that may be acquired or set aside by the National Land Commission for that purpose. Their right to access to land cannot be achieved by denying others of the same right.

105. No evidence was placed before me to show that the people who were allocated land in the suit property are rich people who do not deserve to be allocated land or did not meet the criteria that was set up by the Respondents for the allocation of the land in the Scheme.

106. For the reasons I have given above, I find that the Applicants' Notice of Motion dated 31st December 2010 is unmeritorious and the same is dismissed with no order as to costs.

Dated and delivered in Malindi this **5th** day of **September,** 2014.

O. A. Angote

Judge