



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NYAMIRA

ELC PETITION NO. E001 OF 2021

IN THE MATTER OF; ARTICLES 3, 10, 20, 22, 27(1), 40 (3), 47 (1)

AND 162 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: SECTION 13 RULES (1) AND (2) OF THE

ENVIRONMENT & LAND COURT ACT NO. 19 OF 2011

AND

IN THE MATTER OF: ALLEGED CONTRAVENTION OF THE BILL

OF RIGHTS UNDER THE CONSTITUTION OF KENYA 2010

AND

IN THE MATTER OF: THE LAND ACQUISITION ACT (CAP 295) REPEALED

IN THE MATTER OF THE ENVIRONMENT MANAGEMENT

AND COORDINATION ACT NO. 8 OF 1999 AND ALL OTHER

ENABLING PROVISIONS OF THE LAW

JOSEPH CHUMA NYAMBEGERA.....PETITIONER

=VRS=

COUNTY GOVERNMENT OF NYAMIRA.....1ST RESPONDENT

THE CHAIRMAN OF LAND COMMISSION.....2ND RESPONDENT

THE HONOURABLE ATTORNEY GENERAL.....3RD RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY.....4TH RESPONDENT

RULING:

The 4th Respondent has moved this Honourable court through a Notice of Motion dated 10/12/2021 seeking the following orders:

1. Spent.

2. THAT the Honourable Court be pleased to strike out the 4th Respondent from the suit herein as they are improperly

joined to the suit.

3. Spent.

4. THAT the costs of this Application be provided for.

The Petitioner relies on Order 1 rule 10 (2) of the Civil Procedure Rules, 2010 which states as follows:

“The court may at any stage of the proceedings, either upon or without the Application of either party, and on such terms as may appear to the court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all questions involved in the suit, be added.”

The instant Application was served upon the 1st, 2nd and 3rd Respondents as well as the Petitioner’s advocates as evidenced by the affidavit of service filed on 22/2/2022 but no response has been filed so far. The court will therefore determine this Application without hearing the 1st, 2nd and 3rd Respondents and Petitioner.

The claim in the Petition is that the Petitioner is the registered owner of all that parcel known as L.R No. NORTH MUGIRANGO/BONYARORANDE/1478 and that on 1/2/2021 the 1st Respondent uprooted his tea bushes and cut down his gum trees on the premise of compulsory acquisition for purposes of constructing a road. He further states that the wanton destruction of his tea bushes and gum trees led to looting by members of the public while the local chief looked on and provided security to the said looters. The Petitioner therefore prays for inter alia compensation for the suit property lost by compulsory acquisition.

The issue for determination under the current Application is whether the National Environment Management Authority, the 4th Respondent herein should be struck out as a party in this Petition.

To determine this, we have to find out the functions of the 4th Respondent. Under section 9 of the Environmental Management and Coordination Act No. 8 of 1999 it is provided as follows:

(1) The object and purpose for which the Authority is established is to exercise general supervision and co-ordination over all matters relating to the environment and to be the principal instrument of Government in the implementation of all policies relating to the environment.

(2) Without prejudice to the generality of the foregoing, the Authority shall—

(a) co-ordinate the various environmental management activities being undertaken by the lead agencies and promote the integration of environmental considerations into development policies, plans, programmes and projects with a view to ensuring the proper management and rational utilization of environmental resources on a sustainable yield basis for the improvement of the quality of human life in Kenya;

(b) take stock of the natural resources in Kenya and their utilization and conservation;

(bb) audit and determine the net worth or value of the natural resources in Kenya and their utilization and conservation;

(c) make recommendations to the relevant authorities with respect to land use planning;

(d) examine land use patterns to determine their impact on the quality and quantity of natural resources;

(e) deleted by Act No. 15 of 2015, s. 9(c);

(f) advise the Government on legislative and other measures for the management of the environment or the implementation of relevant international conventions, treaties and agreements in the field of environment, as the case may be;

(g) advise the Government on regional and international environmental conventions, treaties and agreements to which Kenya should be a party and follow up the implementation of such agreements where Kenya is a party;

(h) undertake research, investigation and surveys in the field of environment and collect, collate and disseminate information about the findings of such research, investigation or survey;

(i) mobilise and monitor the use of financial and human resources for environmental management;

(j) identify projects and programmes or types of projects and programmes, plans and policies for which environmental audit or environmental monitoring must be conducted under this Act;

(k) initiate and evolve procedures and safeguards for the prevention of accidents which may cause environmental

degradation and evolve remedial measures where accidents occur;

(l) monitor and assess activities, including activities being carried out by relevant lead agencies, in order to ensure that the environment is not degraded by such activities, environmental management objectives are adhered to and adequate early warning on impending environmental emergencies is given;

(m) undertake, in co-operation with relevant lead agencies, programmes intended to enhance environmental education, public awareness and public participation;

(n) develop, publish and disseminate manuals, codes or guidelines relating to environmental management and prevention or abatement of environmental degradation;

(o) render advice and technical support, where possible, to entities engaged in natural resources management and environmental protection;

(p) prepare and submit to the Cabinet Secretary every two years, and report on the state of the environment in Kenya and in this regard may direct any lead agency to prepare and submit to it a report on the state of the sector of the environment under the administration of that lead agency;

(q) encourage voluntary environmental conservation practices and natural resource conservancies, easements, leases, payments for ecosystem services and other such instruments and in this regard, develop guidelines;

(r) work with other lead agencies to issue guidelines and prescribe measures to achieve and maintain a tree cover of at least ten per cent of the land area of Kenya;

perform such other functions as the Government may assign to the Authority or as are incidental or conducive to the exercise by the Authority of any or all of the functions provided under this Act.

To determine whether the 4th Respondent should have been involved in the construction of the said road as aforementioned, we shall be guided by the 2nd Schedule in the Act which lists projects that require an environmental impact assessment study report as provided for under section 58 of the said Act. To be specific paragraph 2 sub paragraph 2 describes medium projects to include construction and rehabilitation of roads including collectors and access roads and also paragraph 3 sub paragraph describing high risk projects as transportation and related infrastructure projects, including all new major roads and trunk roads.

The Petitioner has not clearly brought out in its petition what type of road was constructed i.e. whether a major road or an access road. However, what is clear although alleged at this juncture is that a road was constructed. None of the Respondents has put in a Response to this dispute. Section 3 of the Environmental Management and Coordination Act No. 8 of 1999 Act also describes the right to a clean and healthy environment as provided for under the Constitution of Kenya, 2010 and therefore the Petitioner has a right to bring a Petition against the 4th Respondent as provided by section 3 of the Act if he fears that his right to a clean and healthy environment has been violated.

The 4th Respondent in the Supporting Affidavit sworn on 10/2/2021 by Cynthia Juliana Sakama claims in paragraph 4 that the remedies sought by the Petitioner cannot be performed by the 4th Respondent. Nothing could be further from the truth as the functions of the County Environment Committees are set out under Section 30 of the Act,

The County Environment Committees shall—

a. be responsible for the proper management of the environment within the county for which it is appointed;

b. develop a county strategic environmental action plan every five years; and

c. perform such additional functions as are prescribed by this Act or as may, from to time, be assigned by the Governor by notice in the Gazette.

A County Environment Committee is under a County Government, a lead Agency under Section 2 of the Environmental Management and Coordination Act No. 8 of 1999.

Section 12 of the Act, under the sub- title Powers in respect of lead agencies, provides as follows:

(1) The Authority may after giving reasonable notice of its intention so to do, direct any lead agency to perform, within such time and in such manner as it shall specify, any of the duties imposed upon the lead agency by or under this Act or any other written law, in the field of environment and if the lead agency fails to comply with such directions, the Authority may itself perform or cause to be performed the duties in question, and the expense incurred by it in so doing shall be a civil debt recoverable by the Authority from the lead agency.

There are therefore some environmental duties delegated to lead agencies by N.E.M.A. under any County Government and in particular the County Government of Nyamira which the Petitioner would want exercised to ensure that he lives in a clean and healthy environment.

Having said so, I give the following orders: -

(1) The Application is disallowed.

(2) The Respondents to file their responses within 14 days from the date of this Ruling.

(3) Since the other parties never participated in this Application, no costs shall be awarded.

These are the orders of the Court.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 23RD DAY OF FEBRUARY 2022.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Sibota

Petitioner: N/A

Respondents: N/A