



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

CONST. PET NO. 17 OF 2019

IN THE MATTER OF INFIRNGEMENT AND CONTRAVENTION OF FUNDAMENTAL

RIGHTS AND FREEDOM UNDER THE CONSTITUTION OF KENYA 2010

ARTICLES 22,23,24,27(1) (2) (3) (4) AND (5),40, 47(1), 60,64,69,259 AND 260

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT CAP 284 SECTIONS 5,6,25,26 AND 30

AND

IN THE MATTER OF THE REGISTERED LAND ACT CAP 300 OF THE LAWS OF KENYA

SECTIONS 27,28,143 ALL OF THE LAWS OF KENYA (NOW REPEALED)

AND

IN THE MATTER OF LAND REGISTRATION ACT NO. 3 OF 2012 SECTION 24 AND 25

AND

THE ILLEGAL, WRONGFUL AND IRREGULAR NOTICE OF COMPLETION OF

ADJUDICATION REGISTER NAISOYA ADJUCATION SECTION NAROK NORTH

SUB COUNTY-NAROK COUNTY BY THE LAND ADJUDICATION AND SETTLEMENT

OFFICER NAROK NORTH/EAST SUB COUNTIES DATED 8TH MAY, 2019

AND

IN THE MATTER OF THE NAISOYA LAND ADJUDICATION SECTION

AND IN THE MATTER OF SAMUEL LETANGUES NAINGISA, DANIEL

LELEPO TIKANI & PATIYIE OLE NAIKUMI AND OVER 344 OTHERS

REGISTERED LAND OWNERS WITHIN THE NAISOYA LAND

ADJUDICATION SECTION NAROK NORTH SUB COUNTY

NAROK COUNTY SECTIONS

BETWEEN

SAMUEL LETANGUES NAINGISA & 2 OTHERS.....PETITIONERS

VERSUS

THE DLASO & 3 OTHERS.....RESPONDENTS

RULING

By an Application dated 23rd May, 2019 the Applicant sought for the orders of temporary injunction restraining the Respondents from closing, entering, subdividing, transferring reviewing, interfering with the Naisoya Adjudication Sections.

The Application was based on the grounds that the Applicants are residents within Naisoya Adjudication Section and representing 334 members and that they are absolute and exclusive proprietors of the parcels of land within the said Adjudication Section where they have settled with their families and are awaiting the completion of the adjudication processes.

The Application was further based on the grounds that on 8th May, 2019 the Land Adjudication Officer had issued an illegal, improper and ambiguous eviction Notice in which they were given 60 days to inspect the register as the Adjudication process would be closed and the Applicants are dissatisfied with the said Notice and further they are apprehensive of the intent of the Notice issued to them by the Land Adjudication officers.

The Application was also supported by the Affidavit of one Samuel Letangues Naingisa in which he reiterated the basis upon which the Application is based on.

The Respondents in opposition to the Notice of Motion filed a joint Replying Affidavit which was sworn by the Land Adjudication Officer Narok North/East. The Respondent contended that Naisoya Adjudication Section was initially declared an Adjudication Section on 7th March, 1975 but the same was repealed and another Adjudication of the area created as a portion of the land was found to have encroached the Mau Forest Reserve and about 5,700 acres were found to be part of the forest.

The Respondent contend that the 334 Petitioners were removed from the Adjudication Register because their land was found to be situated within the Forest and hence can't be accessed for demarcation.

The Applicant further averred that the Adjudication process is now complete and the Adjudication register was published on 8/5/19 and the contents of the notice issued was to inform the public that the register was available for inspection.

The Respondents also allege that the applicant is making the instant Application have not sought for the consent of Land Adjudication Officer and further that the Applicants ought to exhaust all the mechanism provided for under the land Adjudication Act before seeking redress in court.

I have carefully considered the Application before me and the response in opposition to the same and the submissions filed. The instant Application is one that the Applicants are seeking temporary discretionary orders of injunction. The conditions for the grant of the same is now well settled and this are whether the Applicants have established whether damages will be adequate compensation and in whose favour the balance of convenience tilts.

The Application herein was precipitated by the contents of the letter dated 8th May, 2019 in which the 1st Respondent pursuant to the carrying out of adjudication within the suit land had invited the land owners within Naisoya Adjudication Section to inspect the adjudication register before the same is closed and the Applicant felt that this will infringe their rights and interests on the suit land.

The Applicants do not dispute that the Petition and the resultant Application herein were triggered by the contents of the aforesaid letter. The Applicants contend that the same is illegal, improper and ambiguous eviction Notice. The Respondent on his part contends that the Notice was issued pursuant to the provisions of the Land Adjudication Act. I have read the aforesaid Notice and I have not seen anywhere where the Respondent have alluded to an eviction. What the Respondent merely did was to invite the Respondents and/or land owners in the Adjudication Section to inspect the register before it is closed.

Furthermore, the Respondent in issuing the said Notice was exercising a quasi-Judicial function. If the Applicant was dissatisfied with the same the right forum would have been to seek for Judicial Review in quashing the Notice and not by way of the instant Application.

The Respondent in their Replying Affidavit contend that there exists elaborate mechanism to address the Applicants grievances and hence the Petition is immature. In the instant matter the Applicant was to invoke the provisions of Section 28 and 29 of the Land Adjudication Act. The Applicant ought to have raised any objections they had within the Land Adjudication Act for redress. The court of Appeal in the **SPEAKER OF NATIONAL ASSEMBLY -VERSUS- KARUME(1992)KLR 21 HELD:-**

“where there is a clear procedure for redress of any particular grievance prescribed by the constitution or an Act of Parliament that procedure should be strictly followed.....

Since they are good reasons for the procedure, I find that the Applicants have not exhausted the procedures outlined in the Land Adjudication Act as the Act has elaborate mechanism of appeal in the event an individual is aggrieved by the decision of the land Adjudication officer and the Adjudication Committee.

Having stated the above and carefully considered the applicoatn I find that the Applicants have not met the first condition for the grant of orders of injunction and I therefore find that the Notice of Motion dated 23rd May, 2019 lacks merit and I dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **29th** day of **July, 2019**

MOHAMMED KULLOW JUDGE

29/7/19

In the presence of: -

Mr Lemeien for the petitioners

Mr Masikonde for the 3rd Respondent

N/A for the 1st, 2nd and 4th Respondents

CA:Chuma/Kimiriny