



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

CONSTITUTIONAL PETITION NO. 14 OF 2016

WILSON KIPKERTICH.....PETITIONER

VERSUS

BARINGO COUNTY GOVERNMENT.....1ST RESPONDENT

THE CHIEF LAND REGISTRAR.....2ND RESPONDENT

THE CABINET SECRETARY, LAND HOUSING

AND URBAN DEVELOPMENT.....3RD RESPONDENT

THE ATTORNEY GENERAL.....4TH RESPONDENT

AND

THE NATIONAL LAND COMMISSION.....INTERESTED PARTY

JUDGMENT

INTRODUCTION

The petitioner filed the petition seeking orders for the cancellation of titles for land parcels nos. POKOR/KEBEN/GOBAT 338, 339, 340 and 363 or in the alternative, compensation for the same from the 1st respondent.

The petition is based on the allegation that the respondents hived a portion of his father's land and deprived him of his constitutional right to property through an administrative action without following due process.

That his father was allocated land parcel number Pokor/Keben/Gobat/219 measuring approximately 32 acres but later the 1st respondent curved out 4 acres illegally from the said parcel of land which act amounted to deprivation of the right to own property under article 40 of the Constitution of Kenya. Moreover, the action of deprivation of the land without being afforded as hearing infringed on fair administrative action and freedom from discrimination as guaranteed in the constitution of Kenya.

The first respondent filed a replying affidavit through Pius Kipkemboi Chebon, the ward administrator Kisanana ward, stating that the petitioners father was allocated 10 acres of land by the adjudication committee and that t6he suit properties were reserved for public utility.

The 2nd 3rd and 4th respondents filed a replying affidavit sworn by Nelson Odhiambo the county land registrar Baringo stating that land parcel number Pokor/Keben/Gobat/219 measuring 4.2 hectares was registered in the names of Kipkertich Chepyego on the 1st of August 1975 whereas the suitlands were registered in the names of the 1st respondent on the same date.

PETITIONER'S CASE

The petitioner submits that their father was discriminated against during the adjudication process. He was denied a portion of land during adjudication and the same was allocated to the local government based on the grounds that he was a thief and that the surveyors' maps show the other portions of land having equal size and following each other save for the petitioner's land which is a strip. The parcel numbers sequentially follow each other save for the petitioners'' portion where the sequence is broken.

He submits that the evidence of the hiving off land came out in the minutes of one of the many meetings held in an effort to resolve the disputes. The minutes are exhibit 2. He submitted that two of the adjudication committee members admitted they hived off the land as the petitioner was suspected of being a thief.

He submits further that the respondents never adhered to the statutory provisions for compulsory acquisition of land. Further, that the respondents' contention that the petitioners' relief lies in Judicial Review is frivolous and has no legal backing.

RESPONDENTS' CASE

The 1st respondent submitted that the suit parcels were demarcated and registered between 1968 and 1975. The titles were issued in 1975 and are of first registration. The processes were conducted by the Land Adjudication Committee for POKOT/KEBEN/GOBAT adjudication area which was mandated to foresee registration in that area.

The petitioner has not provided any tangible evidence nor information indicating that the 1st respondent's titles were obtained fraudulently or illegally. The evidence on record shows the 1st respondent as the registered owner of the suit parcels. As the registered owner, she is entitled to enjoy all rights of proprietorship. Further, the register shall not be rectified to affect the title of a proprietor who is in possession and had acquired the land for valuable consideration genuinely unless the proprietor had knowledge of the omission, fraud or mistake in consequence of which rectification is sought.

The petitioner ought to have established the nexus between him and these parcels of land which he has not done so. He must establish the nature of his property/interest rights and his rights to enjoy. The petitioner has not provided any documents to justify his claims to the suit property and has failed to establish that he had any rights which are being violated. He has failed to meet the threshold of prayers sought as provided for in the case of Anarita Karimi Njeru (1979) eKLR.

The petition is baseless and the petitioner failed to challenge the decision of the adjudication committee through the proper and correct channel of a fair administrative action and processes in the Land Adjudication Act. He has further not demonstrated a valid claim capable of being protected by law.

ISSUES FOR DETERMINATION

WHETHER THE PETITIONER HAS PROVEN THAT HIS RIGHTS WERE INFRINGED UPON

In *Anarita Karimi Njeru v Republic* [1979] eKLR the court held;

"We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case) that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed."

The petitioner has not provided any proof that there exists a nexus between himself and his late father on one part and the suit parcels of land. He is not the registered owner therefore there is no right accruing to him out of the suit land. There is no documentary evidence supporting any of the allegations that the procedure used to create the suit land was mired in illegalities. There is no evidence that his father was denied the suit land because of being a thief and there is no scintilla of evidence that the suit land was hived from land parcel number Pokor/Keben/Gobat/219. The petition fails on all limbs as it does not meet the prerequisites of a constitutional petition. The same is dismissed with no orders as to costs.

Dated and delivered at Eldoret this 22nd day of May, 2019.

A. OMBWAYO

JUDGE