



Gisesa v National Land Commission & another; County Government of Nyamira & 2 others (Interested Parties) (Environment & Land Petition E001 of 2023) [2023] KEELC 18265 (KLR) (16 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18265 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND PETITION E001 OF 2023**

**JM KAMAU, J
JUNE 16, 2023**

BETWEEN

NYAMBEGA GISESA PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

AND

COUNTY GOVERNMENT OF NYAMIRA INTERESTED PARTY

COUNTY GOVERNMENT OF KISII INTERESTED PARTY

MINISTRY OF LANDS AND PHYSICAL PLANNING INTERESTED PARTY

RULING

1. There are two (2) Applications under Certificate of Urgency both filed yesterday on June 15, 2023 after 1.00p.m. The first Application is by the 5th and 6th Interested Parties who are praying that this matter is referred to mediation. It also seeks that any further proceedings including the visit to the locus in Quo which was slated for today be stayed until the said prayer for mediation is considered by the court. One of the grounds for the Application is that there have been previous deliberations between Kisii and Nyamira counties in the past which resulted in peaceful co-existence of the residents in the two (2) counties. I would have expected this Application to have been made earlier. This date was given to the parties on June 6, 2023 but the two (2) Applicants have waited until the eve of the visit to the site when all the other parties have made preparations to be there. Again it was not filed early in the morning yesterday.



2. I believe by the time this file was brought to me this morning, the other parties were either on the way to the site or already there. There was enough time to make this Application since we left court on June 6, 2023 and the Applicants should not have waited until the last minute to come and stop the proceedings of the day when the parties are already on site. In the premises, I order that the Application dated June 15, 2023 (I believe) erroneously dated as 15th day of Kisii 2023 to be served on all parties for Hearing on July 4, 2023.
3. The second Application is dated June 14, 2023 filed in court on June 15, 2023 equally after 1.00p.m. The same was brought to chambers this morning. The Application seeks a stay of all proceedings including the site visit scheduled for today the June 16, 2023 to the locus in Quo until the Application is heard. The Application also seeks that the Judge presiding over this matter recuses himself because of his conduct and in particular his association with the Chairman of the 1st Respondent Mr. Gershom Otachi the two (2) having been classmates in college. This conclusion and desire was arrived at on June 6, 2023 when the matter last came in court. As I have stated concerning the first Application, the 4th Interested Party who filed this Application had all the time to move the court and ask the trial Judge to disqualify himself. But he chose to wait until yesterday in the afternoon to file the same. The Application is dated June 14, 2023 as well as the supporting Affidavits. All the other parties are already on the site conducting the exercise of the day and stopping them would be very unfair. The exercise of identifying the boundary will go on. If the Applicant wanted the same to stopped, he had all the time to do so and not to wait until the last day. I therefore order that the Application be served on all the parties for Hearing on July 4, 2023.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 16TH DAY OF JUNE, 2023

MUGO KAMAU

JUDGE

In the Presence of: -

Nyangaresi - Court Assistant

Petitioner: Ex-parte

Respondents: Ex-parte

