



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 ARTICLES 10, 20, 22(3), 27(1), 28, 40, 47, 60, 63, 67(2)(e)(h), 69, 70 & 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 & 8)

BETWEEN

MATHEW SAWE CHUMA

JOSEPH KIPKOSGEI LELON

KIMACHUL CHANGWONY KOTUT

MIKE K. KIBIEGO

GILLYBH KORIR CHUMA

JOHN KIPTANUI KIMAIYO

(Suing on their behalf and that of the following Clans of Keiyo Community):

Kapterik Clan

Kabon Clan

Toiyoi Clan

Kobil Clan

Saniak Clan

Tungoi Clan).....PETITIONERS

AND

KENYA FLOURSPUR COMPANY LIMITED.....1ST RESPONDENT

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

THE COUNTY GOVERNMENT OF

ELGEYO MARAKWET.....3RD RESPONDENT

THE NATIONAL LAND COMMISSION.....4TH RESPONDENT

RULING

1. The Petitioners filed the Notice of Motion dated the 6th March, 2019 with the Petition of even date seeking for conservatory order staying the further acquisition by the Respondent of any part of Keiyo Escarpment and Kimwarer Mining area inhabited by the petitioners and their kinsmen pending the hearing and determination of the petition. They also seek for a conservatory order restraining the National Land Commission (4th Respondent) from implementing Gazette No. 925 of 2019 on its intention to acquire certain lands comprised in the Kimwarer Mining area of Keiyo Escarpment inhabited by the Petitioners and their kinsmen until a comprehensive and exhaustive public participation is carried out. They also pray for costs. The application is based on the twelve (12) grounds on its face and supported by the affidavits of Mathew Sawe Chuma, Joseph Kipkosgei Lelon and Mike K. Kibiego, the 1st, 2nd and 4th Petitioners respectively, and a supplementary affidavit sworn by the 1st Petitioner on the 15th May, 2017.

2. The application is opposed by the 2nd and 5th respondents through their replying affidavit sworn by Francis Kipkech, the Deputy Managing Director of the 2nd Respondent, on the 4th April, 2019.

3. That vide the directions issued on the 15th May 2019, the learned counsel for the Petitioners and the 2nd and 5th Respondents filed their submissions dated the 26th August, 2019 and 6th September, 2019 respectively.

4. The following are the issues for the court's determinations;

(a) Whether the petitioners have established reasonable cause for conservatory orders sought to issue.

(b) Who prays the costs.

5. The court has after considering the grounds on the Motion, the affidavit evidence by the Petitioners, the 2nd and 5th Respondents, and submissions by both counsels come to the following determinations:

(a) That the basis of the Petitioners' application seeking for the conservatory orders as discerned from the grounds, their affidavit evidence and submissions by their counsel is their apprehension that the exercise being carried out by the Respondents, who have deployed Surveyors, planners and valuers on the land along Kimwarer Mining area of Keiyo Escarpment, would result to their being displaced and their land being taken over without compensation. That to allay the Petitioners' fears or apprehension, the 2nd and 5th respondents have in their reply explained that the exercise being carried out was as confirmed by the Gazette Notice No. 925 of 1st February, 2019 and was in accordance with **Section 107 of the Land Act No. 6 of 2012** that provides for compulsory acquisition of interests in land for public use. That having considered the affidavit and documentary evidence availed by both sides, the court finds the Petitioners have not laid out a reasonable cause for issuance of the conservatory orders. That the exercise by the respondents is definitely in the public domain in view of the said gazette notice and the engagements with the shareholders and the public has commenced and those with any verifiable claims will definitely have an opportunity to seek to lodge the same and be heard in accordance with the law.

(b) That when the court considers the Petitioners' interests as set out in the petition against the wider public interests, and in view of the fact that there is no definite evidence so far presented that shows that the Petitioners' constitutional rights are likely to be negatively affected before the petition is heard and determined, the court finds this is not a proper case for restraining the respondents from carrying out their legal and statutory duties.

(c) That though the petitioners have failed in their application, the court finds this is a proper case where costs should not follow the events as per **section 27 of the Civil Procedure Act, Chapter 21 of the Laws of Kenya**. That the costs of the application will be on the cause.

6. That in view of the findings above, the petitioners' motion dated the 6th March, 2019 is without merit and hence dismissed with costs in the cause. Orders accordingly.

Dated and delivered at Eldoret this 9th day of October, 2019.

S. M. KIBUNJA

JUDGE

Ruling read in open court in the presence of:

No appearance for Petitioners.

Mr. Odongo for 2nd and 5th Respondents.

Christine: Court Assistant