



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

PETITION NO. 43 OF 2016

PETER KIBIEGON RONO & 25 OTHERS.....PETITIONER

VERSUS

NATIONAL LAND COMMISSION & 3 OTHERS.....RESPONDENT

RULING

(Application to be enjoined as interested parties; suit by petitioners seeking orders to be issued with title to certain land; petitioners alleging that the respondents are keen to issue titles to the land that they claim to members of the Ogiek Community; applicants being members of the named Ogiek Community; applicants may be directly affected by any order; application allowed).

1. The application before me is that dated 12 October 2016 filed by 17 persons who wish to be enjoined to this suit as interested parties. The application is opposed and before I go to it, it is prudent that I set down a little background to this suit.

2. This is a constitutional petition that was commenced on 31 August 2016 by 26 persons. The petitioners aver that they are the legal owners of certain contested parcels of land located within the mau forest complex. It is stated in the petition that some of the petitioners had been issued with letters of allotment to land located in the areas of Marioshoni and Nessuit pursuant to settlement schemes and excisions of the Mau Forest complex that took place between the years of 1991 and 1993. Others, it is stated, acquired letters of allotment pursuant to a series of sale agreements and transactions between themselves and members of the Ogiek community who opted to sell their parcels of land from the year 1997. The petitioners aver that they commenced the process of being issued with title deeds but they were informed that there is a ban on transactions over all parcels of land located within the Mau Forest complex. It is pleaded that the petitioners made inquiries and were informed that the ban does not apply to them, and satisfied with this information, they have been waiting patiently for registration of their titles. The petitioners state that in the beginning of 2016, they heard announcements in the local media and read in the local dailies, that the National Land Commission is taking a tally of the members of the Ogiek community and is re-demarcating the parcels of land within Nessuit and Marioshoni areas so as to issue fresh titles to the members of the Ogiek community. It is stated that this is surprising, since members of the Ogiek community were the ones who largely benefited from the government allocations of 1991-1993 but they opted to sell their land to the petitioners. It is averred in the petition that the petition has been brought forth to challenge the intended decision by the 1st respondent to evict the petitioners and/or effect changes to the register in the stated areas and to settle members of the Ogiek community by opening a new register and issuing them with title deeds.

3. In the petition, the petitioners inter alia want orders of certiorari to quash the decision of the Land

Registrar, Nakuru County, to close the register with regard to the parcels of land located within Marioshoni and Nessuit areas, and an order of mandamus to compel the respondents to effect registration of the petitioners and issuance of titles to them.

4. In this application, the applicants/intended interested parties, aver that they are members of the Ogiek community and residents of Marishoni Location, and Nessuit Location in the Mau Forest Complex. They have stated that they did institute the suit High Court Misc. Civil Application No. 635 of 1997 (ELC No. 821 of 2012) and obtained judgment in their favour on 17 March 2014 and a decree was issued on 7 May 2014. There is also mention of Nairobi HCCC Misc. No. 421 of 2002 which is said to be pending judgment and Application No. 6 of 2012 in the African Court on Human and People's Rights over the same subject matter. It is contended that the outcome of this suit may adversely affect the rights of the applicants and conflict with earlier decisions. They state that as members of the Ogiek community, they have a recognizable stake in this Petition and that they will enlighten the court in addressing some of the issues raised in the petition.

5. The application is opposed by the petitioners who filed Grounds of Opposition. It is argued that the joinder of the applicants will obscure the real issues in controversy and impose unnecessary costs on the parties and therefore undermine the objects of Article 159 (2) of the Constitution. It is also contended that the applicants have not demonstrated a clear interest in the matter.

6. I took in the submissions of Mr. B. N. Kipkoech for the applicants and Mr. Aim Yoni for the petitioners which I have considered in my ruling.

7. It is apparent that in this petition, the petitioners wish to compel the respondents to issue them with titles to certain land which the petitioners aver that they are entitled to, either through direct allotment by the Government, or through purchase from those who were allotted the parcels of land by the Government. They claim that they are perfectly entitled to possess these titles. I have seen that in their petition, they have inter alia contended that the respondents want to issue titles to the Ogiek community to the parcels of land that they claim.

8. It will be observed that the applicants herein are among members of the Ogiek community. They claim to have judgment in their favour in the case Nairobi ELC No. 821 of 2012. I have seen a copy of that judgment. The following was the conclusion of the court :-

"...this Court enters judgment for the Applicants only to the extent of the following orders:

1. This Court hereby declares that that the right to life protected by section 71 of the previous Constitution and Article of 26 the 2010 Constitution, right to dignity under Article 28 of the 2010 Constitution and the economic and social rights under Article 43 of the Constitution of the affected members of the Ogiek Community in Marioshioni Location, Elburgon Division and Nessuit Location, Njoro Division, Nakuru in the Mau Forest Complex including the Applicants has been contravened, and is being contravened by their forcible eviction from the said locations without resettlement and that the said members of the Ogiek community have been deprived of their means of livelihood.

2. This Court hereby declares that the eviction of the Applicants and other members of the Ogiek Community from Marioshioni Location, Elburgon Division and Nessuit Location, Njoro Division, Nakuru in the Mau Forest Complex is a contravention of their right not to be discriminated against under section 82 of the previous constitution, and Article 27 and 56 of the 2010 Constitution as it has resulted in the Applicants being unfairly prevented from living in accordance with their culture as farmers, hunters and gatherers in the forests.

3. The National Land Commission is hereby directed to within one (1) year of the date of this judgment identify and open a register of members the Ogiek Community in consultation with the Ogiek Council of Elders, and identify land for the settlement of the said Ogiek members and the Applicants who were to be settled in the excised area in Marioshioni Location, Elburgon Division

and Nessuit Location, Njoro Division, Nakuru and have not yet been given land in line with the recommendations in the Report of the Government Task Force on the Conservation of the Mau Forest Complex published in March 2009.

4. The Applicants shall serve a copy of the judgment and orders herein on the Chairman of the National Land Commission within 30 days of the date of this judgment.

5. The 1st, 2nd, 3rd 4th 6th Respondents shall meet the costs of this suit."

9. It will be observed from the above, that the court directed the National Land Commission (the 1st respondent in this petition) to open up a register of members of the Ogiek community and identify land for settlement for those who were to be settled in Mariosioni and Nessuit areas. It is difficult to state with conviction at this stage of the proceedings, whether the area which the petitioners claim, is the same area where the respondents want to settle the Ogiek community. If it is, then there will be a nexus between the petitioners and the interested parties for they will essentially be claiming entitlement to the same land. The petitioners in their petition have indeed mentioned in their petition that the respondents want to settle the Ogiek community in land which the petitioners should be entitled to. It does appear that the applicants stand to be directly affected by any judgment of this court. There may also be a possibility of a conflict of decisions given that there is judgment in favour of the applicants and it may be necessary to hear them before issuing any final orders.

10. I am of the view that the applicants have demonstrated a clear interest in this petition and I think it is only proper that they be enjoined in this petition as interested parties. They may have material which may assist this court in arriving at a just decision in this petition. I therefore allow this application. The applicants are hereby enjoined to this suit as interested parties. They are free to file any document either in support or in opposition to the petition within the next 30 days.

11. There shall be no orders as to costs in respect of this application.

12. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 31st day of March 2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU

In presence of:

Mr. Langat for the interested parties .

No appearance on the part of the petitioner or respondents in the petition.

Court Assistant : Nelima

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

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