



REPUBLIC OF KENYA



KENYA LAW
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In re John Muiruri Kanyi (Environment and Land Miscellaneous Application E006 of 2021) [2022] KEELC 15067 (KLR) (28 September 2022) (Ruling)

Neutral citation: [2022] KEELC 15067 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E006 OF 2021
AK BOR, J
SEPTEMBER 28, 2022

RULING

1. Muchangi Patrick, an Advocate of the High of Kenya filed the ex-parte originating summons on December 17, 2021 claiming that the application was of utmost urgency because the dry and fallen wood of different species sold to the applicant under a valid license was wasting away in a storage facility in Samburu county and the applicant was incurring storage charges yet he had his own storage facility in Turkana county.
2. In the ex parte originating summons dated December 15, 2021 the applicant, John Muiruri Kanyi, sought to be permitted to transport the dry and fallen wood of different species including Olea, Acacia, Balanite, Osyris and Euclea which he claimed was sold to him 4 years and 7 months before by the Mikema Forest Users Self Help Group under a valid license. For purposes of security, he prayed that the court orders officers from Kenya Forest Service (KFS), Kenya Wildlife Service (KWS) offices, the police and Samburu county Officers to provide an oversight role during the loading and transportation of the dry and fallen wood of different species including Olea, Acacia, Balanite, Osyris and Euclea from Samburu county to Turkana County. Further, he sought to have the police officers, KFS officers, KWS officers and Samburu county officers ordered to ensure compliance with the orders of the court. The applicant confirmed that he was ready and willing to bear the costs for the whole process. He also sought an order for the court to grant any other order it deems fair and just in and in the best interests of the minors herein.
3. The application was made on the grounds that the applicant purchased the forest produce in October 2016 from Mikema forest self help group, which at the time had a forest management agreement, license or certificate from the local forest service. The applicant stated that the transportation and storage was not for commercial purposes but was meant to protect the forest produce from waste by storing it in the applicant's storage facility located in Turkana county and stop the piling storage charges.
4. The application was supported by the affidavit of John Muiruri Kanyi of identity card number 22681606 of PO Box 111-00209 Loitoktok who described himself as a resident of Maralal Town Samburu county. He annexed an illegible copy of the agreement prepared in October, 2016 executed



by him as a buyer and Mikima Community Forest User Group. The agreement mentions that Mikima forest is a private forest. He also attached a copy of the certificate of registration for the self-help group issued on September 27, 2016 and minutes for the meeting held on September 29, 2016. The title of the minutes reads Ngiro Ndoto Forest. Mr Kanyi deponed that even though the organisation which sold him the wood assured him that they had been permitted by the local authorities to transport the wood he was apprehensive that the officers from the national police, KFS, KWS and the Samburu county may hinder the smooth transportation of the dry wood which he claimed was wasting away in a storage facility in Samburu county. He deponed that he had his own storage facility in Turkana county which was empty and would be a suitable place to store the forest produce. He reiterated that he intended to transport the forest produce for safe keeping and not for commercial use and that he was ready and willing to surrender it to the nearest KFS. He urged the court to order these officers to provide assistance and oversight during the transportation.

5. Looking at the illegible agreement between the applicant and Mikima Community Forest, the court can discern that it states that KFS allowed the community to collect dry and fallen wood which it was selling to the applicant at Kshs 60,000/= per ton. It indicates that the group decided that it would not to deal with any other party for it to be easy to manage their forest without any destruction. It was agreed that after two or three consignments, the applicant would provide the group a participatory forest management plan that would enable the group learn how to manage their forest. He was to provide seeds and seedlings for the group to replant different species of trees for future benefits. The agreement was signed by the group chairman, Lkinanae Lesepeita, its secretary Learnto Alfred and the applicant as the buyer.
6. The applicant also exhibited a copy of the letter dated September 29, 2016 from Latakweny Community addressed to the Samburu North Sub- county Forest Officer seeking an official permit to harvest dry and fallen wood in Mikima Forest. The reason for harvesting the dry and fallen wood in the forest was to reduce the risks of a forest fire which would lead to the destruction of the forest. he also annexed the participatory forest management plan for Mikema Forest. He attached a certificate of origin for forest produce issued on September 29, 2016 by a forestry officer. On the part for general remarks of tree farming it is indicated: “Antouched (sic) forest being allowed to salvage to collect dead fallen burned by fire”. He also attached a list of people from Latakweny Sub- location showing their identity card numbers. Additionally, he attached a press statement issued by the Cabinet Secretary, Ministry of Environment and Forestry dated February 19, 2019 clarifying the moratorium on logging activities in Kenya. The statement clarified that the moratorium did not cover harvesting and transportation of planted trees from private plantations woodlots and private farms.
7. When this matter first came up in court under certificate of urgency on December 21, 2021, the court directed the applicant to serve the application on the Samburu KFS office, KWS office, the National Environment Management Authority (NEMA) and the Samburu county Environmental Committee. The court set down the application for hearing on February 15, 2022.
8. There was no appearance for the applicant when the matter came up on February 15, 2022. The case also came up on 7/3/2022, April 27, 2022 and June 6, 2022 when there was no appearance for the applicant. The court made an order on 6/6/2022 for a notice to show cause to be served on the applicant’s advocate through the Nyahururu Environment and Land Court for 5/07/2022. Service was effected but neither the applicant nor his advocate attended court to show cause. The court directed that it would nevertheless deliver a ruling in the matter.
9. The application refers to the species of trees known as Olea, Acacia, Balanite, Osyris and Euclea stated by the applicant to have been harvested from a forest in Samburu as dry and fallen wood. It is noteworthy that Olea, Acacia, Balanite and Euclea are all indigenous trees and there is a ban on



- harvesting indigenous tree species which was issued on October 15, 1997. The ban is intended for the protection of indigenous trees in Kenya.
10. Osyris is the scientific name for sandalwood which appears in appendix II of the Convention on International Trade in Endangered Species of wild, fauna and flora (CITES).
 11. Kenya is among the countries listed in CITES where *Osyris Lanceolata* is found and is to be protected. CITES is an international agreement between governments whose aim is to ensure that international trade in specimens of wild animals and plants does not threaten the survival of species. Kenya is a signatory to the CITES convention and has designated KWS as the CITES Management Authority and the Scientific Authority for purposes of implementation of the convention. The appendices to the convention are listed according to the degree of protection needed for the flora and fauna.
 12. The subject matter of this case falls within the ambit of the *Forests Act*, No. 7 of 2005. Section 61 stipulates that the provisions of that Act are to be carried out in accordance with any treaty, convention or international agreement concerning forests or forest resources to which Kenya is a party.
 13. Under section 34 of the *Forests Act*, the President may by order published in the gazette declare any tree or species or family of trees to be protected in the whole country or in specific areas. Any person who fells, cuts, damages or removes, trades in or exports or attempts to export any protected tree, species or family of trees or abets in the commission of any such acts commits an offense. The Section gives the President the discretion to reverse the protection if it is no longer necessary.
 14. One of the functions of the Kenya Forest Service under section 5 of the *Act* is to protect forests in Kenya in accordance with the Act. Another function is to enforce the Act and the regulations made under it. KFS enforces the conditions and regulations pertaining to logging, charcoal making and other utilisation activities. The management of all state forests is vested in KFS while that of local authority forests is vested in each local authority with the assistance of KFS. Based on this provision, each county therefore bears the responsibility for the protection and management of all forests and woodlands falling within its jurisdiction.
 15. Section 52 of that *Act* prohibits the felling, cutting, taking, burning, injuring or removing any forest produce except under a license or permit or management agreement issued or entered into under the Act. Section 54 prescribes the penalties for failing to comply with provisions of the *Act*.
 16. A forest officer responsible for an area is enjoined by section 38(3) of the *Act* in consultation with the forest conservation committee to make inspection visits at least twice a year and to make a report to the director on whether such forests are being managed in accordance with the Act. The Director reports to the board.
 17. The court directs the forest officer responsible for Samburu North in charge of Ngiro Ndoto Forest to investigate how what is described as dry and fallen wood in the application was removed from the forest and whether the *Forest Act* was complied with in the removal of the forest produce.
 18. The forest officer is directed to visit all the forests in Samburu county and inspect the state of the forests and thereafter make a report to the KFS Director as to whether the forests in Samburu county are being managed in accordance with the Forest Act.
 19. A copy of that report will be filed in court and given to the Samburu county Government so that it can take steps to enhance the protection and management of all forests and woodlands within Samburu county as enjoined by article 69 of the *Constitution*.



20. KFS officials are directed to investigate and prosecute any persons who were involved in the activities which led to the forest produce that is the subject matter of these proceedings with the offences prescribed under the *Forest Act*.

DELIVERED VIRTUALLY AT NANYUKI THIS 28TH DAY OF SEPTEMBER 2022.

K. BOR

JUDGE

In the presence of: -

Ms. Stella Gakii- Court Assistant

No appearance for the applicant

