



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

KERUGOYA CONSTITUTIONAL PETITION NO. 3 OF 2016

THE COUNTY GOVERNMENT OF KIRINYAGA.....PETITIONER

VERSUS

THE CABINET SECRETARY, MINISTRY OF LAND, HOUSING & URBAN

DEVELOPMENT1ST RESPONDENT

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

THE ATTORNEY GENERAL.....3RD RESPONDENT

AND

THE COUNTY

GOVERNMENT OF EMBU.....1ST INTERESTED PARTY/RESPONDENT

APOLO NJERU MAGANJO

JOSEPH MAINA KANYIRI

JAMES NJAGI CYRUS

NJIRATI KIRANGA 2ND INTERESTED PARTIES/RESPONDENTS

FRANCIS KARIUKI KAMAU

KUTHUA KORI

SAMUEL MURIITHI

JOHN KIAMBI MUCHIRI

JEFITHA MWANIKI

MBEERE ELDERS ADVISORY WELFARE GROUP (NGOME)

NJERU BANDA

ESTON NYAGA NTHIGA 3RD INTERESTED PARTIES/RESPONDENTS

SERAPHINO NGARI

JOSEPH MIIGWA 4TH INTERESTED PARTIES/APPLICANTS

NAHASHON MUGO KABEU

NATHAN MWARE

JOSPHAT NGIRIGACHA NUNGWANJA

PETERSON MAINA

MBUI KIMEU CIURI

BENARD MWANGI

JOSEPH MUKONO

NGIGE MURE

MURAGE GITURA

RULING

1. This application is dated **16.4.2018** and is brought to court pursuant to Rule 7 of the Constitution of Kenya (Protection of rights and fundamental freedoms) Practice and Procedure Rules 2013). It seeks the following orders:

1. That the honourable court be pleased to certify this matter as urgent and be heard ex-parte in the first instance.
2. That the honourable court be pleased to issue a temporary injunction restraining the Respondents/Interested parties or their agents and or representatives from continuing with the surveying, beaconing and allocation of the land at the Mwea Settlement Scheme pending the hearing and determination of prayers 4 and 5 herein below.
3. That the honourable court be pleased to issue a temporary injunction stopping any occupation and/or entry by the Respondents/Interested Parties or any other persons purporting to be allocated the said land at the Mwea Settlement Scheme pending the hearing and determination of prayers 4 and 5 herein below.
4. That the honourable court be pleased to issue a temporary injunction restraining the Respondents/Interested Parties or their agents and or representatives from continuing with the surveying, beaconing and allocation of the land at the Mwea Settlement Scheme pending the hearing and determination of the petition.
5. That the honourable court be pleased to issue a temporary injunction stopping any occupation and entry by the Respondents/Interested Parties or any other persons purporting to be allocated the said land pending the hearing and determination of the petition.
6. That the costs of this application be in the cause.

2. The application is supported by the affidavit of Nahashon Mugo Kabau and has the following grounds:

- a. That the process of the issuance of the titles has been impugned by the petition herein.
- b. That the said land is community land.
- c. That to allow persons to occupy the properties is only meant to defeat the petition herein.
- d. That there is dire need to maintain the status pertaining when this petition was filed.
- e. That the Embu County Government is in the process of granting occupation to several persons as per the list annexed in the petition.
- f. That the process of issuance of the said land lacked the required public participation and the same is shrouded in secrecy.
- g. That the suit land is ancestral land of the Agikuyu people who have used it for grazing their cattle since time immemorial.
- h. That land is a very emotive issue and before any occupation is granted, the petition should be heard and determined.
- i. That the petition herein is elaborate on why the application herein should be allowed.
- j. That it is met and just that this application is allowed.

3. At the ex-parte stage, Miss Kiragu told the court that she sought prayers 1, 2 and 3. She told the court that the surveying, beaconing and the issuance of titles had been done secretly and that if the injunctive orders sought are not granted, the obtaining situation will spawn further fighting and the resultant chaos will lead to a breakdown of law and order.

4. I have considered the apposite pleadings and the submissions made by the advocate representing the 4th Interested Parties. I do find issuance of orders in terms of prayer 3 untenable in that it will have the effect of injuncting parties who are denizens and occupants of the suit land.

5. The following **orders** are issued:-

1. Matter is not certified urgent but is to be heard on Priority Basis.

2. Prayer 2 granted in terms of section 63(e) of the Civil Procedure Act until the 22nd of May, 2018 when the matter will be given directions by the Hon. Justice Angima, ELC Judge, at Embu Law Courts.

3. The application to be served upon all other parties within 10 days of today.

4. Directions on **22nd May, 2018**.

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

CA: Ndegwa

Miss Kiragu for the Applicant

P.M. NJORGE

JUDGE