



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAROK**  
**CONSTITUTIONAL PETITION NO. 7 OF 2017**  
**FORMERLY CONSTITUTIONAL PET. NO. 24 OF 2015**  
**IN THE MATTER OF ARTICLES 10, 20 (1), 23,31,40,75**  
**OF THE CONSTITUTION OF KENYA**

**BETWEEN**

**JOHNSTONE LEPORE KISEREMA.....1<sup>ST</sup> PETITIONER**

**PHILIP LEKAKENY LIMPASO.....2<sup>ND</sup> PETITIONER**

**VERSUS**

**ISACK OMARE OFFICER IN CHARGE OF ADM**

**POLICE CAMP-KILGORIS TOWN.....1<sup>ST</sup> RESPONDENT**

**THE HON. ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**INSPECTOR GENERAL OF POLICE.....3<sup>RD</sup> RESPONDENT**

**JUDGEMENT**

By an Amended Petition dated 13<sup>th</sup> June, 2016 the Petitioners sought for the following orders: -

- (a) A declaration that the fundamental rights and freedoms of the Petitioners under Articles 31 and 40 of the Constitution of Kenya were contravened and grossly violated by the Respondents.
- (b) General and exemplary damages against the Respondents as compensation to the Petitioners for the unconstitutional conduct of the 1<sup>st</sup> Respondent.
- (c) A declaratory order that the Petitioners are the rightful owners of Parcel Numbers D 20 and D 21.
- (d) A permanent order of injunction restraining the Respondents from interfering with the Petitioners' Land Parcels No. D20 and D 21.
- (e) Any further orders and directions that the court may consider appropriate and or fit to grant in the circumstances.
- (f) Costs of this suit to be borne by the Respondents and interest at courts' rates.

It is the Petitioners case that they were the owners of two plots namely Plot No. D1 and D2 both situated within Kilgoris Township and that the 1<sup>st</sup> Respondent without any colour of right has been intimidating the Petitioners and has obstructed them from accessing there plots and threatened the tenants thereon on the two parcels to vacate the plots and they tried to settle amicably but all in vain. The Petitioners also contend that the 1<sup>st</sup> Respondent has destroyed the perimeter fence to the said plots and thus compromised the tenants' security and wellbeing and because of the aforesaid actions the Petitioners claim that the 1<sup>st</sup> Respondent has violated their rights to privacy and as enshrined under Article 40 of the Constitution of Kenya.

The Petitioners further contend that the actions of the 1<sup>st</sup> Respondent has violated his authority and his actions amounted to the compulsory acquisition of the Petitioners property without following due processes.

In an Affidavit in support of the Petition the 1<sup>st</sup> Petitioner averred that they purchased the two plots lawfully and the same were transferred into their names by county council of Trans Mara and that since they acquired the plots they have been paying rates to the aforesaid council. The Petitioners have attached to the Petition a Sale Agreement and copies of various receipts issued by the Council to show that they paid rates on the plots.

It is the Petitioners further contention that the Respondents actions have deprived them of their use and enjoyment of the two plots and unless the court intervenes they will suffer irreparable loss and damage.

In response to the Petition, the Respondents filed a joint replying affidavit in which they contend that the petitioners are building a perimeter wall within the area Administration Camp and that they never existed any perimeter wall between the Petitioners plots and the aforesaid camp. They further alleged that the Petitioners have been accessing their premises using an unauthorized route and the same was a security threat and subsequently two access routes were created one for the camp and the other to the Petitioners plot.

During the hearing, the Petition was heard by way of written submissions and the Petitioners submitted that they are the rightful owners of the two plots and in laying their claim they have annexed a Sale Agreement to confirm purchase, transfer letter and letter of allotment issued by the County Council.

It is the Respondents contention that the Respondents have not challenged the ownership of the two plots and have not brought evidence to challenge the process.

The Petitioners further stated that the Respondents actions contravened the provisions of Article 40 of the Constitution of Kenya in so far as the acquisition of property and its ownership is concerned and being the owners of the land the Respondents actions are tantamount to depriving them of their occupation, use and possession of the same.

The Respondents despite being accorded several chances did not file any submissions and I will thus proceed to deliver the Judgement of the court.

Having considered the Petition before me, the Replying Affidavit and the Submissions filed by the Petitioners the issues for determination as this is a Constitutional Petition are: -

- (i) Whether the Petitioners are the rightful owners of the suit properties.
- (ii) Whether the Respondents actions constitute infringement upon the Petitioners right to property under Article 40 of the Constitution of Kenya.
- (iii) The Petitioners are entitled to prayers sought.

In determining whether the Petitioners are the rightful owners of the suit properties, they have attached to the Petition a sale agreement to show how the suit properties were transmitted to them and a subsequent transfer by the then County Council of Trans Mara in their respective names together with a letter of allotment and payment of rates. The Respondents have not in any way in their replying affidavit challenged the proprietary interest the Petitioners have in the two parcels of land but have only contested the access route to the suit properties.

Further to the above, no evidence has been placed before the court to challenge the allotment of the suit property by the Respondents or any other person or authority either to show that the Petitioners acquired the suit properties by way of fraud, mistake or mis- representation and in the circumstances, I find that the Petitioners have demonstrated with full precision that they are the rightful owners of the suit land.

In the case of **RUKIYA ALI MOHAMED -VERSUS- DAVID GIKONYO NAMBACHA & ANO (KISUMU) HCCC NO. 9 OF 2004** held that: -

**“... once allotment letter is issued and the Allottee meets the condition therein, the land in question is no longer available for allotment since a letter of allotment confers absolute right of ownership of proprietorship unless it is challenged by the allotting authority or is acquired through fraud, mistake or misrepresentation or that the allotment was out rightly illegal or it was against public interest. In other words, where the land has been allocated, the same land cannot be reallocated unless the first allocation is validly and lawfully cancelled.”**

On whether the Respondents actions constitute infringement upon the Petitioners right to property as contained under Article 40 of the Constitution, the Petitioners submitted that the Respondents have deprived them of the use and occupation of their respective plots and their actions were thus unlawful.

The Respondents contended that there was no perimeter wall but conceded that for security reasons they created another entrance to access the suit property. For one to be able to prove what amounts to deprivation of property as contemplated under Article 40 of the Constitution, he must show that there was certain degree to deprive him of his property arbitrarily. From the Petition, the Petitioners title to the land was not questioned. He has not demonstrated with some degree of precision that the Respondents contemplated or did take over his land. I find nowhere on the Petition where he demonstrates that either of the two parcels or the creation of the new access route which stopped his

tenants passing through the camp amounted to deprivation of his property as envisaged under Article 40 of the Constitution of Kenya and for the above reasons, I find that the Petitioners have not proved that they were deprived of their property and also they have not demonstrated that they will suffer loss or damages as a result of the actions of the Respondents.

Having considered the Petition, I do allot the petition and grant the following orders.

- 1. A declaratory order that the Petitioners are the rightful owners of Parcel Numbers D 20 and D 21.**
- 2. A permanent order of injunction restraining the Respondents from interfering with the Petitioners' Land Parcels No. D 20 and D 21.**
- 3. Each party to bear its costs.**

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **19<sup>th</sup>** day of **July, 2019**

**Mohammed Kullow**

**Judge**

**19/7/19**

In the presence of: -

N/A for the parties and their advocates

CA:Chuma/Kimiriny