



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MALINDI

ELC PETITION NO. 3 OF 2016

STEPHEN MUCHIRI1ST PETITIONER
SUSAN WANJIKU2ND PETITIONER
SOLOMON TITO3RD PETITIONER
MARY NJOKI4TH PETITIONER
HENRY MUTHUI5TH PETITIONER
MARY NJERI6TH PETITIONER
JOSEPH KIMANZI MONYOKI7TH PETITIONER
MAULID KANYIKA KISAKENE.....8TH PETITIONER
BETH KABUGI KINYA9TH PETITIONER

VERSUS

AMU RANCH CO-OPERATIVE SOCIETY1ST RESPONDENT
NATIONAL LAND COMMISSION2ND RESPONDENT
HON. ATTORNEY GENERAL3RD RESPONDENT

RULING

1. The Petitioners' Notice of Motion dated 6th April, 2016 is seeking for the following orders:

- a. That this Honourable Court be pleased to issue interim orders of injunction restraining the 1st Respondent, its servants, agents or any person acting under them from evicting, taking possession, erecting an electric fence, harassing the Petitioners, trespassing into, sub-dividing, selling, mortgaging, transferring or in any other way from dealing with portions of L.R Number 26867, Lamu commonly known as Amu Ranch, occupied by the Petitioners pending hearing and final determination of this suit.*
- b. That this Honourable Court be pleased to issue an order for the 1st to the 7th Petitioners file*

this representative suit on behalf of themselves and all other persons affected by the Respondents activities which form the subject matter of this suit and this suit herein be so deemed as duly filed.

c. That the order granting the representative suit be served on all affected persons by way of affixing copies of the court order at the Amu Ranch, the Deputy County Commissioners office, and at the Chief office at Mkunumbi.

d. That the costs of this Application be in the cause.

2. According to the Affidavit of the 5th Petitioner, the Petitioners have filed the Petition on their behalf and on behalf of other residents and occupiers of land known as Amu Ranch within Lamu County; that they have been occupying the said land for “*tens of years*” and that the land in question is their ancestral land.

3. According to the Petitioners, they cleared the land and put up homes on the suit land; that in the year 2010, they started consultations and negotiations with the management of the 1st Respondent with a view of being recognized as squatters and have the land sub-divided and Titles issued and that in the cause of reviewing grants in Lamu, it emerged that there was a large number of squatters on the land.

4. According to the Petitioners, the area they have occupied is between 8,000 to 10,000 acres; that the National Land Commission recommended that the squatters should be considered for re-settlement and that in recent times, the 1st Respondent has resolved that some of the Petitioners should be evicted from the suit land.

5. It is the Petitioners’ case that they are entitled to not only retain their respective portions of land but also to be issued with Title deeds; that the National Land Commission has abdicated its Statutory duty of investigating the Petitioners’ complaints and that the alienation of portions of L.R. Number 26867 occupied by the Petitioners and re-distribution to members of the 1st Respondent is unlawful and unconstitutional.

6. In response to those dispositions, the 1st Respondent averred that the Petitioners’ occupation of land known as Amu Ranch was based on a request that they be allowed to farm the said land; that other occupants settled on the land during the tribal clashes and that the Petitioners were accommodated on the land on humanitarian grounds.

7. The 1st Respondent has denied that the suit property is the Petitioners’ ancestral land that the 1st Respondent only allowed the Petitioners on the land to indulge in subsistence farming for their upkeep.

8. It is the 1st Respondent’s case that the National Land Commission established that it was issued with the title document regularly and that the 1st Respondent is the absolute owner of the suit land.

9. The 3rd Respondent filed Grounds of Opposition in which he averred that the Petitioners claim to the suit land has no lawful basis; that the title to the suit land was lawfully issued to the 1st Respondent and that parliament has not enacted a law setting up a framework for investigations of historical injustices.

10. The Petitioners, the 1st and 3rd Respondents filed their respective submissions which I have considered. I have also considered the authorities that have been filed by the parties.

11. It is not in dispute that the 1st Respondent is the registered proprietor of L.R. No. 26867 measuring 25,003 Ha. According to the grant that was annexed on the 1st Respondent’s Supporting Affidavit, the grant in respect to the suit property was registered in favour of the 1st Respondent on 30th August, 2005.

12. Article 68 of the Constitutions and Section 14 of the National Land Commission Act mandates the 2nd

Respondent to review all grants or dispositions of public land to establish their propriety or legality.

13. Pursuant to that mandate, the 2nd Respondent did investigate how the 1st Respondent acquired the suit property and prepared a report dated 10th November, 2014. In the Report, the 2nd Respondent stated as follows:

“19) Parcel L.R.No. 26867: Amu Ranching Co-operative Society Limited. Recommendation:

- **Regularize title**
- **Ensure Planning and apply for approval under Section 35 of the Transition to Devolved Government Act, 2012.**
- **Consider accommodating the many squatters occupying about 8,000 to 10,000 acres of the ranch.”**

14. It is not clear what the 2nd Respondent meant by “consider accommodating the many squatters” when the mandate of settling squatters lies with the Commission.

15. Under Section 134 of the Land Act, it is the National Land Commission, on behalf of the National and the County governments, that is supposed to implement settlement programmes to provide access to land for shelter and livelihood, and not the 1st Respondent.

16. The Commission is supposed to reserve public land for the establishment of settlement programmes, and where public land is not available, purchase private land for the exercise (*see Section 134(5) of the Land Act*).

17. Having recognized that the suit land is private land, it is upon the National Land Commission to either purchase the said land to settle the squatters or find for them alternative land.

18. Article 40(1) of the Constitution recognizes the right of every person to acquire and own property. The only occasion that the right can be taken away by the court is if the property is found to have been unlawfully acquired.

19. I have perused the Petition. The Petitioners do not seek to have the 1st Respondent’s title revoked by this court on the grounds enumerated under Article 40(6) of the Constitution or Section 80 of the Land Registration Act. It would appear that the Petitioners are not challenging the said title document at all.

20. In view of the above, I find that the Petitioners have not established a *prima facie* case with chances of success.

21. I therefore dismiss the Application dated 6th April, 2016 with costs.

DATED AND SIGNED AT MACHAKOS THIS 2ND DAY OF MAY, 2017.

O.A. ANGOTE

JUDGE

DATED, DELIVERED AND SIGNED AT MALINDI THIS 12TH DAY OF MAY, 2017.

J.O. OLOLA

JUDGE