



Mwichwiri Farmers Company Limited v Settlement & 3 others; Lawrence Mwangi Wambooh & 600 other Members of Mwichwiri Farmers Company Limited (Interested Party) (Environment & Land Petition 09 of 2017) [2024] KEELC 6359 (KLR) (3 October 2024) (Judgment)

Neutral citation: [2024] KEELC 6359 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND PETITION 09 OF 2017
JO OLOLA, J
OCTOBER 3, 2024
IN THE MATTER OF
LAND PARCEL NO. NAROMORU/KIMATHAGE
BLOCK 2 (MWICHWIRI) FORMERLY LR. NO. 9620
IN THE MATTER OF THE
DECISION OF THE CABINET SECRETARY,
MINISTRY OF LANDS AND PHYSICAL PLANNING,
REPUBLIC OF KENYA
RESURVEY LAND PARCEL NUMBER
NAROMORU/KIAMATHAGE BLOCK 2 (MWICHRI)
FORMERLY LR. NO. 9620
1 NYERI ELC PET. NO. 09 OF 2017
JUDGMENT
THE PRIVATE PROPERTY OF THE PETITIONER
IN THE MATTER OF SECTION 4, 5 & 7 OF THE
FAIR ADMINISTRATION ACTION NO. 4 OF 2015
IN THE MATTER OF ARTICLE 20, 21, 22, 40 AND 47
OF THE CONSTITUTION OF KENYA

BETWEEN
MWICHWIRI FARMERS COMPANY LIMITED PETITIONER
AND



**CABINET SECRETARY, MINISTRY OF LAND AND SETTLEMENT 1ST
RESPONDENT**

DIRECTOR OF SURVEYS OF THE REPUBLIC OF KENYA .. 2ND RESPONDENT

COUNTY LAND REGISTRAR, NYERI 3RD RESPONDENT

THE ATTORNEY GENERAL REPUBLIC OF KENYA 4TH RESPONDENT

AND

**LAWRENCE MWANGI WAMBOOH & 600 OTHER MEMBERS OF
MWICHIRI FARMERS COMPANY LIMITED INTERESTED PARTY**

JUDGMENT

Background

1. By the Petition dated and filed on 30th June 2017, Mwichiri Farmers Company Limited (the Petitioners) pray for the following:-
 - a). A declaration that the administrative decision made by the 1st and the 2nd Respondents to resurvey land parcel number Naromoru/Kiamathage/Block 2 (Mwichiri) (formerly LR. No. 9620) without consulting the Petitioner and or giving reasons for the said decision is unconstitutional in that it contravenes the Petitioner's shareholders' constitutional rights as envisaged under Article 40 and 47 of *the Constitution* of Kenya, 2010;
 - b). An order of certiorari be issued to quash the decision made by the 1st and 2nd Respondents to resurvey land parcel number Naromoru/Kiamathage/Block 2 (Mwichiri) (formerly LR. No. 9620) without following the due process of the law;
 - c). An order of permanent injunction restraining the 2nd Respondent from carrying on resurvey of land parcel number Naromoru/Kiamathage/Block 2 (Mwichiri) (formerly LR. No. 9620) without following the due process of the law;
 - d). A declaration that any Registry Index Map (R.I.M) generated from the resurveying of the Petitioners land complained herein (sic) be declared null and void;
 - e). That an order (be issued) restraining the 3rd Respondent from issuing title deeds pursuant to any R.I.M that may be generated from the resurveying of the Petitioners' lands.
 - f). An order cancelling any title deeds that may have been issued pursuant to the unfair administrative decision of the 1st and 2nd Respondents subject matter of this petition;
 - g). That an order (be issued) directing the 3rd Respondent to issue title deeds to the shareholders of the Petitioner as per the details in the Registry Index Map (R.I.M) generated by the survey work carried out by the licensed surveyor P.N. Gichoho Ngugi;
 - h). The Honourable Court be pleased to issue any other appropriate order or relief as it may deem fit and just; and
 - i). Costs to the Petitioner.



2. Those prayers arise from the Petitioner's contention that it is the proprietor of the said parcel number Naromoru/Kiamathage/Block 2 (Mwichiuri) formerly LR. No. 9620 situated within Nyeri County (the suit property). It is the Petitioner's case that in the year 1989 or thereabout, the said land was surveyed by one P.N. Gichoho Ngugi, a licensed land surveyor and that the survey work was duly approved by the 2nd Respondent and the relevant R.I.M was issued and kept in the custody of the 3rd Respondent.
3. It is further the Petitioner's case that upon conclusion of the survey, its shareholders were shown their respective portions of land and some of them have already taken possession thereof.
4. The Petitioner accuses the 1st and 2nd Respondents of moving into the suit property on 14th June 2017 and carrying out a new survey of the land without any consultation with or the knowledge and/or consent of its directors and shareholders. It is the Petitioner's case that the said action has infringed on its constitutional rights under Article 40 and 47 of *the Constitution* and hence the prayers sought in the Petition.
5. The Director of Survey and the Nyeri County Land Registrar (the 2nd and 3rd Respondents respectively) are opposed to the orders sought in the Petition. In a joint Replying Affidavit sworn on their behalf by Cecare Mbaria and Jonah Mwambia, the 2nd and 3rd Respondents aver that the suit property is no longer the property of the Petitioner as the same has already been closed upon resurvey/sub-division and all the resultant title deeds issued to the rightful owners by 7th July 2017.
6. The Respondents point out that the suit property has been the subject of various court cases and that the recent resurvey and issuance of title deeds was done pursuant to a culmination of various court orders. The Respondents aver further that the survey work commenced on 13th June 2017 and were concluded on 30th June 2017 after which the title deeds were prepared and issued to the rightful owners with the last batch being issued on 25th July 2017.
7. The Interested Parties are equally opposed to the Petition. In a Replying Affidavit sworn on their behalf by Lawrence Mwangi Wambooh and filed herein on 23rd October 2017, they aver that Simon Muruthi George who swore an Affidavit in support of the Petition is not a director of the Petitioner and that he is not mandated by the shareholders to file the Petition.
8. The Interested Parties further aver that the resurvey conducted in 2017 by the 2nd Respondent and the issuance of titles by the 3rd Respondent was the result of court orders issued after a long legal battle and that the same are in harmony with the 1972/75 Settlement of members on the suit property as ordered by the Land Disputes Tribunal.

The Petitioner's Case

9. The Petitioner called one witness at the trial.
10. PW1- Michael Muriuki Mwangi is a director of the Plaintiff and a Secretary of the Plaintiff's Board. He told the court that on the 14th June 2017, they had a meeting to re-survey the land. There was however, a political meeting which cropped up. There were many politicians and Government officers who turned up and hence the meeting turned into a political one.
11. PW1 testified that it is only the politicians led by the area MP Kanini Kega who spoke. The MP was accompanied by Surveyors and they proceeded to re-survey the land without any involvement of the Plaintiff Company which owns the land.



The Respondents' Case.

12. The Respondents, equally called one witness in support of their case.
13. DW1 – Kennedy Kimathi Muteithia is a Land Surveyor stationed at the Nyeri County Land Survey's Office. He told the court there was an order issued in Nyeri Chief Magistrate Court on 4th July 2002 which required that the R.I.M for the suit property be cancelled. He told the court the order has never been varied and that they carried out the survey pursuant to the order. They then filed the R.I.M after the survey.

The Interested Party's Case.

14. The Interested Parties similarly called one witness in support of their case during the trial.
15. IPW1- Lawrence Mwangi Wambooh is a farmer and a resident of Mwichiuri Farm. He told the court that the Petitioners are not the directors of Mwichwiri Farmers Company Limited.
16. IPW1 testified that he was a witness to the survey and that for the last 50 years no single member of the company had complained that they did not get their share of land. He testified that all their shareholders were settled and satisfied with what the Government had given except for two members – Michael Muriuki Mwangi and Simon Muruthi George. He told the court the two did not want their members to obtain titles and that the survey exercise that was done in 2017 conformed to the demarcation done earlier in the 1970s.

Analysis and Determination.

17. I have carefully perused and considered the pleadings filed by the parties herein, the testimonies of the witnesses as well as the evidence adduced at the trial. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
18. Mwichwiri Farmers Company Limited (the Petitioner) have by their Petition herein sought for a declaration that the administrative decision taken by the 1st and 2nd Respondents to re-survey land parcel number Naromoru/Kiamathage/Block 2 (Mwichwiri), formerly LR. No 9620, without consulting the Petitioner and or giving reasons for the said decision is unconstitutional in that it contravenes the constitutional rights of the Petitioner's shareholders as envisaged under Article 40 and 47 of *the Constitution* of Kenya, 2010.
19. The Petitioners are also craving an order of certiorari to be issued to quash the said decision and an order of a permanent injunction to issue restraining the 2nd Respondent from proceeding with the said re-survey. The Petitioners' further urge the court to declare that any Registry Index Map (R.I.M) generated from the re-survey be declared null and void.
20. In addition, the Petitioners urge the court to cancel any title deed that may have been issued pursuant to the re-survey exercise complained about and that the said Respondent be directed to issue title deeds to the Petitioners shareholders in accordance with the details contained in the R.I.M generated earlier by one P.N. Gichoho Ngugi, a Licensed Surveyor.
21. The basis for those prayers is the Petitioners' assertion that it is the proprietor of the said land parcel number Naromoru/Kiamathage/Block 2 (Mwichwiri) formerly known as LR. No. 9620 and situated within Nyeri County (the suit property). It is the Petitioner's case that sometime in the year 1989



- or thereabouts, the said parcel of land was surveyed by the said P.N. Gichoho Ngugi, a licensed land surveyor and that the said survey work was duly approved by the 2nd Respondent.
22. It is further the Petitioners' case that upon conclusion of the survey, the relevant R.I.M was prepared and kept in the custody of the 3rd Respondent after which the Petitioners' shareholders were shown their respective portions of land.
 23. The Petitioner accuses the 1st and 2nd Respondents of unilaterally moving onto the suit property on 14th June 2017 and carrying out a new survey thereon without any consultation with or the knowledge and consent of the Petitioner's directors and shareholders. It is the Petitioner's case that the said action has infringed on its constitutional rights under Article 40 and 47 of *the Constitution*.
 24. The Director of Survey (the 2nd Respondent) and the County Land Registrar Nyeri (the 3rd Respondent) are opposed to the Petitioner's claim. In a joint Replying Affidavit sworn and filed herein, the two aver that the suit property is no longer the property of the Petitioner as the same has already been closed upon the re-survey/sub-divisions and that all the relevant title deeds have since been issued to the rightful owners.
 25. It is the Respondents' case that the suit property has been the subject of various court cases and that their recent survey and issuance of title deeds was done pursuant to the culmination of various court orders. They aver that the re-survey works commenced on 13th June 2017 and were concluded on 30th June 2017. It is further their case that thereafter title deeds were prepared and were issued to the rightful owners with the last batch being issued on 25th July 2017.
 26. By an application dated 25th September 2017 a number of individuals claiming to be shareholders of the Petitioner who occupy certain parts of the suit property led by one Lawrence Mwangi Wamboo (IPW1) sought to be enjoined as Interested Parties herein on account that they were likely to be directly affected by the orders the court was being asked to grant in the Petition. That application was allowed by the consent of the parties on 23rd October 2017.
 27. Upon being enjoined in the suit, the Interested Parties swore a Replying Affidavit filed herein on 23rd October 2017 opposing the Petition and asserting that the same had been filed by two people who did not have the authority of the shareholders to do so as they were not directors of the Petitioner.
 28. The Interested Parties, like the Respondents, asserted that the resurvey that had been conducted by the 2nd Respondent and the issuance of titles in the year 2017 was the result of court orders issued after a long legal battle. They told the court the re-survey exercise was done in harmony with the 1972/75 Settlement of their members on the suit property as had been ordered by the Land Disputes Tribunal.
 29. From the material placed before me, it was apparent that the Petitioner herein is a land buying company incorporated in the early 1970s with the objective of purchasing land and settling its members thereon. It was not in dispute that the suit property was among those properties that had been purchased for the Settlement of the Petitioner's shareholders.
 30. It was also not in dispute that since the purchase of the suit property various wrangles have emerged within the management of the company splitting its members down the middle. As a result the Petitioner has had to contend with various disputes filed in the various courts by different factions of its management and shareholding.
 31. As early as the year 1990, some 32 Applicants did file Meru High Court Civil Case No. 319 of 1990 wherein they sought to compel the Petitioner to survey the land and to issue them with title deeds. On



7th November 1990, the said matter was placed before the Honourable Justice S,O. Oguk who recorded a consent order between the parties as follows:-

“ Order

By consent, it is hereby agreed and ordered that the registration and issuing of title deeds to members of Mwichwiri Farmers Co. Ltd in respect of the company farm known as LR 9620, Nyeri be stopped and stayed until the Provincial Commissioner, Central Province, Mr. Victor Musoga or his appointed Personal Assistant, sort out the complaints of the 32 Plaintiffs/applicants in this case. After sorting out such complaints or disputes as may arise, then he should proceed thereafter to cause the relevant title deeds to be processed to those members who are so entitled in respect of their respective plots.

I direct that a copy of this order be served upon the Land Registrar, Nyeri District and the Chief Land Registrar, Nairobi.”

32. It would appear that the Provincial Administration was unable to bring the dispute to an end and a new case being Nyeri HC/Misc. Application No. 88 of 1992 was subsequently filed. Some five (5) years later and by an order made by the Honourable Justice J.L.A. Osiemo on 5th March 1997, the matter was referred to the Nyeri Land Disputes Tribunal for arbitration.
33. That reference gave birth to the proceedings in Kieni Land Disputes Tribunal Case No. 88 of 1997. The decision of that Tribunal were subsequently adopted in Nyeri SPMCC Land Dispute Case No. 47 of 2000 wherein the Honourable Kaburu Bauni, CM issued orders on 1st August 2001 as follows:-
 - “ 1. That the Executive Officer of this court be and is hereby authorized to sign all the necessary documents in respect of Land Parcel No. 9620 for the same to be re-surveyed as per the court order dated 20th June 2001.
 2. That the Government Surveyor and the District Land Registrar Nyeri be and are hereby served with this order.
 3. That the O.C.P.D Nyeri do provide security.”
34. From a perusal of Page 49 of the Interested Parties documents as produced at the trial, it was evident that the Petitioner was unhappy with the orders that were issued on 20th June 2001 aforesaid and that they made an application dated 31st March 2004 in the said Nyeri SPMCC Land Disputes Case No. 47 of 2000 seeking orders as follows:-
 - a). That this Honourable court be pleased to review, vary and or set aside the orders of this Honourable Court issued on 20th June 2001, 16th November 2001, 4th July 2002 and 4th July 2002;
 - b). That in the alternative this Honourable Court do grant such other or further orders as it shall deem fit.
35. As it turned out, that application was dismissed on 12th September 2007 after the court declared that it had no jurisdiction to set aside the award.
36. Arising from the forgoing, it was evident that the Petitioner had over the years frustrated the efforts of its members and shareholders to have the suit property re-surveyed and for title deeds to be issued despite clear court orders that required it to do so. That frustration must have been what led to the orders issued on 1st August 2001 authorizing the Executive Officer of the court to sign documents on



behalf of the Petitioner in order to have the land re-surveyed as was required in the court orders issued on 20th June 2001.

37. While the Petitioner asserts by this Petition that it ought to have been consulted prior to the exercise and its concurrence obtained, it was evident that by the orders issued on 20th June 2001, the Petitioner had been divested of such powers after it failed to comply with the earlier orders.
38. While it is a given that Article 40 of *the Constitution* guarantees citizens the entitlement to acquire and hold property without interference from any quarter, in the circumstances herein, it was upon the Petitioner to demonstrate that indeed the State had unjustifiably and unreasonably disentitled the lawful shareholders of the Petitioner from acquiring and/or owning their property.
39. In the matter before me, I was not persuaded that the Petitioner had been deprived of its land. The Petitioner had long acquired the land on behalf of its shareholders. The Petitioner's sole witness Michael Muriuki Mwangi (PW1) conceded at the trial herein that they had surrendered the main title for the suit property to the Government way back in September 1990 for purposes of getting individual titles. He further conceded that for almost 50 years, they had lived on the land without title deeds and that there was an outcry from many, including the Interested Parties herein who were asking for their titles.
40. The Petitioner did not adduce any evidence to demonstrate that there was any individual shareholders who had been deprived of their land as a result of the actions taken by the Respondents. While the Petitioner contended that the Respondents had taken wrongful administrative action capable of being quashed by this court, it was evident from the foregoing that the actions taken on 14th June 2017 were in compliance with court orders which the Petitioner had attempted to frustrate over a long period of time.
41. At any rate under Article 47 of *the Constitution*, an administrative action is subject to control by judicial review on the grounds of illegality, irrationality or procedural impropriety. The Petitioner did not again persuade the court that the decisions and actions of the Respondents to enforce the court order could be said to be illegal, irrational or procedurally improper.
42. In the premises herein, I was not persuaded that the Petitioners' right had been infringed and/or that they were entitled to any of the orders sought herein. On the contrary, it was evident to me that the Petition had been filed in abuse of the court process to prolong the Petitioner's hold onto the suit land. It was clear that the courts had directed that a Government Surveyor do lead the process of re-survey and it was difficult to understand the Petitioner's obsession with relying on a survey report that was allegedly prepared by one P.N. Gichoho Ngugi in 1989.
43. It was also apparent that the R.I.M prepared by the said surveyor had been cancelled by a court order issued on 4th July 2002 and it was again not clear how the Petitioner expected this court to make an order directing the 3rd Respondent to issue titles in reliance to the already cancelled R.I.M.
44. It follows that I did not find any merit in the Petition dated 30th June 2017. It was certainly filed for some nefarious purpose and in abuse of the court process. It has no merit and must fail. I dismiss the same with costs to the Respondents.

DATED, SIGNED AND DELIVERED AT NYERI THIS THURSDAY 3RD DAY OF OCTOBER, 2024.

In the presence of:

Mr. Muchiri Wa Gathoni for the Petitioners



Ms. Gachanja holding brief for Ms. Kiarie for the Respondents.

No appearance for the Petitioners.

Court Assistant: Kendi

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J. O. OLOLA

JUDGE

