



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAKURU

PET. NO. 1 OF 2018

KAGIA OLE KAMOIRE.....1ST PETITIONER
 LEYUYA OLE MAATANY2ND PETITIONER
 MUSANKA OLE ESHO3RD PETITIONER
 JOHN KERENKE OLOLDOTO.....4TH PETITIONER
 JOSEPH TEEYIA MAATANY 5TH PETITIONER
 JULIUS KILUSU SERPEPI 6TH PETITIONER
 SANKALE OLE NKOTI7TH PETITIONER
 SAIGILU OLE KARIA8TH PETITIONER
 METEKAI OLE KAMAAMIA 9TH PETITIONER

VERSUS

AGRICULTURAL DEVELOPMENT CORPORATION.....1ST RESPONDENT
 MINISTRY OF LAND, HOUSING &
 URBAN DEVELOPMENT2ND RESPONDENT
 ATTORNEY GENERAL3RD RESPONDENT
 NATIONAL LAND COMMISSION.....4TH RESPONDENT

RULING

1. On 25th May 2018 the petitioners filed Notice of Motion dated the same date, under Certificate of Urgency. The matter was placed before the Deputy Registrar on 28th May 2018 who directed that the application be served and that the matter be mentioned before me on 12th June 2018 for directions.
2. Subsequently on 6th June 2018, another application being Notice of Motion dated 5th May 2018 was filed under Certificate of Urgency on 6th June 2018. The matter was also placed before the Deputy Registrar on 6th June 2018 who certified the application urgent, ordered that it be served and that the matter be mentioned before me on 12th June 2018. I was away on 28th May 2018 due to annual leave and on 6th June 2018 due to annual conference of the judges of this court.
3. When counsels for the parties appeared before me on 12th June 2018, the petitioners sought directions that Notice of Motion dated 25th May 2018 be heard first since it seeks orders that certain persons names therein be punished for contempt of court while counsel for the 1st

respondent argued that Notice of Motion dated 5th May 2018 be heard first since it seeks setting aside of the orders in respect of which contempt of court is alleged. Additionally counsels for the 1st, 2nd and 3rd respondents complained that some photographs which are annexed to the affidavit in support of Notice of Motion dated 25th May 2018 are black and white photocopies and therefore not giving a clear depiction of what is captured in the said photographs. They urged the court to order that colour copies be provided. Further, whereas counsel for the 1st respondent sought more time to file a response to Notice of Motion dated 25th May 2018, counsel for the 2nd and 3rd respondents indicated that he does not oppose Notice of Motion dated 5th May 2018 and at the same time sought time to respond to Notice of Motion dated 25th May 2018.

4. Finally, counsel for the petitioners also sought time to respond to Notice of Motion dated 5th May 2018 as well as time to file supplementary affidavit in respect of Notice of Motion dated 25th May 2018. Since the file was brought to me in open court and I had not had a chance to peruse it before going to court, I undertook to peruse the file, consider the submissions and render a ruling with directions on the way forward. I have considered the issues and perused the file.

5. Proceedings herein were commenced by way of petition filed on 22nd November 2016 as Petition No. 15 of 2016 at the High Court in Naivasha. The matter was later in November 2017 transferred to Narok ELC and became Narok ELC Petition No. 25 of 2017. Yet again, the matter was transferred from Narok ELC to this court on 26th January 2018 and thus became Nakuru ELC Petition No. 1 of 2018. In the petition, the petitioners allege violation of articles 27, 28, 29, 40, 47 and 63 of the Constitution among others.

6. On 20th February 2018 the court ordered the respondents to file and serve responses to both the petition and Notice of Motion dated 13th February 2018, an application pursuant to which the petitioners sought conservatory orders, within 21 days from the said date. Subsequently, on 11th May 2018, counsel for the 2nd and 3rd respondents sought more time to file the response. The court granted 30 more days to run from 11th May 2018 within which they were to file and serve the response. I have perused the record and I see no replying affidavit filed so far by the 2nd, 3rd and 4th respondents in response to the petition.

7. Whereas any allegation of contempt of court is a serious matter that needs to be investigated and determined such an investigation and determination is not a time bound matter. It can be dealt with at any stage, even after judgment.

8. At the core of the dispute before the court is the petition. It needs to be heard and determined as soon as possible. The issues raised in the multiple pending applications though serious ones, do not go to addressing the root cause of the dispute. Unfortunately, parties appear to be focusing on the interlocutory applications while forgetting to set the main petition down for hearing. It is my intention that we hear and dispose of the petition as soon as possible. Parties must play their role in that regard.

9. In the circumstances, I make the following orders:

- a) Hearing of the petition shall be given priority over the pending applications.
- b) Any respondent who has not filed a replying affidavit in respect of the petition to file and serve such a replying affidavit within 14 (fourteen) days from the date of this ruling.
- c) The petitioners to file and serve a replying affidavit in respect of Notice of Motion dated 5th May 2018 within 14 (fourteen) days from the date of this ruling. Colour copies of the black and white photographs that were annexed to the affidavit in support of Notice of Motion dated 25th May 2018 be annexed to the replying affidavit.
- d) The 1st respondent to file and serve a replying affidavit in respect of Notice of Motion dated 25th May 2018 within 14 (fourteen) days of the replying affidavit referred to in (c) above.
- e) Petitioners to file and serve a supplementary affidavit in respect of Notice of Motion dated 25th May 2018 within 14 (fourteen) days of service of the affidavit referred to in (d) above.
- f) I will give directions regarding disposal of the pending applications in due cause. Priority will however be given to hearing and determination of the petition.
- g) Petitioners to file and serve written submissions in respect of the petition within 30 (thirty) days from today.
- h) Respondents to file and serve written submissions in respect of the petition within 45 (forty five) days from today.
- i) Upon delivery of this ruling, I will give a mention date for further directions regarding disposal of the petition.
- j) In the meantime, parties are reminded that all orders made by the court must be obeyed as long as they remain in force.

10. Orders accordingly.

Dated, signed and delivered in open court at Nakuru this 13th day of June 2018.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the Petitioners

Mr. Ombui for the 1st Respondent

Mr. Ondieki for the 2nd and 3rd Respondents

No appearance for the 4th Respondent

Court Assistant: Lotkomoi