



**Bamboo Twist Limited v National Land Commission & 7 others;
Embassy of Rwanda & another (Interested Parties) (Environment & Land
Petition 3 of 2020) [2024] KEELC 3663 (KLR) (8 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3663 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND PETITION 3 OF 2020**

SM KIBUNJA, J

MAY 8, 2024

BETWEEN

BAMBOO TWIST LIMITED PETITIONER

AND

NATIONAL LAND COMMISSION 1ST RESPONDENT

**MINISTRY OF LANDS, HOUSING & URBAN DEVELOPMENT 2ND
RESPONDENT**

CHIEF LANDS REGISTRAR 3RD RESPONDENT

COUNTY LAND REGISTRAR, MOMBASA 4TH RESPONDENT

THE ATTORNEY GENERAL 5TH RESPONDENT

COUNTY GOVERNMENT OF MOMBASA 6TH RESPONDENT

THE CABINET SECRETARY, TRADE & INVESTMENTS 7TH RESPONDENT

SPECIAL ECONOMIC ZONE AUTHORITY 8TH RESPONDENT

AND

EMBASSY OF RWANDA INTERESTED PARTY

AWALE TRANSPORTERS INTERESTED PARTY

(Formerly Mombasa H. C. Const. Petition NO. 40 OF 2017)



RULING

1. The petitioner moved the court through the notice of motion dated the 26th September 2023 pursuant to Order 39 Rules 1 & 5 of the Civil Procedure Rules, sections 1, 1A, 63 (c) & (e) of the Civil Procedure Act chapter 21 of Laws of Kenya, seeking for the following inter alia:
 - a. Spent.
 - b. Spent.
 - c. Spent.
 - d. Pending inter-partes hearing of the application, conservatory order be issued restraining the intended 7th & 8th respondents from interfering in any way with the petitioner's proprietary rights over plots MN/VI/1128 to 1132.
 - e. Pending hearing and determination of the petition, conservatory order be issued prohibiting the 6th respondent from carrying out further activities including alienation, trespass, excavation and establishing any physical developments that interfere with the petitioner's proprietary rights in respect of MN/VI/1128 to 1132.
 - f. Pending the hearing and determination of the petition, conservatory order prohibiting the 7th & 8th respondents from continuing in any further acts including alienation, trespass, excavation and establishing any other physical developments that interfere with the petitioner's rights over plots MN/VI/1128 to 1132.
 - g. The County Commander, Mombasa to ensure full compliance and strict adherence of the court order.
 - h. Any other order the court may deem just.
 - i. Costs to be provided for.

The application is premised on the thirteen (13) grounds on its face marked (a) to (m) and supported by the affidavits of Harji Govind Ruda, a director with the petitioner, sworn on the 26th September 2023 and 11th December 2023. It is the petitioner's case that it is the registered owner of plots MN/VI/1128 to 1132, the suit properties; that the court issued conservatory orders over the said properties on 6th September 2017 and extended in 2019; that on the 28th June 2023, the court gave directions on hearing of the petition and fixed it for mention on 31st October 2023; that on the 24th September 2023, the 6th & 7th respondents encroached on the suit properties, began excavation, and levelling of the ground; that on the 25th September 2023, they launched a ground breaking ceremony for County Aggregation & Industrial Park on the said land, in violation of the conservatory orders and without its consent; that the petitioner's advocates wrote letters to the 6th & 7th respondents in protest and then filed this application.

2. The 6th respondent opposed the application through the replying affidavit of Paul Manyala, director incharge Planning, sworn on the 27th November 2023 inter alia deposing that the prayers 3 & 5 cannot be granted at this stage as it will amount to determining the petition; that conservatory orders are inclined to protecting the interest of the general public and cannot issue against the 6th respondent, as it will be against public policy and interest as the suit properties are public land; that the petitioner has not made out a prima facie case as the titles to the suit properties reverted to the 6th respondent



after its titles were revoked by the 1st respondent; that part of the suit properties was allocated to the 1st interested party; that the 2nd interested party had also laid claim over the suit properties but its titles were recalled and cancelled; that the allocation of the suit properties to the petitioner was not regularly and legally done; that the petitioner had not raised any objection to the 1st respondent's review process that resulted to the revocation of its titles; that the suit properties were allocated to the 6th respondent through PDP reference No. 12.3. CT.2019/1 that was advertised without any objection being raised within the 60 days period, and consequently approved as development plan No. 355; that the 6th respondent has embarked on the County Aggregated Industrial Park, Resettlement of Kenya Informal Settlement Improvement Programme and County Cess Office activities on the suit properties; that the petitioner has not met the threshold for the prayers sought to be granted and the application herein should be dismissed with costs.

3. The 2nd to 8th respondents opposed the application through their amended grounds of opposition dated the 28th November 2023 raising 26 grounds summarized as follows:
 - a. That the application is scandalous, vexatious and an abuse of the court process.
 - b. The suit properties were compulsorily acquired following G.N Nos. 248 & 249 of 18th January 1974. That the land is vested in Government absolutely, as the Commissioner of Lands issued the Notice of Taking Possession and Vesting of Land in Government dated 26th June 1974, pursuant to section (1) of the *Land Acquisition Act* 1968.
 - c. The suit properties are public lands for use for the public purpose intended.
 - d. That the allocation of the suit properties to the petitioner was not procedurally and legally done, as it was not set aside for alienation under section 9 of the *Government Land Act* or comply with sections 11(1), 12 and 13 thereof.
 - e. That the letters of allotment relied upon by the petitioner do not identify the allotted plots and the PDP to identify the location of the plots. That no acceptance and payment of the statutory fees was made within the 30 days from 10th January 2020.
 - f. That the office of the Commissioner of Lands was extinguished, with effect from 2nd May 2012 through section 109 of the *Land Registration Act* No. 3 of 2012 that repealed the Government Land Act among others, and could not have issued and or executed new grants for the suit properties on the 13th February 2013 as claimed by the petitioner.
 - g. That the petitioner has not provided evidence to so that the 1st respondent had allocated the suit properties to the persons it alleges it bought them from. That the 1st respondent had power under Article 68(c) of the *Constitution* and section 14 of the National Land Commission, 2012 to consider complaints and review grants and dispositions of public land.
 - h. That ELC Nos. 40 of 2015 & 178 of 2015 were dismissed, and are therefore not pending in court.
 - i. That the petitioner has not met the threshold for grant of conservatory orders, and the application dated the 26th September should be dismissed with costs.
4. The court granted the prayers for joinder of the Ministry of Trade, Investment and Industry & Special Economic Zone Authority as the 7th and 8th respondent respectively, and conservatory order against the 6th respondent on the 4th October 2023. The court later gave further directions on filing and exchanging submissions, and the counsel for the petitioner and 6th respondent filed their submissions dated the 7th December 2023 and 5th February 2024 respectively.



5. The following are the issues for the court's determinations:
 - a. Whether the petitioner has met the threshold for the issuance of conservatory orders sought over the suit properties against the 6th, 7th and 8th respondents, at this interlocutory stage.
 - b. Whether the petitioner has made out a reasonable case for the County Commander, Mombasa be directed to ensure compliance of the conservatory orders.
 - c. Who pays the costs in the application?
6. The court has considered the grounds on the application, affidavit evidence, grounds of opposition, the record and come to the following conclusions:
 - a. Through the amended petition dated the 12th October 2023, the petitioner seeks for among others declaratory orders, certiorari order to quash the 1st respondent's GN NO.6862 of 17th July 2017, mandamus & prohibition orders directed to 3rd & 4th respondents, permanent injunction, damages and costs. The main prayer in the instant application is for conservatory order prohibiting the 6th, 7th & 8th "respondents from continuing in any further acts including alienation, trespass, excavation and establishing any other physical developments that interfere with the petitioner's rights over plots MN/VI/1128 to 1132." The application has been strenuously opposed by the 2nd to the 8th respondents their grounds of opposition and replying affidavits.
 - b. It is clear from the court order annexed to the application, which has not been disputed, that an order in more or less similar words was issued in the interim on 4th September 2017 directed against the 6th respondent. Then on the 16th October 2019, the interim conservatory order was "extended to the conclusion of the matter." It is however not clear why the main petition has not been heard since then.
 - c. From the grounds on the application and opposition, the petitioner's and respondents' depositions, this application was necessitated by the events that took place on the suit properties on the 24th September 2023 and 25th September 2023, where the 6th and 7th respondents launched a ground breaking ceremony for the County Aggregation & Industrial Park. That the court is not expected to make any final findings on matters of fact and or law at this interlocutory stage, but to consider whether the petitioner has made a reasonable case for conservatory order in the nature prayed to issue.
 - d. That considering the administrative actions already taken against the titles to the suit properties, and the public interest in the initiated or intended projects against the private interest of the petitioner in the suit properties, it is not lost to the court that the intended developments will not diminish, but rather add value to the suit properties. In this matter, the court finds the public interest outweighs the petitioner's private interest over the suit properties.
 - e. That further, the respondents herein are mostly government agencies, and if the petitioner was to succeed in the petition, it will not be without appropriate compensation, as the values of the suit properties will be easily ascertained and relevant orders issued.
 - f. That while I find no merit in the petitioner's application, I find it appropriate for the court to issue directions aimed at fast tracking the hearing and determination of the petition that has been pending in court since 2017, when it was initially filed. I am also of the view that it is fair and just that each party bears its own costs in the application.



7. Flowing from the foregoing conclusions, the court finds and orders as follows:
- a. That the petitioner's application dated the 26th September 2023 is without merit and is hereby dismissed.
 - b. That so as to fast track compliance, the Petitioner is granted fifteen (15) days to file and serve any outstanding affidavits/documents and the Respondents and Interested Parties to file and serve their replies/documents thereafter in thirty (30) days from today.
 - c. That a mention date to be fixed at the expiry of forty five (45) days to take directions on hearing of the petition.

It is so ordered.

DATED AND VIRTUALLY DELIVERED ON THIS 8TH DAY OF MAY 2024.

S. M. Kibunja, J.

ELC MOMBASA.

In The Presence of:

Petitioner : Mr. Borona

Respondents: Mr Tajbhai for 6th Respondent

Interested Parties : M/s Abdi for 2nd Interested Party.

Wilson – Court Assistant

