



**Republic v National Land Commission & 2 others; Almer Farm Limited
 (Exparte Applicant) (Environment and Land Judicial Review Case
 4 of 2019) [2024] KEELC 6473 (KLR) (1 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6473 (KLR)

**REPUBLIC OF KENYA
 IN THE ENVIRONMENT AND LAND COURT AT KITALE
 ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 4 OF 2019
 FO NYAGAKA, J
 OCTOBER 1, 2024**

BETWEEN

REPUBLIC APPLICANT

AND

THE NATIONAL LAND COMMISSION 1ST RESPONDENT

THE CHIEF LAND REGISTRAR 2ND RESPONDENT

**BETTY RONO (SUING AS THE EXECUTRIX OF THE ESTATE OF DAVID
 RONO) 3RD RESPONDENT**

AND

ALMER FARM LIMITED EXPARTE APPLICANT

RULING

1. This Court has on many occasions lamented on the paucity of pleadings in pretty much of about one third of Kenya’s current legal practitioners’ life, if the number of those who have appeared before this Court during my service in the station I am in is a sample worth to go by. This is a worrying trend because many a client or party lose his/her case on the basis of poorly drafted pleadings. It is worth reminding all and sundry that it is not the duty of the court to correct, direct or craft pleadings for parties in order to salvage a claim or bring out a clear defence for a party. Ours is an adversarial system and shall remain so hence the judge or judicial officer cannot descend into the arena of parties whether by sympathy or empathy, morality or design to play the parties’ roles. If he so does, he will cease to be an impartial passive arbiter.
2. The pleadings in this application cause for greater worry in preparedness of proper professional legal practice in Kenya. How I wish any drafter of any pleading read the same to themselves to ‘hear’ their



communication in the document before they send it forth for filing! Since this Court is under a duty to sit let me proceed accordingly, pleading paucity notwithstanding.

3. The Third Respondent, who described herself as the Executrix of the Estate of David Rono, moved this Court by a Notice of Motion dated 11/10/2022. It sought the following prayers.
 1. ...Spent
 2. That this honourable Court be pleased to issue orders to the County Surveyor Trans Nzoia County to survey and curve 400 acres out of the 1198 Acres of from L. R. 8940 Acres (sic) pending the hearing and determination of this application (sic).
 3. This honorable Court do issue orders to the officer in charge of the police station, (OCS) Trans-Nzoia County – Cherangany police station to supervise this exercise pending the hearing and determination of this application.
 4. The costs of this application be in the cause.
4. It was based on several grounds and supported by the Affidavit of Betty Rono, the 3rd Respondent. The grounds were that the Respondent fraudulently obtained the Applicant's land, measuring 400 acres. The suit land measured 400 acres to be curved out of 1198 acres from LR No. 8490. The Respondent moved to Court and sued the Applicant in ELC JR, Appl. Case No. 4 of 2019, ELC Misc. Case E013 of 2021 and ELC JR No. 4 of 2019. All three suits were dismissed with costs in favour of the 1st Respondent. It is in the interest of justice that this Honourable Court issues orders to the County Surveyor Trans Nzoia to survey and curve 400 acres out of the 1198 acres from LR. No. 8490. The officer in charge of Trans-Nzoia West police station (OCS) is to provide security during the exercise. The application was brought on time and in good faith.
5. The Applicant swore on 11/10/2022 an Affidavit in support of the Application. She deponed that she was the Administratrix of the Estate of David Rono, her deceased husband. The deceased was a member of Chebisas Group which bought 400 acres through shares of members. She deponed further that she petitioned the National Land Commission (NLC) which after hearing her found that a certain acreage of the land was to be excised and allocated to her and her group. The Respondent appealed through Civil Appeal No. 5 of 2021 (which as per annexure BR1 was in the Court of Appeal sitting at Eldoret, but which application the Court notes that it was for stay of execution pending appeal) and the appeal was dismissed with costs to her. She annexed as BR1 a copy of the Appeal. The Ex Parte Applicant sued her together with the first Respondent in Civil Appeal No. 5 of 2021 which too was dismissed with costs. She prayed that this Honourable Court orders the County Surveyor, Trans-Nzoia to curve 400 acres out of 1198 acres from LR. No. 8490, Trans-Nzoia Cherangany in her favor. She annexed as BR2 (a), (b) and (c) copies of the Ruling of appeal, Letter and Order. She prayed that the County Land Adjudication Officer Trans-Nzoia to settle members of Chebisas Group.
6. The 3rd Respondent/Applicant filed her written submissions 13/05/2024 while the 2nd Respondent filed his dated 08/05/2024. Both argued in favour of the grant of the orders sought. This Court shall not reproduce the content of the submissions separately but will consider it as analyses the issues before it in regard to the merits of the application. Moreover, submissions are not pleadings hence their content is only to shed light on the position of the parties in relation to both the law and the facts on the application.
7. This Court has considered the law and the Application herein together with the rival submissions. The only issues for determination are whether the Application is merited and who to bear costs of the same.



8. As noted at the beginning of this Ruling, learned counsel for the Applicant drafted this application poorly. It was so badly drafted that it could not succeed as it was. Both prayers for determination were, if successful, to be granted pending the hearing and determination of the instant application. What next then? The Application as drafted was interlocutory in nature: there was no final prayer sought. Perhaps the Applicant must have been aware that this Court was functus officio in this matter hence subtly crafted the prayers as such or she did not understand the orders of this Court when it delivered the judgment dated 01/12/2020. Thus, the Application was thoroughly incompetent and unmerited for that matter. The submissions made in support thereof or against are neither here nor there. The Application cannot be grant and must fail.
9. As a parting shot, I wonder why in her wisdom the Applicant decided to make prayers about excision or curving of the 400 acres in relation to the original parcel of land in the instant file. As noted, the instant application which has not succeeded. It was filed in this file, Kitale Misc. Appl. No. 4 of 2019 which the Applicant herein deposed, in the Supporting Affidavit, that it was dismissed. This Court has considered that deposition vis-a-vis the facts and the pleadings herein. Indeed, the Application which was determined herein earlier was a judicial review one.
10. The Judicial Review Application dated 09/04/2019 was brought by the Ex Parte Applicant now Respondent seeking orders of Certiorari against the decision of the National Land Commission made on 07/02/2019 in Case No. NLC/H L1/112/2017. It sought to remove that decision to this Court and quash it and also remove and quash the gazettement of the decision as published vide Gazette Notice No. Volume CXX1- No. 27 published 01/03/2019.
11. In his judgment delivered on 01/12/2020 my learned predecessor Judge disallowed the application. Following his decision the Ex Parte Applicant appealed to the Court of Appeal sitting in Eldoret in Civil Appl. No. 5 of 2021. The Application was disallowed on 09/07/2021 by the Learned Judges of Appeal as shown by annexure BR1.
12. The foregoing demonstrates that upon the delivery of the judgment, against which no appeal subsisted basically left the decision of the National Land Commission intact to this date. This Court became functus officio. The failure of the Application for Judicial Review did not give rise to orders, other than payment and or execution for costs, which could be capable of being actualized in this file as to give rise to an application even close to or akin to the instant one. The Court did not make a declaration that could found an application of the nature of the instant one even if it were to be competent. It only opened the way for the successful party in the NLC Case to move the appropriate Forum to effect the excision of the 400 acres as decided on 07/02/2019 (but not in favour of one individual as the 3rd Respondent/Applicant wished the Court or anyone to believe since the Estate of the late David Rono was only one among many shareholders of the Chebisis Group).
13. The upshot is that the instant application is not merited. It is dismissed for being both incompetent and spent, with no order as to costs.
14. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIRTUALLY VIA THE TEAMS PLATFORM ON 1ST DAY OF OCTOBER, 2024.

HON. DR.IUR F. NYAGAKA

JUDGE, ELC KITALE

At 10:55 AM, in the presence of:



Gemenet for 3rd Respondent/ Applicant

Odongo for 2nd Respondent

Obuya for the Ex Parte Applicant /Respondent

Obino for 1st Respondent

