



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT EMBU

E.L.C. PETITION No. 1 OF 2014

IN THE MATTER OF ARTICLES 62 (20), 63 (1), (2), (3) AND 67 OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF THE LAND ADJUDICATION ACT, CAP 284, LAWS OF KENYA

AND

IN THE MATTER OF CONTRAVENTION AND/OR APPREHENDED CONTRAVENTION OF MBEERE COMMUNITY RIGHTS AND INTERESTS IN LAND IN ALL THE TRUST LAND KNOWN AS MWEA WITHIN THE AREAS KNOWN AS KARABA, WACHORO, RIAKANAU, GATEGI AND MAKIMA UNDER ARTICLES 62 (20), 63 (1), (2), (3) AND 67 OF THE CONSTITUTION OF KENYA

BETWEEN

MBEERE ELDERS WELFARE ADVISORY GROUP & 4 OTHERS.....PETITIONERS

VERSUS

THE ATTORNEY GENERAL & 7 OTHERS.....RESPONDENTS

AND

AMBROSE KITHAKA NJERU & 233 OTHERS.....INTENDED INTERESTED PARTIES

VERSUS

MERCY KARIMI alias MERCY KARIMI MUGAMBI.....RESPONDENT

RULING

1. By a notice of motion dated 30th May 2017 the Applicants sought an order for their joinder in this petition as interested parties. They also sought to be awarded costs of the application.
2. The said application was based upon the grounds shown on the face of the motion. The grounds stated that they were members of the 39 Mbeere clans who were entitled to be allocated some land within Mwea but were somehow left out during the allocation process. The particulars of the land in issue were not given on the face of the motion.
3. The application was supported by an affidavit sworn by Ambrose Kithaka Njeru on 30th May 2017. It was stated in the supporting affidavit that the Applicants were members of the 39 clans of the Mbeere Community who were supposed to be allocated the “Mwea Land” but were apparently left out. They, therefore, wanted to be joined as interested parties herein in a bid to secure an allocation in the remaining adjudication sections being Makima, Riakanau, Wachoro, Gategi and Karaba. A written authority to act and plead on behalf of the Applicants was annexed to the supporting affidavit.
4. The 4th Petitioner filed a replying affidavit sworn on 20th November 2017 on behalf of the Petitioners in opposition to the said application. It was contended that the 1st Petitioner adequately represented the interests of all members of the Mbeere Community made up of 39 clans hence it was unnecessary to admit the Applicants into the petition in their individual capacities. It was also contended that the matters in dispute in the petition have been partially settled with title deeds being issued to some members of the Mbeere Community. It was further contended that if the Applicants had any grievances they should file a separate petition.

5. The Applicants filed a further supporting affidavit sworn by Ambrose Kithaka Njeru in response to the 4th Petitioner's replying affidavit. It was contended that there was nothing legally preventing the Applicants from approaching the court directly. It was contended that the 4th Petitioner had miserably failed to represent and protect their interests in relation to land allocation.

6. The Applicants pointed out that the 4th Petitioner and other clan leaders had greedily obtained large tracts of land at the expense of ordinary clan members. It was claimed that the 4th Petitioner had obtained 89 acres instead of the 5 acres agreed for each clan member. It was further claimed that the 4th Petitioner's wife got 105 acres whilst his son got 70 acres making a total of 265 acres to one family instead of 15 acres.

7. The Applicants stated that they were apprehensive that since there was more land for allocation which was the subject of this petition, they may be disadvantaged if the petition is disposed of in their absence.

8. There is no indication on record if any of the Respondents filed replying affidavits or grounds of opposition with respect to the Applicants' said notice of motion.

9. It was agreed by all the concerned parties that the said application shall be canvassed through written submissions. Consequently, the Applicants filed their written submissions on 2nd March 2018 whereas the Petitioners filed theirs on 20th March 2018.

10. The court has considered the Applicants' notice of motion dated 30th May 2017, the Petitioners' replying affidavit in opposition thereto, the further affidavit by the Applicants as well as the respective submissions of the parties. According to **Black's Law Dictionary (9th Edition)** an interested party is defined as a person who has a recognizable stake in the matter hence a standing to be heard.

11. It has not been disputed that the Applicants are members of the 39 clans of the Mbeere Community who have a stake in the land within Karaba, Wachoro, Riakanau, Gategi and Makima areas of Mwea as claimed in the petition. The only area of contention is whether the Applicants surrendered their rights to the Petitioners to exclusively represent them with respect to the subject matter of the petition.

12. The Applicants do not believe that the Petitioners have adequately represented them or their interests in the subject matter of the petition. It is evident from the affidavits on record that the Applicants consider the Petitioners are a bunch of greedy hyenas out to grab most of the community land. The Petitioners, on the other hand, believe that they have a legal right to represent all members of their community even against their will. What the Petitioners are trying to do is akin to attempting to convince a lamb that a hyena would take care of her interests in the forest.

13. The court is of the view that whatever rights and privileges the petitioners might have under the clan structure, they cannot override the constitutional rights of the Applicant of access to justice under **Article 48 of the Constitution of Kenya, 2010** and their right to seek redress for alleged violation of their constitutional rights under **Article 22 of the Constitution**.

14. In the circumstances of this case, the court is satisfied that the Applicants' notice of motion dated 30th May 2017 has merit and the same is hereby allowed in terms of prayer 1 thereof. Costs of the application shall be in the cause.

15. It is so ordered.

RULING DATED, SIGNED and DELIVERED in open court at EMBU this 26th day of JULY, 2018.

In the presence of Ms Nzekele holding brief for Mr. Kamunda for the Petitioners, Mr Siro for the 1st to 5th Respondents, Mr Mureithi holding brief for Mr. Momanyi for the Applicants and in the absence of the 6th to 8th Respondents.

Court clerk Mr Muinde.

Y.M. ANGIMA

JUDGE

26.07.18