



Registered Trustees of Catholic Diocese of Kisii v Moenga & 5 others (Environment & Land Petition E003 of 2022) [2023] KEELC 17390 (KLR) (11 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17390 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND PETITION E003 OF 2022**

M SILA, J

MAY 11, 2023

BETWEEN

REGISTERED TRUSTEES OF CATHOLIC DIOCESE OF KISII PETITIONER

AND

PETER NYANUSI MOENGA 1ST RESPONDENT

MESHACK MAISIBA 2ND RESPONDENT

GEORGE MORARA ONSARIGO 3RD RESPONDENT

ISAAC MORANGA MONARI 4TH RESPONDENT

CHIEF LAND REGISTRAR, KISII 5TH RESPONDENT

INSPECTOR GENERAL OF POLICE 6TH RESPONDENT

RULING

1. The applicant commenced this suit through a constitutional petition filed on October 24, 2022. In the petition, the applicant has pleaded that she is the registered proprietor of the land parcel Bassi/Dogetaorio II/2091 which had initially been reserved by the Kisii County Council as a cattle dip but was later converted for the establishment of a village youth polytechnic known as Riasamwera Youth Polytechnic. It is averred that the community requested the Catholic Church under the Nyamagwa Parish to sponsor the polytechnic. The applicant avers that she followed all processes and obtained title in her name to the land where the polytechnic is located.
2. It is pleaded that on September 28, 2022, the 1st – 4th respondents (all individuals) together with other persons went to the suit land and destroyed structures and worship items and threatened the life of the Reverend. On October 1, 2022, they again trespassed into the land and chased the worshippers which incident was reported to the police. The petitioner pleads that despite the complaint, no action has been taken by the Itumbe Police Station. It is averred that on October 11, 2022, the petitioner



received a letter from the 5th respondent, the Land Registrar, Kisii, informing her of irregularities in the acquisition of title and that the title had been reserved as public land under the County Government of Kisii. The Land Registrar directed the petitioner to surrender the title for cancellation. It is the contention of the applicant that the 1st – 4th respondents have infringed on her constitutional rights to own property by denying her peaceful possession.

3. It is further contended that the 5th respondent has violated the applicant's right to own property and that he has no powers to cancel title. It is pleaded that due process was not followed in the cancellation of title inter alia as no opportunity to be heard was afforded. The applicant also complains against the 6th respondent (Inspector General of Police) on the allegation that the officers in Itumbe Police station discriminated against her for failing to investigate her complaints. In the petition, the applicant inter alia seeks orders for a declaration that her constitutional rights have been violated by the respondents, a declaration that she owns the suit land, and a permanent injunction against the 1st – 5th respondents from interfering with her possession of the suit land.
4. Together with the petition, the petitioner filed an application seeking orders of injunction to restrain the 1st – 5th respondents from dealing with the title to the suit land or trespassing into the land. It is this application which is the subject of this ruling. The application more or less elaborates what I have already spelt out above.
5. Nothing was filed by the respondents to oppose the motion and indeed they are yet to enter appearance despite being served. I have gone through the application and the submissions of counsel for the applicant. I have seen from the annexed extract of the register that the suit land was first registered on August 2, 1976 in name of Gusii County Council. Entry No 2, dated June 6, 2016, shows that proprietorship is now in favour of St Magdaline Risamwera D O K Youth Polytechnic and entry No 3 of even date, is issue of title deed title deed. Entry No 4, registered on October 9, 2018, is registration of a caution in favour of one Thomas Mokaya Orina claiming a beneficiary interest. Entry No 5 is cancellation by the Land Registrar of the entries No 2, 3, and 4 purportedly under Section 79 (2) of the [Land Registration Act](#) so that title reverts back to Entry No 1 which is proprietorship in name of Gusii County Council. I believe this is what the petitioner complains about, that her title was irregularly cancelled.
6. I have several problems with the petition and with the application. First, in as much as the petitioner/ applicant contends that she is the registered owner of the suit land, that is not the case. I have not seen any registration of the Registered Trustee of the Catholic Diocese of Kisii as ever having been registered as proprietors of the suit land. What I see is registration in name of St Magdaline Risamwera D O K Youth Polytechnic, and I would suppose that given that she is a registered proprietor, capable of holding title, then she must have legal personality of her own and capable of suing in her own name. In the supporting affidavit of Christopher Mogeni Moracha, it is claimed that St Magdaline Risamwera Youth Polytechnic is owned by the petitioner but I have seen absolutely no evidence to that effect. Given the above, I have serious doubts as to the locus standi of the petitioner.
7. Secondly, you would expect that if it is the case of the petitioner that title was illegally reverted to Gusii County Council, then the County Government of Kisii, the successor of Gusii County Council, would be a party to this suit since it is them who are now registered as proprietors. A suit such as this cannot proceed in absence of the beneficiary of the land, for what the petitioner is asking this court to do is more or less to proceed to cancel the registration of Gusii County Council from the title. This court cannot cancel the title of a person who is not a party to the suit. In any event, if what the petitioner wants is an order to stop any dealings in respect of the title, the only entity that is capable of dealing with the title at the moment is the County Government of Kisii, yet, as I have pointed out, she is not



a party. Issuing an injunction to stop the sale or mortgaging or such other dealings on the title against the respondents herein would be issuing an order in vain for they are not capable of dealing with the land. The entity capable of entering into transactions over the land is not a party.

8. Finally, a lot of the documents presented by the petitioner are not legible and cannot be read, significantly, the letter of October 7, 2022, which is said to have led to the cancellation of the title of the Youth Polytechnic. Other documents are also very poorly photocopied. I wonder how the petitioner hopes this court to proceed based on documents that can barely be read.
9. I am afraid that for the above reasons, I am not persuaded that the petitioner has demonstrated to this court any prima facie case that can entitle this court issue an order of injunction against the respondents.
10. For the reasons above, this application is hereby dismissed but since there was nothing filed to oppose it, I make no orders as to costs.
11. Orders accordingly.

DATED AND DELIVERED AT KISII THIS 11 DAY OF MAY 2023

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

