



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KITALE

ELC PET. NO. 2 OF 2014

IN THE ENVIRONMENT AND LAND COURT AT KITALE

CONSTITUTIONAL PETITION NO. 2 OF 2014

IN THE MATTER OF INFRINGEMENT & CONTRAVENTION OF FUNDAMENTAL

RIGHTS & FREEDOM UNDER THE CONSTITUTION OF KENYA 2010

ARTICLES 22, 23, 24, 27 (1), (2), (4) & (5), 40, 47 (1), 60, 64, 67(2), 259 & 260

AND

IN THE MATTER OF THE SETTLEMENT FUND SCHEME (SFTs)

AND

IN THE MATTER OF THE SETTLEMENT OF THE MEMBERS OF THE POKOT

COMMUNITY ONTO THE CHEPCHOINA SETTLEMENT SCHEME FOLLOWING

THE PRESIDENTIAL DECREE IN 1994 TO SETTLE MEMBERS OF THESE

COMMUNITIES BEING LANDLESS & ADVERSELY AFFECTED BY THE

CONSTRUCTION OF THE TURKWEL DAM COVERING OVER 41,000 ACRES

OF GRAZING LAND ONTO THE AGRICULTURAL DEVELOPMENT

CORPORATION (ADC) FARMERS AT TRANS NZOIA

AND

IN THE MATTER OF THE SERIES OF ILLEGAL, WRONGFUL AND

UNLAWFUL ALLOCATION OF LAND WITHIN CHEPCHOINA

SETTLEMENT SCHEME MEANT FOR MEMBERS OF THE POKOT

SABAOT, LUHYA AND TURKANA COMMUNITIES TO

FOREIGNERS AND OTHER WRONGFUL PERSONS

AND

IN THE MATTER OF THE FORGED ALLOTMENT LETTERS ISSUED

FRO FOREIGNERS AND OTHER WRONGFUL PERSONS

OUTSIDE THE ADC FARMS AT TRANS NZOIA

AND

IN THE MATTER OF THE FORGED ALLOTMENT LETTERS ISSUED

TO FOREIGNERS AND OTHER WRONGFUL PERSONS

OUTSIDE THE ADC FARMS AT TRANS NZOIA

AND

IN THE MATTER OF THE AGGRIEVED OF OVER 100,000 LEGALY

ALLOTTED LAND MEMBERS FROM THE POKOT, SABAOT,

TURKANA AND LUHYA COMMUNITIES BEING

THE PETITIONERS/APPLICANT HEREIN

AND

IN THE MATTER OF:-

CHRISTOPHER KURUTYON LONYALA.....1ST PETITIONER
MUSA TINYANG.....2ND PETITIONER
LONYANGAREN LOKORRIONKOR.....3RD PETITIONER
ROBERT MATANDA.....4TH PETITIONER
JOHN MATANDA.....5TH PETITIONER
JOSEPH KANTICH.....6THPETITIONER
ELIZABETH CHEPSERET NDURURU.....7TH PETITIONER
PAMELA CHEPKEMOI NGEINWA.....8TH PETITIONER
ISAAC ATODO SIRE.....9TH PETITIONER
TEGLA LOROUPE.....10TH PETITIONER
MARKO CHEMASWET KAPSANDUL.....11TH PETITIONER
MOSES KABURU.....12TH PETITIONER
LOKALE.....13TH PETITIONER
RAMANYANG PRECH BIWOTT.....14TH PETITIONER
ABRAHAM MARIAH KAMAKU.....15TH PETITIONER
KAKUTO YARANGOLE ALUKUNYANG.....16TH PETITIONER
STEPHEN K.N. NGEIYWA.....17TH PETITIONER
ALEXANDER M. T. SIYWET.....18TH PETITIONER

BEN M. NGEIYWA.....	19 TH PETITIONER
MNANGAR RITENYANG SEPITOI.....	20 TH PETITIONER
BOAZ NAIYWA.....	21 ST PETITIONER
LOWGUROPUS LOKORKOU.....	22 ND PETITIONER
SAMWEL K. KAPAILEL.....	23 RD PETITIONER
LOTANY LOTILIMAT.....	24 TH PETITIONER
JAMES KABURU.....	25 TH PETITIONER
BENJAMIN URIO.....	26 TH PETITIONER
LORNAL EWOL.....	27 TH PETITIONER

VERSUS

CABINET SECRETARY MINISTRY OF

LANDS AND SETTLEMENT.....	1 ST RESPONDENT
DIRECTOR OF LAND ADJUDICATION.....	2 ND RESPONDENT

DISTRICT LAND

ADJUDICATION TRANS-NZOIA.....	3 RD RESPONDENT
COUNTY COMMISSIONER TRANS-NZOIA.....	4 TH RESPONDENT
DEPUTY COUNTY COMMISSIONER KWANZA.....	5 TH RESPONDENT
POLICE COUNTY COMMANDANT TRANS-NZOIA....	6 TH RESPONDENT

ADMINISTRATION POLICY COUNTY

COMMANDANT -TRANS NZOIA.....	7 TH RESPONDENT
INSPECTOR GENERAL OF POLICE.....	8 TH RESPONDENT
HON. ATTORNEY GENERAL.....	9 TH RESPONDENT
FRANCIS KAPCHANGA.....	10 TH RESPONDENT
PETER CHAKALI.....	11 TH RESPONDENT

R U L I N G

1. The application dated 18/1/2018 seeks the following orders:-

(a)spent

(b) That the applicants seek leave of court to amend this petition and be enjoined in Petition No. 2 of 2014 as Interested Party in the interests of justice without any prejudice.

(c) That there be made such other and/or further orders as the ends of justice may demand.

2. The grounds upon which the application is made are that the applicants were allocated land by the Government in 1997 and 1998 through

the ADC and they have been in peaceful occupation of then bona fide plots in ADC Chepchoina Phase II S.F.T. Scheme which is now allegedly threatened by the respondents.

3. It is alleged that the applicants would suffer irreparable injury should their application be declined. Since their plots of land are their source of livelihood, income and place of abode.

4. I have noted that on 2/3/2016 a status quo order was made, that all those allottees who received land from the Government should maintain their respective portions without any interference from any quarters. That order was further clarified on 26/4/2016 by this court. This matter has proceeded. Two witnesses for the prosecution have given evidence. On 27/9/2017 this court ordered that the plaintiff will have 1 hour and 15 minutes more to present its case.

5. Lists of persons entitled to the land by whatever means they claim, will be available. I do not find any difference between the claim by the petitioners and the claim that the applicants now purport to have. Though I believe that this petition is a matter of public law and I believe that the petitioners interests are appropriately catered for in the petition even at present, I will exercise my discretion and allow the applicants named in the list filed in court and headed "Authority to plead and swear affidavits" to be enjoined as interested parties in this petition. They shall file their documents for use in the main petition within 21 days of the order herein and the other parties shall have leave to reply to those documents, if need be within 10 days of service.

6. The witnesses of the applicants in the list attached to the application shall be the only witnesses the applicants shall be allowed to file the affidavits of or to call as witnesses to testify in this petition and no other documents save those in the applicant's list dated 18/1/2018 shall be allowed.

7. The application for an order to amend the petition is denied for the reason that a party may not be allowed to come into proceedings midway and purport to want to amend another party's pleadings. Each party shall bear their own costs of this application in any event.

Dated, signed and delivered at Kitale on this 28th day of February, 2018.

MWANGI NJOROGE

JUDGE

28/2/2018

Coram:

Before: Mwangi Njoroge, Judge

Court Assistant - Collins/Picoty

Mr. Rono for petitioners

Mr. Karani for 10th and 11th Respondent

Mr. Karani holding brief for Wabwire for the 1st - 9th Respondents

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

28/2/2018