



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC PETITION NO 8 OF 2018**

**KIPSYENAN FARMERS COMPANY LIMITED.....PETITIONER**

**VERSUS**

**NATIONAL LAND COMMISSION.....1<sup>ST</sup> RESPONDENT**

**THE HONOURABLE ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**RULING**

***(Application for conservatory orders to stop the National Land Commission from further interference with the petitioner's land pending hearing of the petition; land in dispute being registered in the name of the petitioner; land being private land; no evidence of any claim by the Government to the land; mandate of the National Land Commission being on public land; prima facie case established; conservatory orders granted)***

1. This ruling is in respect of an application dated 1 August 2018, which application was filed contemporaneously with this petition. In the said application, the petitioners want conservatory orders to restrain the 1<sup>st</sup> respondent from initiating, discussing, commenting on, allocating, alienating, disposing, intermeddling, interfering with, or in any way dealing with the issues of the petitioner's land parcel Kampi Ya Moto/Kampi Ya Moto Block 6/288.

2. In the petition, the petitioner has averred that it is a limited liability company which is a land buying company and registered as the proprietor of the land parcel Kampi Ya Moto/Kampi Ya Moto Block 6/288 (hereinafter referred to as "the suit land"). It is averred further that the petitioner purchased the suit land in the year 1968 in order to distribute the same to its members. It is stated that despite the land in question being privately owned, the 1<sup>st</sup> respondent, the National Land Commission, has purported to investigate and adjudicate over the issues of the said property, in the absence of any complaint of present or historical land injustices. It is claimed that on 26 January 2018, the Vice-Chair of the 1<sup>st</sup> respondent, purportedly constituted a committee whose purport was to interfere and intermeddle with the affairs of the petitioner. Through a letter dated 22 February 2018, the said Vice-Chair purported to freeze the affairs of the petitioner and instructed the Directorate of Criminal Investigations to investigate the petitioner and how it acquired the property. The complaint of the petitioner is that the 1<sup>st</sup> respondent does not have jurisdiction to interfere with its affairs, and in this petition, the petitioner has inter alia sought orders of a declaration that the 1<sup>st</sup> respondent is abusing its powers and is operating outside its jurisdiction. The petitioner also wants orders of prohibition, to prevent the 1<sup>st</sup> respondent from dealing with issues relating to its properties, and an order of certiorari to quash the letter of 22 February 2018.

3. So far, no response has been filed to this petition, and there is no reply filed to this application for conservatory orders.

4. I have considered the application. I have evidence that the petitioner is a limited liability company. The petitioner has also annexed a copy of the official search of the suit land which shows that the suit land is registered in its name. I have also seen the letter dated 22 February 2018, written by the Vice-Chair of the 1<sup>st</sup> respondent which seems to contest the petitioner's right to ownership of this land. I however have no evidence before me that the suit property is public property or is claimed by the Government. The mandate of the National Land Commission as provided for at Article 67 of the Constitution is as follows :-

***67. National Land Commission***

***(1) There is established the National Land Commission.***

***(2) The functions of the National Land Commission are—***

- (a) to manage public land on behalf of the national and county governments;*
- (b) to recommend a national land policy to the national government;*
- (c) to advise the national government on a comprehensive programme for the registration of title in land throughout Kenya;*
- (d) to conduct research related to land and the use of natural resources, and make recommendations to appropriate authorities;*
- (e) to initiate investigations, on its own initiative or on a complaint, into present or historical land injustices, and recommend appropriate redress;*
- (f) to encourage the application of traditional dispute resolution mechanisms in land conflicts;*
- (g) to assess tax on land and premiums on immovable property in any area designated by law; and*
- (h) to monitor and have oversight responsibilities over land use planning throughout the country.*

*(3) The National Land Commission may perform any other functions prescribed by national legislation.*

5. I have not seen anywhere in the Constitution or in the National Land Commission Act, Act No. 5 of 2012, where the National Land Commission has been given mandate over private land. I think that the petitioners have demonstrated, prima facie, that the National Land Commission is irregularly interfering with private land of which it has no mandate. The respondents will of course have their chance to contest all that the petitioner contends in this petition, but at the moment, I am persuaded that the petitioners have presented a prima facie case with a probability of success. I am thus persuaded that this is a fit case for the grant of conservatory orders as prayed for by the petitioners. I therefore allow this application and grant the prayer for conservatory orders as sought in prayer 3 and 4 of this application.

6. The petitioner will also have the costs of this application.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 14<sup>th</sup> day of November 2018.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of: -**

Mr. Kipkoech for the petitioner .

No appearance for the respondents.

Court Assistants :Nelima Janepher

Carlton Toroitich

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**