



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 76 OF 2017**

**ONESMAS NTHANGA NGUMA**

**& 77 OTHERS.....PETITIONERS/RESPONDENTS**

**VERSUS**

**KATELEMBO ATHIANI MUPUTI FARMING &**

**RANCHING CO-OPERATIVE.....1<sup>ST</sup> DEFENDANT**

**THE LANDS REGISTRAR, MACHAKOS.....2<sup>ND</sup> DEFENDANT**

**THE MINISTRY OF INTERIOR.....3<sup>RD</sup> DEFENDANT**

**NATIONAL POLICE SERVICE.....4<sup>TH</sup> DEFENDANT**

**THE DIRECTOR OF PUBLIC PROSECUTIONS...5<sup>TH</sup> DEFENDANT**

**THE ATTORNEY GENERAL.....6<sup>TH</sup> DEFENDANT**

**AND**

**THE NATIONAL LAND COMMISSION.....INTERESTED PARTY**

**RULING**

1. In the Notice of Motion dated 14<sup>th</sup> August, 2017, the 1<sup>st</sup> Respondent is seeking for the following orders;-

***a. That this Honourable Court do review, vary and or interpret its orders dated 16<sup>th</sup> June, 2017 and issued on 21<sup>st</sup> June, 2017.***

***b. That costs of this application be provided for.***

2. The Application is supported by the Affidavit of the Chairman of the 1<sup>st</sup> Respondent who has deponed that the court, vide an order dated 16<sup>th</sup> June, 2017, restrained the Respondents from summoning, arresting, detaining, prosecuting or evicting the Petitioners from the parcel of land they are occupying until the Petition is heard and determined; that prior to the issuance of the said orders, a task force had been established to verify and audit all the land transactions relating to the 1<sup>st</sup> Respondent's parcel of land and that the task force is required to summon all people concerned to be able to undertake its task.

3. The 1<sup>st</sup> Respondent's Chairman further deponed that on the basis of the said court order, the Petitioners have sought to invade the land belonging to the society.

4. In reply, the 7<sup>th</sup> Petitioner deponed that the County Government of Machakos does not have power to determine questions pertaining to the entitlement, occupation or possession of the suit land; that the Petitioners are not Members of the 1<sup>st</sup> Respondent and that the current suit will establish the interest and entitlement of the Petitioners to the land.

5. In the Supplementary Affidavit, the 1<sup>st</sup> Respondent's Chairman stated that the Task force was created due to the numerous complaints by

its members in relation to the suit land; that the Task Force had reviewed and had come up with a preliminary report on the status of each Petitioner and that some of the Petitioners are members of the 1<sup>st</sup> Respondent.

6. The 1<sup>st</sup> Respondent's counsel submitted that the Task Force should be allowed to summon the Petitioners to find out the truth about the Petitioners' claim; that eleven(11) of the Petitioners are members of the society who have been allocated land by the society and that the suit land is not an ancestral land for the Petitioners.

7. The Petitioners advocates submitted that the Petitioners claim is that they are descendants of persons who have been living in Katelembo area during and after colonization; that under Article 160(1) of the Constitution, the courts are not supposed to be controlled by any person or authority and that the issues that have been raised by the 1<sup>st</sup> Respondent should be channelled through this court.

8. In its Ruling of 16<sup>th</sup> June, 2017, this court held that the issue of the Petitioners' claim that the suit land is community land as defined under Article 63 of the Constitution can only be determined after trial. That was the basis of allowing the Petitioners Application dated 23<sup>rd</sup> May, 2016.

9. The orders of 16<sup>th</sup> June, 2017 restrained the 1<sup>st</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> Respondents from summoning, arresting or harassing the Petitioners in respect of the parcels of land they are occupying pending the hearing of the Petition. The Ministry of Tourism, Culture, Sports, Co-operative Development and Marketing and the Task Force that was appointed by the said Ministry vide gazette notice number 1949 of 3<sup>rd</sup> March, 2017 are not parties to the Petition. Consequently, the order of 16<sup>th</sup> June, 2017 does not apply to them.

10. In the circumstances, the issue of whether the said Task Force can summon the Petitioners or not while undertaking its terms of reference does not arise. Indeed the issue of the legality or otherwise of the establishment of the said Task Force is not before this court. I shall therefore not make any comment on the process that the said Task Force is undertaking.

11. Suffice to say that any recommendations of the said Task Force are not binding on this court. However, the 1<sup>st</sup> Respondent, or any party, is at liberty to rely on the report of the Task during the hearing of the suit. The long and short of this Ruling is therefore as follows: The Task Force that was appointed vide gazette notice number 1949 of 3<sup>rd</sup> March, 2017 is not barred from conducting its functions as stipulated in the gazette notice. However, the order of the court that was issued on 21<sup>st</sup> June, 2017 will not change. In the circumstances, the Application dated 14<sup>th</sup> August, 2017 is dismissed with costs.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 25<sup>TH</sup> DAY OF MAY, 2018.**

**O.A. ANGOTE**

**JUDGE**