



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

PETITION NO. 51 OF 2015

MT LONGONOT FARMERS SELF HELP GROUP.

(Suing thro’ its officials Samuel Njuguna Mukundi- Chairman

And others)PETITIONER

VERSUS

THE ADMINISTRATION POLICE COMMANDANT.....1ST RESPONDENT

THE INSPECTOR GENERAL2ND RESPONDENT

HON ATTORNEY GENERAL3RD RESPONDENT

RULING

(Application for conservatory orders in a constitutional petition; petitioners stating that they were allocated land and that the Administration Police have taken it over; no proof of any letter of allotment; not title displayed by petitioners; prima facie case not established; application dismissed)

1. This suit was commenced by way of a Constitutional Petition filed on 14th September 2015. Together with the petition, the petitioners filed an application under certificate of urgency seeking the following substantive order:-

That pending the hearing and determination of the petition herein, this honorable court be pleased to issue conservatory orders restraining the respondents, by themselves, their agents, servants, employees, or any other person (s) acting on their instructions and/or directions from demolishing houses, entering into, remaining upon, constructing structures, preventing the Petitioners' members or other members of the public from entering into or in any other manner dealing with any and all land located in LR No. 7473/4/1 measuring 150 acres approximately (otherwise known as Makongo Farm) outside the portion known and described as Plot No. 4.2.

2. The case of the petitioners is that they own this land parcel LR No. 7473/4/1 (the suit land). They say that they were given this land by the late President Jomo Kenyatta in the year 1975. They settled on the land, but around the year 1995, some of their members were displaced by tribal clashes. It is their position that this land was planned and subdivided as follows :-

- (a) 364 low density residential plots, measuring about 100 feet by 100 feet each.

- (b) 72 high density residential plots measuring about 50 feet by 100 feet each.
- (c) 106 commercial plots measuring about 50 feet by 100 feet each.
- (d) 22 light industry plots measuring about 100 feet by 100 feet each.
- (e) A water point to contain a water tank and possibly a borehole, and water treatment facility, measuring about one acre.
- (f) A primary school, measuring about 5 acres.
- (g) A health centre, measuring about 1.5 acres.
- (h) A market, measuring about 2 acres.
- (i) A dumpsite.
- (j) a slaughter house.
- (k) An Administration Police Post, and
- (l) Three Christian churches, to serve the community.

3. It is averred that letters of allotment were issued by the County Council of Nakuru requiring each allottee to pay Kshs. 10,500/= and most of them have paid and continue to pay the dues on an annual basis.

4. Owing to the tribal clashes, the members resolved to help built a Police Post and they prepared a plan which was approved. They then commenced building and thereafter invited the Administration Police (AP) to deploy personnel. Some APs were sent but to the amazement of the petitioners, they came in large numbers and started harassing them. The petitioners complained and the AP Commandant respondent by saying that the land was acquired by the Administration Police Service in the year 2008 for use as an extension of field training by AP personnel. In the Petition, the petitioners claim that their rights to property under Article 40 of the Constitution have been violated.

5. The respondent replied to the application by filing Grounds of Opposition. Among the grounds stated, are that the petitioners have not demonstrated ownership of the suit parcel.

6. At the hearing of the application, I took the submissions of Mr. P.K Njuguna for the petitioners and Mr. Wachira Nguyo for the State.

7. What is before me is an application for conservatory orders which is more or less similar to an application for injunction. I will stand guided by the principles laid down in the case of **Giella vs Cassman Brown (1973) EA 358** which provide that to succeed in an application for injunction, one needs to demonstrate a prima facie case with a probability of success and also show that he stands to suffer irreparable loss if the injunction is not granted. Where in doubt, the court will decide the application on a balance of convenience.

8. I have assessed the case of the petitioners which is that they were allocated the suit property by the First President in the year 1975. However, no allotment letter has been displayed by the petitioners to demonstrate this. What I have seen are some letters asking members of Mt. Longonot Self Help Group, who are the petitioners, to pay some money for survey fees. The land is not identified in these letters. There are two allotment letters annexed which are dated 31st January 2012 and 30 July 2012 to John Vidija and the Office of the President, Makongo A.P Line. These are from the County Council of Nakuru. I have perused these letters. They do not identify any land parcel but appear to be allotments for plots in Mt Longonot Scheme and Makongo Centre. It is difficult for me to determine whether these allotments

are for the same land as claimed in this suit for no connection has been shown between the two. No title has been displayed by the petitioners.

9. I am afraid that I am unable to see any documentation that gives the petitioners any rights over the land parcel LR No. 7473/4/1. In my opinion the petitioners have not demonstrated to me a prima facie case with a probability of success to entitle them to the conservatory orders sought. I am not in doubt and therefore need not consider the balance of convenience. I have little option but to dismiss this application with costs.

10. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 18th day of February 2016.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In presence of :

Mr. P K Njuguna for petitioners

Mr. Kiprotich Kirui for respondents

CA: Janet

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT

AT NAKURU