



Commission for Human Rights Justice & another v National Land Commission & 2 others (Petition 2 of 2023) [2023] KEELC 18091 (KLR) (20 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18091 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KWALE
PETITION 2 OF 2023
AE DENA, J
JUNE 20, 2023**

BETWEEN

COMMISSION FOR HUMAN RIGHTS JUSTICE 1ST PETITIONER

KESI GWEDE 2ND PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

CABINET SECRETARY OF LAND SURVEY 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

Petition

1. In the petition dated 25/1/2023, the Petitioners aver that the 2nd Petitioner is one of the many citizens residing in Mwereni Ward of Kwale County and a victim of land grabbing since abolition of group ranches and the Land [Group Representatives] Act. That the 2nd Petitioner has been in possession, occupation and use of parcel of land which forms part of Mwereni Group Ranch in Kwale/ Mwereni/14 (suit property).
2. According to the 2nd Petitioner, the total acreage of Mwereni Group Ranch was 43,466 Hectares but the same has now shrunk to about 30,000 Hectares. That further there exist several disputes over the land that if not settled will threaten the peaceful coexistence of the parties therein. The 2nd petitioner states that the 1st Respondent is obligated under the Community Land Act to manage land such as the suit property herein and ensure that the same is allotted to the 2nd Petitioner amongst other persons.
3. The petitioner avers that the land disputes arising out of the suit property have created the necessity to subdivide the land and create individual titles for all members of the Mwereni Group Ranch. The



petitioner highlights the particulars of breach of his fundamental rights under paragraphs 25 to 28 of the petition. The petitioners pray for the following orders;

- a. A declaration that the fundamental rights of the petitioners have been violated.
- b. An order directing the respondents to subdivide the subject parcel of land among the members of each to his/her paddock and be issued with documents of ownership.
- c. Costs of the suit.

The Application

4. Together with the Petition was filed a Notice of Motion dated 25th January 2023 seeking an order conserving the suit parcel of land pending hearing and determination of this petition and costs of the application. The application is supported by the affidavit sworn by one Julius Ogogoh a director of the 1st petitioner and on the grounds on the face of the application.
5. It is averred that following the repeal of the Land Group Representatives Act in 2016 and enactment of the *Community Land Act*, land governed under the repealed Act became available and subject to subdivision and allotment to members of the Group ranches. Further that the respondents have violated article 40 of *the Constitution* exposing the 2nd petitioner to myriad of litigation including criminal proceedings in his bid to protect his parcel of land which had been vulnerable to grabbing. Additionally, the 2nd petitioner had been involved in several land disputes which could be permanently resolved if the respondents performed their constitutional and statutory duty by subdividing and allotting the land to members of the Mwereni Group ranch and issue them with title deeds.
6. According to the deponent owing to the above the suit property has been exposed to land grabbing to the detriment of members of Mwereni ranch and who were in danger of being dispossessed and displaced and rendered landless. That it was incumbent upon the respondents to undertake the exercise of land allocation in accordance with the *Community Land Act*.
7. The petitioners urge that the orders sought will preserve the substratum of the petition and unless granted the entire petition will be rendered nugatory.
8. The application is not opposed. The 1st respondent did not enter appearance despite service. The 2nd and 3rd respondents entered appearance through Ms. Langat Chief Litigation Counsel in the AGs office who only responded to the petition. On 3/5/23 counsel for the petitioners urged the court to allow the application in the absence of opposition. I reserved my ruling to 20/6/23 to enable the court fully consider the application instead of granting it summarily in view of the nature of the matter and orders sought.

Determination

9. Having considered the petition and the application and the grounds upon which it is premised as well as the supporting affidavit, the issue for determination is whether the petitioners have met the requirements for grant of the order sought.
10. The court in the case of *Platinum Distillers Limited Vs Kenya Revenue Authority* [2019] eKLR stated thus on conservatory orders; -

‘The law, as I understand it, is that in considering an application for conservatory orders, the court is not called upon and is indeed not required to make any definitive finding either of fact or law as that is the province of the court that will ultimately hear the petition. The



jurisdiction of the court at this point is limited to examining and evaluating the material placed before it, to determine whether the applicant has made out a prima facie case to warrant grant of conservatory orders. The court is also required to evaluate the pleadings and determine whether denial of conservatory orders will prejudice the applicant.....’

11. Applying the above principle, I will proceed and evaluate the material placed before this court to determine whether the petitioners have made out a prima facie case to warrant grant of conservatory orders. In support of the petition the petitioners presented a ruling in Mombasa HCC No. 145 of 2009 dated 6/08/2012 and a bundle of proceedings in Kwale PMCC No. 31 of 2009. These were in respect of the disputes alluded to pitting the 2nd petitioner and individual third parties.
12. It is noteworthy that the parcel Kwale/Mwereni/14 forms the substratum of this petition. The said suit property is deponed to belong to Mwereni Group Ranch however the mother ownership document to the said parcel has not been presented to the court. As it is the court is not in a position to make out the identity of the land it is being invited to conserve. The proceedings and rulings attached can only suffice for purposes of demonstrating there have been disputes involving the 2nd petitioners alleged portion of land and the particulars of which are also not clear. I have noted the 2nd petitioners presented before the principal magistrate court some documents issued to him by the said Mwereni Group Ranch touching on his portion of land herein. The same have not been presented to this court.
13. Meanwhile the application as presented poses a challenge. This court has been moved to make conservatory orders for a property which is said to be under the Mwereni Group Ranch and who have not been enjoined to the suit yet their input could be invaluable to enable the court effectively render justice in this petition.
14. Based on the foregoing it is my view that the applicant has not met the threshold for granting of the conservatory orders sought. The application dated 25/01/23 is hereby dismissed. It is this courts view that the petitioners move to expedite the hearing of the petition on merit.

Costs shall be in the cause.

DELIVERED AND DATED AT KWALE THIS 20TH DAY OF JUNE, 2023

A.E. DENA

JUDGE

Ruling delivered virtually through Microsoft teams Video Conferencing Platform in the presence of:

Mr. Mola holding brief for Mr. Namasake for the Petitioners /Applicants

No appearance for the 1st Respondent

No appearance for the 2nd & 3rd Respondents.

Court Assistant: Daniel Disii

