



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

KERUGOYA CONSTITUTIONAL PETITION NO. 3 OF 2016

IN THE MATTER OF ALLEGED INFRINGEMENT OF THE PROVISIONS OF ARTICLES 1 (1), 1(3), 2(1), 2(2), 2(4), 3(1), 6(2), 10, 35(1), 47, 62 (2), 63 (1), (2), (3) AND (4) 67, 232(1), 258 AND 259(1) OF THE CONSTITUTION OF KENYA

AND

THE LAND ADJUDICATION ACT, CAP 284, LAWS OF KENYA

AND

BETWEEN

THE COUNTY GOVERNMENT OF KIRINYAGAPETITIONER

VERSUS

THE CABINET SECRETARY, MINISTRY OF LAND,

HOUSING & URBAN DEVELOPMENT.....1ST RESPONDENT

THE NATIONAL LAND COMMISSION.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

AND

THE COUNTY GOVERNMENT OF EMBU.....1ST INTERESTED PARTY

APOLO NJERU MAGANJO

JOSEPH MAINA KANYIRI

JAMES NJAGI CYRUS

NJIRATI KIRANGA.....2ND INTERESTED PARTY

FRANCIS KARIUKI KAMAU

KATHUA KORI

SAMUEL MURIITHI

JOHN KIAMBI MUCHIRI

JEFITHA MWANIKI

MBEERE ELDERS ADVISORY WELFARE GROUP (NGOME)

NJERU BANDA

ESTON NYAGA NTHIGA.....3RD INTERESTED PARTY

SERAPHINO NGARI

JOSEPH MIIGWA

NAHASHON MUGO KABEU

NATHAN MWARE

JOSPHAT NGIRIGACHA NUNGWANJA

PETERSON MAINA.....4TH INTERESTED PARTY

MBUI KIMEU CIURI

BENARD MWANGI

JOSEPH MUKONO

NGIGE MURE

MURAGE GITURA

PHILIP MUTUKU MUSYOKA

STEPHEN MUSYOKA KIATU

JACKSON KATUMO MUTISYA.....5TH INTERESTED PARTY

SAMUEL MWANIKI MUSYOKI

TIMOTHY MUTHAMA MUSAU

ESTHER GATARI MUTUVO

MATHEW NYAGA J. KABUTA.....6TH INTERESTED PARTY

NJAGI NGOCI

JOHNSON NJERU KINGANGI

DANSON NJIRU NJERU

HEZRON NTHIGA KINGANGI

USTUS NYAGA KINGANGI.....6TH INTERESTED PARTY

JOSEPH KINGANGI CAMBIRA

DENIS NJUE KINGANGI

SIMON NYAGA NJUKI

RULING

1. This application is dated **18.4.2018** and is said to have been brought to court **under Rule 24(1) of the Constitution of Kenya (protection of rights and fundamental freedoms) Practice and Procedure Rules, 2013).**

2. The application is supported by the affidavit of Philip Mutuku Musyoka sworn on **18th April, 2018** and has the following grounds:

- a) That on **15th August, 2016**, the petitioner filed the instant petition on behalf of the 9 clans of the Kikuyu Community challenging the manner in which the titles to the Mwea Settlement Scheme were issued.
- b) The main grounds of the petition are that the 9 clans of the Kikuyu community who reside in Kirinyaga County were left out in the allocation of the subject land.
- c) The applicants herein made an application to court dated **18th November, 2016** seeking to be enjoined as interested parties on the basis that they are members of the Embu Mwea Ranching Co-operative Society Limited and that they just like the 9 clans of the Kikuyu Community had been left out of the allocation of the subject land.
- d) One of the grounds raised by the petitioner in challenging the legitimacy of the process of the alienation, demarcation and allocation of the land is that there was no survey done before the titles were issued as there were no beacons erected on the ground.
- e) The fact that there were no beacons erected on the ground as at the time that the petition was filed is not denied by the respondents.
- f) On the application of the petitioner and the 4th Interested Party, the Honourable court issued an order suspending the issuance of the titles.
- g) Sometime on the **26th March, 2018**, the Respondent commenced the process of beaconing the Mwea Settlement Scheme and the process has now been completed.
- h) The beaconing process was aimed at ascertaining the extent and the actual location of the land allocated to the beneficiaries who now hold title documents.
- i) The beaconing process was undertaken in the land allocated for public use as well as the land that is currently occupied by private citizens and was aimed at facilitating the occupation of the subject land by the individuals who now hold title documents.
- j) On **13th April, 2018**, the respondents together with the 1st Interested Party commenced the process of showing the respective title holders the parcels that had been allocated to them.
- k) Since most of the title holders do not reside in the Mwea Settlement Scheme, there arose a commotion between the residents of the scheme and the title holders leading to several people getting hurt.
- l) Tension is already very high in the area and unless the court intervenes and grants the orders sought, there is a very high likelihood that there will be further commotion between the people who currently occupy the land and the beneficiaries who will occupy the land after the completion of the process.
- m) The actions of the respondents are a clear indication that they have every intention of facilitating the occupation of the land by the respective title holders.
- n) It is only fair and just that the orders sought be granted.

3. The application seeks the following orders:

- 1. That** this application be certified urgent and service hereof be dispensed with in the first instance.
- 2. That** pending the hearing of this application an order do issue staying the occupation of Mwea Settlement Scheme by persons who hold titles to the land save for those who already reside on the land.
- 3. That** pending the hearing and determination of the petition dated 12th August, 2016, a conservatory order do issue staying the occupation of Mwea Settlement Scheme by persons who hold titles to the land save for those who already reside on the land.
- 4. That** the costs of this application be provided for.

4. Mr. Gibson Kimani prosecuted the application at the ex parte stage on **23.4.2018**. He told the court that he relied on the grounds on the face of the application and on the supporting affidavit sworn by **Philip Mutuku Musyoka on 18.4.2018**. I have perused the apposite pleadings and considered the submissions proffered by the **5th Interested party's advocate**. I find it meritorious to issue the following orders:

a) The application is NOT certified urgent but is to be heard on priority basis.

b) Prayer 2 is granted in terms of the provisions of section 63(e) of the Civil Procedure Act and will remain extant until the **22nd of May, 2018** when the parties will appear **before the Honourable Justice Angima, ELC, Judge, at Embu.**

c) The applicant is directed to serve all other parties within the next 10 days.

d) Directions on 22nd May, 2018.

Delivered in open court at Chuka this 23rd day of April, 2018 in the presence of:

CA: Ndegwa

Gibson Kimani for the Applicant

P.M. NJORGE

JUDGE