



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC PETITION NO. 9 OF 2019

DANIEL A. ONYANGO.....PETITIONER

VERSUS

DOMINION FARMS LIMITED.....1ST RESPONDENT

THE COUNTY GOVERNMENT OF SIAYA.....2ND RESPONDENT

WEST KENYA SUGAR COMPANY LTD.....3RD RESPONDENT

JUDGMENT

The Petitioner is seeking orders for:

- a) A declaration that the ongoing process of developing the Local Part Development Plan for Yala Swamp without carrying out a survey as envisaged under Section 25 of the Physical Planning Act is illegal.
- b) An order of mandatory injunction be issue to ensure that decision of the National Land Commission is implemented and a resurvey done and excess land allocated to the Communities before the Local Part Development Plan is developed and approved.
- c) The costs of the petition be borne by the Respondents.
- d) Any other orders to remedy the violation of the Petitioner's fundamental rights.

The Petitioner self-describes as “a nationwide umbrella body representing the interests of sugar plantation and factory workers in the sugar sector within the Republic of Kenya...” The Petitioner states that the residents of Yala Swamp Communities had filed a claim against the 1st Respondent before the National Land Commission which was allowed vide a decision that the Ministry of Land and Physical Planning and the County Government of Siaya resurveys the swamp to determine the acreage under Dominion farm; and if there is excess land, it should be restored to the affected communities and ownership documents be prepared for the communities.

That the Respondents have developed a local Part Development Plan (PDP) for the swamp in exclusion of key stakeholders and residents; and without adhering to the recommendations of the National Land Commission as no resurvey has been done and/or excess land given to the affected communities. That the 60 day period for raising an objection to the PDP has lapsed and the Director of Surveys might sign the illegally developed PDP unless the court intervenes.

That the Respondents have extended the boundaries of Dominion Farms beyond what had been allocated to them and are threatening to evict the Petitioner from their ancestral land in contravention of the National Land Commission decision.

That these actions constitutes an unlawful exercise of jurisdiction under **Section 25 of the Physical Planning Act** and a violation of **Article 47 (1) of the Constitution** which guarantees fair administrative action; as well as **Articles 26, 28, 40 and 43 (e) of the Constitution**, that is by threatening to deprive the residents of Yala swamp communities their ancestral land from which they derive their income and social security, condemning them to a life of abject poverty and misery.

That the members of the Petitioner have a legitimate expectation that the Respondents shall at all times heed the law before making drastic decisions under **Section 24 of the Physical Planning Act**; and the expectation has been violated.

Issues for Determination

1. Whether the Petitioner's prayers should be granted.

Despite entering appearance, none of the Respondents has filed a defence or submissions. When the matter came up for mention on 10th September 2019, the Respondents were given time to file a defence but have not done so.

Given that no defence has been mounted, this amounts to a concession of the claims made by the Petitioner and the upshot is that the orders sought should be granted with the Respondents bearing the costs.

DATED AND DELIVERED THIS 20TH DAY OF DECEMBER, 2019.

In the presence of:

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A. O. OMBWAYO
ENVIRONMENT & LAND
JUDGE