



Joseph & 3 others (Representing 200 Individuals in the Ribe Community) v Weda & 7 others (Petition E003 of 2023) [2024] KEELC 5177 (KLR) (4 July 2024) (Ruling)

Neutral citation: [2024] KEELC 5177 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
PETITION E003 OF 2023**

EK MAKORI, J

JULY 4, 2024

BETWEEN

**MAXWEL MASAI JOSEPH 1ST PLAINTIFF
SAMSON CHAI 2ND PLAINTIFF
JAMES MANGI 3RD PLAINTIFF
TSUMA CHIVATSI MWAGIRI 4TH PLAINTIFF
REPRESENTING 200 INDIVIDUALS IN THE RIBE COMMUNITY**

AND

**ALI NDORO WEDA 1ST DEFENDANT
LAMECK TSORI 2ND DEFENDANT
JOEL FIKA RIA 3RD DEFENDANT
COUNTY COMMISSIONER OF KILIFI 4TH DEFENDANT
KILIFI COUNTY LAND ADJUDICATION OFFICER 5TH DEFENDANT
COUNTY GOVERNMENT OF KILIFI 6TH DEFENDANT
NATIONAL LAND COMMISSION 7TH DEFENDANT
THE SENIOR REGISTRAR OF TITLES KILIFI 8TH DEFENDANT**

RULING

1. The Notice of Motion dated 3rd August 2023 significantly seeks injunctive reliefs to restrain the respondents from subdividing, demarcating, issuing title deeds, and interfering with the Plaintiff/Applicant’s occupation of all that parcel known as Nyika Reserve in Bistara Kilifi County measuring



approximately 1000 acres pending the hearing of the main Petition. The Applicants, through their representative in this Petition, Maxwell Masai Joseph, deposed an affidavit dated 3rd August 2023 in support of the application. They allege that the 1st, 2nd, and 3rd Respondents have corrupted the operationalization of the settlement scheme by awarding themselves large chunks of land and they have proceeded to trade with the said land to the disadvantage of the local community that is to be settled. A Chief Officer within the department of Lands and Energy - Moses Gunda has allocated himself and erected a fence on a big chunk of the land to be allocated to the locals, a situation that raises eyebrows. This is a serious violation of the provisions of Article 10 of *the Constitution* on good governance by grabbing land for his benefit that is meant for the disadvantaged.

2. John Karanja—the Kilifi County Land Adjudication Officer, filed a response on behalf of the 5th respondent dated 4th October 2023; the other Respondents did not. The replying affidavit raises the following issues: the National Land Commission had made the necessary reservation, and the department has to move in and finalise the regularization of settlers living on the land and other persons using the land, survey, and demarcation commenced with the sole purpose of settling the people living on the land and others who were cultivating the land though living elsewhere; that before the exercise could be completed, a case was filed - Rumba Matano Beja and others v Cabinet Secretary Ministry of Lands and others - claiming that the subject land was part of an adjudication section. This matter is still pending before the Court; they are therefore not privy to any intended demarcation and survey exercise authorized by their office.
3. The Court directed that parties canvass the application via written submissions.
4. Significantly, the Applicants seek that this Court halt a boundary and allocation process that is ongoing within the Nyika Reserve in Bistara Kilifi County by fiat of an injunction to settle local residents, including the applicants. That is the issue I frame for the determination of this Court in this application.
5. In the submissions by the applicants, Mr Tindi, learned counsel for the Applicants, believes that with the facts disclosed, an injunction should be issued to stop the illegalities in the ongoing process. On the other hand, Mr. Munga, learned counsel for the 4th, 5th, and 8th Respondents, submits that the Applicants have not achieved the threshold set in the *Giella v Cassman Brown Co. Ltd* [1973] EA 358 and the prima facie test as laid in *Mrao v First American Bank of Kenya & 2 others* [2003] KLR 125.
6. The Applicants have made allegations that the officials undertaking the demarcation and allocation exercise have failed to identify the rightful persons for allocation and that corrupt Government Officers have set up a corrupt scheme to allocate themselves the same land they are to allocate to the Applicants, representing a conflict of interest, lack of integrity, and exposition of bad governance on their part.
7. In his averment, John Karanja, the Adjudication and Settlement Officer charged with administering that assignment, states that the land in question is Government Land set aside to settle local residents.
8. When adjudication commenced, it was discovered that necessary resolutions were not made for that purpose. The same has now been done and regularized.
9. The process commenced by appointing members to undertake demarcation, but a Court order was served on the Committee pursuant to ELC Case No. 26 of 2021. Another Petition was filed, ELC Petition No. 13 of 2022, claiming that the land in question forms part of an ongoing adjudication in an Adjudication Section.
10. The Government seeks to allocate its land to the Applicants, and a process has been set in motion in harness. From the materials I have and the averment from the parties, several suits on the same issue



have been instituted, which, in my view, will lead to convoluted otherwise a noble process meant to benefit the Applicants. It is not the province of this Court to allocate resources. It resides with the executive arm of the Government. Angima J. reckoned this in the case of Francis Musyoki Makenzi & 61 others v Director of Lands Adjudication and Settlement & 2 others, Njiru Cimba & 65 others & 26 others (2020) eKLR; where he stated as follows:

“It has been held that where there is competition for allocation of resources which allocation falls within the competence of the executive, the judiciary should not usurp the jurisdiction of the executive and make the allocation itself. In the case of Lucy Mirigo & 550 Others V Minister for Lands & 4 Others [2014] eKLR, the appellants had sought orders compelling the Respondents to allocate them a portion of a government forest whose allocation had allegedly been approved by a former President of the Republic of Kenya. In dismissing the Appellants’ claim, the court held, among other things, that;

1. “In the case of R –v- Lancashire County Council Ex p Gaver (1980) 1 WLR 1024, it was stated that they do not usurp the role of the administrator by assuming the task of deciding how resources are to be allocated as between competing claims. We adopt the above dicta in R –v- Lancashire County Council Ex p Gaver (supra) and observe that it is not the duty of the courts to allocate land and decide how national resources are to be allocated between competing claims.”
12. The application seeks that I halt, by way of a restraining order, a boundary and allocation process commenced by the executive and arrogate myself that duty. The Applicants do not state what happens after the process is stalled. When will the process begin if I were to stop it? Who will undertake it? In my view, the jurisdiction of this Court has been invoked wrongly. The Court is not being told that the officers undertaking the duty have failed to act or have acted beyond their scope to warrant perhaps judicial review orders by issuing an injunction. It will tend to scuttle the process. The application raises integrity issues for the officers who undertake the work. This can be addressed by the several Agencies created by *the Constitution*, not this Court.
13. I can also see other matters filed elsewhere challenging the same process. Issuing any other orders will further complicate the whole process.
14. At this point, the Applicants have not established a prima facie case with a probability of success as held in Mrao v First American Bank of Kenya & 2 others [2003] KLR 125 as follows:

“A prima facie case in a civil application includes but is not confined to a ‘genuine and arguable case.’ It is a case which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party as to call for an explanation in rebuttal from the latter”.

To warrant the issuance of the orders sought.

12. The upshot is that the application dated 3rd August 2023 is hereby dismissed, with costs to the 4th, 5th, and 8th Respondents.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT MALINDI ON THIS 4TH DAY OF JULY 2024.

E. K. MAKORI

JUDGE



In the Presence of:

Mr. Tindi, for the Applicants

Happy: Court Assistant

In the Absence of:

Mr. Munga for the 4th, 5th and 8th Respondents

