



**Natwhani & another v Cabinet Secretary, Ministry of Transport, Infrastructure,  
Housing and Urban Development & 4 others (Environment & Land  
Petition 80 of 2018) [2024] KEELC 6688 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 6688 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND PETITION 80 OF 2018**

**MD MWANGI, J**

**JULY 9, 2024**

**BETWEEN**

**PANKARJOY NANALAL NAT'WHANI ..... 1<sup>ST</sup> PETITIONER**

**ROHINI PANKARJOY NATHWANI ..... 2<sup>ND</sup> PETITIONER**

**AND**

**THE CABINET SECRETARY, MINISTRY OF TRANSPORT,  
INFRASTRUCTURE, HOUSING AND URBAN DEVELOPMENT .... 1<sup>ST</sup>  
RESPONDENT**

**KENYA URBAN ROAD AUTHORITY ..... 2<sup>ND</sup> RESPONDENT**

**THE CHIEF LANDS REGISTRAR ..... 3<sup>RD</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION ..... 4<sup>TH</sup> RESPONDENT**

**THE HON ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT**

**RULING**

(In respect to the oral application by the Petitioners for an order to compel the Director Land Administration, and the National Land Commission to avail records, the Deed file and correspondence file)

**Background.**

1. On 2<sup>nd</sup> July, 2024, when this matter was scheduled for hearing of the petition, the Petitioners' Advocates informed the Court that they wished to have the Deed file and correspondence files in regard to the subject property availed in their entirety before the hearing of the petition commences. They



therefore sought an order to compel the Director of Lands Administration and the National Land Commission to avail the same.

2. In response, Mr. Allan Kamau, Senior State Counsel representing the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Respondents stated that he was ready to proceed with the hearing of the petition and had lined up 3 witnesses. He informed the Court that the petition was filed way back in the year 2018 and directions had been taken in regards to the mode of its hearing. At the point of taking directions the Respondents did not make any request for the Deed file and the correspondence files to be availed.
3. The State Counsel argued that the application was not one that could be made on the date of hearing. Discoveries and interrogatories were pre-trial issues that should be done before a matter is confirmed for hearing. He submitted that the Petitioners should make a formal application to enable the Respondents respond appropriately. He further stated that if the Petitioners wished to seek an interrogatory, they were free to do so.
4. Responding to the submissions by the State Counsel, the Advocate for the Petitioners, Mr. Ochieng Odoul submitted that the Attorney General was the defender of public interest and should place before the Court every material at his disposal to help the Court make a conclusive and reasonable decision on the issue before it. He noted that the Attorney General had not stated what prejudice he stood to suffer by availing the documents requested.
5. The Counsel for the Petitioners further submitted that directions are not cast on stone. They can and should be varied for purposes for facilitating a fair trial. The Chief Land Registrar as the custodian of land records has an obligation to avail the public records to enable the Court look at the root of the title. That can only be possible if the records are availed.

#### **Determination**

6. It is not in dispute that directions in regard to the mode of the hearing of this petition had long been taken before the matter was set down for hearing.
7. It is expected that all pre-trial issues including but not limited to identification of contested issues, admission of statements without calling their makers as witnesses where appropriate, giving of evidence on the basis of affidavit evidence or giving orders for discovery of or production or inspection of documents or interrogatories shall be concluded before the confirmation of a matter ready for hearing.
8. Under the Civil Procedure Rules, Order 11 thereof makes provisions for pre-trial directions with the objective of discouraging trial by ambush and to facilitate the just, expeditious, proportionate and affordable resolution of disputes. *The Constitution* of Kenya (Protection of Rights and Fundamental Freedoms) Practice and Procedure Rules, 2013 (the 'Mutunga Rules') too enjoins the Court in exercising its jurisdiction under those rules to facilitate the just, expeditious, proportionate and affordable resolution of all cases.
9. The intentions of the rules therefore is to facilitate expeditious and seamless hearing of cases. As Kiage J.A observed in the case of Nicholas Kiptoo Arap Korir Salat – vs – IEBC & 6 others (2018) eKLR, the rules: -

“....serve to make the process of judicial adjudication and determination fair, just, certain and even-handed. Courts cannot aid in the bending or circumventing of rules and a shifting of goal posts for, while it may seem to aid one side, it unfairly harms the innocent party who strives to abide by the rules. I apprehend that it is in the even-handed and dispassionate application of rules that Courts give assurance that there is clear method in the manner in



which things are done so that outcomes can be anticipated with a measure of confidence, certainty and clarity where issues of rules and their application are concerned.”

10. Courts do however, retain a double-edged inherent jurisdiction; on the one hand to make such orders as may be necessary to ensure the ends of justice are met and on the other hand to prevent abuse of the process of Court. Therefore, where a party as in this matter wishes to re-open the pre-trial issues, so to speak, the party may invoke that inherent jurisdiction of the Court by laying the proper basis for the Court to exercise that jurisdiction in its favour, by making an application seeking the leave of the Court.
11. Making an oral application on the date scheduled for hearing, even though it may be well intentioned, is likely to be interpreted as a calculated move to seek an adjournment of the hearing. Be that as it may, the Petitioners should make a formal application which will be served on the Respondents to give them an opportunity to respond appropriately. The application fortuitously serves to notify the other parties of the Applicant’s intentions.
12. The Court therefore directs the Petitioners to file a formal application in the next 14 days.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 9TH DAY OF JULY 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Kivindyo for the Petitioners

Mr. Allan Kamau for the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, & 5<sup>th</sup> Respondents

Court Assistant: Yvette.

**M.D. MWANGI**

**JUDGE**

