



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC NO. PETITION CASE NO.22 OF 2017**

**IN THE MATTER OF THE CONSTITUTION OF THE**

**REPUBLIC OF KENYA 2010**

**AND**

**IN THE MATTER OF THE ALLEGED CONTRAVENTION OF THE**

**FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES**

**2,19,20,21, 22, 23, 27, 31, 40, 47, 43 , 40, 50, 157(1) AND 258 OF THE**

**CONSTITUTION OF THE REPUBLIC OF KENYA**

**BETWEEN**

**AMINA A. SALIM .....1<sup>ST</sup> PETITIONER**

**ISMAIL MOHAMED.....2<sup>ND</sup> PETITIONER**

**AHMED SHEIKH ABDALLAH.....3<sup>RD</sup> PETITIONER**

**AISHA ABDALLAH.....4<sup>TH</sup> PETITIONER**

**AISHA ABDHALLAH.....5<sup>TH</sup> PETITIONER**

**RAMADHAN ALI.....6<sup>TH</sup> PETITIONER**

**JOEL SAID ALI.....7<sup>TH</sup> PETITIONER**

**OMAR ABDALLAH.....8<sup>TH</sup> PETITIONER**

**ABDALLAH AHMED OMAR.....9<sup>TH</sup> PETITIONER**

**ELISHA AMBANI SHIMINI.....10<sup>TH</sup> PETITIONER**

**HUDSON MWOCHI MULIANGO.....11<sup>TH</sup> PETITIONER**

**ABDALATIF ALINAJI.....12 PETITIONER**

|                            |                              |
|----------------------------|------------------------------|
| ABEID SAID.....            | 13 <sup>TH</sup> PETITIONER  |
| FARUK ALI NAJI.....        | 14 <sup>TH</sup> PETITIONER  |
| SALEH ALI NAJI.....        | 15 <sup>TH</sup> PETITIONER  |
| ABDULRAZAK AHMED ALI.....  | 16 <sup>TH</sup> PETITIONER  |
| GHANIA AHMED ALI.....      | 17 <sup>TH</sup> PETITIONER  |
| JOSEPH OREMO ARUA.....     | 18 <sup>TH</sup> PETITIONER  |
| MARIAM ABDALLAH.....       | 19 <sup>TH</sup> PETITIONER  |
| MOHAMED YUSUF.....         | 20 <sup>TH</sup> PETITIONER  |
| MOHAMED LULU SULEIMAN..... | 21 <sup>ST</sup> PETITIONER  |
| KARUME JUMA.....           | 22 <sup>ND</sup> PETITIONER  |
| MOHAMED JUMA KHAMSUR.....  | 23 <sup>RD</sup> PETITIONERS |
| TWAHA AHMED.....           | 24 <sup>TH</sup> PETITIONER  |
| ISSA HUSSEIN.....          | 25 <sup>TH</sup> PETITIONERS |
| ABDO SALIM.....            | 26 <sup>TH</sup> PETITIONERS |
| HASSAN N. SAKWA.....       | 27 <sup>TH</sup> PETITIONERS |
| JAMES ORINGO.....          | 28 <sup>TH</sup> PETITIONER  |
| VINCENT KIPKIRUI.....      | 29 <sup>TH</sup> PETITIONERS |
| SOFIA SEIF THABIT.....     | 30 <sup>TH</sup> PETITIONERS |
| SALIM SAID.....            | 31 <sup>ST</sup> PETITIONER  |
| PATRICK OKOTH.....         | 32 <sup>ND</sup> PETITIONER  |
| HAJI MOHAMMED ISSA.....    | 33 <sup>RD</sup> PETITIONER  |
| STEPHEN O OCHOLA.....      | 34 <sup>TH</sup> PETITIONER  |
| JOHN OWINO OMOLLO.....     | 35 <sup>TH</sup> PETITIONER  |
| SALIM M. SAID.....         | 36 <sup>TH</sup> PETITIONER  |
| DOMTILA A. OMBIMA.....     | 37 <sup>TH</sup> PETITIONER  |
| ABDUL WARETH.....          | 38 <sup>TH</sup> PETITIONER  |

ABDI NASIR ALI.....39<sup>TH</sup> PETITIONER  
JOSHUA OKINDO.....40<sup>TH</sup> PETITIONER  
WELLINGTON KELUNYO.....41<sup>ST</sup> PETITIONER  
JOSHUA KIPNGETIH.....42<sup>ND</sup> PETITIONER  
MUHAMMED ABDALLAH.....43<sup>RD</sup> PETITIONER

AND

THE NATIONAL LAND COMMISSION .....1<sup>ST</sup> RESPONDENT  
THE CABINET SECRETARY MINISTRY OF LANDS HOUSING &  
PHYSICAL PLANNING URBAN DEVELOPMENT...2<sup>ND</sup> DEFENDANT  
ATTORNEY GENERAL..... 3<sup>RD</sup> RESPONDENT  
THE KENYA INFORMATION SETTLEMENT  
IMPROVEMENT PROJECT (KISIP).....4<sup>TH</sup> RESPONDENT  
THE COUNTY GOVERNMENT OF KISUMU.....5<sup>TH</sup> RESPONDENT  
IDDI RAJAB SHUJAA.....6<sup>TH</sup> RESPONDENT  
SALAL SAID OMAR.....7<sup>TH</sup> RESPONDENT  
ALI MOHAMED SALEH.....8<sup>TH</sup> RESPONDENT  
ELISHA AHMED OMAR.....9<sup>TH</sup> RESPONDENT  
ABDUL VAHMAN OMAR.....10<sup>TH</sup> RESPONDENT  
SAAD BATULI SALIM.....11<sup>TH</sup> RESPONDENT  
FAIZ ABDALLA .....12<sup>TH</sup> RESPONDENT  
YUSUF MOHAMMED.....13<sup>TH</sup> RESPONDENT

### JUDGMENT

1. **Amina A. Salim and 42** others, hereinafter referred to as the 1<sup>st</sup> to 43 petitioners respectively, moved the court through their petition dated 1<sup>st</sup> February 2017 against the National Land Commission and 12<sup>th</sup> others, hereinafter referred to as the 1<sup>st</sup> to 13<sup>th</sup> Respondents respectively, seeking for the following prayers;

“ A. A declaration that the allotment letters dated 15<sup>th</sup> February 2001 issued by the Commissioner of Lands were issued in compliance of a valid court order and the same are the only genuine allotment letters and that any subsequent allotment letters issued are in violation of the court

order and thus null and void.

B. A declaration that the activities of the 4<sup>th</sup> respondent at the Manyatta Arab in so far as they intent not to recognize the allotment letters of the petitioners dated 15<sup>th</sup> February 2001 is illegal.

C. A declaration that the petitioner's fundamental right to life, human dignity, economic and social development as protected and envisaged by article 26, 28, and 43 if the constitution of Kenya

2010, consists, comprises and translates to the right and entitlement of means of livelihood and social economic wellbeing and ultimate human life.

D. A restraining order do issue directed at the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> Respondents, their employees, workers, agents and/or whomsoever jointly and severally restraining them from, issuing fresh allotment letters on Manyatta Arab save for the ones issued and dated 15<sup>th</sup> February 2001.

E. A prohibition order do issue directed at the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondent prohibiting them issuing any fresh allotment letters.

F. An order cancelling all and any allotment letters issued after the petitioners allotment letters of 16<sup>th</sup> February 2001.

G. An order cancelling all and any PDP issued after the petitioners PDP No.9/96/72.

H. The petitioner be awarded general and exemplary damages for violation of their fundamental rights.

I. Any other reliefs do issue to protect the petitioners constitutional rights.

J. The costs of the petition be paid to the petitioners.'

2. The petition is based on the following grounds among others;

- "That prior to the said allotment the petitioners had successfully petitioned the High Court in Kisumu HCC Miscellaneous Civil Application No.96 of 1998 through Judicial Review to compel the then office of the Commissioner of Lands to issue them with allotment letter after the then Commissioner of Lands attempted to issue the same allotments to strangers.

- That the said case ended in favour of the petitioners wherein on 16<sup>th</sup> February 2001 the Commissioner of Lands was compelled by the court to issue the petitioners and other genuine residents of Manyatta Arab Estate with allotment letters.

- That however ten years later on 14<sup>th</sup> April 2011 the Kisumu East District Commissioner following an impromptu visit of the estate made a roadside declaration that fresh allotment letters be reissued in Manyatta Arab Estate. He followed up the matter with a letter to the Commissioner of Lands which complied by dishing our new allotment letters thus creating total confusion and anarchy.

- That the petitioners herein moved the court in the concluded judicial Review in Kisumu HCC Miscellaneous Civil Application No.96 of 1998 to determine which of the two allotment letters was in compliance with its order of 3<sup>rd</sup> December 1998.

- That the court on 28<sup>th</sup> March 2012 returned a verdict that the allotment letters issued by the Commissioner of Lands to the petitioners dated 16<sup>th</sup> February 2001 are deemed as the rightful allotment letters.

- That many of those who were issued with the allotment letter pursuant with the orders of 3/12/1998 have since gone ahead to process their leases while others have developed their plots.
- That in early August 2016 both the Central Government and the County Government of Kisumu under the umbrella of the 4<sup>th</sup> respondent invited the residents for a meeting to discuss the development of Manyatta Arab Estate.
- That the 4<sup>th</sup> respondent commenced by explaining to us their role which is the improvement of the living standard of the estate and took us through four components that they had developed to achieve this which included;
  - a) Component I- Construction accessible roads,
  - b) Component 11- Opening of drainage,
  - c) Component 111- Installation of street lights,
  - d) Component 1V- Registration of individual title deed and construct of houses.
- That in as much as the petitioners herein were happy and comfortable with the first three components they were concerned and weary of the fourth component of registration of individual title deeds for the reasons that the issue was before the court where the same was ruled on which saw allotment letters issued on 3/12/1998. They did reduce their concerns in writing but the response was not convincing and it appeared that the said KISIP program had a hidden agenda.
- That the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents refused to respond to the main concerns and now the 2<sup>nd</sup> and 3<sup>rd</sup> respondent are proceeding with their alarming program of identifying people to process title for them and applying a PDP that had been rejected by the court in the judicial review order of 28/3/2012.
- That to the residents surprise this week January 2017, the 4<sup>th</sup> respondent did not commence with component 1 as promised but jumped straight to component IV and commenced compiling a fresh list of persons who are to be issued with fresh allotment letters for purposes of processing their title deeds.
- That it is apparent the respondent was only misleading the applicant and the respondents of Manyatta Arab that they are to improve their standard of living however their real intentions appears to be geared towards taking away their land.
- That the resident have complained against this exercise and in particular to the fact that strangers were included in the respondent's new list and further some residents numbers were changed causing more confusion.
- The 1<sup>st</sup> respondent despite being the constitutional body charged with overseeing this issue has remained quite.
- Discrimination. There were some residents who allotments letters issued on 16<sup>th</sup> February 2001 were assisted by the 2<sup>nd</sup> respondent to process lease suing the PDP developed for 2001 allotment letters. When other petitioners moved to the offices of the 2<sup>nd</sup> Respondent for similar assistance their request was rejected. The 2<sup>nd</sup> respondent now finds it fit to assist none residents obtain fresh allotments.”

3. The Petition is supported by the affidavit sworn by Amina A. Saslim, the 1<sup>st</sup> Petitioner, on the 1<sup>st</sup> February, 2017 to which is annexed four copies of letters of allotment under reference **7212/XVII** dated

16<sup>th</sup> February 2001 in favour of Hassan N. Sakwa, Issa Hussein, John Owino Omollo and Amina A. Salim, for unsurveyed residential plot numbers 47, 43, 56, and 74 respectively. That also annexed are two court orders as detailed herein below;

A. An order dated 3<sup>rd</sup> December 1998 and issued on the 10<sup>th</sup> December 1998 in Kisumu H.C. Misc. Civil Cause No.96 of 1998, that directed as follows;

“ a) That the Commissioner of Lands be and is hereby prohibited from allocating the plots comprising of Manyatta – Arab Estate other than in accordance with the agreement reached between the Applicants and District Commissioner Kisumu acting on behalf of the Commissioner of Lands on 22/3/96.

b) That an order of certiorari be and is hereby issued quashing the Commissioner of Lands decision allotting the plot comprising of the said estate contrary to the said agreement.”

B) Order dated 28<sup>th</sup> March 2012 and issued on the 10<sup>th</sup> April 2012 in Kisumu H.C. MISC.APPL. NO.96 of 1998 (Judicial Review) that directed as follows;

“1. The letters of allotment issued by the Respondent dated 16<sup>th</sup> February 2001 are hereby deemed the rightful allotment letters as per the agreement entered with the locals of Manyatta Arab estate on the 22/3/1996 as per the orders of the court of 3/12/1998.

2. ....”

4. The Petition was filed contemporaneously with the notice of motion under certificate of urgency dated 1st February 2017 seeking for conservatory orders. The court certified the application as urgent on the 2<sup>nd</sup> February 2017 and ordered that it be served in three days for hearing on a date to be fixed on priority basis. The record shows that the counsel for the Petitioners fixed the application for hearing on the 28<sup>th</sup> February 2017 on which date the court granted prayer 2 in the interim pending the hearing and determination of the notice of motion. That court then gave directions on filing and exchanging of replying papers and written submissions. That there followed court appearances on the 30<sup>th</sup> May 2017, 23<sup>rd</sup> June 2017 and 7<sup>th</sup> December 2017 when today's date for judgment was fixed. That all along those court appearances, the interim orders were extended to the next date.

5. The firm of Amondi & Co. Advocates entered appearances for the County Government of Kisumu, the 5<sup>th</sup> Respondent, on 6<sup>th</sup> February 2017 and subsequently for the 6<sup>th</sup> to 13<sup>th</sup> respondents on the 17<sup>th</sup> February 2017. That the 5<sup>th</sup> Respondent opposed the petition through the affidavit sworn by Daniel Okoth Ogada on the 27<sup>th</sup> April 2017 in which he among others deposed to the following;

· “That I am an employee of the County Government of Kisumu in the office of special programs under the office of the Governor and seconded to the Kenya Informal Settlement Improvement program (KISIP) – Kisumu as the Co-coordinator hence duly charged with its technical running and conversant with the issues particularized in this petition and therefore with authority and capacity to respond thereto as hereafter:

· I am aware that KISIP adopts a bottom up approach in managing the Manyatta Arab Project in line with Articles 10 (a), (b), (c) and (d) of the Constitution which envisages participation of all the stakeholders and it on that basis that contentious issue of allotment letters and leases was handled and it is on the basis that the community members have requested the national office to KISIP to urgently re-start and continue with project.(Annexed herein and marked DOO-1 is a true copy of a letter from the Manyatta Arab Community to the KISIP National Coordinator Arab Community to the KISIP National Coordinator dated 7/02/2017 and signed by 67 owners of various plots.)

· Further that the 1<sup>st</sup> Petitioner is dishonest and deceitful in that the order that she is relying on

(ASS-5) is a forgery as the court registry has since confirmed in response to a letter from the then Manyatta Arab Community Advocate Ken Omollo that the correct dates of the letter of Allotment as per the order was 16/02/2011 and not 16/2/2001. (Annexed herein and marked D002 is a true copy of the letter from Ken Omollo Advocate dated 28/04/2013 and the attendant communication from the Chief Magistrate Kisumu confirming the alteration on the order issued on the 28/03/2012 and dated 16/04/2012.)

- In our interaction with the community and stakeholders it came out clearly that in as much as there was contentious and un gazetted PDP (Part Development Plan) dated 8/10/1996 with 51 plots. the implementation of the court orders of 3/12/1996 in KISUMU JR. MISC. APPLCIATION NO.96/1998 envisaged the carrying out of a survey to identify the locality of the plots and establish their respective sizes.(Annexed herein and marked **DOO-3** is a true copy of a letter from the Commissioner of Lands dated 15/04/1999 to the applicant's advocate G.V. ODUNGA.).

- It is the implementation of the court orders of 3/12/1998 in Kisumu JR Misc. Application No.96/1998 that survey work which established 78 plots was done in March 2010, a notice of the proposed re-planning and formalization of the Manyatta Arabs Squatter Settlement circulated in the Daily Nation of the 5/10/2010 and the PDP No. N. N9/2010/02 gazetted in gazette notice No.12213 which to date has not been quashed by any court exercising supervisory jurisdiction. (Annexed herein and marked D00-4 (a), (b) and (c) are true copies of letter from the District Surveyor dated 25/03/2010, the Daily Nation publication dated 5/10/2010 and the Kenya Gazette Notice dated 8/10/2010.)

- Subsequently, the District plot allocation Committee –Manyatta Arab Settlement scheme which included representatives from the community sat on the 14/10/2011 and approved the list of names to be considered for allocation. (Annexed herein and marked DOO-5 (a), (b) and (c) is a true copy of letter from the District Lands Officer- Kisumu East dated 24/10/2011. Minutes of District plot Allocation Committee meeting held on the 14/10/2011 and the approved list of allottees for the 78 plots.)

- In essence the KISIP project acting in conjunction with the County Government of Kisumu in fulfillment of component 2 on land tenure regularization which ends in April 2017 has embarked on an aggressive process to ensure that letters of allotment are issued, survey is done for each individual plot and leases are ultimately issued as per the all-inclusive meeting of the District Plot Allocation Committee held on the 14/10/2011, a process that has now been stopped owing to the petitioners actions.

- I do honestly believe that this petition is not brought in good faith, is against the public interest and is basically meant to achieve the selfish interest of the petitioner at the expense of the Manyatta Arab Community at large.”

6. The counsel also filed the affidavit sworn by the 6<sup>th</sup> Defendant, Iddi Rajab Shujaa, on behalf of the 7<sup>th</sup> to 13<sup>th</sup> Respondents and herself opposing the petition, and among others deponed as follows;

- “That it is for the reasons aforementioned that the Manyatta Arab community members being sickened by the one person antics of the petitioner did a letter to the KISIP NATIONAL COORDINATOR seeking the continuation of the project whose sole objective we highly appreciate would lead to the improvement of the standard of life of the community members(Annexed herein and marked IRS-1 is a true copy of a letter from the Manyatta Arab Community to KISIP – National Co-coordinator dated 7/02/2017 and signed by 67 owners of various plots.)

- That I can confirm for a fact, because we are a close community, that 14 co-petitioners i.e. ELISHA AMBANI SHIMINI (10), ABEID SAID (13) SELEH ALI NAJI (15), MARIAM ABDALLAH (19), KARUME JUMA (22), ISSA HUSSEN (25), ABDO SALIM 26, SOFIA SEIF THABIT (30), SALIM SAID (32) STEPHENE O. OCHOLA (34) SALIM M. SAID (36),

DOMTILA A. OMBINA (37) ABDUL WARETH (38) AND MOHAMMED ABDALLA (43) are dead and therefore could not have signed the purported authority to file this petition. (Annexed herein sand marked IRS -2 is a true copy of a letter from the village elders confirming the same.)

- That some of the petitioners specifically Mohamed Juma Khamsur (23) Vincent Kipkirui (29), Elisha Ambani Shimini (10), Joel Said Ali (7), Ramadhan Ali (6) and Hassan N. Sakwa (27) had already sold their plots allotted pursuant to minutes of District Plot Allocation Committee meeting held on the 14/10/2011 to bona fide purchasers for value and therefore cannot purport to question the mode of distribution.

- That the 1<sup>st</sup> petitioner has fraudulently produced the signatures of co-petitioners who are beneficiaries and stakeholders of the MANYATTA ARAP KISIP PROJECT and who have confirmed to us that they did not give their consent to the petition.

- That four of the petitioners i.e. ISMAL MOHAMED (2), HAJI MOHAMMED ISSA (33), ABDHI NASSIR ALI (39) AND JOSHUA KIPNGETICH (42) are strangers and known tycoons who could not have been contemplated as beneficiaries and plot owners at Manyatta Arab.

- That the 1<sup>st</sup> petitioner is as beneficiary in the KISIP process with two plots i.e. plot No.17 (in her grandmother's name) and plot No.38 (in her father's name) and was elected to the KISIP Settlement Executive Committee in 2014 from which she had never resigned and has always been part and parcel of the decisions carried out by KISIP.

- Further that the 1<sup>st</sup> petitioner is dishonest and deceitful in that the order that she is relying on (AAS-5) is a forgery as the court registry has since confirmed in response to a letter from the then Manyatta Arab Community Advocate Ken Omollo that the correct dates of the letters of a Allotment as per the order was 16/2/2011 and not 16/2/2001. (Annexed herein and marked IRS-3 is a true copy of the letter from KEN OMOLLO advocate dated 28/4/2013 and the attendant communication from the Chief Magistrate Kisumu confirming the alterations on the order issued on the 28/03/2012 and dated 16/4/2012).

- I know for a fact that in as much as there was the contentious and ungazetted PDP (Part Development Plan) dated 8/10/1998 with 51 plots, the implementation of the court orders of 3/12/1998 in Kisumu JR MISC. APPLICATION No.96/1998 envisaged the carrying out of a survey to identify the locality of the plots and to establish their respective sizes (annexed herein marked IRS-4 is a true copy of the a letter from the Commissioner of Land dated 15/4/1999 to the applicant's then advocate G.V. ODUNGA.)

- Infact i am aware that attempts by the 1<sup>st</sup> petitioner to have the order of 3/12/1996 implemented in terms of her 51 un surveyed plots created mayhem and demonstrations within the Manyatta Arab Community so that the provincial administration acting together with the office of Commissioner of Lands had to work out a workable formula. (Annexed herein and marked IRS-5 is a true copy of photographic evidence of the said demonstrations.)

- It is the implementation of the court orders of 3/12/1998 in Kisumu JR MISC. Application No.96/1998 that survey work which established 78 plots was done in March 2010, a notice of proposed re-planning and formalization of the Manyatta Arabs Quarter Settlement circulated in the Daily Nation of the 5/10/2010 and the PDP No.N9/2010/02 gazetted in Gazette Notice No.12213 which to date has not been quashed by any court exercising supervisory jurisdiction. (Annexed therein and marked IRS-5 (a) (b) and (c) are true copies of letter from the from the District Surveyor dated 25/3/2010, the Daily Nation publication dated 5/10./2010 and the Kenya Gazette Notice dated 8/10/2010.)

- Subsequently the District Plot Allocation Committee – Manyatta Arab Settlement Scheme which included representatives from the community sat on the 14/10/2011 and approved the list of names to be considered for allocation. (Annexed herein and marked IRS-6(a), (b) and (c) is a true

copy of letter from the District Lands Officer Kisumu East dated 24/10/2011. Minutes of District Plot

Allocation Community meeting held on the 14/10/2011 and the approved list of allottees for the 78 plots.)

- That the 1<sup>st</sup> petitioner has always subjected the Manyatta Arab Community to countless litigation in order to disrupt the process of acquisition of titles to our plots in a manner that is equitable and acceptable to all members and her antics are really curtailing a project that has the potential to uplift our standard of living in addition to guaranteeing us our security of tenure. (Annexed and marked IRS-7 (a) and (b) are true copies of our (interested parties) written submissions and replying affidavit filed on 11/11/2013.)
- I dishonestly believe that this petition is not brought in good faith, is against the public interest and is basically meant to achieve the selfish interest of the 1<sup>st</sup> petitioner at the expense of the Manyatta Arab Community at large.”

7. The Principal litigation counsel entered appearance for the 2<sup>nd</sup> to 4<sup>th</sup> Respondents on the 28<sup>th</sup> February 2017 and opposed the petition through the replying affidavit sworn by Arche Aidah Njeri Munano, Principal Secretary In charge the State Department of Housing and Urban Development on behalf of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents. The deponent among others deponed to the following;

- “That I know of my own knowledge that before the Manyatta Arab project began there were consultations between the Manyatta Arab Community and the two levels of government and it was agreed that the approved Part Development Plan (PDP) of 2010 will be used as a base for planning and survey of the settlement since it was the official and most current existing plan and it had superseded the 1996 PDP.
- That I know of my own knowledge that before the project took off several stakeholders meeting were conducted on the ground to validate and ascertain the beneficiaries of the plots in Manyatta Arab Settlement. In those meetings, the community was explained to the role of the government and objective of the project in detail. The community was informed that this project was a national government project that was aimed to improving living conditions in the settlement through enhancement of tenure security that included giving land titles to people living in informal settlements. They were urged to fully participate and that the list of beneficiaries will be finalized with the active participation of Settlement Executive Committee, who were the community elected members along with county officials. I produce the minutes and proceedings of consultative meetings held with community from the inception on 2<sup>nd</sup> June 2016 until the last community stakeholders workshop on 1<sup>st</sup> December 2016 and I mark the bundle ‘ANM2”.
- That I know prior to the conception of this project there were disputes regarding the ownership of plots in the settlement which was decided by the court which ordered that the Commissioner of Land was prohibited from allocating plots in the Manyatta Arap estate other than in accordance with the agreement reached between the applicants and then District Commissioner of Kisumu acting on behalf of the Commissioner of Lands on 22<sup>nd</sup> March 1996.
- That following many complaints and concerns by the residents/plot owners of the Manyatta Arab estate the then District Commissioner held a public baraza on 3<sup>rd</sup> March 2010 to resolve the ownership problems and it was agreed in the meeting that allocation of the plots in the area will redone and based on new part development plan so as to factor in the developments on the ground. I produce a letter REF LND.2/11/VOL1 (61) dated 25<sup>th</sup> March 2010 from the then District Commissioner, Kisumu to the District Officer Winam Division directing him to give support to the land officials who will prepare the new PDP. I produce it and the attachments there on and mark it “ANM3.”
- That in furtherance to that order the District Commissioner, District Physical Planning Officer,

District Land Officer, District Surveyor and the land/stakeholders of the Manyatta Arab estate held several consultative meetings and it was evident that there was confusion by the two part development plans prepared earlier to solve the land ownership issue. The situation was such that people were allocated plots where others had built houses, and due to mix up in allocations that did not make cognizance of the existing structures it was important to find a viable way of complying with the court order. After deliberations the parties agreed that a part development plan would be prepared to depict the current development on the plots. I produce a letter REF. NO.PPD/.N9/MA/VOL1/55 dated 27<sup>th</sup> May 2011 from the District Physical Planning Officer to the Director of Physical Planning and mark it "ANM7".

f) That on 18<sup>th</sup> August 2010 a meeting was held between the Manyatta Arab Settlement Committee and the District Physical Planning Officer at Ardhi House Kisumu. The agenda of that meeting was to present the new PDP, identify the proposed allottees and discuss other emerging issues and resolutions. During that meeting, the physical planner explained the difference between the new PDP and the 1996 PDP was that it was done without ground verification and the 2005 PDP was not advertised procedurally. The 2005 PDP was also objected to because plot owners who had developments on the ground would have been displaced.

- That in that meeting, the community scrutinized the new PDP after which they described it as a true representation on the ground. The community then agreed on the authenticity and accuracy of the plan. At that meeting, a resolution was made that the new PDP 2010 was adopted by the meeting and the District Physical Planning Officer given a go ahead to process it further. I produce the minutes of the said meeting and mark them 'ANM8'. I also produce the 2010 PDP, the Manyatta Arab draft survey plan and the 2016 LPDP that was created as per the 2010 PDP and mark them "ANM9".

- That I know of my own knowledge that the 2010 PDP is valid as it was prepared in pursuance to a court order and that it fully represents the situation on the ground and that the allegations by the petitioner herein are made in bad faith as she always had an opportunity to raise the issues she is now raising in this petition in the various fora over the years that led to the 2010 PDP being created but she failed to so.

- That the allegations by the Petitioner that the respondent's activities are geared towards taking away the land of the Manyatta Arab Settlement people is baseless and untrue. The government is aimed at securing the land ownership of the people by ensuring that they have access to titles to their respective plot.

- That I am advised by the litigation counsel on record that the petitioner herein is a busybody as is evidenced by the fact that she had not even produced a formal authority from the rest of the petitioners to file this petition on their behalf.

- That I am advised by the litigation counsel on record that this petition is against the wider public interest as public funds are a great risk of being wasted if this petition succeeds yet the petitioners have not proved how they will suffer loss and damage if the project proceeds."

8. The Petitioners' counsel filed their written submissions on the 8<sup>th</sup> June 2017 while that for the 2<sup>nd</sup> to 4<sup>th</sup> Respondents' was filed on the 6<sup>th</sup> December 2017. The counsel for the 5<sup>th</sup> Respondent had filed theirs earlier on the 27<sup>th</sup> February 2017 with the replying affidavit.

9. The following are the issues for the determination by the court;

a) Whether the Petitioners had established that the Respondents have embarked on a process of issuing fresh allotments to plots in Manyatta Arab Estate.

b) That if the answer to (a) above is in the affirmative, whether the fresh allotment is in

contravention of the court orders of 13<sup>th</sup> December 1998 and or 28<sup>th</sup> March 2012 in Kisumu H.C. MISC. Application No.96 of 1998.

c) Whether the allotments based on the 1996 PDP have been retained in the 2010 PDP.

d) Whether the Petitioners have shown any violation or threat to violation of any of their constitutional rights to life, human dignity, economic and social dignity.

10. The court has carefully considered the complaints set out in the petition, the affidavit evidence and the written submissions filed and come to the following determinations;

a) That though the petition is by its heading indicated to be filed by 43 Petitioners, there is no averment in the petition or a deposition in the affidavit in support sworn by Amina A.

Salim, the 1<sup>st</sup> Petitioner, to the effect that the 42 other named persons have authorized her to swear the affidavit and or file the petition on their behalf. That further, there is no written documents signed by the other 42 named persons filed with the petition or attached to the affidavit in support authorizing the deponent to file the petition and swear the affidavit on their behalf. That the issue of whether or not the 1<sup>st</sup> petitioner had the authority of the other 42 named petitioners to file the petition on their behalf was raised in the replying affidavit sworn by Architect Idah Njeri Munano, on behalf of the 2<sup>nd</sup> to 4<sup>th</sup> Respondents at paragraph 17 and no formal authority has been availed through a further or supplementary affidavit in response.

b) That in the replying affidavit sworn by the 6<sup>th</sup> Respondent on behalf of the 7<sup>th</sup> to 13<sup>th</sup> Respondents the deponent named 14 of the Petitioners who she claimed are deceased, six who had sold their plots and four who are not plot owners at the estate at paragraphs 5, 6 and 8 respectively. That as in (a) above, the Petitioners did not respond to the Respondents deposition through an affidavit and the court is left in doubt as to whether this petition is by 43 Petitioners or only by the 1<sup>st</sup> petitioner.

That accordingly, the court will take this petition to be by only one petitioner, Amina A. Salim, hereinafter referred to as the Petitioner.

c) That while the Petitioner alleges that the genuine allotment letters that are in compliance with the court orders of 3<sup>rd</sup> December 1998 and 8<sup>th</sup> March 2012 are those dated 16<sup>th</sup> February 2001, the Respondents have disputed and availed another copy of the court order dated 28<sup>th</sup> March 2012 and issued on the 29<sup>th</sup> March 2012. That they have also availed other correspondence between the Chief Magistrate and M/S Ken Omolo & Co.. Advocate confirming that the reference of the date 16<sup>th</sup> February 2001 in the court order relied upon by the Petitioner was in error as the correct date is 16<sup>th</sup> February 2011. The Petitioner has not disputed or challenged that deposition.

d) That though the Petitioner alleges discrimination by the 2<sup>nd</sup> Respondent in refusing to process leases for some petitioners, while processing those of others, no specific details were availed to enable the court make a finding one way or the other. That on the other part, the Respondents have availed detailed documentation of the process that followed after the 1998 court's decision culminating in the developing of the Part Development Plan No.N9/2010/02 Kisumu Municipality and the list of allottees with 78 names forwarded to the Commissioner of Land by the District Land Registrar, through letter dated 24<sup>th</sup> October 2014. That having made a finding earlier that this petition is by only one petitioner, Amina A. Salim, and nothing that the Manyatta Arab Estate residents documented participation in the process leading to the making of the 2010 PDP and the deliberations on how to ensure the 1998 court order was adhered to in the replanning of the land involved, the court finds that no evidence has been tendered to show that any of the Petitioner's constitutional rights have been infringed, violated or threatened as alleged.

e) That the project being carried out by the 2<sup>nd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents is, among others, aimed at formalization of secure land tenure through planning and surveying and in the court's view is worthy of being supported so long as all those persons who had been recognized as beneficiaries, vide the court order of 3<sup>rd</sup> December 1998 and issued on 10<sup>th</sup> December 1998 and affirmed through the subsequent court order of 28<sup>th</sup> March 2012 and issued on the 29<sup>th</sup> March 2012 are reasonably involved and their interest over the plots allocated new taken care of in any new or subsequent replanting and or resurveying.

f) That the Petitioner's complaints are unclear and not precise on the specific acts or omissions each of the named Respondent has done or failed to do. The two learned counsel for the 2<sup>nd</sup> to 13<sup>th</sup> Respondent rightly referred to the principles set by the superior courts in the cases of **Anarita Karimi Njeru -V- the Republic** [1996 – 1980] KLR 1272 and **Mumo Matemu -V- Trusted Society of Human Rights Alliance & 5 Others** [2013] eKLR, on the requirement for reasonable precision in framing of issues in constitutional petitions. That the court finds that whatever it is that makes the Petitioner uncomfortable about the project being carried out at the Manyatta Arab estate by the Respondents is a matter that can be pursued best through other legal means, like an ordinary suit as opposed to a constitutional petition. That way, viva voce evidence would be taken from the contesting 2 parties and their witnesses and a decision on the facts in dispute made on merit.

11. That having made the findings set out above, the court concludes that the petition, and the notice of motion based on it, have no merits and both are dismissed with each party bearing their own costs. The interim conservatory order granted on the 28<sup>th</sup> February 2017, in terms of prayer (2), is hereby vacated.

Orders accordingly.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**DATED AND DELIVERED THIS 11<sup>TH</sup> DAY OF APRIL, 2018**

**IN PRESENCE OF;**

Petitioners 1<sup>st</sup> Present

Respondents 6<sup>th</sup> & 13<sup>th</sup> present

Counsel Mr. Ojuro for Odeny for Petitioner

Mr. Achura for 5<sup>th</sup> to 13<sup>th</sup> Respondents

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**11/4/2018**

11/4/2018

S.M. Kibunja J.

George court assistant

1<sup>st</sup> Petitioner present 6<sup>th</sup> & 13<sup>th</sup> Respondents present

Mr. Ojuro for Odeny for the Petitioner

Mr. Achura for 5<sup>th</sup> to 13<sup>th</sup> Respondents

**Court:**

The judgment dated and delivered in open court in the presence of the 1<sup>st</sup> petitioner the 6<sup>th</sup> and 13<sup>th</sup> Respondents, Mr. Ojuro for Odeny for the Petitioners and Mr Achura for the 5<sup>th</sup> to 13<sup>th</sup> Respondents.

**S.M. KIBUNJA**

**ENVIRONMENT & LAND – JUDGE**

**11/4/2018**