



Gikenyi B & 7 others v Gacanja & 8 others; Ethics and Anti-Corruption Commission & 3 others (Interested Parties) (Environment & Land Petition E073 of 2024) [2024] KEELC 7425 (KLR) (6 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7425 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND PETITION E073 OF 2024
MD MWANGI, J
NOVEMBER 6, 2024**

BETWEEN

**DR MAGARE-GIKENYI B 1ST PETITIONER
DISHON MOGIRE KEROTI 2ND PETITIONER
PAULINE NDU'TA KINYANJUI 3RD PETITIONER
PHILOMON ABUGA NYAKUNDI 4TH PETITIONER
SHALLUM KAKA NYAUNDI 5TH PETITIONER
AGNES WANZUU WAAMBUA 6TH PETITIONER
SEMERE GODWILL 7TH PETITIONER
MARK FORTUNE OMONDI 8TH PETITIONER**

AND

**WILSON GACANJA 1ST RESPONDENT
ELIZABETH GITIRI GACANJA 2ND RESPONDENT
SONETH LIMITED 3RD RESPONDENT
NATIONAL LAND COMMISSION 4TH RESPONDENT
COUNTY EXECUTIVE COMMITTEE MEMBER, BUILT ENVIRONMENT &
URBAN PLANNING, NAIROBI CITY COUNTY 5TH RESPONDENT
NAIROBI CITY COUNTY 6TH RESPONDENT
CHIEF LAND REGISTRAR 7TH RESPONDENT
CHIEF LAND SURVEYOR 8TH RESPONDENT**



ATTORNEY GENERAL 9TH RESPONDENT

AND

ETHICS AND ANTI-CORRUPTION COMMISSION INTERESTED PARTY

LAW SOCIETY OF KENYA INTERESTED PARTY

KITUO CHA SHERIA INTERESTED PARTY

KATIBA INSTITUTE INTERESTED PARTY

RULING

Introduction

1. The Petitioners in this matter describe themselves as Law abiding citizens of Kenya, public spirited individuals and human rights defenders. Their Petition seeks amongst other orders a declaration that plot L.R 209/381/2 subdivided into L.R 209/11401 and L.R 209/11402 (hereinafter referred to as “the Suit Property”) is a public land. Their position is that the illegal allocation and alienation of the public land to private persons is a violation of *the Constitution* and tantamount to violation of rights of Kenyans who are affected by such misappropriation of public land.
2. The Preliminary Objection by the 3rd Respondent seeks to strike out with costs both the Petition and the Notice of Motion application dated 10th September, 2024 on the grounds that: -
 - a. That the issues raised in the Petition primarily concern investigations to establish whether the suit property is private or public land, which investigations are a preserve of the Ethics and Anti-Corruption Commission (EACC) under Section 11 (1) (j) and Section 13 of the *Ethics and Anti-Corruption Commission Act*.
 - b. That Article 79 of *the Constitution* establishes the Ethics and Anti-Corruption Commission which is vested with the powers to conduct investigations on its own initiative or on a complaint made by a member of the public.
 - c. That the Petition and the Notice of Motion Application are premature and unripe and offend the doctrine of exhaustion and the doctrine of ripeness and constitutional avoidance as the Petitioners have not exhausted the mechanisms under Article 252 of *the Constitution* and Sections 11 (1) (j) and 13 of the *Ethics and Anti-Corruption Commission Act*.
 - d. That where there exists sufficient and adequate mechanism to deal with a specific issue or dispute by other designated constitutional organs, the jurisdiction of the Court should not be invoked until such mechanisms have been exhausted. (International Center for Policy and Conflict and 5 Others –vs- The Attorney General & 5 Other)
 - e. In the circumstances the Petitioners’ Petition and Notice of Motion Application are incompetent, unripe, bad in law, fatally defective and an abuse of the Court process.

Issues for determination

3. The Court has keenly read through and perused all the pleadings filed in this matter, the comprehensive written submissions by the parties, the cited authorities, and the relevant provisions of the law as pertains to the preliminary Objection herein.



The issue at hand is whether the preliminary objection is merited.

Determination

4. In the case of *Matemu –vs- Trusted Society of Human Rights & 5 others* [2014] eKLR, the Supreme Court of Kenya was categorical that,

“ Article 22 and 258 of *the Constitution* have empowered every person, whether corporate or non-incorporated, to move the courts, contesting any contravention of the Bill of Rights, or *the Constitution* in general.”

5. I wish to particularly accentuate the provisions of Article 258 of *the Constitution* that expressly allows every person a right to institute court proceedings claiming that *the Constitution* has been contravened or is threatened with contravention. ‘Today, by dint of Articles 22 and 258 of *the Constitution*, any person can institute proceedings under the Bill of Rights, on behalf of another person who cannot act in their own name, or as a member of, or in the interest of a group or class of persons, or in the public interest.’

6. The fact that there are Constitutional or Statutory bodies created and mandated to protect and preserve public land like National Land Commission (NLC) and the Ethics and Anti-Corruption Commission (EACC), as proposed by the 3rd Respondent is not a bar to public spirited citizens instituting legal proceedings to protect and contest what they perceive to be unlawful allocation and or misappropriation of public land.

7. Whether the Petitioners succeed or not in their earnest endeavor is a different matter altogether. At this point the court is not concerned with the merits of the petition. What the Court has been called upon to determine by the raising of the preliminary objection by the 3rd Respondent is whether the Petitioners have a right to institute those proceedings as they have.

8. The Court’s determination is that the Petitioners do have a right to institute proceedings pursuant to the provisions of Articles 22 and 258 of *the Constitution* as well as Article 3 of *the Constitution*.

9. I will say no more at this juncture, considering that these proceedings are pending determination. The preliminary objection by the 3rd Defendant is disallowed, and dismissed with costs to the Petitioners.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 6TH DAY OF NOVEMBER, 2024.

M.D. MWANGI

JUDGE.

In the virtual presence of:

Dr. Magare Gikenyi one of the Petitioners in person

Ms. Njenga h/b for Mr. Bashir for the 3rd Respondent

Ms. Masinde for the National Land Commission

Ms. Nderitu h/b for Mr. Jackson Awere for the 5th & 6th Respondents

N/A for the Interested Parties and 1st, 2nd, 4th, 7th – 9th Respondents

Yvette: Court Assistant



M.D. MWANGI
JUDGE.

