



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MACHAKOS

ELC. PETITION NO. 102 OF 2017

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL

RIGHTS AND FREEDOMS UNDER ARTICLES 42 AS READ TOGETHER

WITH ARTICLE 19, 20, 21(1), 22, 23, 24, 28 AND 70 OF

THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: RULE 4 OF THE CONSTITUTION OF KENYA

(PROTECTION OF RIGHTS AND FUNDAMENTAL FREEDOMS)

PRACTICE AND PROCEDURE RULES, 2013.

BETWEEN

DOUGLAS ONYANCHA OMBOG.....1ST PETITIONER

MATHEW MBABU.....2ND PETITIONER

COLLINS SERONEY ODHIAMBO.....3RD PETITIONER

JOHN OCHIENG OBONDI.....4TH PETITIONER

VERSUS

JOSEPH KARANJA WAMUGI.....1ST RESPONDENT

NATIONAL ENVIRONMENT MGT. AUTHORITY....2ND RESPONDENT

EATON TOWERS KENYA LIMITED.....3RD RESPONDENT

KENYA TOWERS LIMITED.....4TH RESPONDENT

COMMUNICATIONS AUTHORITY OF KENYA.....5TH RESPONDENT

RULING

1. In the Application dated 1st March, 2017, the 1st Respondent is seeking for an order to strike out his name from the suit with costs.
2. In support of the Application, the 1st Respondent has deponed that the Petition does not disclose a cause of action as against him; that he is the lawfully registered proprietor of land known as Mavoko Town Block 49/52 (*Kimbo*) and that having leased out the land, he has never been involved in the construction or development works on the said land.
3. The 1st Respondent has deponed that he has never undertaken any works on the suit land and that the Petitioners have not disclosed how he has breached their constitutional rights.
4. The Petitioners filed Grounds of Opposition in which they averred that the Application lacks merit and offends the basic principles of law.
5. In his submissions, the 1st Respondent's advocate submitted that the 1st Respondent leased his land to the 3rd Respondent; that the 1st Respondent exercised his proprietary rights over his property and that any breach of constitutional rights as alleged by the Petitioners does not lie as against him.
6. The 1st Respondent's advocate finally submitted that the prayers sought by the Petitioners compelling the Respondents to remove the telecommunication mast erected on the suit land cannot issue as against the 1st Respondent.
7. The Petitioners' advocate submitted that the Respondents avoided the essential step in erecting a mast on the suit land and that the 1st Respondent failed to seek the approval of his neighbours while leasing the land for the erection of the mast.
8. In the Petition dated 4th March, 2016, the Petitioners have averred that they are the registered proprietors of parcels of land neighbouring the 1st Respondent's land; that they were not consulted when the Respondents decided to put up a telecommunication mast on the 1st Respondent's land and that the Petitioners right to a clean and healthy environment devoid of radiations and radioactive substances and generator fumes has been curtailed.
9. The Petitioners are seeking for a declaration that the Respondents are in breach of their fundamental right to a clean and healthy environment and for a declaration that in so far as the Respondents have altered the use of land which the Petitioners can utilize their properties, the Respondents are in breach of their rights to use their property.
10. The 1st Respondent has admitted that indeed he is the registered proprietor of the suit land.
11. The 1st Respondent has further admitted that he is the one who leased to the 3rd Respondent the suit land for the purpose of putting up a communication mast.
12. Considering that the suit land is registered in the name of the 1st Respondent, and in view of the allegations by the Petitioners that the user of the 1st Respondent's land was changed without their participation, I find that the 1st Respondent is a necessary party in these proceedings.
13. I say so because while leasing out his land, the 1st Respondent should have known that the user of the land would change, and must have consented to the said change of user of his land. It is that change of user of his land that the Petitioners are opposed to.

14. In the circumstances, the Petitioners' complaint has to be directed to all the named Respondents to enable the court effectively and effectually deal with the dispute.

15. For those reasons, I dismiss the Application dated 1st March, 2017 with costs.

DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 2ND DAY OF NOVEMBER, 2017.

O.A. ANGOTE

JUDGE