



Republic & 2 others v Land Adjudication Officer, Transmara East & 2 others; Saningo & 12 others (Interested Parties) (Judicial Review 1 of 2021) [2022] KEELC 12596 (KLR) (26 July 2022) (Ruling)

Neutral citation: [2022] KEELC 12596 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
JUDICIAL REVIEW 1 OF 2021**

EM WASHE, J

JULY 26, 2022

IN THE MATTER OF: AN APPLICATION BY MATAMPASH OLE SAIRE & SITATO OLOLMAMPULI IKOLET FOR LEAVE TO APPLY FOR ORDERS OF CERTIORARI AND PROHIBITION-AND-IN THE MATTER OF: SECTION 8 AND 9 OF THE LAW REFORM ACT, CAP 26 LAWS OF KENYA-AND-IN THE MATTER OF: THE LAND ADJUDICATION, CAP 284 LAWS OF KENYA-AND -IN THE MATTER: FAIR ADMINISTRATION ACTION ACT-AND -IN THE MATTER OF: ORDER 53 OF THE CIVIL PROCEDURE RULES 2010

BETWEEN

REPUBLIC APPLICANT

AND

MATAMPASH OLE SAIRE 1ST EXPARTE APPLICANT

SITATO OLOLMAMPULI IKOLET 2ND EXPARTE APPLICANT

AND

LAND ADJUDICATION OFFICER, TRANSMARA EAST 1ST RESPONDENT

ATTORNEY GENERAL 2ND RESPONDENT

DIRECTOR OF LAND ADJUDICATION & SETTLEMENT .. 3RD RESPONDENT

AND

OTUMA OLE SANINGO INTERESTED PARTY

PAREYIO OLE MOITA INTERESTED PARTY

KOKWET OLE KUNI INTERESTED PARTY

TATUR OLE KILOYIAN INTERESTED PARTY

YIANTO OLE SEYIO INTERESTED PARTY



DAVID PASEI SIMPIRI	INTERESTED PARTY
SOITANAE OLE KINANTA	INTERESTED PARTY
SOIPEI VINCENT KISEE	INTERESTED PARTY
OLOIMUTIE OLE MAMAYI	INTERESTED PARTY
JOEL LETUYA RAKITA	INTERESTED PARTY
MAKUTIT JOEL MELUBO	INTERESTED PARTY
LENKIYIEU OLE NAIDUYA	INTERESTED PARTY
OLEUNUA OLE TONKEI	INTERESTED PARTY

RULING

1. The ex-parte applicants filed a notice of motion application dated May 25, 2022 (hereinafter referred to as “the present application”) seeking for the following orders; -
 - a. That this application be certified urgent and heard ex-parte in the first instance and service in the first instance be dispensed with.
 - b. That pending the hearing and determination if this Application inter-partes or any such time and duration as this court will deem fit, this court be pleased to issue summons to the Land Adjudication Officer, Transmara West to give and produce evidence regarding the settlement/ Adjudication process relating to Kimintet “A”, “B”, “C”, “D”, “E” and “F”.
 - c. That pending the hearing and determination of this application inter-partes or any such time and duration as this Court will deem fit, this court be pleased to issue summons to the County Surveyor of Narok County to give evidence and produce the cadastral (sheet) maps relating to Kimintet “E” and “F”.
 - d. That in the alternative, pending the hearing and determination of this application inter-partes, this honourable court be pleased to issue orders compelling the County Surveyor, within five (5) Days, to furnish the *ex-parte* applicants with the sheet maps relating to Kimintet “E” and “F”.
 - e. That this honourable court be pleased to order a site visit to the Kimintet “A”, “B”, “C”, “D”, “E” and “F”.
 - f. That this honourable court be pleased to make such other and/or further orders as may appear to this court to be just and convenient.
 - g. That the costs of this application be awarded to the *ex-parte* applicants.
2. The present application is supported by the affidavit of one Matampash Ole Saire (1st *ex-parte* applicant) sworn on the May 25, 2022.
3. The supporting affidavit sworn by the 1st *ex-parte* applicant places before the court Four (4) declaration notices for Kimintet “A” “B” “C” and “D” dated October 29, 1986, October 29, 1986, May 5, 1989 and June 2, 1990 respectively.
4. The present application has been opposed by the Respondents who filed a replying affidavit sworn by the Land Adjudication and Settlement Officer Transmara East and West (The 1st respondent) on the 8th of June 2022.



5. The gist of the respondents affidavit was that the *ex-parte* applicant has not made any request to be supplied with the documents contained in their prayers.
6. The respondents position was that the *ex-parte* applicants are at liberty to make a request and pay the government charges to be supplied with any documents they would be require.
7. The respondents further deponed that the adjudication process was still ongoing and therefore if there was any grievances, then such grievances should be raised upon publication of the adjudication register and addressed through the dispute resolution mechanisms provided for under the [Land Adjudication Act](#), cap 284.
8. In conclusion, the respondents pleaded that the present application be dismissed as it is a fishing expedition devoid of adhering to the procedures set out in the [Land Adjudication Act](#), cap 284.
9. The respondents also filed their submissions on the July 5, 2022 in opposition to the present Application and in support of their replying affidavit.
10. The interested parties also opposed the present application through a statement of grounds of opposition dated June 7, 2022.
11. The interested parties pleaded that the present application offends the mandatory provisions of order 53 of the [Civil Procedure Rules](#) as well as section 8 and 9 of the [Law Reform Act](#), cap 26.
12. The interested parties further stated that the *ex-parte* applicants had not laid out and/or established any sufficient cause to warrant the orders sought in this present application.
13. In conclusion therefore, the interested parties believe that the present application is misconceived and an abuse of the court process hence should be dismissed with costs.
14. The interested parties also filed their written submissions on the 4th of July 2022 in support of the grounds of opposition and opposing the present application.
15. The court has perused the present application, the supporting affidavit, the annexures therein, the replying affidavit by the respondents and the submissions thereof, the grounds of opposition filed by the interested parties and the submissions therein.
16. The first issue for determination is what orders this court should evaluate and determine in this present Application.
17. The reason as to why this Court has brought up this issue is because prayers B, C and D which are the substantive prayers are pleaded as prayers pending the hearing and determination of the present application.
18. The plain reading of this prayers before the court means that whatever orders the *ex-parte* applicants are seeking can only be granted before the inter-parte hearing of this present application and only subsist until the determination of this application.
19. Prayers B, C & D are not capable of being granted beyond the determination of the present application.
20. Litigants have time and again been advised that one must be careful in the drafting of their prayers to enable the court adjudicate on them.
21. The object and purpose of clear and concise pleadings is to ensure that litigants come to court with all the issues clearly defined.



22. In the recent case of *Issa Ahmed & 16 Others versus Mohamed Al-sawae*(2021) eKLR, the Court held as follows; -

“ A court cannot assume or infer a case by referring to a stray sentence here and a stray sentence there in the pleading. A court cannot exercise its judicial position to grant a relief which is not even sought by parties in their pleadings as granting the same would lead to a miscarriage of justice”

23. In essence prayers B, C and D in the present application cannot be granted as the same will be spent on the pronouncement of this ruling.

24. The prayer capable of surviving beyond the pronouncement of this ruling is prayer No E.

25. This prayer seeks the honourable court to order a site visit of the adjudication sections known as Kimintet “A”, “B”, “C”, “D”, “E” & “F”.

26. The grounds which the *ex-parte* applicants rely upon in seeking this prayer is that the adjudication of the adjudication sections known as Kimintet “E”AND “F” are encroaching and/or over-lapping with the Adjudication Section known as Kimintet“D” thereby irregularly displacing and/or internally displacing various persons with a possible result of bringing land ownership clashes.

27. The *ex-parte* applicants have produced the declaration notices of the adjudication sections known as Kimintet “A” “B” “C”and “D” in the supporting affidavit sworn by the 1st ex-parte applicant.

28. The *ex-parte* applicants failed to present the declaration notices of the adjudication sections known as Kimintet“E”and “F” in this present application.

29. The *Land Adjudication Act*, cap 284 under section 3 (1) provides the minister in charge of lands in the Republic with powers to order a certain area as an adjudication section.

30. Section 3(2) specifically provides as follows; -

“ An order under this section shall define the area to which it relates either by description or by reference to a plan or both.”

31. Although the ex-parte applicants did not annex the declaration notices of the adjudication section known as Kimintet“E”and “F”, the same are within the court’s file having been filed together with the substantive notice of motion dated August 10, 2020.

32. The *ex-parte* applicants claim is that the adjudication exercise of the adjudication sections known as Kimintet“E”and “F” is encroaching and/or overlapping with portions of the adjudication section known as Kimintet“D”.

33. Unfortunately, the *ex-parte* applicants have not placed before this court any evidence through their affidavit to convince the court of this allegation.

34. It is not in dispute that the adjudication sections known as Kimintet“D” “E” and “F” are being adjudicated upon by the 3rd respondent.

35. The *ex-parte* applicants in this Application have not made any allegations to the effect that the 3rd respondent is in violation of the boundaries provided in the declaration notices of any of adjudication sections known as Kimintet “D” “E” and “F”.



36. In the absence of such an allegation, this court finds it difficult to understand the basis upon which the Ex-parte applicants can allege encroachment and/or overlapping of the various adjudication sections known as Kimintet“D” “E”AND “F”.
37. The doubt before the court can only be cleared by those persons who have been alienated land rights in the adjudication section known as Kimintet“D” approaching this court with their mutations and/or the photographic index maps and comparing them with those of the adjudication sections known as Kimintet“E” and “F”.
38. This proceeding being not of a representative nature for the people of the adjudication section known as Kimintet“D”, the ex-parte applicants have not tabled any individual proprietary rights alienated to them in the adjudication section known as Kimintet“D” and capable of being encroached and/or affected by the adjudication of the adjudication sections known as Kimintet“E”and “F”.
39. In the Ugandan Case of *E Kangye versus E Bwana* Kampala Hccs No 38 Of1989, the court explained that the purpose of the practice of visiting a site *locus in quo* is to check on the evidence of the witness and not to fill gaps in their evidence, lest the court runs the risk of turning itself a witness in the case.
40. In this present application, the court has held that there is no evidence placed before the Court of the encroachment and/or overlapping between the adjudication sections known as Kimintet“D” “E”and “F” by the *ex-parte* applicants.
41. The request for a site visit by the court in the adjudication sections known as Kimintet“D”, “E” and “F” is therefore misplaced and not necessary.
42. In addition to the above, the *ex-parte* applicant in their pleadings in this present application confirm that the adjudication process in the adjudication sections known as Kimintet“A”, “B” and “C” have been concluded.
43. The conclusion of an adjudication section results to the issuance of proprietary documents.
44. The issuance of proprietary documents in an adjudication section effectively terminates the declaration notice issued by the minister in charge of lands and thereafter sections 24, 25 and 26 of the [Land Registration Act](#), No 3 of 2012 begins its operation.
45. In other words, the adjudication sections known as Kimintet“A” “B” and “C” no longer exist as the entire area has been alienated to the citizens of Kenya.
46. This court in its considered view finds that a site visit of the area formely known as Kimintet“A” “B” and “C” is an exercise in futility as the rights of those allocated land therein can not be altered by this suit.
47. In essence thereof, the *ex-parte* applicants have not laid and/or provided sufficient reason for this court to exercise its discretion and grant prayer E.
48. On the issue of costs, the court is of the view that the prayers sought in the present application have been declined and therefore costs should follow the event.
49. In conclusion therefore, the court makes the following determination in relates to the application dated May 25, 2022;-
 - a. The application dated May 25, 2022 is hereby dismissed.
 - B. The stay orders issued by the court on the 9th of June 2022 be and are hereby lifted, cancelled and/or vacated forthwith.



C. The costs of the application dated May 25, 2022 be borne by the *ex-parte* applicants herein.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS ELC COURT ON 26TH JULY 2022.

EMMANUEL.M.WASHE

JUDGE

IN THE PRESENCE OF:

COURT ASSISTANT:

COUNSEL FOR THE EX-PARTE APPLICANT: Mackenzie holding
brief for Kithi

COUNSEL FOR THE RESPONDENT: Mireri holding brief for
Fatuma

COUNSELF OR THE INTERESTED PARTY: Mireri

