



**Sharifow v Agriculture and Food Authority; Habco Agencies Limited
& another (Interested Parties) (Environment & Land Petition
8 of 2022) [2022] KEELC 12801 (KLR) (30 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12801 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION 8 OF 2022
LN MBUGUA, J
SEPTEMBER 30, 2022**

BETWEEN

ABDIRAHID ABDUL SHARIFOW PETITIONER

AND

AGRICULTURE AND FOOD AUTHORITY RESPONDENT

AND

HABCO AGENCIES LIMITED INTERESTED PARTY

KIPEVU 3PL SUPPLY CHAIN LTD INTERESTED PARTY

RULING

1. Before me is an application dated June 21, 2022 where the applicant seeks the following orders:
 1. That this court be pleased to review, set aside and vary its orders made on February 22, 2022 by the Honourable Mr Justice Mrima.
 2. That this honourable court do transfer this suit to Milimani High Court at constitution and human rights division for hearing and disposal.
 3. That costs of this application be in the cause.
2. The grounds in support of the application are that the suit was filed at Milimani High Court at constitution and human rights division on February 18, 2022 under a certificate of urgency but on February 22, 2022, Honourable Justice Murima gave directions that the file be transferred to the Environment and Land Court. That on May 17, 2022, this court made observation and that it had no jurisdiction to determine the matter. The applicant avers that it has an inalienable right to have his



claim heard and determined by virtue of article 50 of the constitution as he had approached the right court for redress which court had jurisdiction to address his grievances.

3. The applicant has also filed a supporting affidavit where he has reiterated the grounds in support of the application.
4. On July 5, 2022 the court gave directions for the respondents (who were represented in court) to file and serve their responses by July 12, 2022 and submissions were to be filed thereafter. No response or such submissions were filed, hence the application is unopposed. Nevertheless, the court deems it necessary to determine the merits of the application. See Tullow Oil PCL & 3 others v Ps Ministry of Energy & 15 Others [2020] eKLR.
5. At this juncture, I find it necessary to extract the gravamen of the dispute of the applicant as captured in paragraph B of the petition

“ 1. That the respondent herein has made a decision to un-procedurally and unlawfully dispose of a public asset, being all that parcel of land known as LR No 209/10537 situate in Nairobi county by way of a long-term lease to the 1st and 2nd interested parties, a decision and action that warrants the urgent intervention of the honourable court.

2. That the respondent being a state corporation falls under the definition of a public entity under section 2 of the Public Procurement and Asset Disposal Act (PPAD Act) and as such is bound by the provision of the said statute and regulations thereto in relation to matters of procurement and asset disposal as stipulated under section 4 of the PPAD Act.

3. That section 2 of the PPAD Act defines the term disposal of asset to include leasing of assets, thus it would be expected that any attempt by the responded being in public entity to dispose of any of its assets to be done pursuant to the principles, rules and regulations stipulated in the PPAD Act.

4. That despite the foregoing, the respondent herein has made a decision to lease a public asset to the interested parties without paying any due regard to the laid down principles, rules and regulation stipulated in the PPAD Act.

5. That the procedure of disposal of asset is well laid down in part xiv (section 163 to 166 of the PPAD Act and further buttressed under The Public Procurement and Asset Disposal Regulation, 2020 (the regulations) regulations 176 to 202 (more so regulation 180) and other general provision on the Act.

6. That the respondent has leased out the land without any attempt whatsoever being made to comply with the PPAD Act and in particular regulation 180 which sets out the entire process of disposing of public assets, thus the said disposal of the public assets has been done illegally, ultra vires of the powers conferred on the acting director general of AFA, unreasonably and irrationally.

7. That the person who made the decision being the acting director general one Mr Anthony Murithi (D G) was not authorized to do so. There is a whole process spelt out in regulation 180 of the PPAD Act regulation. The process should involve multiple government agencies.

8. The procedure laid down in regulation 180 of the PPAD regulation 2020 was not adhered to, the decision was procedurally unfair and the administrative action was procedurally unfair.

9. The decision of the respondent offends sections 68(3), 138 and 179 of The Public Procurement and Disposal Act, 2015



10. The decision of the respondent contravenes article 10(2)(a)(b) & (c) and 61 of the Constitution of Kenya 2010, article 17(1) of the Universal Declaration of Human Rights and article 14 of the Commission on Human and People's Rights.”

6. It is crystal clear that even though the final orders sought relate to issuance of long term leases by the respondent to the interested parties, the gist of the dispute relates to compliance or none compliance with the PPAD Act; that is not an issue within the province of this court. The court had noted this issue and had therefore requested the parties to address this court on the question of jurisdiction way back on May 17, 2022. A perusal of the record in the court's digital system (CTS) reveals that even a notice of preliminary objection relating to this courts jurisdiction has since been filed by the respondent.
7. The upshot of my findings are that the nature and extent of the dispute at hand is for the High Court. In the circumstances, the application dated June 21, 2022 is allowed with no orders as to costs.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 30TH DAY OF SEPTEMBER, 2022
THROUGH MICROSOFT TEAMS.**

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kiplagat for the Respondent

Court assistant: Joan

