



IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L PET NO 14 OF 2013

Formerly HCC Pet no. 13 of 2013

IN THE MATTER OF ARTICLES 2, 22, 23, 79, 156, 161(2), 173, 226 OF THE CONSTITUTION OF KENYA

BETWEEN

JAMES ROTICH.....1ST PETITIONER

JOHN KOMEN2ND PETITIONER

JAMES KOSIR CHELANGA.....3RD PETITIONER

ELIAS MAIYO KIPKOSIR.....4TH PETITIONER

RICHARD KIPKORE CHEBII.....5TH PETITIONER

(SUING ON BEHALF OF VICTIMS OF LANDSLIDE STAYING IN EMBOBUT FOREST)

AND

HONOURABLE DAVID KANGOGO.....1ST RESPONDENT

TASK FORCE FOR RESTORATION OF EMBOBUT FOREST..2ND RESPONDENT

MINISTRY OF SPECIAL PROGRAMMES.....3RD RESPONDENT

KENYA FOREST SERVICES.....4TH RESPONDENT

ATTORNEY GENERAL5TH RESPONDENT

COUNTY GOVERNMENT OF MARAKWET.....6TH RESPONDENT

(Application to amend a constitutional petition so as to add more parties; application unopposed; application allowed)

RULING

This suit was commenced by way of a constitutional petition said to be brought pursuant to the provisions of Articles 2, 22, 23, 79, 156, 161 (1), 173, and 226 of the Constitution of Kenya, 2010. It was filed by five persons namely, James Rotich, John Komen, James Kosir Chelanga, Elias Maiyo Kipkosir, and

Richard Kipkore Chebii, who stated that they were suing on behalf of "Victims of Landslide Staying in Embobut Forest." Briefly, it is the case of the petitioners that a task force was formed by the Government to identify persons who are squatters in Embobut Forest for purposes of paying them some compensation to enable them move out of the forest. The petitioners allege that despite being entitled to compensation, their names were removed from the list of persons prepared by the task force. In this petition, they want an order that their names be maintained in the list of persons to be compensated.

Through an application dated 30 June 2014, the petitioners wish to amend the petition. The purpose of the amendment is to add several names of persons as petitioners. In total 749 persons want to be added as petitioners in this suit. The persons have described themselves as being the genuine qualified squatters of Embobut Forest.

The application as filed is said to have been brought under the provisions of Sections 3, and 3A of the Civil Procedure Act, and Order 1 Rule 10 (1) and (4) and Order 8 Rule 3 of the Civil Procedure Rules. On my part, I do not see how these provisions apply to a suit of this nature as the suit herein is not a suit that is subject to the civil procedure rules but is a constitutional petition subject to The Constitution of Kenya (Protection of Fundamental Rights and Freedoms) Practice and Procedure Rules, 2013. I will therefore consider this application as filed under the proper rules and consider it on merit despite the defect. I however trust that counsel has taken note of the defect and will correct himself appropriately in future.

Rules 5 and 18 of the 2013 Constitutional Rules, do permit amendments to a petition, and one of the envisaged amendments is to add a party or parties to the petition. The application is not opposed by the respondents and on my part I see no reason why I should decline it.

The application is hereby allowed. I direct that the amended petition be filed and served within the next 7 days. I make no orders as to costs.

It is hereby ordered.

DATED AND DELIVERED AT ELDORET THIS 10TH DAY OF JULY 2014

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Delivered in the presence of:

Mr. H.O. Aseso holding brief for M/s Mose, Mose & Milimo & Co Advocates for applicants.

N/A for M/s Mburu Maina & Co Advocates for 1st Respondent.

Mr. P. Kuria of the State Law office present for 2nd, 3rd and 5th Respondents. and holding brief for Mr. R.M. Wafula for 6th Respondent.

Mr. J.N. Momanyi present for 4th Respondent.