



**Nyachiro v Laikipia County Director of Housing Ministry of Transport,  
Infrastructure, Housing and Urban Development & 2 others (Environment &  
Land Case E001 of 2023) [2023] KEELC 17875 (KLR) (20 April 2023) (Ruling)**

Neutral citation: [2023] KEELC 17875 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT & LAND CASE E001 OF 2023**

**AK BOR, J**

**APRIL 20, 2023**

**BETWEEN**

**MARTIN MASITA NYACHIRO ..... PLAINTIFF**

**AND**

**LAIKIPIA COUNTY DIRECTOR OF HOUSING MINISTRY  
OF TRANSPORT, INFRASTRUCTURE, HOUSING AND URBAN  
DEVELOPMENT ..... 1<sup>ST</sup> RESPONDENT**

**COUNTY COMMISSIONER OF LAIKIPIA ..... 2<sup>ND</sup> RESPONDENT**

**THE COUNTY GOVERNMENT OF LAIKIPIA ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The court directed parties to file submissions on the issue as to whether it had the jurisdiction to deal with this dispute. The Plaintiff filed suit on January 23, 2023 claiming that on August 30, 2018 he was granted possession of government house number MG7 in Nanyuki town by the County Director of Housing, Laikipia County, Ministry of Transport, Infrastructure, Housing and Urban Development where he resides with his family. He averred that on December 15, 2022, the 1<sup>st</sup> Defendant wrote to him requiring him to give vacant position of the government house by January 31, 2023.
2. His claim is that the demand was made without affording him an opportunity to be heard or to defend himself yet the deductions of rent from his salary which is done through the check-off system had not been stopped and the rent for February was already deducted. He added that he had never defaulted in paying rent nor had he violated the terms and conditions of housing. He maintained that he was still working in Laikipia County under the Ministry of Interior and Coordination. He sought a permanent injunction to restrain the 1<sup>st</sup> Defendant from evicting him or interfering with his quiet possession of



- Government House number MG 7 in Nanyuki Town. Further, he sought a permanent injunction to restrain the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from implementing the eviction order against him.
3. The Plaintiff also filed the application dated January 20, 2023 seeking a temporary injunction to restrain the 1<sup>st</sup> Defendant from evicting him from the government house, a temporary injunction to restrain the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants from implementing the eviction order against him.
  4. Parties filed submissions which the court has considered. The Plaintiff relied on Article 162 (2) (b) of the Constitution on the broad jurisdiction of this court in terms of hearing and determining disputes relating to the use and occupation of, and title to land. He also relied on Section 13 (2) of the Environment and Land Court Act which deals with the power to determine disputes relating to environmental planning, title, tenure, boundaries, rents among others. It also gives the court to determine disputes relating to public private and community land and contracts or other instruments granting any enforceable interests in land. He also pointed out that that Act empowers the court to deal with violations of the right to a clean and healthy environment.
  5. The Plaintiff cited the decision in PBM Nominees Limited v Ucbumi Supermarket Limited [2020] eKLR in which the court dealt with the issue of the jurisdiction of this court. He submitted that this dispute arose out of a landlord and tenant relationship pertaining to public land and therefore fell within the ambit of Article 162 (2) of the Constitution regarding the use and occupation of land as well as Section 13 of the Environment and Land Court Act.
  6. The 3<sup>rd</sup> Defendant filed an application dated February 14, 2023 seeking to have the suit against it struck out on the grounds that it does not disclose any reasonable cause of action because it was not involved in the subject matter of the suit.
  7. The 1<sup>st</sup> and 2<sup>nd</sup> Defendants submitted that the house in question was a three-bedroom permanent house with a servant's quarter and is a pool house for the National Government. The house was initially occupied by Mr Moses Nyachiro who was the Chief for Nanyuki town from January 1, 1996 until December 1, 2011 when he died and it was then allocated to his wife Beatrice Nyachiro on humanitarian grounds. That Beatrice Nyachiro worked in the Department of Registration of Persons until August 2018 when she retired. On being requested to move out of the house because she was no longer an employee of the Government, she requested to have the house allocated to the Plaintiff who works for the National Police Service. They went on to submit that late last year, the Department of Housing undertook an audit which revealed that the Plaintiff had been deployed to Meru and his house was available for reallocation. The Plaintiff sought time to relocate his school going children to Meru. Subsequently, the Laikipia East Sub-County House Allocation Committee issued the eviction notice to him.
  8. The Honourable Attorney General submitted that Article 162 of the Constitution does not confer jurisdiction to this court to deal with matters relating to eviction and tenancy of rental houses. Further, that the cause of action does not deal with the grant of an interest in the property but seeks to address the actions of the Department of Housing in evicting the Plaintiff from a house that belongs to the government. He stressed that the court's jurisdiction to deal with disputes connected to the use of land excluded rental houses.
  9. The other point taken up by the State Counsel is that the Plaintiff had not exhausted the other mechanisms for resolution of the dispute before approaching the court. According to the State Department of Housing and Urban Development, the Guidelines confirm that the County House Allocation Committees are in charge of matters relating to house allocation, occupation and vacation and that the applicant ought to have approached the Laikipia East Sub- County Allocation Committee



which has the mandate over the allocation, occupation and vacation of Government houses in the area in question before seeking redress from the court. Additionally, the Attorney General submitted that the Plaintiff had not shown that he had a legal or equitable right in the suit property that required protection by an order of injunction. He concluded by urging that the court was not the right forum to resolve this dispute.

10. The issue for determination is whether this court has jurisdiction to deal with this dispute. It is evident that the Plaintiff was allocated the government house to reside in as a public officer and not otherwise. He does not assert any ownership rights over the land but argues that he is entitled to remain in the government house and continue occupying it as a civil servant working for the county Government of the Republic of Kenya within Laikipia County. The court notes that the assertion by the Defendant that the Plaintiff had been transferred to Meru was not controverted by the Plaintiff. If that be so and the house is required for allocation to another deserving public servant, then it would fall upon the County House Allocation Committee to deal with the allocation of the house in question or its continued occupation by the Plaintiff in accordance with the relevant guidelines on housing of public servants.
11. The court agrees with the 1<sup>st</sup> Defendant that the proper forum for the Plaintiff to assert his claim is with the Ministry dealing with Government housing and not the court.
12. The Plaintiff's suit is dismissed with costs to the Defendants.

**DELIVERED VIRTUALLY AT NANYUKI THIS 20<sup>TH</sup> DAY OF APRIL 2023.**

**K. BOR**

**JUDGE**

**In the presence of:-**

Ms. Mumbi Kiarie for the 1<sup>st</sup> and 2<sup>nd</sup> Defendants

Ms. D. Mathairo holding brief for Mr. A. Muchemi for the 3<sup>rd</sup> Defendant

No appearance for the Plaintiff

