



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kariuki & 11 others v County Government of Nyeri & another (Environment & Land Petition 3 of 2020) [2022] KEELC 3398 (KLR) (19 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3398 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NYERI**  
**ENVIRONMENT & LAND PETITION 3 OF 2020**  
**JO OLOLA, J**  
**MAY 19, 2022**  
**IN THE MATTER OF**  
**ARTICLE 22 (1), (2) & 23 (1)(3) OF**  
**THE CONSTITUTION OF KENYA**  
**AND**  
**IN THE MATTER OF**  
**AN ALLEGED CONTRAVENTION OF FUNDAMENTAL**  
**RIGHTS AND FREEDOMS UNDER ARTICLE 40(3) OF**  
**THE CONSTITUTION OF KENYA**

**BETWEEN**

**JOHN HENRY KARIUKI ..... 1<sup>ST</sup> PETITIONER**  
**GABRIEL KAMAU CHEGE ..... 2<sup>ND</sup> PETITIONER**  
**DICKSON KANYINGI CHEGE ..... 3<sup>RD</sup> PETITIONER**  
**LEAH WANJIKU NJERU ..... 4<sup>TH</sup> PETITIONER**  
**EUNICE NJERI WANJOHI ..... 5<sup>TH</sup> PETITIONER**  
**HARUN GATHARA CHEGE ..... 6<sup>TH</sup> PETITIONER**  
**CONSOLATA WANJIRU WOKABI ..... 7<sup>TH</sup> PETITIONER**  
**PETER KING'ORI CHEGE ..... 8<sup>TH</sup> PETITIONER**  
**MORRIS MAINA GIKONYO ..... 9<sup>TH</sup> PETITIONER**  
**BEATRICE WANJIRU CHEGE ..... 10<sup>TH</sup> PETITIONER**  
**PAUL KAMAU CHEGE ..... 11<sup>TH</sup> PETITIONER**



MARY NGIMA KARIENE ..... 12<sup>TH</sup> PETITIONER

AND

COUNTY GOVERNMENT OF NYERI ..... 1<sup>ST</sup> RESPONDENT

NYERI WATER & SEWERAGE COMPANY LIMITED

(NYEWASCO) ..... 2<sup>ND</sup> RESPONDENT

### RULING

1. By the Notice of Motion dated 1<sup>st</sup> October 2021, the County Government of Nyeri (the Respondent/Applicant) prays for an order that the National Land Commission be enjoined in these proceedings as an Interested Party. The application which is supported by an affidavit sworn by the Applicant's County Secretary Benjamin Gachichio is based on the grounds:
  - (i) That the subject matter of these proceedings is a property known as Title No. Aguthi/Gatitu/617 which was compulsorily acquired by the Commissioner of Lands on behalf of the defunct Municipal Council of Nyeri;
  - (ii) That the National Land Commission took over the mandate of the Commissioner of Lands and is now mandated as custodian of all public land, is involved in all issues to do with interest in land, responsible for all allotment and hence it is paramount that they be enjoined;
  - (iii) That the joinder of the Interested Party will enable this Honourable Court to determine the issues in controversy fully. The questions arising in the Petition may not adequately be determined without the input of the Interested Party.
2. The twelve (12) Petitioners are however opposed to the application. In a Replying Affidavit sworn on their behalf by the 1<sup>st</sup> Petitioner – John Henry Kariuki and filed herein on 21<sup>st</sup> January 2021, the Petitioners aver that the application is frivolous and vexatious and that the same is purposely meant to delay the hearing and determination of the Petition.
3. The Petitioners further assert that no due process was followed in the compulsory acquisition of the suit land and that no payment was made to their father the late Chege Kamau Gathara. They aver that at the time they conducted succession proceedings, the suit land was still in the name of their deceased father and not in the Applicant's name and that therefore it is not public land as stated by the Applicant.
4. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the oral submissions made before me by the Learned Advocates for the parties.
5. By their application herein, the Respondent County Government urges the Court to enjoin the National Land Commission in these proceedings as an Interested Party. It is their position that as the custodian of all public land, the presence of the Commission would enable this Court to fully consider and determine the issues herein in controversy. The Petitioners however contend that as at the time the Respondent acquired the land, the same was not public property and that hence it would be unnecessary to enjoin the Commission.



6. In regard to joinder of parties, Order 1 Rule 10(2) of the Civil Procedure Rules provides as follows:

“The Court may at any stage of the proceedings, either upon or without the application of either party, and as 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 might 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.”

7. That being the case, joinder should be permitted of all parties in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transactions is alleged to exist, whether jointly, severally, or in the alternative, where if such persons brought separate suits, any common question of law or fact would arise. The determining factor in my view, is whether a common question of law or fact would arise between the existing and the intended parties.
8. In the matter before me, the Petitioners assert that Land Parcel No. Aguthi/Gatitu/617 upon which the Respondent/Applicant now runs a sewerage treatment plant was originally owned by their father the late Chege Kamau Gathara. They aver that sometime in June 1979, the Respondent’s predecessor – the Municipal Council of Nyeri forcefully took over the 4.5 acre parcel of land but has to-date failed to offer any compensation therefore.
9. Accordingly the Petitioners seek *inter alia* a declaration that the alienation of the land was in violation of their Constitutional rights and that they are entitled to compensation in full.
10. From the material placed before me, in particular the Surveyor’s Report annexed to the Applicant’s Supporting Affidavit as Annexure “BG O1”, the parcel of land in dispute was acquired by the Government through Gazette Notice Nos. 845 and 846 of 1981 published by the then office of the Commissioner of Lands. It was not lost on this Court that following the enactment of the Constitution of Kenya, 2010, that office ceased to exist and its functions were taken over by the National Land Commission as established under Article 67 of the new Constitution.
11. Under Article 67(2) of the Constitution, it is the said Commission which is mandated to manage public land on behalf of both the National and County Governments. It is also that Commission that is granted the power to initiate investigations into present or historical land injustices and recommend appropriate redress.
12. That being the case it was evident to me that the National Land Commission is a necessary party in these proceedings and that its presence would enable the Court to effectually and completely adjudicate on the matters raised herein. The material documents pursuant to which the subject parcel of land were acquired would most likely be within the domain of the Commission and any compensation due as sought by the Petitioners can only come from the Commission.
13. In the circumstances I am persuaded that there is merit in the Respondent’s Motion dated 1<sup>st</sup> October, 2021 and I allow the same as prayed.
14. Both the Petitioners and the Respondents are hereby directed to serve the Interested Party with the Petition and the Respondent’s Response within 14 days. The Interested Party shall have 21 days from today to file any necessary response.
15. The costs of this application shall be in the cause.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 19TH DAY OF MAY, 2022.**



In the presence of:

Mr. Makura for the Petitioners

No appearance for the Respondents

Court assistant - Kendi

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**J. O. OLOLA**

**JUDGE**

