



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC PETITION NO. 2 OF 2014

CHRISTOPHER KURUTYON LONYALA & 26 OTHERS.....PETITIONERS

VERSUS

CABINET SECRETARY MINISTRY OF LAND AND SETTLEMENT & 10 OTHERS.....RESPONDENTS

RULING

1. This ruling is with regard to an application by way of Notice of Motion dated 13/5/2019 brought under **Order 45 Rule 1(1) (a), 40 Rule 1 and 51 Rule 1 of the Civil Procedure Rules 2010, Section 1, 1A, 3, 3A of the Civil Procedure Act Cap 21**. The petitioners are seeking the following orders:-

(1) ...spent

(2) That this court be pleased to review the orders given on 2/3/2016 by the Hon. Justice E. Obaga and specifically under Order (6) by deleting the word “Government” and replacing it with the phrase “all persons occupying respective portions of the suit land and holding allotment letters by either the Agricultural Development Corporation and/or the Settlement Fund Trustee.

(3) That a temporary injunction be issued against the respondents, their agents servants, employees or any person acting under the direction and/with their co-operation restraining them from evicting, alienating, wasting and/or in any other way interfering with the parcels of the suit land held and occupied by allottees holding letters of allotment either by the Agricultural Development Corporation and/or the Settlement Fund Trustee as at 2/3/2016 when orders of status quo were issued by this court pending hearing and determination of this application.

(4) That a temporary injunction be issued against the respondents, their agents servants, employees or any person acting under the direction and/with their co-operation restraining them from evicting, alienating, wasting and/or in any other way interfering with the parcels of the suit land held and occupied by allottees holding letters of allotment either by the Agricultural Development Corporation and/or the Settlement Fund Trustee as at 2/3/2016 when orders of status quo were issued by this court pending hearing and determination of this petition.

(5) That costs of this application be in the cause.

2. The application is supported by a sworn affidavit of 1st petitioner on sworn on 13/5/2019 on his own behalf and on behalf of other petitioners which amplifies the grounds stated on the face of the application.

3. The grounds relied on are that the petitioners successfully sought orders of *status quo* before the Hon. Justice Obaga on 2/3/2016; that however the Hon. Judge granted orders of *status quo* and further qualified those orders by indicating that “*allotees from the government*” to maintain their respective portions of land; that the inclusion of the word government has created a challenge as the respondents have utilized that order to evict person who had been settled on the land by the Agricultural Development Corporation (ADC) in favour of settling persons given letters of allotment by the Settlement Fund Trustees (SFT). It is alleged that chaos have resulted on the ground as a result of confrontation between government officials and residents as a result of improper interpretation of the *status quo* orders. It is urged that government officials have arrested and instituted criminal proceedings against residents holding ADC letters of allotment and such allottees from ADC will continue to suffer such prejudice unless the orders given by this court are reviewed. Copies of two charge sheets in **Kitale CMCR No. 2204 of 2015** and **Kitale CMCR. No. 5654 of 2018** have been annexed to the supporting affidavit. Those case involve trespass upon private land with Chepchoina Settlement Scheme, Trans-Nzoia County, contrary to **Section 5 (1) (a) of the Trespass Act Cap 294** of the Laws of Kenya. A newspaper clip of 30/4/2019 is also attached.

4. The 11th interested party on behalf of the other interested parties filed an affidavit in support of the motion on **6/6/2019** and annexed even more documents relating to criminal cases before the Chief Magistrates Court at Kitale. He also filed very detailed submissions on 22/7/2019. The 9th and 10th respondents opposed the application by way of written submissions filed on 31/7/2019 while the petitioners filed their submissions on 18/7/2019.

5. have considered all the documents before me in respect of the instant application. I have noted the hearing of the petition herein is nearing completion and only the respondents are yet to testify. This application has already taken up court's time which would have been better utilized at hearing the respondents' case. However in order to be certain that peace prevails as the decision of this court is being made I find that it is necessary to issue fresh orders. I hereby issue an order that the *status quo* existing at the time of delivery of this ruling shall be maintained by all the parties without exception until the judgment in the matter is delivered. The respondents shall expeditiously call their evidence in the matter and close their case at the earliest.

It is so ordered.

Dated, signed and delivered at Kitale on this 3rd day of October, 2019.

MWANGI NJOROGE

JUDGE

3/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Karani for 9th and 10th respondents

N/A for the plaintiff

N/A for interested parties

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

3/10/2019