

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MALINDI
CONSTITUTIONAL & JUDICIAL REVIEW DIVISION
CONSTITUTIONAL PETITION NO. OF 2016



IN THE MATTER OF: CHAPTER FOUR, THE BILL OF RIGHTS, ARTICLES 19, 20, 21,22,23,25,28,40, 159(2) AND 165 (3) OF THE CONSTITUTION OF KENYA

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOM UNDER ARTICLES 19, 20, 21, 22, 23, 40 OF THE CONSTITUTION ,RULE 11 & 12 OF THE PROTECTION OF FUNDAMENTAL RIGHTS & FREEDOM OF PRACTICE & PROCEDURE RULES & ALL OTHER ENABLING PROVISIONS OF THE LAWS.

AND

IN THE MATTER OF: ARTICLE 25 OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

BETWEEN

JOEL OGADA.....PETITIONER

AND

KURAWA INDUSTRIES LIMITED.....1st RESPONDENT
COMMISSIONER FOR LANDS.....2nd RESPONDENT
COMMISSIONER OF POLICE.....3RD RESPONDENT

PETITION

(Pursuant to Articles 2(6),19,20, 21, 22(2)(a), (3)(d),23(1),(3), 26(1),(3) 27(1),(2),28,29(c),(d), 40, & 165(3)(a)(b),(d)(i),(ii) of the Constitution of Kenya 2010 and Rule 11 (c) & 12, the Constitution of Kenya (Supervisory jurisdiction and Protection of Fundamental Rights and Freedoms of the Individual) High Court Practice and Procedure Rules, 2013), and Article 25 Of The Universal Declaration of Human other Relevant Enabling Power & Provisions of The Laws of Kenya.

The Deputy Registrar
High Court of Kenya
Mombasa Law Courts
MALINDI.

The humble Petition of JOEL OGADA whose address of service for purposes of this Petition is care of JOHN MAGIYA & COMPANY, ADVOCATES, Ground Floor, Lotus Plaza, Nkurumah Road P O Box 80243-80100 MOMBASA in the Republic of Kenya.

A. DESCRIPTION OF THE PARTIES

1. The Petitioner is a citizen of the Republic of Kenya and a resident of Kanagoni area Fundlissa Location-Malindi within the Kilifi County and he has taken out this Petition on his own behalf.
2. The 1st Respondent is a limited liability Company incorporated and registered pursuant to the provisions of the Companies' Act Laws of Kenya and having its registered office and principal place of Business at Malindi within the Republic.
3. The 2nd Respondent is a Government Employee working as a Commissioner for Lands responsible and in charge of all matters concerning public land in the service of all the people within the Republic. Service of this Petition shall be affected on the office of the Petitioner Advocate's Office. Whereas the 3rd Respondent is also a Government Employee working as the Commissioner of police in charge of police officer in matters of security and protection of all persons and their properties.

THE FACTS:

1. THAT the Petitioner among others is the Legal/beneficial owners of the parcel of Land situate at **Kurawa Kanagoni Fundisha Location** identified as **Plot No.13332** having acquired and/or assumed ownership of the same from his ancestral parents as the indigenous owner and having been born on the suit land and lived there since time immemorial.
2. THAT at all material times hereto the Petitioner has been in possession/or occupation and still in possession of the said parcels of land until unfairly disposed by the respondents or/their agents.
3. THAT the 1st Respondent in conniving with the local administration have enticed most residents to move out and meagerly compensated them to demolish their houses and remove their crops and trees which compensation was too minimal and inadequate.
4. THAT the Respondents in collusion with the Registrar of title/land have illegally and fraudulently without the petitioner's consent or knowledge caused themselves to be registered as the proprietors of the suit property in total disregard of the petitioner among many others who have been on ground since time immemorial and totally destroyed their properties.
5. THAT the title as held by the 1st respondent was acquired un-procedurally and the respondents jointly conspired and colluded to defraud the petitioner and other members on the ground and fraudulent hence *null and void ab-initio*.
6. THAT the 1st respondent has no right of title it is fair and just that the suit property is preserved as it were originally before the fraudulent act and unconstitutional Acts by the Respondents as the persons on the ground could not be completely ignored having lived there for over 40 years and have no place to go, thus a creation of squatters.
7. THAT the petitioner has been treated by the agents of the respondents jointly and in collusion in a cruel, inhuman and degrading manner while trying to protect his fundamental rights as provided for in the Constitution.
8. THAT subjecting Petitioner numerous arrests, being taken into police custody and subsequent detention, his property and the dwelling house demolished thus constituting to serious breach of the Petitioner's fundamental rights and Freedoms as to liberty, humane treatment, and freedom

20. The petitioner aver that the respondents are obliged to transfer the occupied portions of the suit property to the petitioner and be registered as the owner as opposed to disrupting his life with threats of eviction and taking of the suit land entirely.

PRAYERS:

Your Petitioner therefore humbly prays for:-

- (a) declaration that the Petitioner is Legal/beneficial owner of the part of the parcel of Land situate at **Kurawa Kanagoni Fundisha Location** identified as **Plot No.13332** (herein referred as the community land) having acquired and/or assumed ownership by prescription from his ancestral parents as the indigenous person and the Petitioner subjected to forceful eviction there from and potentially subjecting the Petitioner to a state of homelessness contravenes the Provisions of Article 2(5), 25, 28, 43(1)(b),47(1) of the Constitution of Kenya 2010 which guarantees, adequate housing, dignity, respect protection and the right to fair administrative action.
- (b) A declaration that the Petitioner's rights under Article 40 of the Constitution of Kenya 2010 relating to the protection of the right to ownership of property and prompt, full, fair and just compensation in the event of compulsory acquisition for public use or appropriation have been violated by the Kenya State.
- (c) A declaration that the Petitioner's rights to Human dignity, freedom and security of the persons guaranteed under Articles 28 and 29 of the Constitution of Kenya 2010 have been violated by the Kenya State and further that the Petitioner's rights to access to justice guaranteed under Article 48 of the Constitution of Kenya 2010 have been violated by the Kenya State.
- (d) A Declaration that the cruel, inhuman and degrading treatment subjected on the Petitioner upon his arrest and being taken into police custody and subsequent detention and conviction constituted serious breaches of the Petitioner's fundamental rights and Freedoms as to liberty, humane treatment, and freedom against arbitrary interference with his privacy, family and home, and right to earn an honest living as guaranteed under the Constitution of Kenya, and further grossly violated the Petitioner's right to a fair administrative action and legitimate expectation as provided for under Article 47 of the Constitution.
- (e) A permanent prohibitory injunction restraining the Respondents jointly and severally by themselves, Agents or servants from selling, Leasing or otherwise disposing any interest in the suit property entering, remaining, demolishing, harassing and / or interfering with the suit property and the petitioner quiet possession thereof and further an Order directing the 2nd Respondent to register the Petitioners portion as a proprietor and /or offer alternative portion.
- (f) General Damages consequential to the Declarations of violations of the Petitioner's Fundamental Rights and Freedoms
- (g) Costs of this Petition.

Dated at Mombasa this 25th day of May 2016

JOHN MAGIYA & COMPANY
ADVOCATES FOR THE PETITIONER

Drawn and Filed By:

John Magiya & Company,
Advocate,
Lotus Plaza , Ground Flr,
Cathedral Road, Off Nkrumah Road,
P.O Box 80243-80100,
Mombasa.

To Be Served Upon

1. Kurawa Industries Limited
Malindi
2. Commissioner For Lands,
3. Commissioner of Police,
thru, The Attorney General
Mombasa