



**Tikani & 18 others v Attorney General & 6 others (Environment & Land  
Petition 12 of 2017) [2023] KEELC 17578 (KLR) (30 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17578 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ENVIRONMENT & LAND PETITION 12 OF 2017**

**CG MBOGO, J**

**MAY 30, 2023**

**FORMERLY NAKURU PETITION NO. 7 OF 2013**

**IN THE MATTER OF ARTICLE 1,2,3, 10,19,20,21,22,23,35,40,43,47(1),50  
60,63,165 3 (B), 258 AND 259 1 (B) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE SUPREMACY OF THE CONSTITUTION  
PURSUANT TO ARTICLE 2 OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF THE CONSTITUTION OF KENYA (SUPERVISORY JURISDICTION  
AND PROTECTION OF FUNDAMENTAL RIGHTS AND FREEDOMS OF THE  
INDIVIDUAL) HIGH COURT PRACTICE AND PRECEDURE RULES 2006, RULES 1-23**

**AND**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOM UNDER ARTICLES 20,27,28,40,43,53,56 AND 57 OF THE CONSTITUTION  
AND IN THE MATTER OF TRESPASS OF CIS MARA SHEEP AND GOAT PROJECT AT  
OLOPITO, OLOKERE LOONKISHU NAANYOKIE AT PURKO MOTONYI FARM AND  
HOLDING GROUND LR NO. ILMASHARIANI/MORIJO/60 BY THE MINISTRY OF  
LIVESTOCK AND DEVELOPMENT, NAROK NORTH DISTRICT, NAROK COUNTY**

**BETWEEN**

**TURERE OLE TIKANI & 18 OTHERS ..... PETITIONER**

**AND**

**ATTORNEY GENERAL ..... 1<sup>ST</sup> RESPONDENT**

**LIVESTOCK PRODUCTION OFFICER NAROK NORTH .... 2<sup>ND</sup> RESPONDENT**

**PERMANENT SECRETARY, MINISTRY OF LIVESTOCK &  
DEVELOPMENT ..... 3<sup>RD</sup> RESPONDENT**



<b>DIRECTOR OF LIVESTOCK, MINISTRY OF LIVESTOCK &amp; DEVELOPMENT</b> .....	<b>4<sup>TH</sup> RESPONDENT</b>
<b>PERMANENT SECRETARY, MINISTRY OF LANDS</b> .....	<b>5<sup>TH</sup> RESPONDENT</b>
<b>NAROK COUNTY COUNCIL</b> .....	<b>6<sup>TH</sup> RESPONDENT</b>
<b>NAROK TOWN COUNCIL</b> .....	<b>7<sup>TH</sup> RESPONDENT</b>

## RULING

1. Before this court for determination is a notice of motion application dated 8<sup>th</sup> August, 2022 filed by the petitioners herein expressed to be brought under Sections 1A,1B,3A and 63 (a)(b)(c) and (e) of the *Civil Procedure Act* and Order 42 Rule 6 and Order 50 Rule 1 of the *Civil Procedure Rules* seeking the following orders:-
  1. spent.
  2. This honourable court be pleased to reinstate the orders granted on 20<sup>th</sup> March, 2013 by Waithaka J.
  3. That pending the hearing and determination of this application and subsequently of the appeal, the respondents be restrained from demarcating, disposing or dealing in any other way with the three subject parcels of land herein, namely Cis Mara Sheep and Goat project at Olopito, Olekere Loonkushu Naanyoike at Purko Motonyi farm measuring approximately 499 acres and the holding ground referenced as LR. No. Ilmashariani/Morijo/60 in Narok County.
  4. That pending the interpartes hearing and determination of this application, and subsequently of the appeal, the respondents, their servants and/or agents or otherwise howsoever be restrained from dealing in any way with the three subject parcels of land herein, namely Cis Mara Sheep and Goat project at Olopito, Olekere Loonkushu Naanyoike at Purko Motonyi farm measuring approximately 499 acres and the holding ground referenced as LR. No. Ilmashariani/Morijo/60 in Narok County.
  5. That pending the hearing and determination of this application and subsequently of the appeal the respondents, their servants and/or agents or otherwise howsoever be restrained from issuing any title deeds.
  6. The costs of this application be provided for.
2. The application is premised on the grounds that this court delivered a judgment on 20<sup>th</sup> July, 2022 and with no orders in place, there is risk of interference by the respondents and that there are members of the Purko Community residing on the said parcels of land.
3. The application is supported by the supporting affidavit of Joseph Nkaiwuatei sworn on even date. The said Joseph Nkaiwauatei deposed that he is a member of the Purko Community and the Chief Executive Officer of Purko Development Trust, the 18<sup>th</sup> petitioner. He further deposed that vide the judgment delivered by this court on 20<sup>th</sup> July, 2022, the orders issued by Waithaka, J on 20<sup>th</sup> March, 2013 were vacated and there is great risk that the respondents are free to interfere with the suit properties which is likely to raise tension on the ground as the respondents had already started encroaching on the said parcels.



4. The 18<sup>th</sup> petitioner further deposed that if the respondents are free to transact and deal with the properties, the petitioners and the Purko community at large will be at great loss and will suffer irreparable harm as they resided on the land for generations.
5. The application was opposed by the replying affidavit of Godfrey Ndubi Kwena, Town Administrator of the 6<sup>th</sup> respondent sworn on 13<sup>th</sup> October, 2022. The 6<sup>th</sup> respondent deposed that Joseph Nkaiwuatei is neither a petitioner nor a witness herein and describes himself through an entity that is not recognized. As such, the said petitioner does not have legal standing to clothe the deponent with any locus standi.
6. The 6<sup>th</sup> respondent further deposed that upon dismissal of the petition, the prayers sought failed and this court went ahead and vacated the earlier orders issued on 20<sup>th</sup> March, 2013 and that the prayers sought by the said applicant is asking this court to reverse its judgment or sit on appeal of its own judgment. Further, that the prayers have already been overtaken by events as its advocates have already applied for the registration of the court's decree which was registered against the county's title deed.
7. The 6<sup>th</sup> respondent deposed that the restrictive orders dated 20<sup>th</sup> March, 2013 cannot be reinstated once the petition was dismissed and thus is futile.
8. The application was further opposed by the 1<sup>st</sup> respondent's grounds of opposition dated 17<sup>th</sup> November, 2022 on the following grounds:-
  1. That the application is fatally defective as the supporting affidavit is sworn by one Joseph Nkaiwuatei who is not a party to the suit.
  2. That the applicant has not met the threshold for the grant of the orders sought.
  3. That the application is misconceived, mischievous and an abuse of the court process.
9. The applicant filed a supplementary affidavit in response thereto sworn on 27<sup>th</sup> January, 2023. The applicant reiterated the averments raised in his supporting affidavit and further deposed that as the Chief Executive Officer of the 18<sup>th</sup> petitioner, he represents the interests of the public considering the location of the property which will benefit not only the Purko community but other residents as well.
10. He further deposed that the respondents holding the suit property in trust for the petitioners have not proved or shown public participation in the subdivision of the suit properties hence the need to have reinstatement of the injunctive orders.
11. The application was canvassed by way of written submissions. The applicant filed written submissions dated 26<sup>th</sup> January, 2023. The applicant raised three issues for determination as listed below:-
  - a. Whether the affidavit sworn by Joseph Nkaiwuatei is valid.
  - b. Whether the suit property is community land.
  - c. Whether the interim orders ought to be reinstated.
12. On the first issue, the 18<sup>th</sup> petitioner submitted that it is within Mr. Nkaiwuatei's mandate to sign an affidavit on behalf of Purko Development Trust and it is an affirmed fact that having an official of a corporation sign an affidavit and not being a party to the suit does not invalidate the authority of the affidavit. The 18<sup>th</sup> petitioner relied on the case of *Ajiwa Shamji Limited versus Kenya National Highways Authority & Another* [2018] eKLR.
13. On the second issue, the 18<sup>th</sup> petitioner submitted that it does not necessarily represent people of a tribe but those living in one geographical space and that the developments undertaken by the trust were



- and are meant to benefit those living in the area around and any person who may need to use them. As such, the suit property qualifies to be community land since it held by the County Government in trust for the people of the Purko community and the beneficiaries of the same property.
14. On the third issue, the 18<sup>th</sup> petitioner submitted that the suit properties have been under the care and use of the Purko community for generations running into the pre-colonial period as this has been their ancestral land for hundreds of years and that if the orders sought are not re-instated, then it may render the appeal nugatory. Also, that reinstatement will avert any possible breach of peace on the ground and will protect the interest of the community by having the suit property used for the purpose intended.
  15. The 6<sup>th</sup> respondent opted to rely entirely on its replying affidavit. The 1<sup>st</sup> respondent did not file any written submissions.
  16. I have analysed and considered the application, replies thereof and the written submissions filed by the 18<sup>th</sup> petitioner and the issues for determination is as below:-
    - i. Whether Joseph Nkaiwuatei has locus standi to depone to the averments in the supporting affidavit.
    - ii. Whether this court ought to re-instate the orders issued on 20<sup>th</sup> March, 2013.
  17. The instant application was supported by the affidavit of one Joseph Nkaiwuatei sworn on 8<sup>th</sup> August, 2022. The said Mr. Nkaiwuatei deposed that he is a member of the Purko Community and the Chief Executive Officer of Purko Development Trust. The 1<sup>st</sup> and 6<sup>th</sup> respondent contended that the said affidavit is fatally flawed and defective for the reason that the said deponent is a stranger to the proceedings.
  18. The 18<sup>th</sup> petitioner is Purko Development Trust. I have looked at the affidavit in support of the petition that was the subject of the determination by this court in the judgment delivered on 20<sup>th</sup> July, 2022. The said petition was supported by the affidavit of Daniel Ole Nakola who deposed to the averments therein by stating in paragraph 1; “That I am the duly appointed representative of the Board of Trustees of Purko Development Trust, within Narok South District of Narok County, which Trust was registered on the 15<sup>th</sup> November, 1999 for the benefit of the Purko Community.”
  19. Attached to the said affidavit was a document giving authorization to the said Daniel Ole Nakola to pursue the matter on their behalf as the Secretary of Purko Development Trust. Enclosed to the said document was a list of a Board of Trustees of the 18<sup>th</sup> Petitioner. The list contained seventeen members. The said Joseph Nkaiwuatei is not in the list as a member and there is no indication that he is the Chief Executive Officer. I have also had a look at the trust agreement between the Purko General Assembly and the Purko Development Trust. A further look at the management of the trust indicates that there shall be a board and the executive committee consisting of the chairman, vice-chairman, secretary and the treasurer. The said trust was registered on 5<sup>th</sup> June, 2000 by the Minister for Lands and Settlement. Again, the said registered trust bears the names of the registered trustees of the 18<sup>th</sup> petitioner. The said Joseph Nkaiwuatei’s name is not contained therein.
  20. I am in agreement with the 1<sup>st</sup> and 6<sup>th</sup> respondents that Joseph Nkaiwuatei is a stranger to these proceedings. The ripple effect is that the application has been left with no legs to stand on. As such, the notice of motion application dated 8<sup>th</sup> August, 2022 merits no further consideration whatsoever by this court.
  21. The upshot of the above is that the notice of motion application dated 8<sup>th</sup> August, 2022 is hereby dismissed with no orders as to costs. It is so ordered.



**DATED, SIGNED & DELIVERED VIA EMAIL ON THIS 30<sup>TH</sup> DAY OF MAY, 2023.**

**HON. MBOGO C.G.**

**JUDGE**

30/5/2023.

In the presence of: -

CA:Chuma

