



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MILIMANI

ELC. PETITION NO. 12 OF 2019

IN THE MATTER OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF AN ALLEGED INFRINGEMENT OF THE PETITIONERS

RIGHT TO PRIVACY GUARANTEED BY THE PROVISIONS

OF ARTICLE 31 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF AN ALLEGED INFRINGEMENT OF THE PETITIONERS

RIGHT TO PROPERTY GUARANTEED BY

ARTICLE 40 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF A DENIAL OF THE PETITIONERS RIGHT

TO A FAIR ADMINISTRATIVE ACTION GUARANTEED BY THE

PROVISIONS OF ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF AN ALLEGED INFRINGEMENT OF THE PETITIONERS

RIGHT TO A FAIR ADMINISTRATIVE ACTION GUARANTEED BY

THE PROVISIONS OF ARTICLE 47 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF AN ALLEGED INFRINGEMENT OF THE PETITIONERS

RIGHT TO EQUAL PROTECTION AND EQUAL BENEFIT

OF THE LAW GUARANTEED BY THE PROVISIONS OF

ARTICLE 27 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE FAIR ADMINISTRATIVE

ACTION ACT NO 4 OF 2015

AND

IN THE MATTE ROF THE PROVISIONS OF SECTION 24 OF THE
NATIONAL POLICE SERVICE ACT CAP 84 LAWS OF KENUYA

AND

IN THE MATTER OF SECTIONS 90 AND / OR 91 AND/OR 96 (B)
AND/OR 339(1) OF THE PENAL CODE CAP 63 LAWS OF KENYA.

BETWEEN

MONIKA WANGUI NJIHIA.....PETITIONER

AND

JOSEPH KOMU MWANGI.....1ST RESPONDENT

JOSEPH KAMAU MBAGUA.....2ND RESPONDENT

SIMON NDUNGU NGUMI.....3RD RESPONDENT

MARY WANJA MEMIA.....4TH RESPONDENT

PATRICK MEMIA WANJA.....5TH RESPONDENT

SIMON NJOROGE WANJIKU.....6TH RESPONDENT

EDWARD INYANJE KHAYAH.....7TH RESPONDENT

MACHARIA CHEGE.....8TH RESPONDENT

THE O.C.S KIAMUMBI POLICE STATION.....9TH RESPONDENT

THE NAIROBI CITY COUNTY

POLICE COMMANDER.....10TH RESPONDENT

THE ATTORNEY GENERAL.....11TH RESPONDENT

RULING

1. This is a Ruling in respect of a Notice of Motion dated 4th March 2019 in which the Petitioner/Applicant seeks an order to mandamus to issue compelling the 9th Respondent to charge the 1st to 8th Respondents for the criminal offence of forcible detainer.
2. The Applicant had filed a petition against the Respondents and contemporaneously filed this application. The Applicant was then acting in person but she later engaged services of an advocate.
3. On 27th May 2019, the Court gave directions to the Respondents to file their response to the Applicant's application. As at 26th June 2019 it is only the 8th to 11th Respondents who had filed a replying affidavit to both the notice of motion and the Petition. The 1st to 8th Respondents were given leave to file their replying affidavits by close of business on 26th June 2019. The Court then directed parties to put in written submissions in respect of the notice of motion.
4. The Applicant filed her submissions on 6th August 2020 through her advocates. The 9th to 11th Respondents had already filed their submissions on 23/12/2019. The 1st to 8th Respondents filed their submissions on 13th August 2020.

5. The Applicant contends that she together with eight others are the registered owners of LR No.209/12896. She contends that the 1st to 8th Respondents have invaded the land and have remained on the same. She has reported the invasion to Kiamumbi Police Station but the Police have failed to arrest and charge the 1st to 8th Respondents with the offence of forcible detainer.

6. There is no evidence that the 1st to 8th Respondents filed any replying affidavit. When I asked my court assistant to ask for a replying affidavit from their counsel, the court assistant was given a copy of a replying affidavit which was not commissioned. It is therefore clear that no replying affidavit was filed by the 1st to 8th Respondents.

7. The 9th to 11th Respondents opposed the Applicant's application based on a replying affidavit filed on 21st June 2019. The 9th to 11th Respondents contend that the Notice of Motion is an abuse of the process of the Court. The 9th to 11th Respondents contend that the officers from Kiamumbi police station have not refused to act on the Applicant's complaint.

8. The Deputy Officer Commanding Police Station (OCS) Kiamumbi Police Station narrated the steps which were taken following the Applicant's complaint to the station. The Police officers visited the disputed property and asked the disputants to come to the Police Station. The Applicant and her group produced a title whereas the 1st to 8th Respondents said they were sons and daughters of the original Kamuthi Farmers Company Limited shareholders and were therefore beneficial owners of the suit property.

9. The Police then took further steps to go to the lands office to verify the title by the Applicant and her group. The lands officials told the officers that they were in the process of looking for the deed file so that they could ascertain the ownership claims. The Police then forwarded their report file to the office of the Director of Public Prosecutions, Kiambu who advised that there was no sufficient evidence to charge the 1st to 8th Respondents with the offence of forcible detainer.

10. I have carefully considered the Applicant's application as well as the opposition to the same by the 9th to 11th Respondents. I have also considered the submissions by the parties herein. As I said before in this ruling, the 1st to 8th Respondents did not file any replying affidavit. Their submissions do not even touch on the application in issue. They address the Petition. However, be that as it may, the only issue for determination is whether an order of mandamus should issue compelling the police to arrest and charge the 1st to 8th Respondents.

11. The Applicant wants the 9th Respondent compelled to arrest and charge the 1st to 8th Respondents with the offence of forcible detainer. The Deputy OCS, Kiamumbi Police Station has demonstrated that they did investigations and forwarded their file to the office of the Director of Public Prosecutions, Kiambu who advised that there was no sufficient evidence to charge the 1st to 8th Respondents as the file in the lands office was yet to be reconstructed and ownership claim verified. The disputants were asked to file civil proceedings where evidence will be adduced. There is therefore no basis upon which this court can issue an order of mandamus to compel the prosecution of the 1st to 8th Respondents for an offence of forcible detainer. It is not yet established that the Applicant is in possession of a lawfully obtained title. I find that the Applicant's application has no merits. The same is hereby dismissed with costs to the 9th to 11th Respondents.

It's so ordered.

Dated, Signed and Delivered at Nairobi on this 1st day of October 2020.

E.O.OBAGA

JUDGE

In the Virtual Presence of :-

Mr Oduor for Petitioner

M/s Fatma for 9th, 10th and 11th Respondent

Court Assistant: Hilda

E.O.OBAGA

JUDGE