



**REPUBLIC OF KENYA**

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

**PETITION NO. 2 OF 2014**

**NARESH KUMAR AGGARWAL.....PETITIONER**

**=AND=**

**SILAS KIPTUI KIPCHILAT Alias SILAS K. YEGO.....1<sup>ST</sup> RESPONDENT**

**NATIONAL LAND COMMISSIONER.....2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL.....3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

**PETITIONERS CASE**

**NARESH KUMAR AGGARWAL, hereinafter referred to as Petitioner** has come to court against **SILAS KIPTUI KIPCHILAT Alias SILAS K. YEGO** and **NATIONAL LAND COMMISSION** and the **ATTORNEY GENERAL** claiming that he is the proprietor and/or owner of all those parcels of land namely, Eldoret Municipality/Block 14/654 and Eldoret Municipality/Block 14/657 situate within the Municipality of Uasin Gishu County.

That the Petitioner brings this petition in his capacity as a Kenyan citizen and the registered owner of Eldoret Municipality/Block 14/654 and Eldoret Municipality/ Block 14/657 whose access and/or easement has been blocked and/or prevented and/or obstructed by the I<sup>t</sup> Respondent who has commenced construction and/or erection of a perimeter wall around the said easement space thereby blocking the Petitioner's easement on account of allocation by the 2<sup>nd</sup> Respondent contrary to the Petitioner's interest.

The Petitioner also brings this Petition in the public interest to protect the public and the users of the public space designated as parking space which serves as easement to the commercial plots Eldoret Municipality/ Block 14/654 and Eldoret Municipality/Block 14/657 and parking space for the members of the public and prospective customers to the plots mentioned hereinabove since they are commercial plots which require easement for their effective use.

The Petitioner's position is that the acts of the 1<sup>st</sup> Respondent of claiming proprietorship and/or ownership interest of the easement area and/or space contrary to the original intent and/or interest of the public at large is an act of selfishness aimed at grabbing the subject piece of land for his own use and benefit thereby depriving the petitioner the right to easement and the public the right to parking space.

The Petitioner has learned that the 2<sup>nd</sup> Respondent in collusion with the I Respondent has without any colour of right fraudulently created a lease instrument and/or Certificate of Lease in favour of the I<sup>t</sup> Respondent and denoted it as Eldoret Municipality/Block 14 1646 and yet according to the Municipal Council of Eldoret original map and the Physical Planning Department of the Uasin Gishu County, the area is a designated parking space which should be open to allow easement to the property next thereto and not be fenced.

The Certificate of Lease issued on the 20/6/2003 by the 2<sup>nd</sup> Respondent showing the 1<sup>st</sup> Respondent as the registered owner of the said parcel of land was issued unconstitutionally illegally. fraudulently and without due regard to the interests of the public at large and/or the petitioner's right of easement and ought to be cancelled.

The 2<sup>nd</sup> Respondent's servants and/or agents have taken part in perpetuating an illegality whilst the 3<sup>rd</sup> Respondent ought to protect the public who are the citizens of Kenya from such acts of unconstitutionally illegality hence this petition for the cancellation of the lease instrument and/or certificate of lease on Eldoret Municipality/ Block 14/1646 issued in favour of the 1<sup>st</sup> Respondent.

The Petitioner instituted a civil suit in Eldoret vide Chief Magistrate's Civil Suit No. 245 of 2008 between himself Naresh K. Aggarwal -vs- Silas K. Yego over the subject matter seeking injunctive orders to restrain the 1<sup>st</sup> Respondent from interfering with the Petitioners right of easement and/or access to his parcels of land namely, Eldoret Municipality/Block 14/654 and Eldoret Municipality/Block 14/657.

The matter was heard and a decree issued in favor of the Petitioner herein on the 14/12/2011 granting injunctive orders barring the 1<sup>st</sup> Respondent from interfering with the petitioner's right of easement area and/or the access space of the petitioner to his plots. The court further ordered that the temporary fence erected by the 1<sup>st</sup> Respondent be removed forthwith.

The 1<sup>st</sup> Respondent on learning of the court's decree, moved to court to set aside the decree of the court which application was heard and allowed in his favour, thus the decree was set aside and suit ordered to proceed for hearing.

That the Petitioner was dissatisfied with the court's decision setting aside the decree and or judgment and appealed to the High Court vide Eldoret Civil Appeal No. 80 of 2012 which appeal is still pending for determination.

That the petitioner has complained to the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents seeking help but his efforts have been fruitless for want of action by the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents and the 1<sup>st</sup> Respondent has in the last few days commenced the construction of a boundary wall around the perimeter of plot Eldoret Municipality/ Block 14/1646 necessitating the instant petition for orders that-

- 1. The 1<sup>st</sup> Respondent be restrained from putting up a perimeter wall around the illegally acquired parcel of land denoted as Eldoret Municipality/Block 14/1646.**
- 2. The cancellation of the Lease which gave rise to the Certificate of Lease issued on 20/6/2003 in favour of the 1<sup>st</sup> Respondent.**
- 3. The removal and/or distraction of the perimeter wall purportedly erected on the and/or around the aforesaid plot number Eldoret Municipality/Block 14/1646 to allow access and/or easement to the plots numbers Eldoret Municipality/Block 14/654 and Eldoret Municipality/Block 14/657 and create parking space for the members of the public.**
- 4. The giving full effect of the original map as initially intended.**

The petitioner states that orders sought herein are not exactly the same as the orders that were sought in the civil case number Eldoret CMCC No. 245 of 2008 between the Petitioner and the 1<sup>st</sup> Respondent save for the orders of injunction which in fact the said suit was limited to as opposed to the current petition.

That as a result of the foregoing, it is the petitioner's position that the Respondents have contravened the Constitution of Kenya 2010 by wrongfully alienating public property and taking away the petitioner's easement and/or access space thereof thereby depriving the petitioner and the members of the public their right to access and parking space.

That the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents in furtherance of the illegality issued a Lease and Certificate of Lease in favour of the 1<sup>st</sup> Respondent conferring ownership rights against the interests of the petitioner and the public at large.

That the actions of the 1<sup>st</sup> Respondent of purporting to acquire the property purportedly denoted as Eldoret Municipality/Block 14/1646 which is a public parking reserve and the access and/or easement area for plot number Eldoret Municipality/ Block 14/654 and Eldoret Municipality/Block 14/657 are unconstitutional, fraudulent, illegal and amounts to land grabbing.

That the acts of the 2<sup>nd</sup> Respondent of purporting to create records at the land registry in respect of parcel number Eldoret Municipality/Block 14/1646 and issuing a Lease and Certificate of Lease in favour of the 1<sup>st</sup> Respondent amounts to illegal allocation, deprivation and dispossession of the petitioner's right to easement and/or access and the public parking space which acts are inconsistent with the Constitution of Kenya.

The illegal acquisition and/or conversion of public property is in contravention of the spirit of the Constitution of Kenya and should not be condoned.

That the petitioner seeks this court's protection so far as its right of easement, access and public parking space is concerned which rights ought to be protected as enshrined in the constitution.

The Petitioner prays that: -

***a) A permanent injunction restraining the 1<sup>st</sup> Respondent, his agents, servants and/or any other person acting on his instructions from erecting or a perimeter wall, constructing, fencing off, occupying and/or in any other or whatsoever interfering or dealing with parcel number Eldoret Municipality/Block 14/1646 which is public parking space or interfering with the petitioner's right to easement and/or access to his parcels of land namely, Eldoret Municipality/Block 14/654 and Eldoret Municipality/Block 14/657.***

***b) An order for the surrender and cancellation of the Lease and Certificate of Lease issued in favour of the 1<sup>st</sup> Respondent by the 2<sup>nd</sup> Respondent in respect of land parcel number Eldoret Municipality/Block 14/1646 and the rectification of the land records at the lands office to reflect and/or show that the parcel of land Eldoret Municipality/Block 14/1646 is a public parking space and the petitioner's easement and/or access area in conformity with the original map of the area.***

***c) An order for removal and/or demolition of the perimeter wall erected thereto and/or any other structure constructed on the***

land parcel number Eldoret Municipality/Block 14/1646.

d) A declaration that the purported allocation to the 1<sup>st</sup> Respondent and the Lease and the Certificate of Lease issued on 20/6/2003 in favour of 1<sup>st</sup> Respondent over parcel number Eldoret Municipality/Block 14/1 646 was and is illegal and nul and void.

e) An order of certiorari to quash the decision of the 2<sup>nd</sup> Respondent to allocate and issue a lease and/or Certificate of Lease in favour of the 1<sup>st</sup> Respondent and/or any other person and the lease certificate held by the 1<sup>st</sup> Respondent over Eldoret Municipality/Block 14/1646.

f) An order for Mandamus against the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent to restore and/or rectify the records at the lands office in respect of Eldoret Municipality/Block 14/1646 to reflect the same as public utility, parking space and/or open easement to parcels numbers Eldoret Municipality Block 14/654 and Eldoret Municipality Block 14/657.

g) Costs of the petition.

h) any further and/or other orders which this Honourable Court may deem fit and just to grant in the circumstances.

### **1<sup>ST</sup> RESPONDENT'S CASE**

The 1<sup>st</sup> Respondent states that he is the sole registered proprietor of the leasehold interest in the Land Parcel Known as number Eldoret Municipality/Block 14/1646 measuring 0.3580 Ha. The Petitioner is a neighbour owing land Municipality/Block14/654 and Eldoret Municipality/Block 14/657 while share a boundary with of Eldoret Municipality/Block 14/1646.

According to the 1<sup>st</sup> respondent, this is a boundary dispute and does not within the ambit within the arbitration of the constitution of Kenya 2010. He states that the Petitioner has no duty to petition on behalf of the public.

He states that the user of the area is residential and not commercial. He states that the court has no jurisdiction to issue the prayers sought.

### **2<sup>ND</sup> AND 3<sup>RD</sup> DEFENDANT'S CASE**

The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant state that the suit land was lawfully/properly and procedurally evicted. It was planned vide PDP No.17/95/236, which was duly executed and approved by relevant Government Department hence paving way for allocation. The suit was not reserved for any public purpose. The 2<sup>nd</sup> and 3<sup>rd</sup> Defendant doing any allocation of funds.

### **ANALYSIS AND DETERMINATION**

I have considered the rival submissions on record and do find that the Petitioner has failed to demonstrate that the suit land is a public land. there is no evidence that the suit land is a parking lots. The County Government of Uasin-Gishu could have had the records of the parcel of land as a parking lot because all parking lot belong to County Government.

There is no record that the suit is reserved as a parking lot and in fact the PDP RF.NO.17/95/236 indicates that parcel of land was a proposed residential area by letter dated 23/1/2010 to Town Clerk, Municipal council of Eldoret confirms that it did not belong to the Municipal Council of Eldoret but belonged to Silas Kiptui Kichillat t/a Kiplagat Flowers. I do find that the Petitioner has no basis to come to court under Article 22 of the constitutional of Kenya. There is no evidence that the Petitioner's rights have been violated.

In *Anarita Karimi Njeru vs= Republic (1976-1980) KLR 1272*, it was held.

*We would, however, again stress that if a person is seeking redress from the High Court on a matter which involves a reference to the Constitution, it is important (if only to ensure that justice is done to his case that he should set out with a reasonable degree of precision that of which he complains, the provisions said to be infringed, and the manner in which they are alleged to be infringed.*

In *Mumo Matemu vs= Trusted Society of Human Rights Alliance & 5 others (2013) eKLR*, it was noted by the court.

*"Our commitment to the values of substantive justice, public participation, inclusiveness, transparency and accountability under Article 10 of the Constitution by necessity and logic broadens access to the courts. In this broader context, this court cannot fashion nor sanction an invitation to a judicial standard of locus standi that places hurdles on access to the courts, except only when such litigations is hypothetical abstract or is an abuse of the judicial process. However, we must hasten to make it dear that the person who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating cause of justice. Where a person is acting for persona/ gain or private profit or out of political motivation or other oblique consideration, the court should not a//ow itself to be seized at the instance of such person and must reject the application at the threshold." (Emphasis added)."*

In conclusion, I do find that the Petitioner has failed to demonstrate that the suit property is Public Land. The parcel of land is private land and therefore the petition is not well founded hence I do dismiss the Petition with costs.

Orders accordingly.

**Dated and delivered this 10<sup>th</sup> day of September, 2019**

**A. OMBWAYO**

**JUDGE**