



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAJIADO

ELC CASE NUMBER 5 OF 2017

(formerly Machakos ELC PETITION No. 26 of 2014)

IN THE MATTER OF : ALLEGED CONTRAVENTION OF THE FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLE 20(1), 21(1), 10, 40, 50 AND 64 OF THE CONSTITUTION OF KENYA 2010;

AND

IN THE MATTER OF : THE REGISTRATION LAND ACT CAP 300(Now Repealed)

AND

IN THE MATTER OF: THE LAND REGISTRATION ACT, 2012 AND THE LAND ACT 2012;

AND

IN THE MATTER OF: THE LAND TITLE KAJIADO/KAPUTIEI-SOUTH/1915;

BETWEEN

LANTEI OLE KISERIAN.....PETITIONER

VERSUS

THE DISTRICT LAND REGISTRAR KAJIADO.....1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....2ND RESPONDENT

THE NKAMA GROUP RANCH LIMITED3RD RESPONDENT

AND

JOSEPH MOISASI.....1ST INTERESTED PARTY

DAVID KOIN TOOIKA.....2ND INTERESTED PARTY

PARTIMO OLE MOISASI3RD INTERESTED PARTY

IN THE MATTER OF: Sections 5 of the Judicature Act Cap 8 Laws of Kenya

IN THE MATTER OF: Order 52 Rule 2 of the Rules of the Supreme Court of England

IN THE MATTER OF: Disobedience of a Court Order made by this Honourable Court on 30th October 2014 and 22nd January, 2015

IN THE MATTER OF: An Application by LANTEI OLE KISERIAN for leave to apply or an Order for Committal for Contempt of Court against

i. Joseph Moisasi

ii. David Koin Topoika

iii. Partimo Ole Moisasi

RULING

By a Chamber Summons dated 1st March 2017 and filed on 3rd March, 2017 and brought under Order 53 Rule 2(3) of the Rules of the Supreme Court of England, as well as Section 1A, 1B, 3, 3A, 63(e) of the Civil Procedure Act Cap 21 and Section 5(1) of the Judicature Act Cap 8, the ex parte applicant is seeking the following orders:

1. **THAT** this Application be certified urgent and service of the same be dispensed with.
2. **THAT** leave be granted to the Applicant to commence contempt of Court proceedings against Joseph Moisasi, David Koin Topoika and Artimp Ole Moisasi; the interested parties for disobeying this Honourable Court's orders issued on 30th October 2014 and 22nd January 2015.
3. **THAT** the costs of this application be provided for.

The application is supported by the grounds that the interested parties/petitioners herein Joseph Moisasi, David Koin Topoika and Partimo Ole Moisasi are in contempt of the court orders dated 30th October, 2014 and 22nd January, 2015 where the Honourable Judge directed that both parties maintain peace and status quo.

The application is supported by the verifying affidavit of Lantei Ole Kiserian where he outlines the history of the suit and avers that on 30th October, 2014 his petition was consolidated with petition number 24 of 2014 filed by the interested parties/respondents herein Joseph Moisasi, David Koin Topoika and Partimo Ole Moisasi. He states that the Honourable Judge directed both parties to maintain peace and the status quo subsisting prior to the filing of the two petitions be maintained until the matter was heard and disposed of. Further that on 22nd January 2015 the Court further reiterated the order of status quo. That the pronouncement of the order by the Judge was in the presence of both parties to the suit. The applicant avers that the respondents have arrogantly and capriciously violated the Court order and have engaged in constant intimidation against the applicant and his family. They have dug a well, cut down trees, allowed sand harvest at an adjacent river etc. He has reported the matter to the local police and provincial administration but they refused to act claiming the order for maintaining status quo was vague. He says the interested parties/ respondents persist in the reckless behaviour of defying the court order.

Mr. Aunga for the applicant maintained that the interested parties/respondents have continued to be reckless and harass the applicant and interfere with his peaceful occupation of the land. I have perused the court file, annexed documents and heard Mr. Aunga's arguments. I note from the court file that the parties were represented in court whenever the order of status quo was extended by the Honourable Judge on the 30th October, 2014 and 22nd January, 2015 respectively.

I hereby grant leave to the ex parte applicant to commence contempt proceeding against the interested parties/respondents herein Joseph Moisasi, David Koin Topoika and Partimo Ole Moisasi within 14 days from the date hereof.

Costs to be in cause.

Dated and delivered at Kajiado this 10th day of April 2017

CHRISTINE OCHIENG

JUDGE

Representation.

Mr. Onindo holding brief for Mr. Mwema Kitulu for applicant.

Court Assistant –Mpoye