



**Nandy v Chief Land Registrar & another (Environment & Land Petition  
57 of 2018) [2023] KEELC 22151 (KLR) (7 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22151 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 57 OF 2018**

**J OMANGE, J  
DECEMBER 7, 2023**

**BETWEEN**

**AMOS OTIENO NANDY ..... PETITIONER**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**PAUL GITHITU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This petition arises out of the Petitioners quest to have the land register altered and entries made to reflect the property LR Number 23149 in their joint names. The Petitioners filed an affidavit and Supplementary Affidavit attaching various documents in support of their case. The Respondents on the other hand filed grounds of opposition. The Respondent did not file any affidavit or produce any documents. Both parties have filed written submissions.
2. One of the prayers in the petition require the court to make an order of certiorari quashing any titles issued over the suit property. Another prayer seeks an order of mandamus compelling the 1<sup>st</sup> Respondent to issue a title in the name of the Petitioners herein. These prayers will result in alteration of the register.
3. Order 21 rule 6 of the *Civil Procedure Rules* states ‘where there is a prayer for a Judgement the grant of which would result in some alteration to the title of land registered under any written law concerning the registration of title to land, a certified copy of the title shall be produced before any such Judgement is delivered’.
4. The 1<sup>st</sup> Respondent while disparaging the title in the name of the Petitioners has not produced the current status of the property. Indeed, one of the reasons the Petitioners filed the instant case is that they were unable to obtain any information from the 1<sup>st</sup> Respondent as a search application did not yield any results.



5. Having considered the circumstances of this case, I find that this is one of the rare cases when this court should exercise its powers given under Section 22 (b) of the Civil Procedure Act thus; ‘subject to such conditions and limitations as may be prescribed the court may at any time, either on its own motion or on application of any party issue summonses to persons whose attendance is required either to give evidence or produce documents or such other objects as aforesaid’ .
6. In the same vein section 173 of the Evidence Act grants the courts extended powers for the purpose of obtaining evidence. While this power should be used sparingly, it is one of the reservoirs that a court can draw upon so as to ensure that the ends of justice are met.
7. A similar view was held by Justice David Mwangi in the case of Garden Estate Company Limited Versus Gulbanu Mohamed & 2 others, ELC Case no 446 of 2008, wherein the Judge stated ‘I consider this one such exceptional case that calls for the exercise of the courts discretion, under Section 22(b) of the Civil Procedure Act and Section 173 of the Evidence Act for purposes of the just and conclusive determination of the dispute between the parties herein’
8. The court should not make its orders in a vacuum of information. More so in land cases where the impact of a decision reverberates through generations. The 1<sup>st</sup> Respondent who is a public officer has a responsibility to provide to the court and the parties herein timely and accurate information as required by Article 232 (f) of the Constitution. This court has a responsibility even suo motto to ensure this is done.
9. Consequently, I hereby vacate my earlier order on delivery of Judgement, and reopen the case to enable the Director in charge of Land Administration and the Chief Land Registrar to appear as witnesses to appraise the court on the history and the status of the suit property.
10. The court will issue appropriate summons to the Director in charge of Land Administration and the Chief Land Registrar to appear in court on an appointed date to testify in court and appraise the court on the history and status of LR Number 23149.
11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 7<sup>TH</sup> DAY OF DECEMBER 2023.**

**JUDY OMANGE**

**JUDGE**

In the presence of: -

Mr. Kandie for the Petitioner

No appearance for the Respondents

