



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC. PET NO. 6 OF 2018

ISAIAH WANYONYI & 42 OTHERS.....PETITIONERTS

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

COUNTY GOVERNMENT OF TRANS-NZOIA.....2ND RESPONDENT

PRINCIPAL SECRETARY

MINISTRY OF AGRICULTURE.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. The Notice of Motion dated **27/9/2018** seeks that the court issue a temporary conservatory order prohibiting the respondents from interfering with the ownership and use of pieces of land known as **Kitale Municipality Block 6** and **7** or from imposing penalties, revoking of titles and placing, restrictions on the said documents amongst other actions pending the hearing and determination of this constitutional petition and that costs of this application be in the cause.
2. The applicants' grounds for the application are that they own and have titles to various plots within the blocks of land known as Block 6 and 7; that the 1st respondent vide a notice in the press announced that the parcels in Block 6 and 7 were illegally alienated and required the owners to vacate their properties within those blocks; that the penalties threatened by the 1st respondent include revocation of titles and restrictions on titles; that no opportunity has been accorded the owners to explain how they obtained the land; that the notice shows that a decision has already been arrived at, without giving the petitioners a proper and conducive environment for hearing before they can be requested to vacate, to have the owners removed from their properties and this is contrary to the rules of natural justice and that the petition would be rendered nugatory if the orders sought are not granted.
3. The application is supported by the affidavit of **Isaiah Wanyonyi** the 1st petitioner herein sworn on **27th September, 2018** which to a great degree reiterates the summarized grounds above.
4. In reply to the application the 2nd respondent filed a replying affidavit dated **19/11/2018**. He avers that the 2nd respondent has no objection to the verification of titles and that the application before court is premature. In my view this amounts to support for the 1st respondent's action. The deponent avers that the application by the petitioners against it is incompetent.
5. The petitioners filed their submissions on **4/12/2018**. Submissions were filed on behalf of the 2nd respondent on 1/2/2019. I have perused through the court record in this matter and found no submissions filed on behalf of the other respondents.
6. There is a petition on the record. It challenges the constitutionality of the decision of the 1st respondent contained in the notice in the press dated 20/6/2018 requiring the owners of the parcels of land situate within Block 6 and Block 7 to vacate and seeks the same to be quashed.
7. It is a cardinal principal of justice that once a litigant comes to this court he should not be turned away unheard. In this case the petitioners are apprehensive that once the notice expires - and I believe it has now expired while this application was pending - the consequences of the respondents' actions enforcing the intention evinced in the notice, including possible eviction and restriction of their titles may be drastic and may affect them adversely. It is necessary for both parties to argue their case on an equal footing, before any further action is taken in respect of the land by the respondents.
8. I have examined the annexures to the application and found a lease, letters of allotment and correspondence over the suit land.

9. This court is convinced that justice would be done and be seen to be done if each side were allowed to present their side of the case before any further action on the part of the respondents, and especially the 1st respondent.

10. For that reason I find that the application dated 27/9/2018 has merit. The same is granted in terms of **prayer 3 (three)** thereof.

11. The costs of the application shall be in the cause.

Dated, signed and delivered at Kitale on this 6th day of February, 2019.

MWANGI NJOROGE

JUDGE

6/02/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Teti for applicants

N/A for respondents

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

6/02/2019