



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC PETITION NO. 2 OF 2014

CHRISTOPHER KURUTYON LONYALA.....	1 ST PETITIONER
MUSA TINYANG.....	2 ND PETITIONER
LONYANGAREN LOKORRIONKOR.....	3 RD PETITIONER
ROBERT MATANDA.....	4 TH PETITIONER
JOHN MATANDA.....	5 TH PETITIONER
JOSEPH KANTICH.....	6 TH PETITIONER
ELIZABETH CHEPSERET NDURURU.....	7 TH PETITIONER
PAMELA CHEPKEMOI NGEINWA.....	8 TH PETITIONER
ISAAC ATODO SIRE.....	9 TH PETITIONER
TEGLA LOROUPE.....	10 TH PETITIONER
MARKO CHEMASWET KAPSANDUI.....	11 TH PETITIONER
MOSES KABURU.....	12 TH PETITIONER
LOKALE.....	13 TH PETITIONER
RAMANYANG PRECH BIWOTT.....	14 TH PETITIONER
ABRAHAM MARIAH KAMAKU.....	15 TH PETITIONER
KAKUTO YARANGOLE ALUKUNYANG.....	16 TH PETITIONER
STEPHEN K.N. NGEIYWA.....	17 TH PETITIONER
ALEXANDER M. T. SIYWET.....	18 TH PETITIONER
BEN M. NGEIYWA.....	19 TH PETITIONER
MNANGAR RITENYANG SEPITOI.....	20 TH PETITIONER
BOAZ NAIYWA.....	21 ST PETITIONER
LOWGUROPUS LOKORKOU.....	2.2 ND PETITIONER

SAMWEL K. KAPAILEL.....23RD PETITIONER
LOTANY LOTILIMAT.....24TH PETITIONER
JAMES KABURU.....25TH PETITIONER
BENJAMIN URIO.....26TH PETITIONER
LORNAL EWOL.....27TH PETITIONER

AND

EKTELA EKAL LODIO.....1ST INTERESTED PARTY
MARGRET LONGELECH.....2ND INTERESTED PARTY
MICHAEL NGOLESH.....3RD INTERESTED PARTY
CLAY MADARA OCHIENG.....4TH INTERESTED PARTY
WILSON OTIENO OBURE.....5TH INTERESTED PARTY
BENJAMIN ORIA.....6TH INTERESTED PARTY
JAMES K. KABURU.....7TH INTERESTED PARTY
MARY SIMON LOKAMAR.....8TH INTERESTED PARTY
KENNETH ESINYEN.....9TH INTERESTED PARTY
EPEYON NKRUKA ETABO.....10TH INTERESTED PARTY
WILFRED OGUTU.....11TH INTERESTED PARTY
SYLUS ODONGO WERE.....12TH INTERESTED PARTY

VERSUS

CABINET SECRETARY MINISTRY OF LANDS AND SETTLEMENT.....1ST RESPONDENT
DIRECTOR OF LAND ADJUDICATION.....2ND RESPONDENT
DISTRICT LAND ADJUDICATION TRANS-NZOIA.....3RD RESPONDENT
COUNTY COMMISSIONER TRANS-NZOIA.....4TH RESPONDENT
DEPUTY COUNTY COMMISSIONER KWANZA.....5TH RESPONDENT
POLICE COUNTY COMMANDANT TRANS-NZOIA.....6TH RESPONDENT
ADMINISTRATION POLICY COUNTY COMMANDANT -TRANS NZOIA...7TH RESPONDENT
INSPECTOR GENERAL OF POLICE.....8TH RESPONDENT
HON. ATTORNEY GENERAL.....9TH RESPONDENT
FRANCIS KAPCHANGA.....10TH RESPONDENT
PETER CHAKALI.....11TH RESPONDENT

RULING

1. The application dated 14/3/2018 seeks a host of orders. These orders are all related to the enforcement and compliance with a court order dated 2/3/2016.
2. The application seeks that the O.C.S Endebess Police Station do prevail upon his officers not to be used by the respondents Nos. 5, 10 and 11 in this petition to harass, intimidate or threaten to arrest the applicants/interested parties for exercising their status quo rights in Chepchoina Phase II Settlement Fund Trustees Scheme as they own, use, benefit and deal with their lawful private individual properties therein.
3. There is also sought an order that the O.C.S. do invoke “*contempt of court criminal liability offence charges*” against any persons found to deliberately breach the said court order and also that the O.C.S. Endebess Police Station assisted by the Deputy County Commissioner be ordered to evict the “trespassers” on the said land who have no legal letters of allotment from the Government either through the Agricultural Development Corporation or the Settlement Fund Trustees.
4. The application is supported by the sworn affidavit of one Wilfred Ogutu the 11th Interested Party in the petition. He avers that after the Government allotted the land to individuals between 1997 - 1998, it later repossessed the same land in 2012 and caused double allocation. The deponent terms it a “*fallacy*” the assertion that only the Settlement Fund Trustees can allot land on behalf of the Government.
5. I have looked at the court order dated 2/3/2016. It was issued at the instance of the petitioners. Later the interested parties who are the current applicants came into this matter by virtue of an order of this court issued on 28/2/2018. Before they were enjoined, the dispute as to the interpretation of the orders of this court of 2/3/2016 was brought before this court and on 26/4/2016 this court stated that the status quo orders which were given are that the allottees by the Settlement Fund Trustees were the ones to remain in occupation. When the applicants therefore seek an enforcement of the order and at the same time state that they were settled by the Agricultural Development Corporation in 1997/98, and seek that the orders of status quo be maintained they appear to be engaging in doublespeak.
6. The application dated 14/3/2018 may at a casual glance be seen as one meant to vindicate the interests of justice but in my view it is not. No credible evidence has been adduced in the affidavit that the orders of 2/3/2016 were disobeyed. Secondly there is also no evidence of harassment of the applicants by anybody to warrant the orders of restraint sought in prayer No. 2 of the application.
7. Thirdly, it is not the function of this court to direct the police as to whom they should arrest and charge in court as requested in prayer No. 3 for the reason that all that depends on the outcome of complaints and subsequent investigation of those complaints.
8. Fourthly, granting prayer No. 4 before the conclusion of the hearing of this petition is inimical to the interests of justice in that final mandatory orders would have been granted before a trial of the main issues in a suit on their merits which is contrary to the principles set out in various precedents such as the notorious “*Locabail*” case. (*Locabail International Finance Ltd -vs- Agro Export & Another [1986] ALLER 901*).
9. For this reason, I find no merit in the application dated 14/3/2018 and I hereby dismiss it with costs to the respondents.

Dated, signed and delivered at Kitale on this 13th day of April, 2018.

MWANGI NJOROGE

JUDGE

13/4/2018

Coram:

Before -Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Karani for 10th and 11th Respondents

Applicants’ representative Ogutu, in Court

N/A for Hon. Attorney General

N/A for the Petitioners

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

13/4/2018