



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**PETITION NO. 19 OF 2015**

**IN THE MATTER OF THE CONSTITUTION OF KENYA ARTICLE 75 OF THE OLD CONSTITUTION OF KENYA, 1963**

**AND**

**IN THE MATTER OF ALLEGED RIGHT TO OWN PROPERTY – ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF ALLEGED THREATENED BREACH AND DEPRIVATION TO PRIVATE PROPERTY ARTICLE 40 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE LAND ADJUDICATION ACT CHAPTER 284 OF THE LAWS OF KENYA**

**AND**

**IN THE MATTER OF LAND PARCELS L. R. NO. 2993/2, L. R. NO. 5722, L.R. NO. 5347/1, L. R. NO. 9078/2 AND L. R. NO. 5337/3 OLING'A TONGO COMPLEX ADC FARM**

**BETWEEN**

**KIBOROA SQUATTERS.....1<sup>ST</sup> PETITIONER**

**SABWANI ADC SQUATTERS.....2<sup>ND</sup> PETITIONER**

**OLINGA TONGO SQUATTERS.....3<sup>RD</sup> PETITIONER**

**CENTRE FOR HUMAN RIGHTS.....4<sup>TH</sup> PETITIONER**

**VERSUS**

**KEYSIAN AUCTIONEERS.....1<sup>ST</sup> RESPONDENT**

**KENYA COMMERCIAL BANK.....2<sup>ND</sup> RESPONDENT**

**NATIONAL LAND COMMISSION.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**RULING**

The petitioners herein are squatters and Centre for Human Rights who have come to court against the respondents claiming to be the occupants of parcels Number L. R. No. 2993/2 measuring 809.17 Ha, L. R. No. 5722 measuring approximately 305 Ha, L. R. No. 5347/1 measuring approximately 237 acres L. R. No. 9078/2 measuring approximately 1637 acres and L. R. 5337/3 measuring 7003.9 Ha. The petitioners' claim is that they have been in occupation of the suit land. They claim to have been allocated the land in the year 1990, took possession and have been farming on the land.

It is claimed that on or about 1.12.2015, the 1<sup>st</sup> respondent advertised for sale to petitioners' parcel of land aforesaid. It is stated that if the land is sold, the petitioners will suffer irreparably.

The 2<sup>nd</sup> respondent on her part states that the petition does not raise a cause of action and it is an affront of the principle of sanctity of title as it seeks to deprive a genital owner of its use and peaceful enlargement of the subject property without any reasonable justification. It is claimed that lands limited has not been enjoined. Moreover, that ADC borrowed various loans from the 2<sup>nd</sup> defendant has not serviced the same and therefore the current outstanding loan is Kshs.485,957,380.

The facility was approved by Government of Kenya through Personal Secretary, Agriculture. The 2<sup>nd</sup> respondent is surprised that lands limited and ADC are not enjoined in this petition.

I have considered the petition, verifying affidavit, supporting affidavit and the replying affidavit together with rival submissions and do find that the land in dispute is public land. It is strange that Kenya Commercial bank would attempt to auction public land and the government is silent on the same. It is further strange that the National Land commission is silent while public land is about to be auctioned. It is the petitioner who is the squatter that has shown interest in the land by coming to this court to protect its rights to the property of which he is in possession.

I do find that the petitioners have satisfied this court that they are in possession of the suit land and therefore, they are entitled to protection against eviction until the petition is heard and determined.

If the petitioners are evicted, they will suffer irreparable loss that cannot be compensated in monetary terms as their right to economic benefit would have been infringed.

The upshot of the above is that I do grant a conservatory order restraining the respondents and their servants agents or employees from alienating selling auctioning annexing trespassing tiling or any other manner interfering with the petitioners possession of and peaceful occupation of parcels Number L. R. No. 2993/2 measuring 809.17 Ha, L. R. No. 5722 measuring approximately 305 Ha, L. R. No. 5347/1 measuring approximately 237 acres L. R. No. 9078/2 measuring approximately 1637 acres and L. R. 5337/3 measuring 7003.9 Ha until the hearing and determination of the petition.

Orders accordingly.

**Dated and delivered at Eldoret this 27<sup>th</sup> day of June, 2019.**

**A. OMBWAYO**

**JUDGE**