



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. APPLICATION NO.100 OF 2010

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR ORDERS OF THE
 JUDICIAL REVIEW IN THE NATURE OF CERTIORARI & PROHIBITION

IN THE MATTER OF THE CONSTITUTION OF KENYA SECTION 81 & 84 SECTION 8 & 9 OF
 THE LAW REFORM ACT CAP 2893, THE TRUST LAND ACT CAP 288, THE LAND AND OTHER
 ENABLING PROVISIONS OF THE LAW

AND

IN THE MATTER OF PROPOSED DEVELOPMENTS WITH THE COUNTY COUNCIL OF
 NYAMBENE TIGANIA EAST

MURIUKI BAIBAYA.....1ST APPLICANT

MUILUTHA NKUBITU.....2ND APPLICANT

MUTHEE M'KIREMA.....3RD APPLICANT

M'IMANYARA BAIMUNYA.....4TH APPLICANT

JOYCE NKIROTE KUBAI.....5TH APPLICANT

ON BEHALFOF THEMSEVES & 105 OTHERS

KALI COMMUNITY BASED ORGANIZAITON THRO'

DAVIDKABERIA, FRANCIS MPURUNG'AAND ANTONY MUTABARI

(CHAIRMAN, SECRETARY AND TREASURER RESPECTIVELY).....APPLICANT

PRECIOUS ACADEMY SCHOOL THRO' ITS DIRECTORS – LUCY MUTHEE, BENSON
 KINOTI,

CHARLES GITONGA AND LUCY MWENDWA.....INTERESTED PARTIES

VERSUS

THE CLERK, COUNTY COUNCIL OF NYAMBENE.....1ST RESPONDENT

DISTRICT LAND ADJ. OFFICER, TIGANIA EAST.....2ND RESPONDENT
TIGANIA EAST LAND REGISTRAR, MINISTRY OF LANDS.....3RD RESPONDENT
DIRECTOR PHYSICAL PLANNING, TIGANIA EAST.....4TH RESPONDENT
DISTRICT COMMISSIONER, TIGANIA EAST.....5TH RESPONDENT
HON. ATTORNEY GENERAL.....6TH RESPONDENT

RULING

This application is dated 4th June, 2014 and seeks orders:

1. **THAT this application be certified as extremely urgent.**
2. **THAT the honourable court be pleased to grant leave to the applicant KALI COMMUNITY BASED ORGANIZATION and all its members to be joined as interested parties in these proceedings.**
3. **THAT this honourable court be pleased to order the County Government of Meru to be joined as the 1st respondent in these proceedings to replace the defunct County Council of Nyambene.**
4. **THAT this honourable court be pleased to direct that the orders of injunction issued by this honourable court on 5th February, 2011 against the County Council of Nyambene be extended and be deemed as binding against the county Government of Meru and consequently be enforceable against the said County Government.**
5. **THAT cost of this application be provided for.**

The application is supported by the affidavit of David Kaberia, the chairman of the applicant and on the following grounds

1. **That the applicant/interested parties are residents of Turingwi A and B Kisima.**
2. **That these proceedings will affect and/or have a bearing on the applicant/interested parties rights and interest on their lands situate in Turingwi A and B Kisima considering that these proceedings are in the nature of judicial review expected to address issues of adjudication and ownership of land within Turingwi, Ntulili, Kisima and its environs.**
3. **That it is only fair and in the best interest of justice that the applicants being stakeholders of the subject matter herein be joined as parties to enable them be heard and represented.**
4. **That the 1st respondent in these proceedings is the County Council of Nyambene which is now defunct and which by virtue of the Constitution of Kenya 2010 and the County Government Act, 2012 was succeeded by the County Government.**
5. **That prior to the coming in force of the County Government Act, this honourable court had issued orders of stay against the now defunct County Council of Nyambene which orders are still in force and valid.**
6. **That the county Government of Meru in its capacity as the successor of the defunct County Council of Nyambene has embarked on the process of demarcation, re-allocation, beaconing and alienation of lands within Ntulili, Turingwi, Kisima and other areas in total**

disregarding(sic) the orders of stay of 5th February, 2011.

- 7. That the only way to ensure that the court orders of 5th February 2011 are obeyed is to join the County Government of Meru as parties in these proceedings and consequently direct that the said orders be extended and be deemed as binding and enforceable against the said County Government in place of the County Council of Nyambene.**
- 8. That the process of demarcation, relocation and beaconing of the said lands by the County Government of Meru is aimed at rendering the proceedings herein nugatory which in effect will render the applicants landless, homeless and destitute.**
- 9. That joining the proposed parties to these proceedings is not only beneficial to the applicants but to the court as well in that it will present a good opportunity for the court to effectually and judiciously adjudicate upon the issues at hand.**

The application was slated for interpartes hearing on 7.7.2014. Mrs Kaume for the applicant informed the court that the application had been served upon other parties. There is indeed an affidavit filed in the court file showing that on 9.6.2014, the deponent Kaume Mukira, an advocate of the High Court of Kenya, and an advocate in the firm which represents the applicant, authorised to serve all court documents, had on 9th June, 2010 served the County Government of Meru, the State Law Office, and the firm of Nyamu Nyaga and Company, Advocates. It was sworn that service was accepted but all three entities declined to acknowledge service by signing the deponent's copy. Then on 10th June, 2014 the deponent served the firm of Gitobu Imanyara. He deponed that service was accepted but like the other 3 entities alluded to earlier, the firm, refused to sign his copy. There is another affidavit sworn by the same advocate saying that the same parties were all served on 27th June, 2014 but they all refused to acknowledge service.

Mrs Kaume told the court that as the application was unopposed prayers 3 and 4 should be allowed. Mr. Kieti for the 2nd to 6th respondents told the court that he was not opposed to the application. Mrs Kaume said nothing about prayer 2.

Prayer 2 seeks leave for the applicant Kali Community Based organization and all its members to be joined as interested parties in these proceedings. Prayer 3 seeks to have the County Government of Meru joined as the 1st respondent in these proceedings to replace the defunct County Council of Nyambene. Prayer 4 seeks an order directing that the orders of injunction issued by this honourable court on 5th February 2011 against the County Council of Nyambene be extended and be deemed as being against the County Government of Meru and consequently be enforced against the said County Government.

I have examined the averments and the documents proffered by the applicant. I have also considered the submissions made on behalf of the applicant.

Annexure "DK1" produced by the applicant is meant to confirm that it is a duly registered community based organization under the Ministry of Gender, Children and Social Development. Although there is a handwritten document purporting to show its members, there is no certified copy of members who were originally registered by the then Ministry of Gender, Children and Social Development or who are the extant members. Although the legal standing of the applicant as a Corporate entity capable of suing and being sued, may be a pertinent issue for consideration by this Court, Annexure "DK1" clearly shows that Kali Community Based Organization, the applicant was registered on 30th May, 2013, after the County Council of Nyambene had been rendered defunct by operation of the law and over 2 years after orders were issued against the Council on 5th February 2011. Obviously, orders issued against a defunct County Council can not be extended to an applicant who was not in existence at the time the orders were issued. For the same reason, and also in view of the nebulous nature of the legal personality of the applicant, I am inclined not to allow it to be enjoined in this suit. I am also not inclined to order the County Government of Meru to be enjoined by an applicant whose legal personality has not been established.

In the circumstances, this application is dismissed. I issue no order as to costs.

It is so ordered.

Delivered in Open Court at Meru this 24th day of July, 2014 in the presence of:

Cc. Daniel/Lilian

P. M. NJOROGE

JUDGE