



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

MERU ELC PETITION CASE NO. E009 OF 2020

IN THE MATTER OF: ARTICLE 22 (1) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF: BREACH OF THE CONSTITUTION , FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLES 1(1), 2(2), 10(2), (B), 19, 20, 21, 22, 23, 24, 27, 28, 29, 40(A), 47, 50, 63, 66, 67, 159(2)(B) AND 188**

AND

**IN THE MATTER OF: THE CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND FREEDOMS
UNDER ARTICLE 40 OF THE CONSTITUTION REGARDING THE RIGHT TO PROPERTY**

AND

**IN THE MATTER OF: SECTION 4, 10, 11, 13, 22, 23 AND 24 OF THE CONSTITUTION OF KENYA
(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)**

PRACTICE AND PROCEDURE RULES 2013

BETWEEN

ESHUA LIMU CHEL.....1ST PETITIONER

EKAI L. PETER.....2ND PETITIONER

ERUPE LOBUIN.....3RD PETITIONER

COUNTY GOVERNMENT OF ISIOLO.....4TH PETITIONER

AND

THE INSPECTOR GENERAL OF POLICE.....1ST RESPONDENT

COUNTY COMMANDER MERU COUNTY.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

1. This application reads as follows:

NOTICE OF MOTION

(Under the provisions of Articles 1(1), 2(2), 10(2) (b), 19, 20, 21, 22, 23, 24, 27, 28, 29, 40(a), 47, 50, 63, 66, 67, 159(2) (b) and 188 of the Constitution of Kenya, 2010; and sections 4, 10, 11, 13, 22, 23 and 24 of The Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules 2013)

TAKE NOTICE that this honourable court will be moved on theday of2020 at 9.00 O'clock in the forenoon thereafter as counsel for the petitioners/applicants may be heard on an application for orders:

1. That petition be certified urgent and be heard ex-parte and service thereof be dispensed with in the first instance.
2. That pending the hearing and determination of this application interparties, this honourable court be pleased to issue an order to compel the 2nd respondent to return the close to 4000 herd of cattle he forcefully and illegally drove from the 1st, 2nd and 3rd petitioners' Manyatta in Ilaat village, Ngaremara ward in Isiolo county. If granted, since this main prayer is quite similar to the prayers in the main petition, the petitioners undertake to keep the said livestock as to the orders of this honourable court.
3. That pending the hearing and determination of this application interparties, this honourable court be pleased to issue an order of temporary injunction against the 1st and 2nd respondent either by themselves, their servants, or their agents or any person acting for or on their behalf and howsoever from dispossessing, displacing and evicting the people of Ilaat Village, Isiolo County living at the boarder (sic) of Isiolo – Meru Counties and their neighbours.
4. That pending the hearing and determination of this petition, this honourable court be pleased to issue an order to compel the 2nd respondent and his agents or employees to return the 4000 herd of cattle he forcefully and illegally drove from the petitioners' manyatta in Ilaat village, Ngarema ward in Isiolo county subject to the terms of this honourable court.
5. That pending the hearing and determination of this petition, this honourable court be pleased to issue a prohibitory order or an order of temporary injunction against the respondents either by themselves, their servants, or their agents or any other person acting for or on their behalf and however from dispossessing, displacing and evicting the people living at the boarder (sic) of Isiolo-Meru Counties and their neighbours.
6. That an order for declaration that the acts of the 2nd respondent or his agents or employees under his instructions or government institution under its instruction of dispossessing the residents of Ilaat village in Ngaremara ward in Isiolo county is illegal, irregular and therefore null and void.
7. That an order of certiorari bringing to this honourable court and quashing the decision of the 2nd respondent of dispossessing and displacing the residents of Ilaat village, Ngaremara ward in Isiolo County.
8. That due to the nature and volatile situation currently prevailing at the Isiolo county and Meru County boarders (sic) the conflict resulting from the impugned acts and other that may issue, this honourable court be pleased to order the Isiolo County Commander and County Commissioner to ensure compliance of the order as may issue from this honourable court and also ensure peace prevails.
9. That a temporary order do issue staying the effect of the decisions of the 2nd respondent of dispossessing and displacing the residents of Ilaat village, Ngaremara ward in Isiolo county until the hearing and determination of this petition nor such period as this honourable court may deem fit.
10. That the cost of this petition be provided for.
11. That this honourable court be pleased to make any further orders as it may deem just and fit to grant.

Which application is based on the following grounds;

1. In a rather unprecedented manner, on the 17th November, 2020, the 2nd respondent and police officers acting under the authority of the 1st and 2nd respondents attacked the people of Ilaat town, Ngaremara ward in Isiolo County displacing them and drove away close to 4000 herd of cattle from the petitioners' homesteads. The herd was driven to the Nadomoru police station in Igembe, Meru County where they are currently detained. The herd has not grazed since then.
2. On inquiring why their herd was forcefully driven away, the petitioners and other residents of Ilaat village were met with gun fire shot at them by the police officers from Meru county under the authority of the 2nd respondent. The petitioners were informed that the government was carrying out a recovery operation of cattle which were allegedly stolen by the Turkana's of Isiolo county. Where the alleged theft took place was not mentioned to them neither did any arrests done as required by the law. The acts of the 2nd respondents tantamount to using an illegality to cure an illegality.
3. The decision of the 2nd respondent to detain the petitioners' herd of cattle is illegal, unjustifiable and in clear contravention of the petitioners' rights to own properties as envisaged under Article 40 of the Constitution. The 2nd respondents' acts manifests an eye for an eye meted on the wrong party which has no basis in the legal world.
4. The illegal decision of the 2nd respondent to forcefully detain the petitioners' herd of cattle is in blatant disregard of the law and is

oppressive on the Isiolo local communities. The residents of Ilaat village are living in constant fear of attacks by the 1st and 2nd respondents who are legally meant to protect them and their properties. The 2nd respondent has turned against its subjects leaving the petitioners and other residents with no option but to flee away to unknown land.

5. In the view of the impending blatant disregard of the law and violation of the fundamental constitutional rights of the petitioners and the communities they live in, if this honourable court of law does not come in to redress such a blazeny disregard of the rule of law, the residents will continue to suffer violations of their rights. But more scaring is that if the law refuses to heed to the cry of the common citizens, the experience is that, the people common as they may be, may lose trust in the government institutions especially the police mandated to protect them and their properties, and resort to defending themselves to preserve their existence. This will be fatal and it's only the intervention of this honourable court that will salvage this.

6. That in light of this injustice, unfairness and blatant disregard of the law, the political and social environment in Isiolo especially in Ngaremara ward is tensed. Isiolo community is a very sensitive community with pastoralists who against such provocation may trigger violence. Such violence in the past has been caused by careless actions and decisions of the police, bias and unfairness, oppression and abuse of the rule of law against legitimate expectations. The least expectation of the community is that they be protected.

7. That the communities living at the boarder (sic) of Isiolo and Meru counties are Samburu and Turkana who are pastoralists. And by virtue of their living at the said boarder (sic) and their way of life, these communities ought to be consulted on any issue touching on land and boundaries as that affects their livelihoods. These communities are in constant fight with their neighbours over grazing land and water, which is a scarce commodity in Isiolo. It is therefore very worrying if the 2nd respondent is caught in the said wrangles not as a party to uphold the rule of law but as a participant of thuggery and an enforcer of lawlessness. Left unattended, untamed unchallenged and unrivalled, the act of the 2nd respondent will greatly antagonize the local communities and impact negatively on the rule of law but above all will horn (sic) conflict and incite the local communities living at the said boarder (sic) to conflict and violence. This is unrivalled expectation which the 2nd respondent should have seen but he refuses to.

8. That the 2nd respondent has no power whatsoever to drive away herd of cattle belonging to the petitioners and detain them. If at all they suspect that the said heard (sic) were indeed stolen, then, nothing stops him from arresting the suspected thief. Since no arrests was done, the decision to drive away the heard (sic) forcefully is malicious and illegal.

9. That the political environment among the communities living at the boarder (sic) of Isiolo and Meru Counties is tense due to these illegalities and it will be proper for this honourable court to step in and stop the said illegalities to alleviate political or tribal clashes as well as give a promise of equality and fairness to the communities.

Which application further grounded on the supporting affidavit of Eshua Limu Chei and such other grounds, reasons and arguments as may be adduced at the hearing hereof.

DATED AT NAIROBI ON THIS 18TH DAY OF NOVEMBER, 2020

2. This matter was slated for virtual hearing on 14.12.2020 at 11.30pm.

3. Before the matter was heard, the petitioners' advocate filed a Notice of withdrawal in the following format:

NOTICE OF WITHDRAWAL

(under Order 25 Rule 1 of the Civil Procedure Rules, 2010)

TAKE NOTICE that the Petitioners herein have unconditionally withdraw (sic) the Petition and the Notice of Motion both dated **18th November, 2020** in their entirety.

Dated at Nairobi on this 14th day of December, 2020

SIGNED.....

ZAINAB JARMA & COMPANY

ADVOCATES FOR THE PETITIONERS/APPLICANTS

4. The apposite Notice was copied to the Attorney General, who represents all the respondents in this suit.

5. The Notice of Withdrawal accords with Rule 27 (1) (a) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013.

6. In the circumstances, I hereby issue the following orders:

a) This Petition is marked as withdrawn, and is, therefore, termed as effectively and definitively heard and determined with no orders issued against the respondents.

b) No orders as to costs are issued.

Delivered in Chambers at Chuka this **14th day of December, 2020** in the presence of:

CA: Ndegwa

Petitioners' advocate served electronically.

P. M. NJORGE,

JUDGE.