



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. 1 OF 2019

**IN THE MATTER OF ARTICLES 3 (1), 22(1), (2) (b) & (d), AND 258 (1) & 2 (b) & (d) OF THE CONSTITUTION OF THE
REPUBLIC OF KENYA, 2010**

AND

**IN THE MATTER OF ARTICLES 1, 2(1), (2), (4), (5) & (6), 3, 10, 21, 22, 23 (1) & (3), 27(1), (2), (4), 40 (1) & (3), 159 (1) & (2),
162(1), (2) & (3), 165 (5) (b), 258 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

BETWEEN

MWANGAZA L.P.O SELF-HELP GROUP.....PETITIONER

AND

THE HONOURABLE ATTORNEY GENERAL.....1ST RESPONDENT

THE NATIONAL LAND COMMISSION.....2ND RESPONDENT

KENYA AIRPORTS AUTHORITY.....3RD RESPONDENT

ISILOLO COUNTY GOVERNMENT.....4TH RESPONDENT

RULING

1. The application dated 5.1.2019 was filed under a certificate of urgency and was coming up for interparties hearing on 30.1.2019. On 30.1.2019, Counsels for respondents sought for time to put in their replying affidavits. Further, the Attorney General averred that the subject matter herein is related to two other cases petition 6/11 and petition 30/2016 and an application was hence made orally for consolidation of all these matters. The other two files are scheduled for mention on 6.2.2019.

2. Petitioners counsel averred that the titling process is in progress with the rapid results initiative having only three months to complete the process. Citing the provisions of article 50 of the constitution, the applicants are praying for an injunction halting all the activities particularly the titling process on going on the suit land pending the inter-partes hearing of the application.

3. I have perused the two files **petition 6 of 2011** and **petition 30/2016** and I find that indeed the subject matter is the same. In petition 6/11, the initial claimants were 77 but with time, the numbers rose into hundreds. In petition 30/2016 the claimants are 50, while in the present petition, there are 260 claimants.

Consolidation

4. All the claimants in the three petitions are staking entitlement to the suit land generally known as MWANGAZA area. The application to have all these matters consolidated could perhaps be reasonable. I say **“PERHAPS”** to express the uncertainty at this stage primarily because the claimants in the older two suits, petition 6/11 and petition 30/16 may not be aware of this suit and may want to give their comment on the issue of consolidation. It is not lost to this court that the claimants in petition 6/11 have been in the litigation arena for a period of over 7 years and that the matter is scheduled for settlement.

5. In light of the foregoing, I do hesitate to allow the prayer for consolidation at this stage. Instead, I direct that a formal application for consolidation be made by the Attorney General, whereby service will be effected upon the petitioners in the other two older files. Meanwhile, I direct that as much as it is practically possible, the three files are to be handled at the same time.

Interim orders of injunction

6. Article 50 (1) of the constitution stipulates that **“every person has a right to have any dispute that can be resolved by the application of the law decided in a fair and public hearing.....”**.

7. However the entire provisions of the constitution have to be read in a whole-some manner. For instance **article 24 (1) (d)** of the **constitution** provides that the enjoyment of rights and fundamental freedoms by any individual should not prejudice the rights of other persons.

8. I find that an order of status quo was granted on 15.12.2011 in petition 6/11 and the matter was scheduled for possible settlement in the very near future. It is my considered view that if the court was to grant prayer 4 in the present application, it would prejudice the litigants who have been in this court for the last 7 or so years without giving them an opportunity to be heard. It is paramount that the litigants in petition 6 of 2011 and in petition 30 of 2016 be made aware of this matter before issuance of any orders herein.

9. It is not lost to this court that one of the prayers in this petition is a declaratory order for petitioners to be compensated for their parcels of land which were allegedly compulsorily acquired. It follows that petitioners are not left without any remedy.

10. All in all, I decline to grant any interim orders of injunction at this stage.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 31ST JANUARY, 2019

IN THE PRESENCE OF:-

C/A: Kananu

Odhiambo for petitioners

Kimaita for 3rd respondent

B. Kimathi for first respondent

K. Muriuki for 4th respondent

HON. LUCY. N. MBUGUA

ELC JUDGE