



**Kenya African National Union v National Land Commission & 2 others
(Petition E006 of 2021) [2023] KEELC 18055 (KLR) (13 June 2023) (Judgment)**

Neutral citation: [2023] KEELC 18055 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
PETITION E006 OF 2021**

BM EBOSO, J

JUNE 13, 2023

BETWEEN

KENYA AFRICAN NATIONAL UNION PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

JOHN GAITI KINYANJUI 2ND RESPONDENT

PETER HERMIS NJOROGE 3RD RESPONDENT

JUDGMENT

Background

1. This petition challenges a purported undated and unsigned finding by the National Land Commission in relation to two parcels of land located in Kiambu Municipality. The 2nd and 3rd respondents contend that the purported finding is valid and binding. They have, indeed, moved the Kiambu Chief Magistrate Court seeking to enforce the purported finding. On its part, the petitioner seeks an order declaring the purported finding as invalid. I will outline a brief summary of the contextual background to the petition before I dispose the issues that fall for determination.
2. The Kenya African National Union (the petitioner) holds title numbers Kiambu/Township Block II/52 and Kiambu/ Township Block II/53. The exhibited land registers and titles indicate that the said land registers were opened in 1972. The exhibited registers reveal that the two parcels were surveyed and registered in the name of the County Council of Kiambu in 1972. They were subsequently transferred to the trustees of the petitioner on 30/1/2001.
3. John Gaiti Kinyanjui [the 2nd respondent] and Peter Hermis Njoroge [the 3rd respondent] contend that they made a complaint to the National Land Commission [the 1st respondent] challenging the petitioner's titles. They have, however, not exhibited a copy of the complaint. The 2nd and 3rd



respondents further contend that parties made representations before the 1st respondent's Kiambu County Coordinator and, subsequent to that, the 1st respondent made a finding affirming their titles over the suit properties.

4. The rival parties have exhibited what they contend to be a determination by the 1st respondent on the ownership dispute relating to the suit properties. The alleged determination is unsigned and undated.
5. The alleged determination contains the following purported verbatim finding:

“7.0 Finding

In light of the foregoing, it is our considered opinion and determination that in the interest of justice and documentary evidence, the parcel of land to be issued to Peter Njoroge, John Gaiti Kinyanjui and Geoffrey Thangwa Muringu.

That NLC goes ahead and prepares the said lease promptly to avoid further miscarriage of justice.”

6. It does emerge from the affidavit sworn by Ms Bellinda Akello in response to the petition that according to the 1st respondent, the impugned document is not a determination. Ms Bellinda Akello deposes at Paragraphs 11 and 12 thus:

“ 11. That the purported document which is the main subject of the petition is not a determination as understood and defined by the 1st respondent and as alleged and thus the same is not admissible in a court of law.

12. That an unsigned document has no probative value as the content's genuineness cannot be proved.”

7. Waving the purported determination, the 2nd and 3rd respondents moved the Kiambu Chief Magistrate Court through Kiambu CMC MCE & L Case No E5 of 2020 seeking, among other reliefs, an order directing the Land Registrar - Kiambu to issue them with a title relating to the suit properties. The 2nd and 3rd respondents made the following averments at paragraphs 5, 6, 7, 8 and 9 of their plaint:

“ 5) The plaintiffs aver that sometime in February, 2018 they presented a memorandum to the National Land Commission over a dispute related to Kiambu Municipality Block II/52 and Kiambu Municipality Block II/53 (suit properties).

6) It is the plaintiffs averment that the National Land Commission – Kiambu heard both parties on various dates between July and August 2018 and made a finding affirming their claim over the said land parcels.

7) The plaintiffs state that following the finding of the National Land Commission, their lawyers wrote to the National Land Commission requesting for issuance of fresh titles in their names.

8) The plaintiffs further state that on 14/10/2020, the CEO of the National Land Commission responded to the letter by the Advocates requesting for an amended Registry Index Map (RIM) in order to process lease documents.



- 9) The plaintiffs aver that they have since forwarded a request to the Director of Surveys and are awaiting the documents.”

Petition

8. The above events are what triggered this petition through which the petitioner seeks: (i) an order quashing the 1st respondent’s “decision”; (ii) a declaration that the purported revocation of the petitioner’s titles was ultra vires the provisions of the [National Land Commission Act 2012](#) and hence invalid and unconstitutional; (iii) a permanent injunction restraining or prohibiting the “2nd and 3rd respondents” [sic] against “conducting and carrying out further proceedings touching and/or concerning the review of the title over and in respect of the suit property”; and (iv) costs of the petition.
9. The case of the petitioners is that hearings before the 1st respondent’s Kiambu County Coordinator were not concluded because the petitioner’s witnesses were not heard. The petitioner adds that the 1st respondent’s Kiambu County Coordinator adjourned the matter before hearing the petitioner’s case, citing lack of quorum within the ranks of the 1st respondent’s commissioners. The petitioner contends that the 1st respondent neither proceeded with the case nor delivered a determination on the complaint.

Responses

10. The 1st respondent filed a replying affidavit sworn on November 21, 2022 by Belinda Okello. She deposed that at the time the 1st respondent received the complaint, they were conducting grants review hearings under Section 14 of the [National Land Commission Act](#). The position of the 1st respondent is that the purported document is unsigned and is not a determination. They, however, admit writing to the 2nd and 3rd respondents asking them to submit an amended Registry Index Map (RIM). Ms Akello does not expressly deny the allegation that the unsigned and undated document emanated from the Commission’s Kiambu County Coordinator’s Office.
11. The 2nd and 3rd respondents filed a joint replying affidavit sworn on October 15, 2021. Their case is that the 1st respondent conducted a hearing and rendered the “decision” contained in the unsigned and undated document. They contend that the 1st respondent affirmed their claim through the unsigned and undated document. Indeed, they exhibited the unsigned document. They confirmed that they initiated Kiambu CMC MCE & L Case No E5 of 2020 to enforce the “decision” of the 1st respondent contained in the impugned document. They deposed thus:

“36. That we were advised by our Advocates on record to approach the Chief Magistrate Court Kiambu in CMELC E5 of 2020 to enforce the decision of the National Land Commission and to protect the land parcels from being irregularly transferred”.

Submissions

12. The petitioner filed written submissions dated 29/7/2022 through M/s Oruenjo Kibet & Khalid Advocates. The petitioner identified the following as the issues that fall for determination in the petition: (i) Whether the decision by the 1st respondent to revoke the petitioner’s titles should be quashed; (ii) Whether the petitioner is the owner of the suit properties; (iii) Whether the respondent have violated the petitioner’s constitutional rights over the suit property; (iv) Whether the lower court has jurisdiction to hear this matter (sic); and (v) Whether the petitioner is entitled to the reliefs sought.



13. Counsel for the petitioner faulted the 1st respondent for making a finding that contradicted the evidence before it, noting that the 1st respondent having found that the process through which the 2nd and 3rd respondents attempted to acquire the suit properties was irregular, it was contradictory for it to purport to affirm their claim. Counsel added that whereas the 1st respondent purported to revoke the petitioner's title, no attempt was made to comply with the requirements of Sections 28 and 31 of the [National Land Commission Act](#).
14. Counsel added that the petitioner was the lawful proprietor of the suit properties, following an allocation made in its favour "in the early 1960s" and it had enjoyed "unfettered possession and occupation" of the suit properties. Citing the provisions of Section 25 of the [Land Registration Act](#), counsel argued that the petitioner's title was protected by the said law.
15. Counsel for the petitioners added that the 1st respondent violated the petitioner's constitutional rights over the suit property in that: (i) they denied the petitioner the right to a fair hearing under Article 50 and the right to a fair administrative action under Article 47 of the [Constitution](#); and (ii) they violated the petitioner's right to own property under Article 40 of the [Constitution](#).
16. On the question of jurisdiction of this court to entertain this suit while there subsists Kiambu CMC MCE & L Case No E5 of 2020, counsel made reference to the exhibited valuation reports and submitted that the combined value of the suit properties exceeded the pecuniary jurisdiction of the Chief Magistrate Court, hence the Environment and Land Court was the proper court to hear and determine the dispute. Counsel urged the court to grant the reliefs sought in the petition.
17. The 1st respondent filed written submissions dated 28/2/2023 through Ms Matilda Kisengese Advocate. Counsel for the 1st respondent identified the following as the issues that fall for determination in this petition: (i) Whether the purported document is a decision by the 1st respondent; (ii) Whether the 1st respondent has violated the petitioner's constitutional rights over the suit property; and (iii) Whether the petitioner is entitled to the prayers sought.
18. Counsel submitted that, having received a complaint from the 2nd and 3rd respondents, the 1st respondent invoked its jurisdiction under Article 67 of the [Constitution](#) as read together with Section 6 of the [National Land Commission Act](#), and in the spirit of encouraging alternative dispute resolution and traditional dispute resolution mechanisms, the 1st respondent proceeded to listen to the 2nd and 3rd respondents' complaint. Counsel added that meetings involving the parties were held for the purpose of gathering information. Counsel reiterated that the document that the petitioner relied on was not a determination and was inadmissible.
19. Counsel added that the allegation of infringement of rights was misplaced because "the alleged determination" is non-existent. Counsel contended that whereas there was no dispute that meetings were held, no decision was ever made by the 1st respondent. Counsel submitted that "all hearings and decisions relating to complaints lodged through the Commission were heard and determined by a panel of Commissioners". Counsel reiterated that in the absence of a decision by the commissioners of the 1st respondent in relation to the suit properties, the petitioner cannot allege infringement of its rights.
20. Lastly, the 1st respondent's counsel submitted that the petitioner had failed to demonstrate a basis for grant of the reliefs that were sought in the petition.
21. The 2nd and 3rd respondents elected not to file written submissions. Mr Kanyonge who appeared for them made the following presentation before the court on 2/3/2023:

"We have filed a replying affidavit to the petition. We have not filed written submissions. We have looked at the written submissions of the 1st respondent. We feel that those submissions



are sufficient. We will, in the circumstances, not be filing written submissions. We ask for a date for Judgment.”

Analysis and Determination

22. I have considered the petition; the responses to the petition; and the submissions tendered on the petition. I have also considered the relevant legal frameworks and jurisprudence. The 2nd and 3rd respondents elected not to file written submissions. The 1st respondent took the position that the document which the petitioner, the 2nd respondent, and the 3rd respondent are waving is not a determination by the 1st respondent.
23. In the circumstances, the key issues that fall for determination in this petition are: (i) Whether this petition is the appropriate platform on which to adjudicate all the issues raised that are raised in the petition; (ii) Whether the impugned document can be the subject of a judicial review order declaring it null and void; and (iii) Whether the petitioner has made out a case for grant of any of the reliefs that are sought in the petition. I will make brief sequential analysis of the issues in the above order.
24. The issue relating to the jurisdiction of this court was first raised by the 2nd and 3rd respondents through their preliminary objection dated 19/7/2021. They did not, however, pursue the preliminary objection. Secondly, in their response to the petition, the 2nd and 3rd respondents raised the issue of jurisdiction anchored on the doctrine of res subjudice.
25. This petition was triggered by a document that is attributed to the 1st respondent, purporting to affirm that the 2nd and 3rd respondents are the legitimate owners of the suit properties. The petitioner seeks a judicial review order declaring the purported document null and void. The chief magistrate court does not have jurisdiction to issue judicial review orders.
26. Besides seeking the above judicial review order, the petitioner seeks a declaration that it is the legitimate owner of the suit property. In my view, a determination relating to the legality of the petitioner’s titles is one that should be considered on the platform of an ordinary suit commenced by way of a plaint and in a forum where a proper trial will be conducted. For complete and effectual adjudication of the question of legality of the titles, all necessary parties will be expected to be joined as parties to the suit. The County Government of Kiambu is not a party to this petition. Similarly, the Director of Land Administration and the Director General of Physical and Land Use Planning in the National Government is not a party to the petition. These are necessary parties in the adjudication of the question of legality of the titles that are held by the petitioner. In the circumstances, I do not consider this petition, which essentially raises procedural issues relating to the purported proceedings by the 1st respondent, to be the proper forum for ventilating issues relating to the legitimacy of the titles that are held by the petitioner.
27. An important consideration in this regard is the fact that the Chief Magistrate Court is currently seized of a substantive dispute relating to the legitimacy of the petitioner’s titles. Whether or not the Chief Magistrate Court has pecuniary jurisdiction is a question to be presented to the Chief Magistrate Court through a formal application alongside the supporting evidence on the value of the suit properties.
28. What this court is certain about is that the Chief Magistrate Court does not have judicial review jurisdiction and cannot issue judicial review orders. For the above reasons, I take the view that given the circumstances of this petition, this is not the appropriate platform on which to effectually adjudicate the dispute relating to ownership of the suit properties. I will, in the circumstances, only exercise judicial review jurisdiction and let the parties seek adjudication of the dispute relating to ownership of the suit properties on the platform of an ordinary suit. Those are my findings on the first issue.



29. The second issue is whether the impugned document can be the subject of a judicial review order declaring it null and void. The 1st respondent did not deny the allegation that the document which is attributed to them came from their Kiambu County Coordinator's Office. All they said is that because the document is unsigned, it cannot attract an invalidating order.
30. The 2nd and 3rd respondents contend that the document came from the 1st respondent. It is the case of the 2nd and 3rd respondents that the impugned document contains a valid finding which they seek to enforce through a suit in the Chief Magistrates Court.
31. It is clear from the conduct of the 1st respondent's Kiambu County Coordinator that the 1st respondent was engaged in irregular activities, at least at the County Level. Proceedings such as those that the County Coordinator purported to conduct could only be carried out by a panel of Commissioners. Secondly, the fact that the 1st respondent's Kiambu County Office released an illegal document which the 2nd and 3rd respondents are using to cause unnecessary confusion within the general public is a proper basis for an order declaring the said document as a nullity. That is my finding on the second issue.
32. The third issue is whether the petitioner has made out a case for grant of any of the reliefs that were sought in the petition. This court has made a finding to the effect that the issue relating to the legality of the petitioner's titles should be ventilated on the platform of an ordinary civil suit. Further, the court has observed that the 1st respondent's Kiambu County Office released an illegal document which the 2nd and 3rd respondents are purporting to "enforce" to wrestle the suit properties from the petitioner. In the circumstances, the petitioner is entitled to a declaratory order placing the impugned document where it belongs – a declaration that the purported finding /decision, whether signed or unsigned, is a nullity. I so find.
33. On costs, parties will bear their respective costs of the petition.

Disposal Orders

34. In the end, this petition is disposed in terms of the following orders:
 - a. The unsigned purported determination by the Kiambu County Coordinator of the National Land Commission, purporting to affirm the 2nd and 3rd respondents as the proprietors of land parcel numbers Kiambu/Municipality Block II/52 and Kiambu/Municipality Block II/53 is hereby declared to be illegal and a nullity.
 - b. Parties shall be at liberty to ventilate issues relating to ownership of the said parcels of land on the platform of ordinary civil suit(s).
 - c. Parties shall bear their respective costs of this petition.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 13TH DAY OF JUNE 2023

B M EBOSO

JUDGE

In the presence of:-

Mr Otieno for the Petitioner

Mr Musyoki for the 1st Respondent

Mr Kanyonge for the 2nd and 3rd Respondent



Court Assistant: Hinga

