



Kariobangi South Land Owners Welfare Group & 3 others v Nairobi City County & 5 others; Karionbangi South Juakali Society (Interested Party) (Environment & Land Petition 1337 of 2016) [2023] KEELC 16827 (KLR) (12 April 2023) (Ruling)

Neutral citation: [2023] KEELC 16827 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 1337 OF 2016
MD MWANGI, J
APRIL 12, 2023
IN THE MATTER OF THE PREAMBLE, ARTICLES 19, 20, 21,
22, 23, 24,
25,26,27,28,33,34,35,36,37,40,41,42,43,47,50,53,54,55,
56,57,60,61,62,63,64,65,66,67,68,69,70,73,74,75,79,80,
159,175,176,186,249,259,260 OF THE CONSTITUTION
IN THE MATTER OF THE LAND ACT NO. 6 OF 2012
IN THE MATTER OF THE COUNTY GOVERNMENT ACT OF
2012
IN THE MATTER OF CITY BYLAWS AND BUILDING
REGULATIONS

BETWEEN

KARIOBANGI SOUTH LAND OWNERS WELFARE GROUP . 1ST PETITIONER
JAMES MBUGUA KIMIRI 2ND PETITIONER
SABINA MANDERE 3RD PETITIONER
JOSEPH JUMA OMENYA & OTHERS 4TH PETITIONER

AND

NAIROBI CITY COUNTY 1ST RESPONDENT
GOVERNOR NAIROBI CITY COUNTY 2ND RESPONDENT
CHIEF OFFICER LANDS 3RD RESPONDENT
COUNTY SECRETARY NAIROBI CITY COUNTY 4TH RESPONDENT



NATIONAL LAND COMMISSION 5TH RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT
AND
KARIONBANGI SOUTH JUAKALI SOCIETY INTERESTED PARTY

RULING

Background

1. On March 15, 2023, the court stood down the 3rd witness for the Petitioners and adjourned the matter for purposes of directions to guide the hearing. This was after the partial hearing of the case when it became apparent that it was not clear on whose behalf the Petition had been filed and the actual interests sought to be protected.
2. The Petition is stated to be the ‘Petition of Kariobangi South Land Owners Welfare Group and Others’. At paragraph 1 of the Petition, the 1st Petitioner, Kariobangi South Land Owners Welfare Group is described as a ‘welfare group’, ‘duly authorized by owners of plots in Kariobangi South Sector VI’. The Petition does not reveal who the alleged plot owners are. Their plot numbers are also not disclosed. There is no clear description of the plots or their acreage for that matter.

Determination

3. Rule 3(8) of the [Constitution of Kenya \(Protection of Rights and Fundamental Freedoms\) Practice and Procedure Rules, 2013](#) reserves the court’s inherent power ‘to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of court’.
4. This court in the case of [Nyakundi & Another –Vs- Embakasi Ranching Co Ltd & Another](#) (2022) KEEL 3833 (KLR) cited the Court of Appeal decision in the case of [Kenya Power & Lighting Company Ltd vs Benzene Holdings Ltd t/a Wyco Paints](#) (2016) eKLR, where the court described the inherent jurisdiction of the court as a residual intrinsic authority which the court may resort to in order to put right that which would otherwise be an injustice.
5. The Court observed that section 3A of the [Civil Procedure Act](#) appears to have been introduced to augment the provisions of section 3 of the Act, vesting in the courts inherent power to make any orders as may be necessary for the ends of justice to be met or to prevent abuse of the process of the court. This power has been broadened by the introduction in the year 2009 of the overriding objective in sections 1A & 1B and in the year 2010 by Article 159 of the [Constitution](#).
6. The Court of Appeal in the above cited case and in an attempt to define the scope and extent of the inherent powers of the court made reference to the [Halsbury’s Laws of England](#), 4th Edition Vol 37 Para 14 where the authors expounded it as follows;

“The jurisdiction of the court which is comprised within the term ‘inherent’ is that which enables it to fulfil itself, properly and effectively, as a court of law. The overriding feature of the inherent jurisdiction of the court is that it is part of procedural law, both civil and criminal, and not part of substantive law; it is exercisable by summary process, without plenary trial; it may be invoked not only in relation to the parties in pending proceedings, but in relation to anyone, whether a party or not, and in relation to matters not raised



in litigation between the parties; it must be distinguished from the exercise of judicial discretion; it may be exercised even in circumstances governed by rules of court. The inherent jurisdiction of the court enables it to exercise control over process by regulating its proceedings, by preventing the abuse of the process and by compelling the observance of the process ... In sum, it may be said that the inherent jurisdiction of the court is a virile and viable doctrine and has been defined as being the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them."

7. Rule 4(2) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* allows 'a person acting as a member of, or in the interest of, a group or class of persons, or 'an association acting in the interest of one or more of its members' to institute court proceedings in the interest of such members where any right or fundamental freedom provided for in the constitution is allegedly denied, violated or infringed or threatened.
8. In this instant case, the proceedings before me, as I already observed earlier on were supposedly instituted by Kariobangi South Land Owners Welfare Group on behalf of its members whom, in the petition, are merely described as owners of plots in Kariobangi South Jua Kali Sector VI.
9. The Petition has however, not disclosed with clarity and precision, who these alleged owners of the plots are. It has neither described the plot numbers nor their sizes/acreage. From the partial hearing of the case conducted so far, it is apparent that some of the plots already have titles.
10. Rule 10 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* requires amongst other things, at sub-rule (2)(d), that the nature of injury caused or likely to be caused to the Petitioner or the person in whose name the Petitioner has instituted the suit to be disclosed. At sub-rule (2)e, details regarding any Civil or Criminal case involving the Petitioner or any of the Petitioners which is related to the matters in issue in the petition are required to be disclosed. This has not been done in the Petition herein.
11. Therefore, and in exercise of its inherent powers to ensure the observance of the due process of law and to do justice between the parties and to secure a fair trial between them, the court makes the following orders: -
 - i. The Petition herein be amended and served upon all the parties in the next 21 days to fully disclose the names of all the plot owners on whose behalf it is brought, their national identity card numbers, their plot numbers, the acreage of their respective plots and all other necessary information for purposes of clearly identifying the plot owners and their plots. The amended Petition should also comply with Rule 10 of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013*.
 - ii. All the Respondents and Interested Parties shall be at liberty to file any responses in 14 days after service of the amended Petition.
 - iii. Alongside their pleadings, all parties shall file their identified issues for determination.
 - iv. The court will upon the filing of (i), (ii) and (iii) above under rule 21(3) of the *Constitution of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013* frame the issues for determination and give such further directions as may be necessary for the expeditious hearing of the case.



It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 12TH DAY OF APRIL 2023.

M.D. MWANGI

JUDGE

In the virtual presence of:

Mr. Ondieki for the Petitioners.

Ms. Nyang for the 2nd Interested Party.

Mr. Okore for the 1st, 2nd, 3rd & 4th Respondents.

No appearance for the 5th & 6th Defendants and the 1st Interested Party.

Court Assistant – Yvette.

M.D. MWANGI

JUDGE

