



**Kirui v County Government of Uasin Gishu & 2 others (Environment & Land  
Petition E001 of 2019) [2022] KEELC 3061 (KLR) (18 May 2022) (Judgment)**

Neutral citation: [2022] KEELC 3061 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION E001 OF 2019**

**EO OBAGA, J**

**MAY 18, 2022**

**BETWEEN**

**KIMUTAI KIRUI ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF UASIN GISHU ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**UASIN GISHU COUNTY ATTORNEY ..... 3<sup>RD</sup> RESPONDENT**

**JUDGMENT**

1. The petitioner filed this petition on January 28, 2019 in which he sought the following reliefs:-
  - a. That a declaration do issue pursuant to article 2 (4) of the Constitution of Kenya, 2010 that the suit property is a public land and that construction of ward administration offices by the 1<sup>st</sup> Respondent does not constitute equitable, efficient and sustainable use of suit property.
  - b. That a declaration do issue pursuant to article 2(4) of the Constitution of Kenya that the acts and/or omissions of the 1<sup>st</sup> respondent in interfering with the lawful social and/or recreational activities of the members of the Petitioner through intended construction of ward administration offices by the 1<sup>st</sup> respondent, destroying the suit property, barring access to the suit property herein - Nariri (Cheptiret Trading Centre) Plot No. 3 situated on Land Parcel No.7728/1 & Land Parcel No.LR No.3655) by placing any barriers thereto are a nullity and invalid for failure of compliance with articles 1, 10, 28, 40, 43, 47, 55, 57 and 186 of the Constitution of Kenya, 2010 and that the 1<sup>st</sup> respondent has no mandate whatsoever to interfere with the petitioner's members while enjoying social and/or recreation facility on the suit property.



- c. That a declaration that the 1<sup>st</sup> respondent violated the petitioner's constitutional rights to ensure sustainable exploitation, utilization and management and conservation of suit property - Nariri (Cheptiret Trading Centre) Plot No.3 situated in Land Parcel No. 7728/ 1 & Land Parcel No. LR No.3655) as a natural resource.
  - d. That the 1<sup>st</sup> respondent be compelled by an order of a mandatory injunction to demolish any developments or structures on suit property- Nariri (Cheptiret Trading Centre) Plot No. 3 situated on Land Parcel No. 7728/1 & Land Parcel No. LR No.3655) and restore it to its original and intended purpose and in default the petitioner be at liberty to remove the same at the cost of the 1<sup>st</sup> respondent coupled with an order to restrain the 1<sup>st</sup> respondent, its servants, agents, or any authority or person legal or otherwise from continued construction of the 1<sup>st</sup> Respondent's ward administration offices and/or from interfering with suit property.
  - e. That an order that a relevant committee be constituted to visit the suit properties to gather and collect views of the Petitioner and its members and/or members of the public regarding the intended change of use of the suit property and/or in the alternative the issue to be tabled before the 1<sup>st</sup> respondent's county assembly for deliberations by the elected members.
  - f. That the Respondents be ordered to pay damages for the blatant breach of the provisions of Articles 10, 28, 40, 43, 47, 55, 57 and 186 of the Constitution of Kenya, 2010.
  - g. That the costs of the Petition be awarded to the petitioner.
  - h. That any other appropriate relief that the court may deem fit.
2. The Petitioner who brought this Petition on behalf of over hundred other persons contends that plot No. 3 comprised in LR. No 7728/1 and LR No. 3655 (suit property) had been designated as an open space which the members of the public used as a recreational space, conducting of public barazas and cinema viewing among other social functions. In late 2018, the 1<sup>st</sup> respondent decided to put up ward administration offices on the suit property. This is what prompted the Petitioner to file this petition.
  3. The petitioner contends that there was no public participation conducted and that the National Land Commission as the custodian of public land on behalf of County Government had not been involved in the conversion of the suit property from recreational purposes to construction of ward administration offices. He also contended that the necessary licenses from bodies like National Environmental Management Authority (NEMA) and National Construction Authority (NCA) had not been obtained.
  4. The petitioner filed a notice of motion for conservatory orders stopping the construction. In a ruling delivered on March 1, 2019, the court granted the Petitioner conservatory orders stopping the construction of ward administration offices.
  5. The 1<sup>st</sup> respondent who had committed over 100 million shillings for the project was forced to abandon the project and the funds which had been earmarked for the project were directed to other projects. The petitioner then went to slumber until the court issued a Notice to show cause why the petition should not be dismissed for want of prosecution on November 17, 2021.
  6. When the petitioner's advocate appeared in court on November 17, 2021, he explained that he had not prosecuted the petition for lack of instructions. He pleaded with the court to spare the petition from dismissal. The court then gave directions as to the disposal of the petition by way of written submissions.



7. The petitioner filed his submissions dated December 2, 2021. The 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed their submissions on 4<sup>th</sup> March, 2022. The 2<sup>nd</sup> respondent did not file submissions as he argued that the petition had been overtaken by events.
8. It is important to note that the respondents did not file any replying affidavits to the petition. It appears that after an injunction was granted stopping the construction of the ward administration offices, the 1<sup>st</sup> Respondent decided to abandon the project. The money which had been earmarked for the project was redirected elsewhere.
9. I have looked at the submissions filed by the 1<sup>st</sup> and 3<sup>rd</sup> respondents. It is clear that the petitioner had filed Eldoret CMCC No 312 of 2018 over the same subject. This suit was however withdrawn. The main relief in the petition was to stop the construction of the ward administration offices. This was achieved by the 1<sup>st</sup> respondent abandoning the project. The other relief sought was that the issue be tabled in the County Assembly of the 1<sup>st</sup> respondent for deliberations. There is already a petition in that regard pending before the County Assembly of the 1<sup>st</sup> respondent. It is therefore clear that this petition has been overtaken by events. Any further consideration of the petition will be an academic exercise which will not be of any use. The counsel for the petitioner should have simply withdrawn the petition for having been overtaken by events instead of seeking to file submissions on a matter which had been overtaken by events. I therefore proceed to dismiss the petition with no order as to costs.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 18<sup>TH</sup> DAY OF MAY, 2022**

**E. OBAGA**

**JUDGE**

In the virtual presence of;

Ms. Too for Mr. Kagunza for Petitioner

**E. OBAGA**

**JUDGE**

**18<sup>TH</sup> MAY, 2022**

