



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION NO. 45 OF 2014

IN THE MATTER OF ARTICLE 22 (1) OF THE CONSTITUTION OF KENYA

AND

**IN THE MATTER OF CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS
PURSUANT TO**

**ARTICLES 40 (1), (2), (3) AND 47 (1) OF THE CONSTITUTION) PRACTICE AND
PROCEDURE RULES 2012**

SOLOMON M. NCHEBERE & 22 OTHERSPETITIONERS

VERSUS

THE MERU COUNTY GOVERNMENT.....RESPONDENT

J U D G M E N T

1. Petitioners claim that they are the registered owners of all those parcels of land known as Unsurveyed plot No. 15, 20, 22, 36, 17, 30, 42, 11, 12, 9, 34, 35, 21, 33, 4, 23, 7, 25, 3, T-879 all in Meru Municipality also known as plot Nos. T-935, T-966, T-877, T-862, T-988, T-890, T-892, T-904B, T-871, T-902, 86 T-888, T-887, 878, T-885, T-882 and T-879 all in Meru Municipality (here in after referred to as the suit plots).

2. On diverse dates in May, 1999 all the Petitioners were issued with letters of allotment in respect of the suit lands by the commissioner of lands.

3. Petitioners further claim that they have been in occupation of the Suitland since 1995 and that they have greatly developed the land by putting up permanent structures.

4. Petitioners claim that the Respondent and its officers have threatened to demolish the developments on the Suitland and evict them.

5. The prayers sought by Petitioners are:

a. A declaration that the Petitioners are the lawful, and sole owners of all the suit plots.

b. An injunction restraining the Respondents or anyone acting on its behalf from demolishing the developments/ buildings house/ structures on the suit lands or depriving the petitioners ownership and enjoyment of the suit plots, or in any other way interfering with the petitioner's ownership, quiet possession, occupation and use of the suit plots.

c. A declaration that the Petitioner's constitutional right to protection to right to own property has been violated.

d. A declaration that the Petitioners' constitutional rights to a fair administrative action has been violated.

e. Such other orders that the Court may deem just and expedient in the circumstances to grant in order to serve the ends of justice.

6. Respondent is the County Government of Meru. The Physical Planner of the Respondent, one Jefferson Musyoka Swore an Affidavit stating that the Suitland is referred as Jua Kali and was meant for light industries but that the Petitioners converted the land for use of residential and Commercial purposes.

7. It is also averred that that Petitioners have encroached into the Kanyuru River where they have constructed structures on the riparian land which is public land. Respondent contends that the encroachment has resulted in pollution of the environment as there is discharge of sewerage waste hence an environment health hazard.

8. Respondent also states that Petitioners have disobeyed zoning laws and that the developments there on are unapproved.

9. It is also averred by Respondent that Petitioners do not own the land.

10. Way back on 15:06:15, directions were given for the petition to be heard by way of Written Submissions The said submission have been filed and exchanged and the court has considered the same in the determination of this case.

11. The first and foremost issue for consideration is whether the Petitioners have any rights over the suit land capable of being protected by way of a Constitutional Petition.

12. Respondent has submitted that:- "title to landed property normally comes into existence after issuance of a letter of allotment, meeting the conditions stated in such a letter and actual issuance thereafter of a title document. In support of this argument, Respondent has cited the case of *Wreck Motors Enterprises vs. The Commissioner of Lands and 3 Others Nairobi Civil Appeal No. 71 of 1997* and *Joseph Arap Ngok Vs. Justice Moijo Ole Keiwa NAI Civil Application No. 60 of 1997*.

13. I am in agreement with these submissions since a letter of allotment is not a title and it therefore doesn't confer rights of proprietorship to a claimant.

14. Where then does that leave the Petitioners? Do they (petitioners) have any rights capable of being protected by this court?

15. A scrutiny of the letters of allotment issued to the Petitioners indicate that the letters were issued in May 1999, for a term of 99 years. The Respondent had promised to issue the Petitioners with titles under Cap 281 or 300 (now repealed) and that the grant or lease:- "**will be undertaken as soon as circumstances permit...**"

16. It is apparent that the Respondent is the one who put the Petitioners into occupation of the aforementioned plots via the letters of allotment. The Respondent has also been collecting rent and rates in respects of the Suitland. It then follows that the Petitioners have acquired possessory rights over that Suitland awaiting the crystallization of such rights into rights of proprietorship in conformity with what is contained in the letters of allotment.

17. The onus was on the Respondent to facilitate the acquisition of the titles. It is upon the Respondent to give an account as why the grant or lease cannot be given to the petitioners.

18. From the foregoing, I find that petitioners had acquired rights and over the suit land anchored on the doctrine of legitimate expectation. It is none other than the Respondent who incubated this right.

19. In **Serah Mweru Muhu v. Commissioner of Lands and 2 others, Petition No.413 of 2012**, where the court was dealing with an application to renew/ extend a leasehold tenure, it was stated that “ **at its core, and in its broad sense, the doctrine of legitimate expectation is said to arise out of a promise made by a public body or official, which the person relying on it anticipates it will be fulfilled....**”

20. In **Kuria Green limited vs. the Registrar of titles and another Petition 107 of 2010**, the court while making reference to a party's legitimate expectation quoted Lord Simon Brown in **R vs DEVON COUNTY COUNCIL ex parte P. BAKER, [1995] 1 ALL ER**, where it was stated that: “**...it is the interest rather than the benefit that is the substance of the expectation. In other words, the expectation arises not because the claimant asserts any specific right to a benefit but rather because his interest in it is one that the law holds protected by the requirements of procedural fairness; the law recognizes that the interest cannot properly be withdrawn (or denied) without the claimant being given an opportunity to comment and without the authority communicating rational grounds for any adverse decision**”.

21. The Respondent cannot therefore claim that Petitioners have no rights capable of being protected.

22. The Respondent have laid out a raft of allegations against the Petitioners including pollution of environment, building residential and commercial structures in an industrial set up, building without approval and contravening zoning laws.

23. However, the Respondent has not demonstrated that they accorded the Petitioners fair administrative action while making the aforementioned allegations.

24. As rightly submitted by the Petitioner, Section 4 of the Fair Administrative Action stipulates that:-

4. (1) Every person has the right to administrative action which is expeditious, efficient, lawful, reasonable and procedurally fair.

(2) Every person has the right to be given written reasons for any administrative action that is taken against him.

(3) Where an administrative action is likely to adversely affect the rights or fundamental freedoms of any person, the administrator shall give the person affected by the decision-

(a) prior and adequate notice of the nature and reasons for the proposed administrative action;

(b) an opportunity to be heard and to make representations in that regard;

25. The proviso echoes what is set out under Article 47 of the Constitution.

26. Respondent has submitted that the issues raised by Petitioner are in the ambit of Judicial Review. But how were the Petitioners to take this route when they are not even aware of the decisions made by the Respondent save for the Red ex marking (X markings) that were put on their structures.

27. The Petitioners ought to have been made aware of the allegations contained in the affidavit of the Respondent and they also ought to have been given an opportunity to be heard.

CONCLUSION

28. The final orders of the court are as follows:-

a. The Respondent or any one acting on its behalf is hereby restrained from demolishing the developments/ buildings house/ structures on the suit lands or depriving the petitioners ownership and enjoyment of all that land known as Uns plot No. 15, 20, 22, 36, 17, 30, 42, 11, 12, 9, 34, 35, 21, 33, 4, 23, 7, 25, 3, T-879 all in Meru Municipality also known as plot Nos. T-935, T-966, T-877, T-862, T-988, T-890, T-892, T-904B, T-871, T-902, 86 T-888, T-887, 878, T-885, T-882 and T-879 all in Meru Municipality or in any other way interfering with the petitioner's, quiet possession, occupation and use of all that land known as Uns plot No. 15, 20, 22, 36, 17, 30, 42, 11, 12, 9, 34, 35, 21, 33, 4, 23, 7, 25, 3, T-879 all in Meru Municipality also known as plot Nos. T-935, T-966, T-877, T-862, T-988, T-890, T-892, T-904B, T-871, T-902, 86 T-888, T-887, 878, T-885, T-882 and T-879 all in Meru Municipality unless there is full compliance with the applicable law.

b. It is hereby declared that petitioners have a legitimate expectation to own the aforementioned suit plots unless and until the Respondent gives reasons to the contrary.

c. It is hereby declared that petitioner's constitutional right to protection of the right to own property has been violated.

d. It is hereby declared that the Petitioners' constitutional rights to a fair administrative action has been violated.

e. Respondent is condemned to bear costs of the suit.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 24th JANUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Kimathi K. H/B for Mutuma for Petitioners present

Mungai for Respondent present

HON. L. N. MBUGUA

ELC JUDGE