



Leboo & 2 others (Suing as Members of Lembus Council of Elders) v The Director of Kenya Forest Service & another; Miti Bora Sawmills Limited & another (Interested Parties) (Environment & Land Case 273 of 2013) [2023] KEELC 17452 (KLR) (18 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17452 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 273 OF 2013**

**EO OBAGA, J
MAY 18, 2023**

BETWEEN

**JOSEPH LEBOO 1ST PLAINTIFF
WILLY NGURUTU 2ND PLAINTIFF
PHILIP SURA 3RD PLAINTIFF
SUING AS MEMBERS OF LEBBUS COUNCIL OF ELDERS**

AND

**THE DIRECTOR OF KENYA FOREST SERVICE 1ST RESPONDENT
BARINGO COUNTY FOREST CO-ORDINATOR 2ND RESPONDENT**

AND

**MITI BORA SAWMILLS LIMITED INTERESTED PARTY
ROWAN FORESTER INTERNATIONAL SAWMILL INTERESTED PARTY**

RULING

1. The plaintiffs/applicants filed a notice of motion dated December 6, 2021 in which they sought the following orders: -
 - a. Spent
 - b. This honorable court be pleased to grant an order of injunction to restrain the 1st respondent by themselves, their agents or servants, and more specifically the chief conservator of forests from signing, witnessing sealing, authorizing or in any other way completing the tender process of the disposal of the forest plantation contained in the tender documents namely;



- i. Bid No KFS/DSIP/03/2021–2022
- ii. Bid No KFS/DISP/02/2021-2022
- iii. Bid No KFS/DSPI/04/2021-2022
- iv. Bid No KFS/DISP/05/2021-2022

Over the 8 blocks of forest plantation namely Sabatia, Maji-mazuri, Kiptuget, Chemususu, Narasha, Koibatek, Chemorgok and Esageri blocks pending the hearing and determination of this application inter-parties

- c. This honourable court be pleased to grant an order of injunction to restrain the 1st respondent by themselves their agents or servants, and more specifically the chief conservator of forests from signing, witnessing sealing authorizing or in any other way completing the tender process of the disposal of the forest planation pending the hearing and determination of this application and the application dated September 7, 2021.
 - d. Costs of this application be provided for.
2. The applicants moved to court seeking to stop the 1st defendant/respondent from proceeding with the tendering process as per the four bids listed in paragraph one hereinabove.
 3. Before the application could be heard, it was brought to the attention of the applicants’ counsel that the tendering process had been stopped through a judgement delivered in a constitutional petition filed in Nairobi. The applicants’ counsel sought for time to confirm the position.
 4. The applicants’ counsel later appeared in court and asked that the application be canvassed by way of written submissions. The court directed that the applicants’ file and serve submissions within 14 days from February 27, 2023. The respondents and interested parties were to file their submissions within 14 days from the date of service of the applicants’ submissions. There were no submissions filed by all the parties.
 5. I have looked at the replying affidavit by the respondents. I notice that what the applicants were seeking to stop was stopped through a judgement delivered in Nairobi ELC petition No 1 of 2022 (*Timber Manufacturers Association v Kenya Forest Service & 4 others*). It will therefore be superfluous to write a ruling over a matter which has been overtaken by events.
 6. The applicants should have withdrawn the application the moment they were informed that the tendering process had been stopped and particularly having seen the replying affidavit by the respondents where a copy of judgement from the Nairobi ELC petition No 1 of 2022 was annexed. I therefore proceed to dismiss the applicants’ application with costs to the respondents and interested parties.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18TH DAY OF MAY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Akinyi for Mr. Omusundi for 1st and 2nd Interested parties.

Ms. Cheruiyot for 1st and 2nd Respondents.



Court Assistant –Laban

E. O. OBAGA

JUDGE

18th MAY, 2023

