



**Kajulu Kithimo Welfare Association (Suing through its Registered Officials John Omollo Ondiek and Joseph Aswes Dianga) v National Land Commission & another (Environment & Land Case E001 of 2022) [2022] KEELC 14424 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14424 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE E001 OF 2022  
A OMBWAYO, J  
OCTOBER 27, 2022**

**BETWEEN**

**KAJULU KITHIMO WELFARE ASSOCIATION ..... PLAINTIFF  
SUING THROUGH ITS REGISTERED OFFICIALS JOHN OMOLLO ONDEIK  
AND JOSEPH ASWES DIANGA**

**AND**

**NATIONAL LAND COMMISSION ..... 1<sup>ST</sup> DEFENDANT  
THE PRIVATIZATION COMMISSION ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Kajulu Kithimo Welfare Association suing through its registered officials John Omollo Ondiek and Joseph Aswes Dianga have come to this court for orders that pending the hearing and determination of the main suit, this court be pleased to issue temporary orders of injunction restraining the 1<sup>st</sup> defendant, their agents and/or persons acting under their authority respectively from renewing leases for farms measuring 39,460,124.75 acres in Kithimo land being the Kajulu community ancestral lands in Miwani West, Miwani Central, Miwani East, Miwani North Nyangore and Chemelil whose leases have since expired between 2002-2005.
2. That pending the hearing and determination of the main suit, this court be pleased to issue temporary orders of injunction restraining the 2<sup>nd</sup> defendant, their agents and/or persons acting under their authority respectively from continuing with the intended privatization process in respect of the government shares in Miwani Company Ltd and Chemelil Sugar Company Ltd particularly their 16,645.1 acres of land confirmed by the National Land Commission.
3. That this court be pleased to issue orders of maintenance of the status quo pending the hearing and determination of the main suit.



4. The application is made on grounds that there is sufficient cause in terms of public interest given that 5426 landless members of the Kajulu Community are in destitute has already been shown to warrant orders sought in the circumstances.
5. The 1<sup>st</sup> defendant in a determination issued on February 7, 2019 erroneously disallowed the plaintiff's claim in respect of ancestral land rights in Kithimo land being the Kajulu Community ancestral lands in Miwani West, Miwani Central, Miwani East, Miwani North, Nyangore and Chemelil measuring 18,684.4899 ha whose leases have since expired between 2002-2005 but recommended that the 2<sup>nd</sup> defendant settles the landless.
6. The 2<sup>nd</sup> defendant in a communication dated July 29, 2019 to both the plaintiffs and the 1<sup>st</sup> defendant did indicate that it had no power to transfer lands to the landless plaintiffs hence it could not implement the 1<sup>st</sup> defendant's recommendation.
7. The plaintiffs are aware that the leases in respect of the subject parcels of land expired in 2002-2005 and that the 1<sup>st</sup> defendant has been issuing fresh leases with terms allowing for change of user to carry out mega housing units project in what is a flagrant departure from the original intention of cane agriculture for which the applicants were forcefully evicted.
8. The plaintiffs are aware that the 2<sup>nd</sup> defendant initiated the process of privatization of the sugar industries amongst which are Chemelil Sugar Ltd and Miwani Company Ltd that have substantial government holding and both of which lay claim to some 16,645.1 acres of the Kithimo land.
9. According to the plaintiff, there is a high likelihood that unless stopped the defendants may completely alienate the expired lease and dissipate any potential of the landless plaintiff getting back their lands or equity in state entities that acquired their parcels.
10. In the supporting affidavit John Omollo Ondiek, it is stated that the plaintiff is registered under section 10 of the [Societies Act](#) with 5426 registered members and have instructed the firm of Amondi & Co Advocates to file the suit. He states that he is a descendant of the original owner of the Kajulu Kithimo land but were evicted in 1906 hence migrated to Tanzania but came back after the Government of Tanzania implemented the ujamaa system of Government that implied compulsory appropriation of private property. The plaintiff have brought this suit in their representative capacity for Kalulu Community claiming 18,684,4899 Hectares where land was alienated to Asian for sugarcane plantation. The plaintiffs then eventually settled at Wath Onger in South Nyanza. The plaintiffs claim that they were made landless by the advent of the colonial and the settlement of the Asians in their parcel of land. According to the plaintiffs they have a strong case with a likelihood of success.
11. In the main suit the plaintiffs pray for orders that this court be pleased to declare that the conduct of the colonial administration in forcefully alienating the Kithimo and being the Kajulu Community ancestral lands in Miwani West, Miwani Central, Miwani East, Miwani North, Nyangore and Chemelil all measuring a total of 18,684.899 Ha (about 46,711.22475 acres) in 1901-1906 without compensation or alternative lands amounted to a historical injustice.
12. That the Kajulu Community be entitled to compensation for their parcels of lands that are deemed to have been compulsorily acquired by the government particularly the 16,645.1 acres confirmed by the National Land Commission to be in the names of state corporations Miwani Company Ltd and Chemeli sugar Company Ltd.
13. That this court be pleased to quash and/or otherwise stop the renewal of the leases in respect of the remaining farms measuring 39,460.12475 acres in Kithimo land being the Kajulu community ancestral



- lands in Miwani West, Miwani Central, Miwani East, Miwani North, Nyangore and Chemelil whose leases have since expired between 2002-2005 and give the plaintiff's first priority during issue of fresh leases.
14. In the replying affidavit Joseph Koskey, the Executive Director and CEO at the privatization Commission states that the mandate of the privatization Commission is stipulated under *Privatization Act* 2005. He states that the privatization Commission does not own any land as to the land belongs to the government of Kenya or the government entities or agencies and therefore allocation and transfer of land does not fall within the scope of the 2<sup>nd</sup> respondent.
  15. The 2<sup>nd</sup> respondent stated that the privatization of the 5 sugar companies in Kenya was abandoned by the government of Kenya hence the suit herein has no basis against the 2<sup>nd</sup> defendant. The 1<sup>st</sup> defendant filed neither defence nor replying affidavit.
  16. The plaintiff counsel Amondi submits that the applicants have established a *prima facie* case with a likelihood of success as they have demonstrated that their constitutional rights are threatened with violation.
  17. That they have a *bona fide* question to raise. The applicants relied on *Banis African Ventures Ltd v National Land Commission (2021) eKLR*, *Vivo Energy Kenya Ltd, v Maloba Petrol Station Ltd & 3 Others (2015) eKLR*. The applicants submit that the court at this stage is only the gauge the strength to the plaintiffs case and not the main suit.
  18. On the issue as to irreparable loss that can't be computed with damages to applicant state that the expired leases are currently being re-issued to new applicants and that with new ownership and change of user. It will be impossible for the applicant to validate their claims.
  19. The 2<sup>nd</sup> respondent submits through the honorable Attorney General that the prayers sought against the 2<sup>nd</sup> respondent are moot as there is nothing to restrain as the government has made the decision to abandon the privatization model that was approved by parliament in 2015 into respect to Miwani sugar Company Ltd (in receivership) meaning that the term of the board of the commission expired in June 2019, hence nothing was actualized.
  20. I have considered the application, affidavits on record and rival submission and do find that the applicants have established a *prima facie* case with a likelihood of success against the 1<sup>st</sup> defendant on the claim of historical injustice having been the owners of the suit parcel of land before being dispossessed by the colonial government and the sugar plantation farms. The applicants have not established a *prima facie* case against the 2<sup>nd</sup> defendant who has abandoned the process of privatization of the sugar companies.
  21. This court finds that the applicants have not demonstrated that they will suffer irreparable damage that can't be compensated with damages as the 1<sup>st</sup> respondent has the power to compensate the applicants if they succeed in court. Moreover, the pinnacle of the reliefs sought by the applicant in the main suit is compensation for the said parcels of land.
  22. The balance of convenience tilts towards not granting the injunction orders because the parcels of land were not initially registered in the names of the plaintiffs. The upshot of the above is that the application is denied with costs.

**DATED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF OCTOBER 2022**

**A O OMBWAYO**

**JUDGE**

