



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC PETITION NO. 60 OF 2018**

**NANCY WAMUGO MUCHENE.....APPLICANT**

**VERSUS**

- 1. THE INSPECTOR GENERAL OF POLICE**
- 2. SENIOR CHIEF KAYOLE NORTH LOCATION**
- 3. THE DIRECTOR OF CID**
- 4. HON. DPP**
- 5. HON. ATTORNEY GENERAL**
- 6. NAIROI COUNTY GOVERNMENT**
- 7. CABINET SECRETARY, MINISTRY OF LANDS**
- 8. NATIONAL LAND COMMISSION**
- 9. LUKA MWANGI**
- 10. MACHARIA KIGO**
- 11. CHAIRMAN MANNA JUA KALI SETTLEMENT SCHEME.....RESPONDENTS**

**AND**

- 1. KENYA NATIONAL HUMAN RIGHTS COMMISSION**
- 2. LAW SOCIETY OF KENYA**
- 3. KITUO CHA SHERIA**
- 4. AFRICAN CENTER FOR OPEN GOVERNANCE**
- 5. KATIBA INSTITUTE**
- 6. MCA MATOPENI AREA**

**HON. ABDI GUYO.....INTERESTED PARTIES**

**RULING**

1. By a petition dated 6<sup>th</sup> October 2018, the petitioner seeks against the respondents, the following.

*(i) Declaration that the respondents violated the Constitution of Kenya.*

*(ii) An order evicting the persons on the petitioner's land.*

*(iii) A declaration that the respondents violated the petitioner's human and constitutional rights.*

*(iv) An order for compensation for the petitioner.*

*(v) An order that the other owner of the plots of land in the Kayole area be protected and be issued with their title deeds.*

*(vi) That adequate and reasonable security be provided to the people of the Kayole area.*

*(vii) An order of general and aggravated damages against the 9<sup>th</sup> and 10<sup>th</sup> respondents for trespass and tortuous assault.*

*(viii) Any other order the court deems fit and just.*

*(ix) A permanent injunction against the 9<sup>th</sup> and 10<sup>th</sup> respondents, their agents, servants and minions from building, occupation, dealing, charging, leasing, transferring or in any way interfering with the applicant's possession, occupation and use of the parcel of land.*

*(x) Costs of this suit.*

*(xi) Interest on sum above at court rates from date of filing until payment in full.*

*(xii) An order that the officer commanding Kayole Police Station do enforce the above orders granted.*

*(xiii) A mandamus order compelling the 1<sup>st</sup> to the 9<sup>th</sup> respondents to obey and execute the law and Constitution of the Republic of Kenya by arresting, charging, investigating, and doing all that the law requires of them.*

2. Together with the petition. She filed a notice of motion. She told the court that she bought plot no. Mo6 in Manna Jua Kali Settlement Scheme, Kayole and was issued with an ownership certificate in November 2012. She paid Kshs.100,000. In July 2013 she started construction. After laying the foundation about eight men in company of a Mr. Moha demanded protection money which she paid. Later on 10<sup>th</sup> August 2018 she was thrown out of the land and assaulted by the Chairman of the adjacent Matopeni Settlement Scheme. Thereafter the 9<sup>th</sup> Respondent started building on the foundation she had started. She reported the matter to the Senior Chief Kayole North Location and Kayole Police Station. She was not assisted. In support of her petition she has annexed a copy of her ownership certificate of Plot NO. Mo6, the Chief's letter dated 27<sup>th</sup> August 2018 and 30<sup>th</sup> August 2018. She also annexed a copy of the occurrence book extract.

3. The Hon. Attorney General was instructed to appear for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 5<sup>th</sup> and 6<sup>th</sup> respondents who filed grounds of opposition dated 28<sup>th</sup> January 2019. The grounds are that the petitioner has not demonstrated which articles of the constitution relied on have been infringed by the said respondents. Further that the petition is frivolous, vexatious and misconceived. The 5<sup>th</sup> respondent entered appearance on 22<sup>nd</sup> November 2018. It also filed an undated notice of motion seeking that he be struck out of these proceedings.

4. The 9<sup>th</sup> respondent filed his replying affidavit dated 22<sup>nd</sup> November 2018 stating that his wife purchased plot no. A06 within Manna Jua Kali Settlement Scheme from Elizabeth Wanjiku Munuhe vide a sale agreement dated 25<sup>th</sup> November 2016.

5. The petition was canvassed by way of written submissions.

6. I have considered the petition, the grounds the affidavits in support. I have also considered the grounds of opposition and the replying affidavits. I have also considered the written submissions of counsel.

7. I find that the petitioner herein has failed to demonstrate how the rights she is alleging have been infringed by the respondents. I find she has failed to establish that she has a prima facie case with probability of success at the trial. This appears to be a dispute as to ownership. She should pursue it in that manner. I find no merit in this application. The same together with the petition are dismissed. I make no orders as to costs.

It is so ordered.

**Dated, signed and delivered in Nairobi on this 25<sup>th</sup> day of September 2019.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

.....Advocate for the Petitioner

.....Advocate for the Respondents

.....Interested Parties

.....Court Assistant