



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC PETITION CASE NO 7 OF 2017

FORMERLY MERU ELC PETITION CASE NO. 9 OF 2014

IN THE MATTER OF ARTICLES 22, 70 AND 258 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 19, 20, 22, 27, 32, 35, 42, 43, 44 OF THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF THE CONTRAVENTION OF ARTICLES 2(5) & (6), 10, 60, 62, 63, 67, 69, 70, 71, 73 AND 174 OF THE CONSTITUTION OF KENYA 2010

BETWEEN

LAW & SOCIAL DEVELOPMENT TRUST (LASODET).....1ST PETITIONER

ATIRIRI BURURI MA CHUKKA TRUST.....2ND PETITIONER

WENDY W. MUTEGI & OTHER 3000 PETITIONERS.....3RD PETITIONERS

VERSUS

THE HONOURABLE ATTORNEY GENERAL.....1ST RESPONDENT

THE CABINET SECRETARY MINISTRY OF ENERGY

AND NATURAL RESOURCES.....2ND RESPONDENT

THE CABINET SECRETARY MINISTRY OF LANDS.....3RD RESPONDENT

THE NATIONAL LAND COMMISSION.....4TH RESPONDENT

THE KENYA FOREST SERVICE.....5TH RESPONDENT

KENYA WILDLIFE SERVICES.....6TH RESPONDENT

THE CABINET SECRETARY MINISTRY OF

INFORMATION & COMMUNICATION.....7TH RESPONDENT

THARAKA NITHI COUNTY GOVERNMENT.....8TH RESPONDENT

RHINO ARK.....9TH RESPONDENT

THE NYAYO TEA ZONES DEVELOPMENT CORPORATION.....10TH RESPONDENT
NATIONAL ENVIRONMENTAL MANAGEMENT
AUTHORITY (NEMA).....11TH RESPONDENT
FOREST COMMUNITY NEIGHBOURS.....1ST INTERESTED PARTY
SAW MILLERS.....2ND INTERESTED PARTY

RULING

1. This application filed by the 5th respondent and dated 13th January, 2017 seeks orders:

- (i) That the petitioners' suit against the 5th respondent be dismissed with costs for want of prosecution.
- (ii) That costs for this application be provided for.

2. The application has the following grounds:

- (a) That more than one year has elapsed since the last time the suit was in court for Ruling on 18.12.2014.
- (b) That the petitioners' have not set down the suit for hearing since then.
- (c) That there has been inordinate delay in the prosecution of the suit on the part of the petitioners.

3. The application is supported by the affidavit of, JOE KATHUNGU, which states:

"I, JOE KATHUNGU OF P. O. Box 1637, EMBU in the Republic of Kenya do hereby make oath and state as follows:

- 1. That I am an Advocate of the High Court of Kenya having the conduct of this matter on behalf of the 5th Respondent herein.
- 2. That the Petitioners herein filed two applications dated 22nd April, 2014 and 13th June, 2014 respectively.
- 3. That the Ruling in respect of both applications was delivered on 18th December, 2014.
- 4. That since the delivery of the said Ruling, the petitioners have not taken any step to prosecute the suit.
- 5. That the delay in prosecuting this suit has been inordinate.
- 6. That it is quite clear that the petitioners have lost interest in prosecuting this suit.
- 7. That I pray that in the interest of justice, this suit be dismissed with costs to the 5th respondent

4. When the matter was heard inter partes on 31.10.2017, the application was supported by the 5th and 11th respondents and by the 1st interested party. Although Miss Munga for the 5th respondent indicated that the 5th respondent was unable to serve the 3rd petitioner, I take the position that this is not fatal to the application.

5. Order 17 allows a court to dismiss a suit where after one year parties do not show cause to the satisfaction of the court that the suit should not be dismissed. It is clear that the 3rd petitioner has for a period of over 1 year not moved this court in any way. The other petitioners have also not done so.

6. I find that the petitioners and the other parties have not shown to the satisfaction of the court why this suit should not be dismissed.

7. This suit is dismissed.

8. The suit having been couched in terms that suggested that it was in the nature of public interest litigation, I will not award costs to any of the parties. Parties will bear their own costs.

9. It is so ordered.

Delivered in open court at Chuka this 31st day of October, 2017 in the presence of:

CA: Ndegwa

Miss Munga h/b Kathungu for 5th Respondent

Mwanzia h/b Mutinda for 1st Interested party

Gitonga present for 11th Respondent

P. M. NJORGE

JUDGE