



Shamco Africa Limited v Agriculture and Food Authority; Habco Agencies Ltd & another (Interested Parties) (Environment and Land Judicial Review Case E011 of 2021) [2022] KEELC 15635 (KLR) (20 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15635 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E011 OF 2021
LN MBUGUA, J
DECEMBER 20, 2022

BETWEEN

SHAMCO AFRICA LIMITED APPLICANT

AND

AGRICULTURE AND FOOD AUTHORITY RESPONDENT

AND

HABCO AGENCIES LTD INTERESTED PARTY

KIPEVU 3PL SUPPLY CHAIN LIMITED INTERESTED PARTY

RULING

1. The exparte applicants filed an application dated June 18, 2021 seeking leave to institute judicial review proceedings for orders of certiorari, prohibition and mandamus in relation to the decision of the respondent to lease out public land without complying with the *Public Procurement and Asset Disposal Act* (PPAD Act). When the application was presented before the court on June 21, 2021, directions were given for joinder of the two lessees as interested parties.
2. Thereafter, the aforementioned interested parties filed a Notice of Preliminary Objection dated November 9, 2021 contending that the suit is misconceived, incompetent, bad in law and has no basis due to none compliance with section 41 of *Agriculture And Food Authority* (no 13 of 2013) and section 9 (2) of *Fair Administrative Action Act*.
3. The court then gave directions on the prosecution of the application and the preliminary objection, of which a ruling thereof was to be delivered on February 2, 2022. In a short ruling of February 2, 2022, the court noted that the gist of the matter related to the *Public Procurement and Asset Disposal Act* (PPAD) Act and gave directions for the parties to address the court on the questions of jurisdiction.



4. Thereafter, the court was informed that parties were exploring settlement. However, this did not bear fruits and eventually the court gave directions for parties to file and serve submissions in respect to the Preliminary Objection.
5. I have considered all the issues raised herein as well as the rival submissions, and the question of jurisdiction.
6. The crux of the dispute herein is well articulated in the Verifying Affidavit of the applicant dated June 18, 2021 of which I deem it fit to capture the contents of paragraph 6-11 thereof as follows:
 - i. “That, the decision to issue the said leases is the
subject of this judicial review; we challenge the same on the following grounds:
 - ii. 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 provisions of the said statute and regulations thereto in relation to matters of procurement and Asset disposals as stipulated by section 4 *PPAD Act*.
 - iii. That section 2 of the *PPAD Act* defines the term disposal of assets to include leasing of assets, thus it would be expected that any attempt by the respondent being a public entity to dispose of any of the assets to be done pursuant to the principles, rules and regulations stipulated in the PPAD Act.
 - iv. That despite the foregoing, the respondent herein made a decision to lease a public asset (the subject property) without paying any due regard to the laid down principles, rules and regulations stipulated in the PPAD Act.
 - v. That the procedure for disposal of assets is well laid down in part XIV (sections 163 to 166 of the *PPAD Act* and further buttressed under The *Public Procurement and Asset Disposal Regulations, 2020* (the regulations) regulations 176 to 202 (more so regulation 180) and other general provisions on the Act.
 - vi. 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 public assets, thus the said disposal of the public assets has been done illegally, *ultra vires* of the powers and functions of the acting director general of AFA, unreasonably and irrationally”.
7. It is crystal clear that the applicants desire to institute juridical review proceedings because of issues relating to none compliance with the *Public Procurement and Asset Disposal Act* (PPAD) Act. That is clearly a matter not in the province of this court.
8. In the circumstances this suit is hereby struck out for want of jurisdiction. Each party to bear their own costs of the suit.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF DECEMBER, 2022 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA

JUDGE

In the presence of:-

Omondi holding brief for Change for *exparte* applicant



Bosibori holding brief for Kiplagat for respondent

Court assistant: Eddel

