



Gatarakwa Farmers Company Limited v National Land Commission (Environmental and Land Originating Summons 001 of 2022) [2025] KEELC 725 (KLR) (11 February 2025) (Judgment)

Neutral citation: [2025] KEELC 725 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 001 OF 2022
AK BOR, J
FEBRUARY 11, 2025

BETWEEN
GATARAKWA FARMERS COMPANY LIMITED APPLICANT
AND
THE NATIONAL LAND COMMISSION RESPONDENT

JUDGMENT

1. The Applicant filed the Originating Summons dated 29/3/2022 claiming to be entitled to be registered as the proprietor of 35 parcels of land being Ewaso Nyiro/Suguroi/Block 7/305, Ewaso Nyiro/Suguroi/Block 7/319 (now Ewaso Nyiro/Suguroi Bk VIII/730-737), Ewaso Nyiro/Suguroi/Block 1/1088, Ewaso Nyiro/Suguroi/Block 1/1089, Ewaso Nyiro/Suguroi/Block 1/111, Ewaso Nyiro/Suguroi/Block 5/707, Ewaso Nyiro/Suguroi/Block 5/708, Ewaso Nyiro/Suguroi/Block 5/709, Ewaso Nyiro/ Ilpajeta Block 1/1205, Ewaso Nyiro/ Il Pajeta Block 1209, Ewaso Nyiro/ Il Pajeta Block 1/952, Ewaso Nyiro/ Ilpajeta Block 1/1208, Ewaso Nyiro/ Ilpajeta Sirrima Block 1/1090, Ewaso Nyiro/ Ilpajeta Sirrima Block 1/1206, Ewaso Nyiro/ Ilpajeta Sirrima Block 1/1082, Ewaso Nyiro/ Ilpajeta Sirrima Block 1/1091, Ewaso Nyiro/ Ilpajeta Sirrima Block 1/1081, Ewaso Nyiro/ Ilpajeta Sirrima Block 1/1079, Ewaso Nyiro/Suguroi/Block 8 (Ngobit III)/313, Ewaso Nyiro/Suguroi/Block 5/421, Ewaso Nyiro/Suguroi/Block 5/422, Ewaso Nyiro/Suguroi/Block 5/423, Ewaso Nyiro/Suguroi/Block 5/424, Ewaso Nyiro/Suguroi/Block 5/425, Ewaso Nyiro/Suguroi/Block 5/443, Ewaso Nyiro/Suguroi/Block 5/444, Ewaso Nyiro/Suguroi/Block 6/977, Ewaso Nyiro/Suguroi/Block 6/741, Ewaso Nyiro/Suguroi/Block 6/216, Ewaso Nyiro/Suguroi/Block 3/757, Ewaso Nyiro/Suguroi/Block 3/236, Ewaso Nyiro/Ilpajeta Block 1/1077, Ewaso Nyiro/Suguroi/Block 5/664, Ewaso Nyiro/Suguroi/Block 6/45 and Ewaso Nyiro/Suguroi Block 5/986. The parcels of land will be referred to as the Suit Properties in the judgment.
2. The Applicant framed various questions for determination by the court in the summons. Firstly, whether the Respondent's concession that the disposition of the title over the Suit Properties in favour of the Government of Kenya was acquired through illegalities and misrepresentation of facts and was



therefore incapable of conferring proprietary rights which would entitle the Applicant to be registered as the proprietor of the Suit Properties. Secondly, whether the court should direct the Respondent to execute the necessary instruments of transfer for the Applicant to be registered as proprietor of Suit Properties, Thirdly, whether the Deputy Registrar of the court should execute the conveyancing documents to facilitate the transfer on behalf of the Respondent if the Respondent failed to effect the transfer of the Suit Properties to the Applicant.

3. The summons was premised on the grounds that the Applicant acquired the Suit Properties between 1973 and 1978 on behalf of its members but the land was illegally and fraudulently misappropriated by the then President Hon. Daniel Moi through a roadside declaration and registered in favour of the Government of Kenya on the presupposition that the Applicant's land formed part of the forest land and was yielded to the Kenya Forest Service for utilisation. Further, that the Kenya Forest Service had unequivocally absolved itself from laying claim to the Suit Properties while stating that the land in question was never part of forest land. Additionally, that the Respondent had conceded that the Suit Properties were private and that it did not object to the land being registered in the Applicant's name.
4. The summons was supported by the affidavit of Andrew Muchiri Gituku who deponed that the Applicant was incorporated in 1973 and resolved to acquire the Suit Properties. He exhibited a copy of the report of the Presidential Probe Committee on Gatarakwa Farmers Company Limited. He claimed that the then President, HE Daniel Moi purported to dissolve the Applicant's board of directors and formed a presidential probe committee to look into the activities of the company. That as a consequence of the probe, the government appropriated the properties owned by the Applicant on the pretext that they were to be afforested areas.
5. He averred that on 8/1/2018, the Applicant wrote to the Respondent as the custodian of government land seeking redress through compensation or reallocation. The Respondent instructed the Kenya Forest Service vide its letter of 8/3/2018 to conduct an inquiry into the proprietorship of the Suit Properties. That Kenya Forest Service conducted the inquiry and through its letter dated 26/3/2019, it informed the Respondent that the Suit Properties were not its properties nor were they within the gazetted forests areas.
6. Further, that on 7/6/2019, the Respondent conceded that it did not have any objection to the Applicant utilising the Suit Properties which had been confirmed to be private property. The Applicant claimed that it wrote to the Respondent on 17/8/2020 to restore the Suit Properties to the Applicant to no avail. He averred that through the letter dated 31/1/2022, the Chief Land Registrar indicated that the alienation and conveyance of the Suit Properties registered under the Government of Kenya fell within the ambit of the Respondent. The Applicant contended that the Respondent had been evasive in executing the necessary conveyance instruments.
7. The Applicant annexed a copy of the Report of the Presidential Probe Committee on Gatarakwa Farmers' Company Limited 1986-1988 to his supporting affidavit. He also exhibited copies of some of the green cards for the Suit Properties together with the correspondence referred to in the affidavit of Mr. Gituku.
8. The Respondent did not participate in the matter except at the initial stages when it filed a Replying Affidavit in response to the application dated 29/3/2022 seeking injunctive relief pending hearing and determination of the suit.
9. The matter proceeded for hearing on 18/9/2024 when Andrew Muchiri Gituku gave evidence for the Plaintiff. He told the court that the Applicant purchased various parcels of land in Lamuria (Juja Farms) Estate, Gianni Farm, Ngobit Estate, Deighton Downs Estate, Sirima Limited and Gatarakwa II. He deponed that in the course of devolving the parcels of land to the shareholders, the former President



Daniel Moi purported to dissolve the Applicant's board of directors and formed a presidential probe committee to look into the Applicant's activities through a road declaration made along the Nyeri Nyahururu on 10/6/1986. That as a consequence of the probe, the government appropriated the properties owned by the Applicant on the pretext that they were to be afforested and for public utilities yet the Applicant had already set aside land for such purposes.

10. He averred that being aggrieved by the actions of the government then, the Applicant commenced recovery of the misappropriated properties in 1988 and in 2018 it sought compensation from the Respondent who conceded that the Suit Properties did not belong to the Kenya Forest Service. Despite this acknowledgement, the Respondent had failed to execute the necessary conveyancing instruments. He produced the documents attached to his supporting affidavit.
11. The Respondent did not participate at the hearing of the case and did not file submissions. The Applicant submitted that the two issues for determination were whether the conveyance of the Suit Properties to the government and its designation as public property was illegal and whether the Respondent's concession that the Suit Properties were private and not public obligated it as the custodian of public land to cause their conveyance to the Applicant.
12. The Applicant submitted that having subscribed to the shareholding, the Applicant's shareholders expected that the Suit Properties would devolve to them as purchasers of land for value but the Applicant could not transfer the land to its shareholders on account of the Respondent's illegal acquisition of the Suit Properties. The Applicant contended that the Respondent's actions violated its right to property under Article 40 of *the Constitution*. It maintained that it acquired the Suit Properties lawfully and that there was no basis for their transfer to the Government of Kenya. The Applicant relied on Section 107 of the *Land Act* on the process to be followed in compulsory acquisition.
13. The Applicant relied on *Eunice Grace Njambi Kamau and Another v Attorney General & 5 Other* [2013] eKLR regarding the process of compulsory acquisition of land. It urged that it had continuously and illegally been deprived of the fruits of ownership of the Suit Properties which it lawfully acquired and termed these as acts of impunity. It submitted that the Respondent being fully aware that the conveyance in favour of the government of Kenya amounted to illegality had conceded that the Suit Properties were private and it did not have an objection to their private use. The Applicant maintained that proprietorship of the Suit Properties ought to revert to it.
14. The Applicant submitted that vide the letter dated 7/6/2019, the Respondent pronounced itself that it did not have any objection to the Suit Properties being utilised by the Applicant following an elaborate investigation process involving the Kenya Forest Service and the Chief Land Registrar. Further, that the government entities had distanced themselves from the purported conveyance in their favour and absolved themselves from having dealt with the Suit Properties. According to the Applicant, the concession by the Respondent was an admission that an illegality was perpetrated and the Respondent was bound to reconvey the Suit Properties to the Applicant.
15. The Applicant relied on Section 120 of the *Evidence Act* in support of the argument that the Respondent was estopped from denying that the Suit Properties were acquired irregularly. The Applicant relied on the doctrine of estoppel and argued that no person should be deprived of their proprietary rights unless in the manner provided by law. It concluded that the irregularity and illegality vesting the Suit Properties in the Government of Kenya were glaring and were admitted and that the land should therefore revert to the Applicant as its rightful owner.
16. The issues for determination are firstly whether the conveyance of the Suit Properties to the government and its designation as public property was illegal and whether the Respondent's



concession that the Suit Properties were private and not public obligated it as the custodian of public land to cause their conveyance to the Applicant.

17. The Applicant filed this suit seeking to recover land that it claims to have been acquired on behalf of its members between 1973 and 1978. Its claim is that its land was illegally appropriated through an order made by the then President, the late Daniel Moi in 1986 and registered in favour of the Government of Kenya. The extracts of titles which the Applicant produced in court show that Euaso Nyiro/Suguroi/VI/1550 was reserved for an administrative centre while parcel no. 935 was reserved for a polytechnic. Euaso Nyiro/Suguroi/Block VIII was reserved for afforestation as was parcel number Euaso Nyiro/II Pejeta Block I/1205. Euaso Nyiro/II Pejeta/Block 1/1012, 1091, 1081/1079 and Euaso Nyiro/Suguroi/Block VIII/313 were reserved for afforestation.
18. The court notes that the parcels of land known as Euaso Nyiro/ Suguroi/Block VII/732, Euaso Nyiro/ Suguroi/Block VII/733, Euaso Nyiro/ Suguroi/Block VII734, *Euaso Nyiro/ Suguroi/Block VII735* and Euaso Nyiro/ Suguroi/Block VII/737 are registered in the names of private persons just as is Euaso Nyiro/II Pejeta/Block 1/1206. Since these parcels of land are registered and owned by private individuals who were not made parties to this suit, the court cannot direct that these parcels of land be transferred to the Applicant as it seeks.
19. Without those registered proprietors' being made parties to the suit, this court cannot make any orders affecting their proprietary rights as that would amount to condemning them unheard which goes against the rules of natural justice. If the Applicant wishes to recover these parcels of land, then it ought to sue the registered individuals so that they can be afforded an opportunity to defend the Applicant's claim to their land.
20. The National Land Commission(NLC) which is the Respondent in this case came into operation in 2012 following the enactment of the [National Land Commission Act](#). The Applicant claims that the Suit Properties were appropriated from the Applicant in 1986 when NLC did not exist. In this court's view, since the land was surrendered to the Government of Kenya, the proper party to be sued for recovery of the land indicated to be reserved for afforestation, trading centre, polytechnic and administration centre is the Attorney General, who represents the government in legal matters.
21. [The Constitution](#) designates the Attorney General (AG) as the principal advisor to the Government vide Article 156 which goes further to stipulate that the AG shall represent the national government in court or in any legal proceedings to which the national government is a party. Under Section 5 of the Office of the Attorney General Act (OAG Act), the AG is responsible for advising Government Ministries, Departments, Constitutional Commissions and State Corporations on legislative and other legal matters. The section enjoins the AG to provide efficient and professional legal services to the Government and the public for the purpose of facilitating, promoting and monitoring the rule of law, the protection of human rights and democracy.
22. Pursuant to Section 7 of the OAG Act, the Attorney-General has the right of audience in proceedings of any suit or inquiry of an administrative body which the Attorney-General considers to be of public interest or involves public property. While it is within the mandate of NLC to manage public land, the role of advising Government entities like the Kenya Forest Service and defending suits touching on public land like some of the Suit Properties in this suit falls on the AG and not the NLC.
23. One of the functions of NLC under Article 67(2) of [the Constitution](#) and Section 5 of the [National Land Commission Act](#), is to manage public land on behalf of the national and county governments. NLC's other functions under this section are to alienate public land on behalf of, and with the consent of the national and county governments; to monitor the registration of all rights and interests in land; and to ensure that public land under the management of the designated state agencies is sustainably



- managed for the intended purposes. It is clear that the mandate of NLC does not extend to defending the Government in claims for the recovery of public land.
24. Under Section 7 of the *Limitation of Actions Act*, actions for recovery of land must be instituted within 12 years of the date of dispossession. The Applicant's right of action accrued in 1986, according to its claim that portions of its land were illegally appropriated through an order by the then President, the late Daniel Moi. The Applicant filed this suit on 31/03/2022, which is 36 years later, which in itself makes the suit time barred.
 25. The Applicant seeks an order to compel NLC to execute transfer documents for the Suit Properties in its favour or alternatively, for the Deputy Registrar to be authorised to do so. Some of the parcels of land in question are reserved for afforestation. The Applicant relied on the letter dated 26/3/2019 authored by the Kenya Forest Service indicating that the parcels in question were not part of the gazetted forest block and that they were private properties. The reservation of part of the Applicant's land surrendered for public use as land for afforestation was in the court's understanding intended to establish a forest or grow trees where there was no recent tree cover. The concept of afforestation looks to the future and would not realistically form part of the existing gazetted forest block. One would have reasonably expected that the Kenya Forest Service would be keen on seizing the land reserved for afforestation and putting it into use by growing forests as a viable way of climate change mitigation and to give effect to Article 69 of *the Constitution* which requires the State and every person to work towards achieving and maintaining a tree cover of more than 10% of the land area of Kenya.
 26. Through the Replying Affidavit of Brian Ikol filed in opposition to the application for injunctive relief, the Respondent indicated that in a bid to have this matter resolved amicably, it conducted investigations pursuant to Articles 252 (1) (b) and 67 (2) (f) of *the Constitution* which revealed that Ewaso Nyiro/Suguroi Block 6/977 was reserved for Makutano Trading Centre with developments comprising the Chief's Camp, Huduma Centre, Police Station, bus park and fenced stalls. Ewaso Nyiro/Suguroi Block 1/741 was reserved for public utility and was held by the County Government of Laikipia although it was yet to be planned, developed and put into use.
 27. Mr. Ikol also deponed that parcel numbers Ewaso Nyiro/Suguroi Block 6/216 and Ewaso Nyiro/Suguroi Block 6/741 were owned by private individuals. He annexed copies of the work plan for the ground visits, and a few searches and copies of green cards. He exhibited a letter dated 27/10/2022 from the County Government of Laikipia confirming that Makutano Market Centre on Ewasonyiro Suguroi Block IV/977 existed as public land in the County's physical planning records. The Respondent filed written submissions in respect of the application for injunction in which it urged that the Applicant was undeserving of the injunctive relief and added that the Applicant had either ignored the land use planning laws or was seeking land already surrendered for public use. It concluded that the suit land did not fall within its mandate.
 28. If the land known as Ewaso Nyiro/Suguroi Block 6/977 has already been put into use as Makutano Trading Centre with developments comprising the Chief's Camp, Huduma Centre, Police Station, bus park and fenced stalls as the Respondent deponed in its response to the application for injunctive orders, then the court cannot order that that parcel of land be transferred to the Applicant since the public interest would supersede the Applicant's interest in light of the fact that the land was surrendered for public utility.
 29. The Applicant relied on the Report of the Presidential Probe Committee on Gatarakwa Farmers' Company Limited 1986-1988 in urging its case without leading any evidence on the process of how portions of its land were converted to public land. Page 23 of the Report of the Presidential Probe Committee indicates that the Committee set aside 286 public plots which were surrendered to the



- Commissioner of Lands. A number of pages are missing from that report. This confirms that the Suit Properties were indeed surrendered by the Applicant and that the land was not compulsorily acquired.
30. The Development and Use of Land (Planning) Regulations of 1967 made under the repealed Land Planning Act stipulated at clause 11 that every person requiring consent for development had to make an application to the interim planning authority for the area in which the land concerned was situated or the Central Authority in the prescribed form. Such application had to show the use and density proposed and the land which the applicant intended to surrender for public purposes consequent upon the proposed development. Public purpose meant any non-profit-making purpose and included educational, medical and religious purposes; public open spaces and car parks; Government and local government purposes. Subdivision of land fell under the definition of development in those Regulations defined.
 31. As the Applicant stated, it bought large parcels of land in Deighton Downs, Gatarakwa II, Suguroi, Sirrima, Ngobit and Lamuria and subdivided the land into small portions for allocation to its members. At the time it was subdividing its land, it had to seek consent and the consent to subdivide the land was conditional upon surrendering part of the land for public purposes as it did based on the indication in the Report that 286 plots were set aside for public purpose and that these were surrendered to the Commissioner of Lands. Once the Applicant surrendered part of its land for public purposes, the surrendered land became public land and ceased to be private land.
 32. Under Section 9 of the Land Act, public land may be converted to private land by allocation. Any substantial transaction involving the conversion of public land to private land requires approval from the National Assembly or the respective County Assembly. If some of the parcels of land reserved for public utility forming the subject matter of this suit are not required for the specific public purpose for which they were set aside, then the Applicant needs to follow the procedure prescribed by Section 12 of the Land Act.
 33. The suit is dismissed. The court makes no orders as to costs.

DELIVERED VIRTUALLY AT EMBU THIS 11TH DAY OF FEBRUARY 2025.

K. BOR

JUDGE

In the presence of: -

Mr. Kinyua Maina for the Applicant

Ms. Mumbi Muriguh for the Respondent

