



REPUBLIC OF KENYA



KENYA LAW
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Karsan Ramji & Sons Limited v County Assembly of Kitui & 2 others (Environment & Land Case E005 of 2022) [2022] KEELC 14726 (KLR) (10 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14726 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITUI
ENVIRONMENT & LAND CASE E005 OF 2022**

LG KIMANI, J

NOVEMBER 10, 2022

IN THE MATTER OF: VIOLATION OF ARTICLES 1, 2, 3, 10, 19, 20, 21, 22, 23, 24, 35, 40, 43, 47, 62(1)(F), 62(3), 93, 94(6), 109, 110, 124, 191, 199(1) 209, 258, 259 AND 260 OF THE CONSTITUTION OF KENYA AS WELL AS THE FOURTH SCHEDULE THERE TO

AND

IN THE MATTER OF: SECTION 87, 91 AND 104 OF THE COUNTY GOVERNMENT ACT NO. 17 OF 2012

AND

IN THE MATTER OF: SECTIONS 125 (2) AND 207 OF THE PUBLIC FINANCE MANAGEMENT ACT OF 2012

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTIONS ACT 2015

AND

IN THE MATTER OF: SECTIONS 6, 20, 136, 140, 183, 197 AND 200 OF THE MINING ACT, 2016

AND

IN THE MATTER OF: SECTIONS 9, 125 AND 147 OF THE ENVIRONMENTAL MANAGEMENT AND COORDINATION ACT

AND

IN THE MATTER OF: KITUI COUNTY FINANCE BILL, 2019

AND



**IN THE MATTER OF: ALLEGED ENACTMENT BY THE COUNTY
ASSEMBLY OF KITUI OF LAW THAT IS INCONSISTENT WITH
AND/OR IN CONTRAVENTION OF THE CONSTITUTION**

AND

**IN THE MATTER OF: ALLEGED VIOLATION OF FUNDAMENTAL
RIGHTS AND FREEDOMS OF PERSONS ENGAGED IN THE BUSINESS
OF QUARRYING ACTIVITIES AND CONSUMERS OF THEIR SERVICES**

BETWEEN

KARSAN RAMJI & SONS LIMITED PETITIONER

AND

COUNTY ASSEMBLY OF KITUI 1ST RESPONDENT

COUNTY GOVERNMENT OF KITUI 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

1. The petitioner/applicant moved the court by way of notice of motion dated November 2, 2022 under certificate of urgency. The said application seeks conservatory orders as set out in the body of the application and the supporting affidavit pending hearing and final determination of the said application in the 1st instance and pending the hearing and final determination of the petition in the 2nd instance.
2. This ruling is in respect of the prayer for interim relief pending inter partes hearing and determination of the application dated November 2, 2022.
3. I have considered the said application, the supporting affidavit and submissions of both counsel for the parties. In coming to the final determination, I have taken into account a number of issues stated hereunder arising from the previous proceedings in this case and the current proceedings.
4. I have considered that there are two similar applications on record dated April 9, 2021 and November 2, 2022 respectively. The two applications seek relatively similar conservatory orders and are brought under article 19, 20, 22, 23 and 159 (2) (d) of the *Constitution* of Kenya (Protection of Rights & Fundamental Freedoms) Practice & Procedure Rules 2013. The application dated April 9, 2021 was heard by the High Court and the Hon Justice Limo delivered a ruling granting conservatory orders on June 10, 2021 details of which are set out in the said ruling. By an application dated June 29, 2021, the 2nd respondent sought to have the suit herein transferred to the Environment and Land Court at Kitui and for review and setting aside of the orders of the court issued on June 10, 2021. The court delivered its ruling on September 22, 2022 and made an order transferring the suit to the Environment & Land Court. Further, the court stated

“it is only fair and just that I review and set aside the orders of this Court made on June 10, 2021. The parties can ventilate over the issue at the right forum which is the ELC.”



In my view, the question of whether the current application can be sustained in light of the existing and pending application dated April 9, 2021 will be an issue for determination at the inter partes stage.

5. I have further considered that the applicant has had the benefit of interlocutory conservatory orders issued without the respondents participation albeit the respondents were served with the application but did not appear, for a period between June 10, 2021 and September 22, 2022. The court record does not show effort to have the petition heard. The applicant was only moved when the respondent sought to levy taxes on them by issuing invoices and impounding their motor vehicles.
6. I have considered the applicants claim that the application and the petition present a single issue dispute of whether mining and the charging of levies and taxes is the mandate of the National or County Government, however a perusal of the petition and consideration of the submissions by both counsel indicates that there is more to the dispute than that. The petition and the application raise the question of closure of the applicant's mines. The respondent raised the issue of environmental degradation and violation of the right to a clean and healthy environment to the residents of the areas where the mining activities are being carried out. The respondent also raised the question of whether there was any environmental impact assessment carried out to support the activities of the petitioner. It has also emerged that there are other suits relating to the same mining activities. The respondents submit that there is need to hear the dispute in totality in order to come to a fair and just determination.
7. It is also noted that the Finance Bill that first imposed the taxes and levies was a 2015 Bill and the 2019 amendment that was complained of only apparently enhanced the amounts of taxes and levies payable. It is thus not clear whether the applicant has been paying the levies and the implication of such payment and my view is that this is an issue for determination inter partes.
8. I have also perused the entire record of the court to confirm if as claimed by the applicant, they possess a mining license/permit under the [Mining Act](#) and have not seen any evidence of such a license/permit. The Hon Justice Limo had in the [ruling of June 10, 2021](#) also made the same observation and one of the issues for determination will be the basis upon which the applicant carries out its mining activities within Kitui County. This is an issue for determination at the inter partes stage. The High Court, Hon Justice Limo issued the orders of June 10, 2021 on the strength of a letter from the Ministry of Petroleum & Mining dated March 2, 2020.
9. I have also considered the authorities cited by the applicant and especially the Supreme Court decision of [Base Titanium Ltd v County Government of Mombasa & another](#) [2018] eKLR on the interpretation of the powers to impose taxes by the National and County Governments under article 209 of [the Constitution](#) of Kenya 2010.
10. Taking into account the foregoing considerations, I decline to issue interim conservatory orders in terms of prayers 2 and 4 of the application dated November 2, 2022. I however grant orders in terms of prayer 6 of the application in the following terms;
 - a. A conservatory order be and is hereby issued restraining the respondents their servants, agents or representatives from enforcing the collection of levies arising from the invoice raised on October 26, 2022 or any subsequent levies pending hearing and determination inter partes of the application dated November 2, 2022.
 - b. The applicant is directed to serve the petition and the application herein on the 1st and 3rd respondent within three (3) days from the date hereof.



- c. The respondents are directed to file and serve their reply to the application herein and the petition for the 2nd respondent within three (3) days from the date hereof and for the 1st and 3rd respondents within 3 days from the date of service of the application.
- d. The applicant is at liberty to file and serve a supplementary affidavit if need be and to further file and serve written submissions within seven (7) days from the date of service of replying affidavits and in any event within 15 days from the date hereof.
- e. The respondents to file and serve written submissions within 7 days from the date of service of the applicant's submissions.
- f. Mention to confirm filing and for further directions on the ruling date on December 8, 2022.

DELIVERED, DATED AND SIGNED AT KITUI THIS 10TH DAY OF NOVEMBER 2022.

HON LG KIMANI

ENVIRONMENT AND LAND COURT JUDGE

Ruling read in open court and virtually in the presence of-

Musyoki Court Assistant

Mr Kyalo for the plaintiff

Mr Kaluu for the 1st and 2nd defendant

Mr Atonga holding brief for Mr. Orego for the 3rd defendant

