



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC PETITION NO 25 OF 2016

JACKSON MUNJURI MUNORU.....PLAINTIFF

VERSUS

AMBROSE GICHUNGE.....1ST DEFENDANT

DISTRICT LAND ADJ AND SETTLEMENT

OFFICER IGEMBE NORTH.....2ND DEFENDANT

ATTORNEY GENERAL.....3RD DEFENDANT

JUDGMENT

1. This petition was filed on 6.9.2016, whereby, the petitioner avers that he was at all material times the recorded owner of parcel No. 555 Akirang'ondū "A" Adjudication section, which is 0.7 acres. Petitioner avers that in December 2014, 1st respondent started to lay a claim on the suit land and hence a sham objection was filed which culminated in petitioner being deprived of 0.30 acres of land.

2. Petitioner therefore prays for;

(a) A declaration that the petitioner's fundamental rights and freedoms as guaranteed under the constitution of Kenya were contravened and violated by the respondents and are still being violated by the actions of the 1st and 2nd respondents.

(b) A declaration that the 2nd respondent acted illegally and unconditionally in depriving the petitioner of 0.30 acres when no justification had in fact been laid for doing so.

(c) A permanent injunction restraining the 1st and 2nd respondents their agents, servants, legal representative, heirs, assigns or anybody acting on their behest and authority from interfering with petitioners rights of user and occupation of the entire L.R No. 555 Akirangondū "A" Adjudication Section and the resultant subdivision measuring approximately 0.70 acres.

(d) An order directing the 2nd respondent to rectify the records of land parcel No. Akirangondū "A" Adjudication Section to revert 0.30 acres back to the petitioner.

3. The 1st respondent did file a replying affidavit on 23.9.2016, where he avers that the objection proceedings were conducted under the relevant statutes and that the decision there of delivered on 25.2.2015 was never appealed against.

4. The 2nd Respondent, who is the Attorney General did not file any response to the petition despite their promise to do so.

5. On 20.2.2018, directions were given for the petition to be canvassed by way of written submissions. Such submissions have duly been filed by the petitioner and 1st respondent. The 2nd respondent stated that he would associate himself with the submissions of the 1st respondent.

6. I have considered all the issues raised herein including the submissions filed by the parties.

7. It is a requirement for a petitioner who is seeking redress under the constitution to state his claim with precision by making reference to the provisions of the constitution which have been violated and to indicate the extent in which such provisions have been violated. In *Annarita Karimi Njeru Versus Attorney General (1979) eKLR*, it was established that "a petitioner who seeks redress under the Constitution must state his claim with precision by reference to the provisions of the Constitution that have been violated".

8 The present petition does not indicate what provisions of the constitution have been violated. I therefore find that the petition has not met the threshold of a constitutional petition.

9. I also note that petitioner has admitted that there were objection proceedings before the 2nd respondent. The applicable law was cap 283 laws of Kenya (Land consolidation Act). This act has an elaborate dispute resolution mechanism. It follows that the cases cited by 1st respondent, **Bernard Murage versus Fineserve Africa Ltd & 3 others (2015) eKLR ; Speaker of National Assembly Versus Njenga Karume (2008) eKLR and Fineserve** are relevant and applicable herein.

10. In **Kenya Bus services Ltd & 2 others versus AG (2005) eKLR**, Nyamu J in agreement with the decision in the case of **re-application by Bahadir (1986) LRL 297** stated that **“The constitution is not a general substitute for the normal procedures for invoking judicial control of administration action. where infringement of rights can found a claim under substantive law, the proper course is to bring them under that law and not under the constitution”**.

11. It is not for this court to act as an appellate forum regarding the decision of the 2nd respondent. The petitioner is bound by the provisions of the applicable law on matters adjudication.

12. All in all I find that the petition is not merited. The same is dismissed with costs to respondents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 11th APRIL, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Kithinji holding brief for Omari for petitioner – present

Miss Mwiraria for 1st respondent – present

AG for 2nd and 3rd Respondent absent

HON. LUCY. N. MBUGUA

ELC JUDGE