



**REPUBLIC OF KENYA**

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

**CONSTITUTION PETITION NO. 4 OF 2018**

**IN THE MATTER OF ARTICLES**

**1,2,3,10,19,20,22,23,35,40,43,47(1),50,60,63,165(3)(B),258 AND 259 1 (B) OF THE CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF THE SUPREMACY OF THE CONSTITUTION PURSUANT TO ARTICLE 1 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE INDIVIDUAL) HIGH COURT PRACTICE AND PROCEDURE RULES, 2006, RULES 11-23**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLES 20,27,28,40,43,53,56 AND 57 OF THE CONSTITUTION OF KENYA**

**AND IN THE MATTER OF THE COMMUNITY LAND ACT SECTIONS 4,5,6,7,8,9,10,11,12 AND 13**

**AND**

**IN THE MATTER OF THE ADJUDICATION AT NAROSUURA GROUP LR NO. NAROK/NAROSUURA/1, IN NAROK COUNTY**

**BETWEEN**

**SARUNI OLE LOONKUSHU & 9 OTHERS.....PETITIONERS**

**-VERSUS-**

**THE ATTORNEY GENERAL & 14 OTHERS.....RESPONDENTS**

**RULING**

By a Notice of Motion dated 26<sup>th</sup> July, 2018 which was brought under section 1A, 1B and 3A of the Civil Procedure and Section 63(a) (b) (c) and (e) and order 50 Rule 1 and section 5 of the contempt Act.

The Applicant sought orders that the 5<sup>th</sup> to 15<sup>th</sup> Respondents be cited for contempt of court for failing to adhere to a court order and an order that the Respondents be restrained from sub-dividing and dealing with the subject parcel of land Naroosurua Cis Mara/6 and the Respondents be restrained from issuing title deeds.

The application was based on the grounds that there exists an order of maintenance of status quo that was issued by the court on 31<sup>st</sup> May, 2018 that mandated the parties to maintain status quo pending the hearing and determination of the substantive petition and that the respondents have issued blank transfer forms to members of Naroosurua Group Ranch and carrying out transactions over the suit land.

The Application was further based on the grounds that the 5<sup>th</sup> to 15<sup>th</sup> Respondents were inciting the community to ignore the court orders and hence it is necessary to cite them for contempt to preserve the dignity of the court and sanity of the judicial process.

The Application was further supported by the affidavit of 1<sup>st</sup> Petitioner who deponed that despite the court having issued an order for the maintenance of status quo, the 5<sup>th</sup> to 15<sup>th</sup> respondents have been issuing land transfer documents and allocating land despite the court's orders and further that the respondents have been inciting the local community to invade the suit land despite the existence of the order and because of the aforesaid some members of the community were injured and reports made to Naroosura Police Station.

The Applicants further averred that the disobedience of the said orders offends the provisions of Section 4 of the contempt of court Act (2016).

The application was opposed by the respondents through the 6<sup>th</sup> respondent one Joseph Simintei Kasare.

It is the Respondents contention that the Application is misguided and contained factual fabrications which were meant to delay the just and expeditious disposal of the petition.

The Respondents have denied that they ever violated the order of the court and that they are law abiding citizens and once their advocates explained to them the importance of status quo order they have not violated any part of the same and nothing has been happening on the ground.

The Respondents further denied to have received any money from any sale of part of the suit land and that there is no evidence placed before the court to show that any sale indeed took place.

The respondents in their affidavit also took issue with the transfer forms exhibited by the Applicants and that the said forms do not have any dates that show when the transfer was done nor any one issued with the forms swearing an affidavit to that effect.

The Respondent further averred that none of the 5<sup>th</sup> to 15<sup>th</sup> respondents was charged with any offence in support of the allegation of reports made and hence nothing links them to what was related.

When the application came up for hearing none of the learned counsel for the petitioners or respondents addressed me on the second limb of the application which related to issuance of injunctive order against the said orders.

It is my observation that this was an oversight on their part but I will address the said part in the subsequent paragraphs.

I have read the application before me and the submissions made by counsel and the issue for determination before me is whether there existed an order of the court maintaining status quo and whether the respondents were in breach of the said orders to warrant the 5<sup>th</sup> to 15<sup>th</sup> respondents be cited for contempt and whether the applicants have satisfied the provisions of order 51 to warrant the grant of injunctive orders.

It is not disputed by the parties that on the 3<sup>rd</sup> May, 2018 the court had directed that pending the hearing and determination of the substantive petition, the parties do maintain the status quo obtaining on the said date.

The Applicants allege that the respondents are in breach of the said order by purporting to issue blank transfer forms in respect of the same. The applicants had annexed three transfer forms which were marked as SOL 1A, SOL 1B and SOL 1C, SOL 7A, 7(b) which they allege were issued by the Group Ranch to others. It is the same transfer that the Respondents are alleging as undated and unsigned.

I have looked at the said transfer forms which were dated while the rest seem not to have been attested and/or certified, further there seems to be no photos of the would be transferees.

The existence of the aforesaid transfer forms is basis upon which the present application is founded and it is my finding that taking into account the threshold required for one to be cited for contempt the forms though they may have manifested same intent the respondent seems not to have actualized their intention and it would have helped the court if the applicant either sought the help of the registrar to show indeed the said transfer was concluded and provided a search or if the alleged purchase would have supported the application by way of an affidavit.

It is my finding from the above that the applicant has not sufficiently discharged the burden of proof to enable the court to determine whether indeed the respondents are in breach of the order of court and I find they are not.

As I pointed out previously the applicant sought order of restraining the 5<sup>th</sup> to 15<sup>th</sup> Respondents. I find that it shall serve the interest of justice and to safeguard the suit land that I order that pending the hearing and determination of the substantive petition an order of injunction be and is hereby issued restraining the Respondents from demarcating, disposing and dealing with the suit land LR Naroosura/Cis Mara/16 and a further order do issue restraining the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondent from proceeding, facilitating or procuring any transfer and issue of title deeds in respect of the suit land pending the hearing and determination of the substantive petition.

I order each party to bear its costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this 17<sup>th</sup> day of **DECEMBER, 2018**

**Mohammed Noor Kullow**

**Judge**

**17/12/18**

In the presence of:

Mr. Ochang for the Respondents

Mr Kambo holding brief or Kagucia for the petitioners

CA:Chuma