



REPUBLIC OF KENYA

IN THE HIGH COURT

AT EMBU

Petition 7 of 2011

IN THE MATTER OF ARTICLES 62(2), 63(1), (2), (3) and (4) OF THE CONSTITUTION OF KENYA

AND

THE LAND ADJUDICATION ACT, CAP.284 LAWS OF KENYA

AND

IN THE MATTER OF CONTRAVENTION AND/OR APPREHENDED CONTRAVENTION OF MBEERE COMMUNITY RIGHTS AND INTEREST IN LAND IN ALL THAT TRUST LAND KNOWN AS MWEA WITHIN THE AREAS KNOWN AS KARABA, WACHORO, RIAKANAU, GATEGI AND MAKIMA UNDER ARTICLES 62(2), 63(1), (2), (3) AND (4) OF THE CONSTITUTION OF KENYA

BETWEEN

MBEERE ELDERS ADVISORY WELFARE GROUP1ST PETITIONER

DAVID MITI NJUKI2ND PETITIONER

NJERU BANDA 3RD PETITIONER

ESTON NYAGA NTHIGA 4TH PETITIONER

SERAPHINO NGARI 5TH PETITIONER

AND

THE ATTORNEY GENERAL 1ST RESPONDENT

COMMISSIONER OF LANDS 2ND RESPONDENT

DIRECTOR OF LAND ADJUDICATION 3RD RESPONDENT

CHIEF LAND REGISTRAR 4TH RESPONDENT

DISTRICT LAND REGISTRAR

MBEERE DISTRICT (SOUTH) 5TH RESPONDENT

THE COUNTY COUNCIL OF MBEERE 6TH RESPONDENT

R U L I N G

I had given directions and granted Leave to the Attorney General on behalf of the 1st – 5th Respondents to file their replying affidavit within 14 days.

However Mr. Kamunde has opposed this grant of Leave to the Respondents for what he terms deliberate delays. He submits that the Attorney General was served last year and has not filed any replying affidavit inspite of the several meetings he has had with them. In other words Mr. Kamunde wants this Court to bar the five Respondents from filing a reply to the matter pending herein.

I do note from this record that on 25/4/2012 Mr. Okwaro (then for 6th Respondent) and the Petitioners Counsel agreed to file written submissions. I gave a mention date for 4/6/2012. On 4/6/2012 no Ruling date would be given because the Petitioners had not filed submissions. Mr. Kamunde asked for 7-10 days to comply and a mention date taken for today. Even as the matter is before me for mention today the Petitioners have not filed their submissions the reason being that Mr. Njaragua has just come on record and needs to peruse the record. The Attorney General represents five Respondents who are alleged to be committing the acts complained of. They have filed Grounds of opposition to the Petition. If anything these are the officers who have to explain to this Court if the accusations leveled against them are true why they are doing them.

If this Court accommodates the Petitioners when they are not working within the time lines given by the said Court then the other parties ought also to be accommodated under the same breath. This is the only way all issues will be brought on board and the matter is decided on merits. I therefore find no merit

in the objection, and grant the Attorney General 14 days within which the 1st – 5th Respondents will file and serve their Replying affidavits. The 6th Respondent and Petitioners will have corresponding Leave to file and serve any reply within 7 days. Thereafter the parties to file and exchange written submissions. Counsel for Petitioners to be the 1st to file and serve before the others can respond. Mention on 24/9/2012 to confirm compliance. The earlier orders issued in the morning are set aside.

DATED, SIGNED AND DELIVERED AT EMBU THIS 2ND DAY OF JULY 2012

**H.I. ONG'UDI
JUDGE**

In the presence of:

All 3 Counsels

Njue – C/c