



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT OF KENYA

AT ELDORET

CONSTITUTIONAL PETITION NO. 1 OF 2016

KEIYO FARM COMPANY LTD.....PETITIONERS

VERSUS

MINISTRY OF DEVOLUTION & PLANNING....1ST RESPONDENT

ATTORNEY GENERAL2ND RESPONDENT

JUDGMENT

Keiyo farm Company Limited (**hereinafter referred to as the petitioner**) Lodged this petition against the Ministry of Devolution and Planning and the Attorney General (**hereinafter referred to as the respondents**) on 12.1.2015 stating that it was incorporated on 16.4.1971 under registration No. 9877. Their sole purpose was to purchase or redeem lands taken up by the white settlers in the neighborhood of Ainabkoi, Kondoo and Burnt Forest areas of Uasin Gishu which were originally owned by their ancestors.

The Petitioner claims to have purchased only 3,023 acres of prime land in Trans Nzoia in 1970 that is L. R. 5529, 7363/2 and 5788, together with the buildings and other improvements therein. The petitioner claims to have been attacked by members of the Ngoroko, a Society Menace, which resulted in Cattle rustling, forceful eviction of the petitioner's members killing and burning accompanied by massive vandalization of the petitioner physical assets on the farm and the same climaxed with the killing of three fellow farmers and others were injured.

The Petitioner members upon realizing that there was no assistance from the Government chose to vacate the properties and sought for alternative shelter amongst their people and in the neighboring Uasin Gishu District.

Their members lost their property and they became squatters and most of the members now live in abject poverty. The evictees and their immediate families averred that they suffered a great loss and dispossession resulting in both human and material costs and their pleas have never been responded to by past governments.

Their particulars of loss and dispossession were itemized as loss of land, material, crops and grass and forceful eviction from their parcels of land, burning of houses, homes, and structures on the farm and loss of animals and livestock. They averred that their rights under Articles 21, 22 and 23 of the constitution were violated.

They prayed for compensation by the Respondents who have a duty to protect their citizens and a declaration that they are rightful owners of the parcel of land known as LR.5529, 7363/2 and 5788 and that the Respondents ought to compensate them for the value of the land at the current market rates. They pray for costs of the petition

The petitioners in support of their claim filed an Agricultural Valuation Report by prof Paul Kimurto and Sam K. Kalya Consultants and Agricultural Experts outlining the economic, social, and human losses incurred by the petitioners.

Mr. Mwinamo, learned counsel for the petitioner submits that the petitioner has demonstrated that its members suffered a lot as a result of land dispossession and human and material loss.

Mr. Ngumbi, learned counsel for the respondents submitted that the Petitioners did not produce any extract of title to prove ownership of the parcels of land known as LR.5529, 7363/2 and 5788 and hence their allegation that they purchased the said parcels of land is unfounded and hence no compensation ought to issue from them to the Petitioners as they did not prove to be the legal owners of the said parcels of land.

It was their submission that petitioners never lodged a complaint to the police over “Ngoroko” a social menace and they are guilty of inordinate delay of over 42 years in bringing their petition as well as indolence in protecting their constitutional rights and hence their petition ought to fail since the law requires promptness and courage and frowns upon delay and indolence.

They submitted that the valuation report presented by the Petitioners was speculative, exaggerated and based on wrong principles and ought to be disregarded. The Petitioners did not produce any books of accounts to prove how many livestock the farm had, how much they were earning from the cereal, coffee and forestry farming and hence their claims for economic losses, social losses, human losses and educational losses is based on wrong principles.

The petitioners sued the wrong parties as the Ministry of Devolution and Planning is not charged with the security mandate in the country.

I have considered the petitioners’ submissions and do find that the petitioners have not produced any document as proof of ownership of the parcels of land known as LR.5539, 7363/2 and 5788. Moreover, the petitioners have not produced any document to prove that they reported the matter to the police in respect of the Ngoroko Menace and therefore the petitioners have not availed this court evidence as proof that their rights have been violated.

The petitioners merely annexed the certificate of incorporation and a list of members and that was all. I do find that the petitioners have not established that their farms were vandalized and no contravention of constitutional rights has been proved at all. *When exercising this constitutional jurisdiction, the court is concerned to uphold, or vindicate, the constitutional right which has been contravened* the evidence tendered on behalf the petitioner in my view does not demonstrate the alleged violation. Courts have over the years established that for a party to prove violation of their rights under the various provisions of the Bill of Rights they must not only state the provisions of the Constitution allegedly infringed in relation to them, but also the manner of infringement and the nature and extent of that infringement and the nature and extent of the injury suffered. The petition herein is not supported by the evidence required in law and is therefore dismissed with no order as to costs.

Dated, signed and delivered at Eldoret this 28th day of June, 2018.

A. OMBWAYO

JUDGE