



Ptallah & 3 others v County Government of Uasin Gishu & 4 others (Environment & Land Case 235 of 2015) [2024] KEELC 6369 (KLR) (2 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6369 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 235 OF 2015**

**JM ONYANGO, J
OCTOBER 2, 2024**

BETWEEN

**OLIVER LANGAT PTALLAH 1ST PLAINTIFF
GEOFREY NDUNG’U MURILA 2ND PLAINTIFF
CAROLINE CHEBET KIGEN 3RD PLAINTIFF
PRISCAH ACHOLA INDAKWA 4TH PLAINTIFF**

AND

**COUNTY GOVERNMENT OF UASIN GISHU 1ST DEFENDANT
MINISTRY OF LANDS HOUSING & PLANNING (UASIN GISHU
COUNTY) 2ND DEFENDANT
THE CHIEF LAND REGISTRAR, UASIN GISHU COUNTY ... 3RD DEFENDANT
ATTORNEY GENERAL 4TH DEFENDANT
MOLERISE INNOVATIVE SERVICES 5TH DEFENDANT**

RULING

1. What is before me for determination is the 5th Defendant’s Notice of Motion dated 18th March 2024 seeking the following orders:
 1. Spent
 2. The Honourable Court be pleased to vary Order Number 1 in the consent order entered on 9th April, 2019 by making an order that Eldoret ELC Judicial Review No. 4 of 2018 – *Republic v National Land Commission & Others (ex parte Molerise Innovative Services Limited)* be disposed of separately.



3. The costs of this application be in the cause.
2. The application is predicated on the grounds set out in the Notice of Motion, the main ones being that the decision of the National Land Commission dated 15th March 2018 was made without jurisdiction and the same is thus null and void. The Applicant has challenged the same vide Judicial Review Application No. 4 of 2018. The Applicant is therefore of the view that the said Judicial Review Application ought to be heard separately from the instant suit.
3. The said grounds are elaborated in the Applicant's Supporting Affidavit sworn on 18th March 2024 where the Applicant deposes that since the decision of the NLC is a nullity *ab initio*, the court should vary Order No. 1 in the consent order entered on 9th April 2019 by making an order that Eldoret ELC Judicial Review No. 4 of 2018 be disposed of separately to prevent the course of justice from being defeated.
4. The application was opposed by the 1st Plaintiff, 1st and 2nd Defendants. The 1st Plaintiff filed a Replying affidavit sworn on 17th April 2024 while the 1st and 2nd defendants filed Grounds of Opposition dated 28.5.2024. the 2nd-4th Plaintiffs and 3rd and 4th defendants did not file any response to the application.
5. In his Replying Affidavit, the 1st Plaintiff deposed that there is no evidence placed by the Applicant to demonstrate that the consent was obtained by fraud and/or misrepresentation or breach of professionalism or collusion on the part of counsel to warrant the consent order being varied. He emphasized that the consent order entered into by counsel is binding on all parties and cannot be set aside unless it is proved that it was obtained by fraud, collusion or by an agreement contrary to the public policy of the court or where the consent was given without material facts in misapprehension or ignorance of such facts in general for a reason which can enable the court to set aside an agreement.
6. The parties were directed to canvass the application through written submissions and the Applicants and 1st and 2nd Defendants filed their submissions which I have carefully considered.
7. In his submissions the Applicant gave a background of the matter. He submitted that the subject matter of the Commission's decision being land parcels numbers LR No. Eldoret Municipality Block 14/2191 and the twelve (12) sub-divisions namely; Eldoret Municipality Block 14/2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240 and 2241 were also the subject of litigation in previously instituted suits namely; Eldoret ELC No. 235 of 2015 and Eldoret ELC No. 369 of 2015.
8. When the aforesaid matters came up in court on 9th April, 2019, a consent order was recorded in the following terms;

“By consent;

It is hereby ordered that;

1. The decision of the National Land Commission dated 15/3/2018 is stayed pending the hearing and determination of EldoretE&L No.235 of 2015 and 369 of 2015.
2. EldoretE&L. No.235 of 2015 and 369 of 2015 are hereby consolidated.
3. Proceedings to be conducted in 235 of 2015
4. The plaintiff in 369 of 2015 is the 5th defendant.
5. The plaint of the plaintiff in 369 of 2015 is hereby deemed as defence in 235 of 2015.



6. The defence in 369 of 2015 is deemed as the reply to defence.
 7. The 2nd, 3rd and 4th defendants to file defences and documents within 15 days.
 8. The National Land Commission to be enjoined as the 6th defendant and to be served by the plaintiff within 15 days.
 9. Molerise Innovative Services are made the 5th defendants.
 10. Mention on 22/7/2019 for further directions.
 11. Proceedings in Eldoret JR No 4 of 2018 are hereby stayed.
 12. The plaintiff to amend the plaint to reflect the parties as per the order today.”
9. It was his contention that the decision of the National Land Commission dated 15th March 2018 was made without jurisdiction and that it is therefore null and void.
 10. He further submitted that staying the proceedings in Judicial Review No. 4 of 2018 would mean that the impugned decision of the National Land Commission dated 15th March, 2018 would continue to hang on the Applicant’s head like the proverbial “Sword of the Damocles”, yet the Commission did not have jurisdiction to make a determination on the title to the suit land.
 11. It was his submission that the continued stay of proceedings in Judicial Review No. 4 of 2018 was inimical to the administration of justice as it would create unnecessary backlog. He was therefore of the view that the Judicial Review No. 4 of 2018 should be disposed of separately and expeditiously.
 12. In their submissions, the 1st and 2nd defendants contended that parties are bound by their pleadings. They argued that the Applicant had filed his application under Order 3 Rule 8 of the Civil Procedure Rules seeking that order No. 1 of the consent order dated 9.4.2019 be varied and that ELC JR No. 4 of 2018 be heard separately yet the said consent order did not seek to consolidate ELC JR No. 4 of 2018 with any other suit.
 13. They relied on the case of *Samuel Mbugua Ikumbu v Barclays Bank of Kenya Limited* [2015] eKLR and *Flora Wasike v Destimo Wamboko* [1982-1988] KAR 625 for the proposition that a consent order can only be varied or set aside on grounds that would justify setting aside a contract. These include, fraud, collusion, illegality, mistake, absence of material facts or if the contract is contrary to the policy of the court.
 14. They submitted that in the instant case the Applicant had failed to demonstrate that there was fraud, collusion, mistake or illegality in the consent order as he had merely misinterpreted the said order. It is their further contention that it is only paragraph 11 of the Consent order that mentions ELC JR No. 4 of 2019 by stating that the proceedings therein be stayed. They are of the view that the Applicant wants the court to pronounce itself on the legality of the decision of the National Land Commission dated 15.3.2015 at an interim stage before hearing the Judicial Review matter yet the same has been stayed.
 15. The only issue for determination is whether there are sufficient reasons to vary paragraph 1 of the consent order dated 19th April, 2019.

Order No. 1 of the Consent order dated 19th April, 2019 reads thus:

1. The decision of the National Land Commission dated 15/3/2018 is stayed pending the hearing and determination of Eldoret E&L NO. 235 of 2015 and 369 of 2015.



16. Although the Applicant seems to suggest that Order No. 1 states that the ELC JR No. 4 of 2019 be consolidated with the instant suit and ELC Case No. 369 of 2015, the contrary is true. I have read the consent order and nowhere is it suggested that JR No. 4 of 2019 be consolidated with this suit. My view is that if the decision of the National Land Commission is stayed, it will pave way for the hearing and determination of ELC case No. 235 of 2015 and ELC Case No. 369 of 2015 and the JR will automatically be heard separately, assuming that the aspect regarding the decision of the NLC shall not have been dealt with.
17. As correctly submitted by counsel for the 1st and 2nd defendants, the Applicant would like the court to determine the legality of the decision of the National Land Commission before hearing the submissions of the parties. This I cannot do unless the parties agree to review the consent and prioritize JR No. 4 of 2019 over the instant suit and ELC Case No. 369 of 2015. This would be followed by directions on how the same should be canvassed.
18. The principles for setting aside consent orders was laid out in the case of *Flora N. Wasike v Destimo Wamboko* [1988] eKLR and *Kenya Commercial Bank Ltd v Specialized Engineering Co. Ltd* [1982] KLR 485 where the Court held that:

“A consent order entered into by counsel is binding on all the parties to the proceedings and cannot be set aside or varied unless it is proved that it was obtained by fraud or collusion or by an agreement contrary to the policy of the court or where the consent was given without sufficient material facts or in misapprehension or ignorance of such facts in general for a reason which would enable the court to set aside an agreement.”

In *James Muchori Maina v Kenya Power & Lighting Company Ltd* [2005] eKLR the court observed as follows:

“A consent is in the form of a contract. It binds the parties. Since the time that consent was entered in court in 1999, it has not been challenged, nor has any of the parties applied to set it aside. The legal validity of a consent and principles on which it can be set aside were considered by the Court of Appeal in the case of *Kenya Commercial Bank Ltd v Benjob Amalgamated Ltd*, Nairobi Civil Appeal No. 276 of 1997, wherein the Court of Appeal applied the reasoning in the case of *Flora Wasike v Destimo Wamboko* [1988] eKLR”

19. In the instant case, the consent was recorded on 19.4.2019. At the time of recording the consent ELC JR No. 4 of 2019 had already been filed by the Applicant. The essence of the said application was to challenge the decision of the National Land Commission. The reasons being advanced by the Applicant that the said decision is invalid are the same ones raised in the Judicial Review Application. I can't help wondering why the Applicant agreed to the consent which prioritized the hearing of the instant suit. Having willingly signed the consent order the Applicant is therefore bound by it.
20. What is clear is that the Applicant has failed to prove that the consent was obtained by fraud or collusion or by an agreement contrary to the policy of the court to warrant the same being set aside.
21. Consequently, the application lacks merit and it is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 2ND DAY OF OCTOBER 2024

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J.M ONYANGO



JUDGE

In the presence of;

1. Mr. Siboe for Mr. Baraza for the 1st Plaintiff
2. Mr. Ogongo for the 1st and 2nd Defendants
3. No appearance for the 3rd and 4th Defendants
4. Mr. Rotich for Mr. Njuguna for the 5th Defendant

Court Assistant: Brian

