



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

PETITION NO. 2 OF 2019

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 10, 20, 22(3), 2(1), 28, 40, 47, 60, 63, 67(2)(e)(h), 69, 70 AND 159 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013 (UNDER RULES 2, 3, 4, 5, 7 AND 8)

BETWEEN

MATHEW SAWE CHUMA1ST PETITIONER/APPLICANT

JOSEPH KIPKOSGEI LELON.....2ND PETITIONER/APPLICANT

KIMACHUL CHANGWONY KOTUT.....3RD PETITIONER/APPLICANT

MIKE K. KIBIEGO.....4TH PETITIONER/APPLICANT

GILLYPH KORIR CHUMA.....5TH PETITIONER/APPLICANT

JOHN KIPTANUI KIMAIYO.....6TH PETITIONER/APPLICANT

VERSUS

KENYA FLUORSPAR COMPANY LIMITED.....1ST RESPONDENT

KERIO VALLEY DEVELOPMENT AUTHORITY.....2ND RESPONDENT

COUNTY GOVERNMENT OF ELGEYO MARAKWET.....3RD RESPONDENT

NATIONAL LAND COMMISSION.....4TH RESPONDENT

HON. ATTORNEY GENERAL.....5TH RESPONDENT

RULING

By Notice of Motion dated 25th July 2019, the 5th respondent prays for orders that the conservatory orders and directions issued herein on 24th July, 2019 be varied, reviewed, vacated and or set aside forthwith. The directions issued on 15th May, 2019 prescribing the manner of hearing of the Notice of Motion dated 6th March, 2019 and which directions have never been set aside be reverted to forthwith. That the costs of this application be in the cause.

The application is based on grounds that the hearing date for 24th July 2019 was erroneously, irregularly and improperly issued to the petitioner, ex parte, as this matter was due for mention on 16th September 2019, a date taken by consent on 15th May, 2019 and there was no justification for fixing the matter ex parte when the petitioners had not even complied with directions issued on 15th May, 2019.

The court was misled to believe that the respondents had not complied with the directions of the court and that the Notice of Motion was

unopposed when the record shows that 2nd and 5th applicants herein filed and served a detailed replying affidavit on 5th April, 2019 and that directions on the hearing of Notice of Motion had been given which petitioners had not complied with.

That the conservatory orders issued herein on 24th July 2019 are void ab initio as they were issued in total disregard of 2nd and 5th applicants' response on record and therefore the applicants were condemned unheard in utter violation of rules of natural justice.

The conservatory orders issued on 24th July 2019 have and likely to occasion a miscarriage of justice as the applicants stand to be denied a right to make use of land considered as public land which has always been in their possession and use since gazettelement vide Legal Notices No. 320 and 321 of 31st January, 1975.

That the overriding objective of this court is to administer substantive justice and upon hearing of all parties without undue procedural technicalities and this extends to evaluating all evidence sought to be relied upon.

That this court is a temple of justice and it is only fair and just that this application be granted. That the conservatory orders are offensive to the rule of law and public interest.

I have considered the application and response by Mr. Mbugua and do find the application merited on grounds that the application dated 6th March 2019 is still pending hearing and has not been heard and that the orders which were framed as directions were made on a mention date but in the presence of a representative of the Attorney General who did not object despite the oral application by Mr. Mbugua for conservatory orders pending hearing of the petition.

The upshot of the above is that the conservatory orders and directions issued herein on 24th July, 2019 are hereby varied, reviewed, vacated and or set aside forthwith.

The directions issued on 15th May, 2019 prescribing the manner of hearing of the Notice of Motion dated 6th March, 2019 and which directions have never been set aside be reverted to forthwith.

For avoidance of doubt, the petitioners are given 10 days to file and serve their submissions, the respondents to file and serve within 10 days of service. Ruling on 9th September, 2019.

Dated and delivered at Eldoret this 7th day of August, 2019.

A. OMBWAYO

JUDGE