



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

PETITION CASE NO. 13 OF 2017

KIPKOECH ARAP SANG1ST PETITIONER
ROSELINE SAMOEI2ND PETITIONER
MESHACK KIMUTAI MORO.....3RD PETITIONER
STEPHEN KIPKOECH BOR.....4TH PETITIONER
DAVID BOR5TH PETITIONER

VERSUS

THE PRINCIPAL SECRETARY, MINISTRY OF LANDS
AND PHYSICAL PLANNING.....1ST RESPONDENT
DISTRICT LAND REGISTRAR,
UASIN GISHU.....2ND RESPONDENT
NATIONAL LAND COMMISSION3RD RESPONDENT
THE HONOURABLE ATTORNEY GENERAL.....4TH RESPONDENT

RULING

(An application for conservatory orders to restrain the respondents from processing and issuing title deeds for certain parcels of land; applicants alleging that they are entitled to the parcels of land and that the respondents are issuing titles to their exclusion; application not opposed; prima facie case established; conservatory order granted for a limited period in view of public interest)

1. Before the court for determination is petitioners’ Notice of Motion dated 10th April 2017. The application is brought under Rules 19 and 23(1) & (2) of the Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013. The applicants seek the following orders:

1. *(Spent).*
2. *(Spent).*

3. *THAT this Honourable Court be pleased to issue conservatory orders restraining the Respondents, their agents, servants, employees or otherwise howsoever from processing and issuing title deeds for parcels of land compromised in LR NO 24644: Northern Tindiret Cheboror otherwise also known as Cheboror Farm pending the hearing and determination of this Petition.*

4. *THAT this Honourable Court be pleased to give such directions as it deems fit for the expeditions hearing and determination of the Petition filed herein.*

5. *THAT the costs of this application be provided for.*

2. The application is supported by the affidavit of Kipkoech Arap Sang who deposes that sometime in the 1980s the government of the Republic of Kenya evicted him and him and the other petitioners from various forests and excised part of North Tindiret Forest to create LR. No. 24644: Northern Tindiret Cheboror Farm measuring approximately 788.30 hectares to resettle him and the other petitioners. He further deposes that he and the other petitioners were allocated alternative parcels of land and were issued with allotment letters after the government had repossessed some of the plots earlier on allocated to them for public utility purposes. That the government is now processing title deeds for parcels of land within Cheboror Farm in total exclusion of all the parcels that they now occupy. The petitioners fear that if titling process is concluded without taking into account their interests then their rights to property will be violated and they will be prejudiced. They therefore urge the court to grant the orders sought.

3. The petitioners filed an affidavit of service showing that the respondents were served with the application. The respondents neither filed any response nor attended court at the inter parte hearing of the application. The application was thus heard unopposed. Counsel for the petitioners relied entirely on the application and the supporting affidavit and urged the court to allow the application.

4. I have considered the application and submissions in respect thereof. I note that simultaneously with the present application the petitioners filed petition dated 4th April 2017 in which they seek the following declarations and orders:

a) A Declaration that petitioners are the lawful owners of all those parcels of land known as Cheboror Farm Parcel Nos. 159, 354, 355, 352, 353, 121, 191, 360 and 361 respectively.

b) A Declaration that the rights of the Petitioners guaranteed under Articles 27, 28, 29, 40, 43 and 47 of the Constitution are under threat of violation by the Respondents.

c) An Order directing the Respondents to issue title deeds to the Petitioners with respect to all those parcels of land known as Cheboror Farm Parcel Nos. 159, 354, 355, 352, 353, 121, 191, 360 and 361.

d) An Order prohibiting the Respondents from proceeding with the titling process without taking into account the interests of the petitioners.

e) Costs of this petition.

f) Any other relief that this Honourable Court may deem fit and just to grant in the circumstances.

I further note that it deposed in the affidavit in support of the petition that the petitioners were allocated the parcels of land known as Cheboror Farm Parcel Nos. 159, 354, 355, 352, 353, 121, 191, 360 and 361.

5. The applicants seek a conservatory order. In such an application, the applicant must establish a prima facie case with a probability of success. The court also ought to consider public interest prior to granting or refusing the orders. As already noted, the respondents have neither responded to nor opposed the application despite being served. The applicants' case therefore remains unchallenged. I therefore find that the applicants have established a prima facie case on a balance of probabilities.

Regarding the issue of public interest, no evidence has been placed before the court to show in what manner the orders sought would impact public interest. I note however from the supporting affidavit that the respondents are said to be processing title deeds for land within Cheboror Farm. It is possible that there will be beneficiaries who are not parties to this case who may be affected by a conservatory order. I will mitigate any possible adverse effects on the public by fast tracking the hearing and determination of the petition. I will give directions for disposal of the petition upon delivery of this ruling.

6. In the end I grant a conservatory order restraining the Respondents, their agents, servants, employees or otherwise howsoever from processing and issuing title deeds for parcels of land compromised in LR NO 24644: Northern Tendiret Cheboror otherwise also known as Cheboror Farm. The orders will be in force for a period of not more than six months from the date of this ruling, unless otherwise ordered by the court. Costs to the petitioners.

Dated, signed and delivered in open court at Nakuru this 13th day of June 2017.

D. O. OHUNGO

JUDGE

In the presence of:

Ms. Muchiri holding brief for Mr. Konosi for the petitioners/applicants

No appearance for the respondents

Court Assistant: Gichaba